Implementation of the European Youth Guarantee and the Right to Work: A comparative Analysis of Traineeship Programmes under the EU Active labour Market Policy
Eleved, Anja; Bazzani, Tania; De Le Cour, Alexandre; Staszewska, Ewa

published in
International Journal of Comparative Labour Law and Industrial Relations
2022

DOI (link to publisher)
10.54648/ijcl2022013
10.54648/ijcl2022013

document version
Publisher's PDF, also known as Version of record

document license
Article 25fa Dutch Copyright Act

Link to publication in VU Research Portal

citation for published version (APA)

General rights
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

• Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
• You may not further distribute the material or use it for any profit-making activity or commercial gain
• You may freely distribute the URL identifying the publication in the public portal

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address:
vuresearchportal.ub@vu.nl

Download date: 20. Sep. 2023
Implementation of the European Youth Guarantee and the Right to Work: A Comparative Analysis of Traineeship Programmes Under the EU Active Labour Market Policy

Anja Eleveld*, Tania Bazzani**, Alexandre De Le Cour*** & Ewa Staszewska****

This article analyses the consistency between the implementation of the EU Youth Guarantee and the fundamental right to work. Focusing on the use of traineeships as an implementation instrument, it explores various types of national Active Labour Market Policies (ALMP) for young unemployed people in Italy, Spain, the Netherlands and Poland. The case studies show that it remains to be seen whether the traineeships considered in this research comply with the right to work. The authors argue for the need to strengthen the Youth Guarantee to accord with the right to work, so that in addition to the right to a first job, it ensures that work-related instruments include the provision of effective training, as well as the right to equal pay for work of equal value, and decent working conditions. This is particularly important in view of the Coronavirus disease 2019 (COVID-19) pandemic, that has had an unprecedented economic impact in the EU and is likely to result in another dramatic upsurge in the number of young unemployed.

Keywords: Youth Guarantee, Right to Work, NEETs, Traineeships, Decent Work, Equal Pay, Active Labour Market Policies

1 INTRODUCTION

On 22 April 2013, the European Union adopted the Council Recommendation on establishing a Youth Guarantee: a commitment by the Member States to ensure

---

* Associate Professor, Department of Social Law, Faculty of Law, Vrije Universiteit Amsterdam. Email: anja.eleveld@vu.nl.
** Post-Doctoral Researcher, European University Viadrina. Email: Bazzani@europa-uni.de.
*** Serra Húnter Fellow, Labour Law and Social Security, University of Barcelona. Email: alexandre.delecourt@ub.edu.
**** Assistant Professor, Department of Labour Law, Faculty of Law and Administration, University of Lodz. The authors would like to thank the anonymous reviewers of this article as their constructive, critical observations have been an important contribution to the structuring of the ideas it contains. Email: estaszewska@wpia.uni.lodz.pl.
that all young people under the age of twenty-five receive a good-quality offer of employment, continued education, or an apprenticeship or traineeship within four months of becoming unemployed or leaving formal education. In 2020, the target group of the Youth Guarantee was subsequently extended to everyone up to the age of thirty.

By 2018, Active Labour Market Policies (ALMPs) were the most frequently adopted non-employment form of work under the Youth Guarantee. These usually involve young people carrying out work in the form of traineeships. While the exact definition of ‘traineeships’ varies across jurisdictions and authors, the Council Recommendation 2014/C 88/01 of 10 March 2014 on a Quality Framework for Traineeships refers to ‘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’. These traineeships are not to be confused with apprenticeships, which the International Labour Organisation (ILO) Vocational Training Recommendation 1962 (No. 117) defines as ‘systematic long-term training for a recognized occupation taking place substantially within an undertaking’.

In practice traineeships are not always combined with training programmes. Moreover, as shown in our case studies, trainees often lack the status of employees: traditional contracts of employment are often replaced by contractual and administrative instruments that are not protected by labour law. This raises several questions regarding their justification, and indeed the extent to which they contribute to youth precarization, particularly given the relatively recent increase in the use of ALMP traineeships for young unemployed people.

---

6 According to Stewart, supra n. 4, apprenticeships can be distinguished from traineeships in that they are more likely to operate over longer periods, and they necessarily involve training in all of the competencies required to practice a particular trade or profession.
8 Ibid.; Julia López López, Traineeships and Systemic Discrimination Against Young Workers, in Andrew Stewart et al. eds, supra n. 4, at 321–333.
9 Andrew Stewart et al., supra n. 4.
Considering that ALMPs are considered an expression of the right to work\textsuperscript{10} that promotes full employment and decent working conditions, this article aims to evaluate tensions that may arise between the way the Youth Guarantee is implemented and the fundamental right to work. In recent labour law literature, ALMPs have been critically analysed against the right to (freely chosen) work.\textsuperscript{11} However, ALMP traineeships for young unemployed have not attracted specific attention. This article specifically focuses on these policies by developing standards based on an analysis of the right to work in order to evaluate processes and instruments relating to the Youth Guarantee (section 2). It then uses these standards to explore and evaluate the use of ALMP traineeships for young unemployed people as an implementation instrument of the Youth Guarantee in Italy, Spain, the Netherlands and Poland (section 3). The first two countries were selected as they have an extremely high rate of youth unemployment, and one contrasting with the relatively low rates of youth unemployment in the Netherlands and Poland (see Table 1). In addition, the different approaches to ALMPs adopted in the various countries\textsuperscript{12} and their differing classifications in the literature on welfare state models\textsuperscript{13} allow for a well-balanced mix of cases for analysis.

Based on these case studies, we examine the extent to which national ALMP traineeships for young unemployed people are in line with the goals of EU youth policies, and how they could be improved, both in terms of the legal protection provided to ALMP participants and in realizing the right to work (section 4). The article ends with a brief conclusion, in which we reflect on the relevance of the Youth Guarantee against the backdrop of rising youth unemployment as a result of the Covid-19 pandemic (section 5).

\textsuperscript{10} Mark Freedland et al., Public Employment Services and European Law (Oxford University Press 2007).
\textsuperscript{12} Tania Bazzani, Italy, Denmark and Germany: A Comparative Analysis in Active and Passive Labour Market Policies, 8(2) Eur. Lab. L. J. 133–153 (2017); Alexandre de le Court, Protección por desempleo y derechos fundamentales. El caso español en contexto (Tirant lo Blanch 2016).
Table I  Youth Unemployment in Europe in 2020

<table>
<thead>
<tr>
<th>Country</th>
<th>% (15–29 Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>29.2</td>
</tr>
<tr>
<td>Italy</td>
<td>22.1</td>
</tr>
<tr>
<td>Netherlands</td>
<td>7.1</td>
</tr>
<tr>
<td>Poland</td>
<td>7.1</td>
</tr>
</tbody>
</table>

Source: Eurostat

2 EU YOUTH EMPLOYMENT POLICIES AND THE FUNDAMENTAL RIGHT TO WORK

This section starts with an outline of the history and contents of EU youth employment policies (2.1) and then considers and discusses these policies and the instruments proposed in respect of the right to work. A distinction is made between the right to work as an obligation on the part of the state to realize the right to a (first) job through employment policies (2.2) and the right to decent working conditions for young unemployed people participating in those policies (2.3). The section concludes with a proposal for various elements to be considered when analysing ALMPs for young unemployed people from a perspective of the right to work (2.4).

2.1 EU YOUTH EMPLOYMENT POLICIES: A N OVERVIEW

Since 1998, the European employment guidelines have stressed the need to shift unemployment protection from passive to active measures and, in the case of youth unemployment, to ease the transition from school to work. In this vein, and in the subsequent years, the guidelines considered social protection and education, as well as training, to be auxiliary to actively enhancing employability. In 2006, the Council issued a Recommendation for lifelong learning, aiming to equip young people with key competences for further learning and working

---

throughout their lives.\textsuperscript{16} The economic problems triggered by the 2008 financial crisis resulted in further measures targeting young people, including the relaunching of European policies aimed at combating youth unemployment. One of these policies was incorporated into the 2011 Council Recommendation in which Member States were called on to implement comprehensive policies to tackle early school-leaving, including measures encompassing prevention, intervention and compensation.\textsuperscript{17}

In 2013, the Council recommended, through the Youth Guarantee,\textsuperscript{18} that Member States should provide everyone under the age of twenty-five with a good-quality opportunity of employment, continued education or an apprenticeship or traineeship within four months of their becoming unemployed or leaving formal education. At the same time, the strategic importance of the Youth Guarantee was emphasized by the decision to revise the European Funds so that they could be used in an efficient way to promote (young) people’s access to the labour market.\textsuperscript{19} As a result, the Youth Guarantee became a lasting European policy tool for tackling youth unemployment.

The Council Recommendation of 30 October 2020 replaced the Recommendation of 2013 on establishing a Youth Guarantee. By means of this 2020 Recommendation, the Council extended the Youth Guarantee’s target group to people under the age of thirty.\textsuperscript{20} This Recommendation also referred back to the 2014 Recommendation for a Quality Framework for Traineeships, which proposes guidelines on enabling trainees to acquire high-quality work experience based on a written traineeship agreement, including learning and training objectives, and under safe and fair conditions, with the aim of increasing their chances of finding a good-quality job.\textsuperscript{21}

The European Social Fund Plus (ESF+), which was created by merging several existing funds (the European Social Fund, the Youth Employment Initiative (YEI), the Fund for Aid to the Most Deprived (FEAD), the EU Programme for Employment and Social Innovation (EaSI) and the EU Health

\textsuperscript{18} Council Recommendation 2013/C 120/01 of 22 Apr. 2013 on establishing a Youth Guarantee, OJ C 120, 26 Apr. 2013.
\textsuperscript{20} Supra n. 2.
Programme), represents a further attempt to increase the effectiveness of European policies on supporting young people. This new fund is envisaged not only as the main way to support implementation of the Pillar of Social Rights, but also as a crucial tool for policies on youth employment and social inclusion. It has a budget of EUR 97 billion for the years from 2021 to 2027, which is consistently more than the amount of each of the funds from which it was formed. The rules governing the fund explicitly state that Member States with rates of young NEETs (i.e., people aged between 15 and 29 who are Not in Education, Employment or Training) above the EU average have to devote at least 15\% of their ESF+ funding between 2021 and 2025 to measures in support of youth employment and activation of young people.

Youth employment policies are also embedded in the European Semester, with two of the twelve Social Scoreboard indicators monitoring the percentage share of young NEETs (aged 15–24) and the share of early leavers from education and training (aged 18–24).

2.2 YOUTH EMPLOYMENT POLICIES FOR REALIZING THE RIGHT TO WORK

The legal source of the obligation for states to pursue policies aimed at full productive employment, including ALMPs, is undoubtedly the right to work. This fundamental universal right is also regarded as a precondition for other social human rights, such as the right to decent working conditions and the right to equal wages for work of equal value. We contend, then, that the Youth Guarantee and its implementation within the Member States can be embedded within this framework. This section examines the right to work in relation to the Youth Guarantee in more detail.

The right to work, in its various normative forms, is reflected in a positive legal order. Attention should be paid to Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 1 of the European Social Charter (ESC), which both impose a duty on states to take the steps necessary to achieve full employment. The ESC includes the principle that

---

25 See in particular, Art. 6 (2) ICESCR; CESCR General Comment No. 18 on the right to work; Art. 6 ICESCR, E/C.12/GC/18(2008), para. 26 and Art. 1 (1) ESC. See also Simon Deakin, Article I. The
people have the right to earn a living by freely chosen work (this is further
developed in Article 1 of the ESC). The European Committee of Social Rights
(ECSR), which is responsible for supervising the ESC, also considers the imple-
mentation of the Youth Guarantee when assessing the contracting parties’ com-
pliance with Article 1(1) on the right to work. So, too, does the Committee on
Economic, Social and Cultural Rights (CESCR) when assessing the implementa-
tion of Article 6 of the ICESCR.

Although it is undoubtedly possible to speak of the universal dimension of the
right to work, this does not mean that the contents of this right are the same
regardless of the entitled person’s individual characteristics. This is because the risk
of unemployment varies from one person to another and, while the labour market
is heterogeneous, certain risk groups, such as young people, require greater
specialization and increased intensity in implementing their right to work.

It is our contention that a right to a first job can be identified both in social human
rights treaties such as the ICESCR and the ESC and in EU youth policies.27 This right
to a first job means that jobs should be available for all young people entering the
labour market (even though the maximum age for participating in the Youth
Guarantee has been increased to thirty, which might be seen as watering down that
objective). The CESCR points out that access to a first job constitutes an opportunity
for economic self-reliance and, in many cases, a means of escaping poverty.28 In
addition, in the context of the right to work, the ECSR pays particular attention to
young people, particularly young women, who have great difficulties in finding initial
employment.29

Realizing the right to a first job requires people to be properly equipped to
take up work. This is particularly important where the primary cause of the
difficulties experienced in realizing the right to a first job is a deficient educational
system. Implementing the right to work in preparation for the first job is a way of
filling this gap.

First of all, then, Article 6(2) of the ICESCR prescribes technical and voca-
tional guidance and training programmes; policies and methods aimed at achieving
sustainable economic, social and cultural development; and full, productive
employment. According to the CESCR, national policies on adequate education
and vocational training should also be adopted and implemented to promote and
support access to employment opportunities for young people, in particular young

---

27 See e.g., Activation Policies for the Unemployed, the Right to Work and the Duty to Work (Elise Dermine &
Daniel Dumont eds, Peter Lang 2014).
28 CESR, supra n. 25, para. 14.
29 ECSR, Conclusion XVI-1, Statement of Interpretation on Art. 1 § 19 (2002).
Meanwhile, Article 1(1) ESC stresses that to ensure the right to work can be effectively exercised, it is vital for states to adopt the achieving and maintaining of as high and stable a level of employment as possible as one of their fundamental objectives and duties, all with a view to attaining full employment. Article 1(4) ESC, in turn, focuses on the provision or promotion of appropriate vocational guidance, training and vocational rehabilitation.

The right to vocational training is further developed as an ‘autonomous’ right under Article 10 ESC. According to the ECSR ‘vocational training’ stipulated in Article 10 ESC covers initial training, university and non-university higher education as well as continuing training as stipulated in Article 10 (3). This provision, where it concerns young people, mentions not only the obligation to ‘grant facilities for access to higher technical or university education’, but also to ‘provide or promote a system of apprenticeships and other systematic arrangements for training young boys and girls in their various employments’. Moreover, Article 10(3) ESC, which provides for the right to continuing vocational training for adult workers, also applies to ‘employed and unemployed persons, including young unemployed people’. The various instruments for implementing the right to work consequently include not only the provision of appropriate assistance in searching for a job, and the availability of financial incentives for employers hiring young unemployed people or establishing apprenticeships, but also traineeships as ‘systematic arrangements’ for training.

We can also identify a right to a first job in EU law. Under the European Pillar of Social Rights, the implementation of young people’s right to work as conceptualized here is integrated within the principles on access to the labour market, more specifically as a ‘right’ to active support towards employment. This framing of the right to work can be embedded in the understanding of the fundamental right ‘to engage in work’ given in Article 15 of the EU Charter of Fundamental Rights, including the right to vocational training and other forms of labour market support aimed at enabling a person to obtain ‘decent’ work. However, it should be noted that, under the EU Charter,
the right to access vocational training is also framed within the right to education in Article 14. This embedding of vocational training in both the right to work and the right to education could thus be seen as emphasizing the training component. This would argue in favour of analysing instruments centred on the acquisition of skills and competences not only from the perspective of the right to education, but also taking account of all the dimensions of the right to work.

We will close this section with a few remarks on the balance between the employability approach and the rights approach. It is contended that a right-to-work perspective implies that Member States should be required to prove that traineeships implemented as part of the Youth Guarantee should effectively enhance employability. In other words, their use should be justified by their effective contribution to realizing the right to a first job. As such, it would be reasonable to consider that the effectiveness of ALMPs should be included within the contents of the right to work, and that those policies should include means of assessing their efficacy. This seems to be the way implicitly followed by the ECSR more recently. As pointed out earlier, the ECSR assesses youth employment policies under Article 1(1) of the ESC, and considers the level of youth unemployment and, in the event of high rates, the existence of ALMPs targeted at young people (including the Youth Guarantee). The Committee’s 2020 Conclusions on assessing youth employment policies under Article 1(1) in countries where the rates of NEETs or young unemployed people are above the EU average include observations on the effectiveness and impact of the measures analysed. Importantly, the Committee does not consider the existence of measures for implementing the Youth Guarantee to be sufficient in themselves. Instead, it assesses the results of any such measures, not only in terms of participation, but also in terms of labour market integration.

34 Therefore, the ECSR argues that in the absence of information the Committee is not able to pronounce on the effectiveness of ALMPs (European Committee of Social Rights, Conclusions 2020 – Cyprus, Art. 1–1, 2020/def/CYP/1/1/EN).

35 Including the European Committee of Social Rights, Conclusions 2020, Estonia, Art. 1–1 (2020/def/EST/1/1/EN); Hungary, Art. 1.1 (2020/def/EST/1/1/EN); Romania, Art. 1–1 (2020/def/ROU/1/1/EN) or Spain, Art. 1–1 (XXII-1/def/ESP/1/1/EN) where it observes that ‘while noting the wealth of information on the legislative basis and objectives of the many different measures, [it] did not find the information requested in the previous conclusions […] on whether the employment policies in place are monitored and how their effectiveness is evaluated’.
2.3 The right to decent working conditions when participating in youth employment policies

In section 2.1 we mentioned that the new Council Recommendation of 2020 on establishing a Youth Guarantee refers back to the Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships. However, the 2014 Recommendation, albeit aimed at increasing the chances of finding a good-quality job, provide for only a limited number of minimum standards (such as maximum weekly working times and weekly rest periods). In terms of pay, working times and health and safety, the focus of the Recommendation seems to be on guaranteeing transparency rather than on proposing minimum conditions. While the ninth recital in the Recommendation recognizes that the lack of social security coverage for trainees is one of the problems that has been identified, point 7 recommends only that Member States should ‘encourage traineeship providers to clarify whether they provide coverage in terms of health and accident insurance as well as sick leave’. More generally, minimum conditions for traineeships do not seem to have been explicitly included under right-to-work approaches, despite being an important instrument in youth employment policies. It can be questioned whether this is in conformity with the right to work. First of all, based on the legal literature and supervisory bodies’ recommendations, we cannot but conclude that the right to work includes the right to decent work. For example, as observed in the previous section, based on the legal literature, under Article 15 of the EU Charter, the right to work envisages the realizing of such work. In addition, the CESCR emphasizes that work referred to in Article 6 of the ICESCR must be decent work – in other words, work that respects fundamental human rights, as well as workers’ rights in terms of workplace safety and remuneration, and includes payment of wages sufficient to allow workers to support themselves and their families. Meanwhile the ECSR states that traineeships should be conducted under contracts of employment, with other arrangements being reserved for school-based education.

36 Supra n. 21.
37 It is interesting to observe that, according to its twenty-eighth recital, the Recommendation does not apply to ‘work experience placements that are part of curricula of formal education or vocational education and training’, thus confirming the different treatment of training arrangements in the framework of ALMPs and as part of realizing the right to education.
38 On the other hand, according to the Commission Staff Working Document on ‘Applying the Quality Framework for Traineeships’ (SWD/2016/0324 final), it seems that in most Member States where ALMP traineeships do not take the form of an employment contract, trainees are often protected by insurance for work-related accidents and social security provisions.
40 CESCR, supra n. 25, para. 7.
41 ECSR, supra n. 32, at 123–124.
We therefore concur with Julia López López, who argues that the Youth Guarantee seems to attribute the same value to employment, traineeships and apprenticeships, even though those different formalizations of work do not provide the same protection in terms of status and working conditions. While the use of non-employment forms of work is justified by the objective of enhancing young people’s employability, we should not forget that these forms of work are more precarious than employment, and so may contribute to the indirect but systemic discrimination of young workers.42

One way to ensure at least some basic working conditions and prevent the emergence of precarious work relations is by assigning trainees the status of employee or worker. In this regard it is important to point out that, as set out in the sixth recital of Directive 2019/1152 on transparent and predictable working conditions in the European Union, case law of the Court of Justice of the European Union (CJEU) allows trainees and apprentices to be considered as workers under EU law regardless of the nature of the employment relationship under national law, provided that they perform real and genuine activities for and under the direction of another person and receive remuneration in return for these activities.43 Neither the level of productivity of the person concerned nor the origin of the funds from which the remuneration is paid, or the (very) limited extent of the remuneration, has consequences for whether or not the person is considered a worker under EU law.44 More specifically, the CJEU ruled in Trojani, and more recently in Fenoll, that even persons performing activities as part of a labour market reintegration programme may be considered workers under EU law, as long as the services performed are capable of being regarded as forming part of the normal labour market.45 In a number of cases, the CJEU specifically ruled that a trainee should be regarded as a worker under EU law.46 Trainees regarded as workers under EU law fall, inter alia, under the scope of the Equal Treatment Directives,47 the Working Time

---

42 Julia López López, supra n. 8.
45 CJEU, 7 Sep. 2004, C-456/02 Trojani, para. 24; CJEU, 6 Mar. 2015, Case C-316/13, Fenoll, para. 42.
46 CJEU, 30 Mar. 2006, Case C-10/05 Matters, para. 18, where the applicant completed a professional training period as a care assistant; see also Kranemann (CJEU, 17 Mar. 2008, Case C-109/04) and Kreuziger (CJEU, 6 Nov. 2018, Case C-619/16), which concerned students on a mandatory legal traineeship. Some scholars have argued that remuneration is the decisive element when determining whether a relationship constitutes an employment relationship (see e.g., Martin Risak & Thomas Dullinger, The Concept of ‘Worker’ in EU Law: Status Quo and Potential for Change 34–35 (ETUI 2018). Regarding judgments such as that in Fenoll, supra n. 45, which concerned a person earning substantially less than the national minimum wage, others, however, have argued that the condition of subordination is essential to the employment relationship (see Nicola Kountourn, The Concept of ‘Worker’ in European Labour Law: Fragmentation, Autonomy and Scope, 47(2) Indus. L. J. 221 (2018)).
47 For example, Directives 2000/78/EC, 2000/43/EC and 2006/54/EC (see CJEU, 13 Jan. 2004, Case C-256/01 Allomby).
Directive,\textsuperscript{48} the Pregnancy Directive\textsuperscript{49} and the Temporary Agency Work Directive,\textsuperscript{50} and perhaps under the scope of other EU directives as well.\textsuperscript{51}

However, even where young participants in ALMPs are regarded as workers, they may still receive a small allowance instead of a salary, or a salary considerably lower than that paid to workers performing similar tasks under a regular employment contract. This raises the question of whether these (underpaid) forms of employment can be considered as realization of the postulate of \textit{decent} work.

The legal literature on the right to work provides a range of different answers to this question. Part of the literature emphasizes that remuneration is only one aspect of the right to decent work: the right to such work also entails the right to dignity. Collins, for example, argues that the right to work should not be seen as a means to an end (i.e., full employment), but as an end in itself. This means that the right to work should, above all, be grounded in values such as dignity, self-respect and self-development.\textsuperscript{52} Indeed, according to the preparatory documents of Article 6 ICESCR, the right to work ‘did not mean simply the right to remuneration but the right of every human being to do a job freely chosen by himself, one which gave meaning to his life’.\textsuperscript{53} For the CESCR, too, the right to work is a human right, and an inseparable and inherent part of human dignity that contributes to workers’ recognition with their community and their personal development.\textsuperscript{54} In other words, traineeships should, as a minimum, be grounded in values such as dignity, self-respect and self-development.\textsuperscript{55}

It should also be noted that work in an underpaid traineeship, or the obligation to accept temporary agency work (instead of a permanent job), may violate not only the right to freely chosen work stipulated in Article 6 ICESCR and Article 1 ESC,\textsuperscript{56} but may also be in breach of the right to \textit{decent} work, given its collective dimension. This will be the case if the measure results in downward pressure on other workers’ working conditions or crowds out

\textsuperscript{48} Directive 2003/88 (see e.g., Fenoll).
\textsuperscript{49} Directive 92/85/EEC (see e.g., CJEU, 11 Nov. 2010, Case C-232/09, Danosa).
\textsuperscript{50} Directive 2008/104/EC (see CJEU, 17 Nov. 2016, Case C-216/15 Ruhrlandklinik).
\textsuperscript{51} For example, Directive 1999/70/EC (see CJEU, 1 Mar. 2012, Case C-393/10, O’Brien). Kountouris, \textit{supra} n. 46, at 209 considers that, regarding the judgment in \textit{Ruhrlandklinik}, the court may apply the definition of the EU worker to other directives, too. In this respect he also refers to the statement that ‘even in the absence of explicit reference to an EU definition, the concept of worker developed in the field of free movement of workers is applicable’, referring to European Commission C (2017) 2611 final, at 8.
\textsuperscript{53} Matthew Craven, \textit{The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development} 197 (Clarendon 1995).
\textsuperscript{54} CESCR, \textit{supra} n. 25, paras 1 and 4.
\textsuperscript{55} See also Dermine, \textit{supra} n. 11; Paz-Fuchs, \textit{supra} n. 11.
\textsuperscript{56} Dermine, \textit{supra} n. 11; Mantouvalou, \textit{supra} n. 11; Paz-Fuchs, \textit{supra} n. 11.
regular work. Furthermore, the paid character of a traineeship greatly enhances the likelihood of the trainee subsequently obtaining high-quality employment. It is thus more than reasonable that, in its Resolution of 8 October 2020 on the Youth Guarantee, the European Parliament condemned the practice of unpaid traineeships, internships and apprenticeships, which constitutes a form of exploitation of young people’s work and violation of their rights.

In this context we should also consider the fundamental right to decent wages. Article 7(a)(i) ICESCR, stipulating the right to equal wages for work of equal value, states that we should first consider whether a young trainee is performing work of equal value to that of another worker. Note in this regard that several countries have set reduced minimum wages for young workers so as to improve their chances in the labour market. On the one hand, the ILO Committee supervising ILO Convention No. 131 on minimum wages has stated that such general measures are difficult to understand as they assume that ‘all young workers (...) without distinction and irrespective of their job or position are less productive due to a lack of experience, and therefore merit lower remuneration’. On the other hand, however, and specifically concerning trainees, the ILO Committee ‘considers that persons covered by apprenticeship or traineeship contracts should only be paid at a differentiated rate where they receive actual training during working hours at the workplace. In general, the quantity and quality of the work performed should be the decisive factors in determining the wage paid’.

The ECSR also accepts differences between the wages of young workers and adult workers. Article 4(1) ESC provides for the right of ‘workers to a remuneration such as will give them and their families a decent standard of living’, while Article 7(5) obliges parties to ‘recognise the right of young workers and apprentices to a fair wage or other appropriate allowances’. According to the ECSR, a reasonable difference between young workers’ wages and adult wages can be accepted, but the gap must close quickly. In the case of apprentices, the difference can be justified by on-the-job training received, but ‘the apprenticeship system must not be deflected from its purpose and be used to underpay

---

58 Paz-Fuchs, supra n. 7; Charikleia Tzanakou et al., How do Internships Undertaken During Higher Education Affect Graduates’ Labour-Market Outcomes in Italy and the United Kingdom?, both in Internships, Employability and the Search for Decent Work Experience (Andrew Stewart et al. eds, Edward Elgar 2021).
59 2020/2764(RSP).
61 Ibid., at 94.
young workers’, such that ‘the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period’. We contend that these findings can also be applied to traineeships for young people as an instrument that brings the trainee within the concept of a worker, according to the ESC, or at least an intermediary position between employee and apprentice. This seems to be confirmed in the 2019 Conclusions for Portugal, where the pay of trainees and apprentices was analysed under Articles 4(1) and 7(5) ESC.62 The question of unpaid traineeships’ conformity with those provisions in the Charter was also discussed in the framework of Collective Complaint 150/2017, which was brought by the European Youth Forum against Belgium and declared admissible by the ECSR decision of 5 December 2017. The question of whether lower remuneration or the absence of remuneration can be justified is also an important point to consider, given the subjective and contested nature of the claims surrounding the value of traineeships and their ‘costs’ for employers.63 In summary, the principle of equal remuneration for work of equal value, as enshrined in the various instruments discussed, implies that trainees have the right to be paid a minimum level of wages (or wages comparable to those of employees performing similar tasks), and that these can only be lower than the wages of other workers if there is clear evidence that the training component involves an investment by the company and is accompanied by a disproportionately lower level of productivity. This also shows the importance of effectively guaranteeing the training component in such relationships.

2.4 The right to work as a normative framework for assessing youth employment policies

The previous analysis has shown that derogations from the minimum wage are permissible when the traineeship includes a training dimension and effectively allows for a transition to regular employment. At the same time, in the EU legal context, trainees who perform work activities and receive remuneration (even small amounts) should be recognized as workers, which also means that basic labour law protections apply, such as legal regulations in the field of health and safety and working time. We furthermore contend that our analysis enables us to identify the main elements of a framework that is based on the right to work:

---

62 ECSR, Conclusion 2019 – Portugal – 7-5 (2019/dec/PR.T/7/5/EN), where non-conformity with Art. 7–5 resulted from non-conformity with Art. 4–1, the pay of trainees and apprentices being less than 80% of a minimum wage that, in itself, does not respect the standard of 50% of the net average wage.

63 Paz-Fuchs, supra n. 7.
– Programmes should result in the transition to decent, non-precarious and freely chosen work
– The training component of instruments must be guaranteed.
– Participation in programmes should be grounded in values such as dignity, self-respect and self-development.
– The status under which participants perform work as part of such programmes must guarantee basic working conditions.
– Participants have the right to equal pay for work of equal value and only effective and efficient training programmes may justify a lower wage.
– Instruments used must not result in work being crowded out or in downward pressure on wages.

Given those main elements, it is reasonable to state that the objectives of the Youth Guarantee are predominantly in line with the right to work as conceptualized in the ICESCR, the ESC and the EU legal framework. Both the Youth Guarantee and the right to work emphasize the importance of fair working conditions and of increasing the chances of finding good-quality jobs. In addition, while the recommendations of the Quality Framework for Traineeships highlight high-quality work experience and a traineeship contract with learning and training objectives, the right to work underscores the importance of training and self-development, using instruments, such as traineeships that increase the chances of moving to ‘a first job’.

3 ASSESSING YOUTH GUARANTEE PROGRAMMES UNDER THE RIGHT TO WORK: ITALY, SPAIN, THE NETHERLANDS AND POLAND

Given the various elements discussed in the previous section, the national overviews will be structured around the analysis of youth unemployment rates, general reflections on the implementation of the Youth Guarantee and its components, regulation of ALMP traineeships for young unemployed people (and assessment of the extent to which the right to fair remuneration, fair working conditions, training guarantees and guarantees against the crowding-out of regular employment are respected) and considerations regarding evaluation and effectiveness.
3.1 **ITALY: EXPONENTIAL GROWTH IN TRAINEESHIPS**

Although not a new problem, Italy’s youth unemployment (15–29 years) increased in the aftermath of the 2008 crisis, reaching a peak of 31.6% in 2014, and then gradually fell to 22.1% by 2020 (more recent Eurostat data). The launch of the Youth Guarantee at an EU level was consequently seen as an opportunity to make substantial progress in this field.

Italy’s Youth Guarantee Programme (YGP) was first implemented in 2013 and is currently managed by the Italian Agency for Active Labour Market Policies (ANPAL), together with the regions. Although approximately 1,515,000 young people were registered with the YGP on 31 August 2019, only 59.4% of them were participating in activation initiatives. Such initiatives consisted of extra-curricular traineeships (57%), occupation incentives (25.5%) and vocational training (13.2%). Once the participants completed their programmes, 54.9% found employment and 79% had at least acquired work experience.

The YGP includes receiving and initial processing of entrants; orientation; vocational training; job support; apprenticeships; traineeships; civil service; support for entrepreneurship; national and EU professional mobility; a job creation bonus for companies, and distance learning. Of these measures, the biggest increase has been seen in traineeships, the number of which has grown exponentially since 2012. An agreement signed in 2017 by the state, the regions and the autonomous provinces lays down the general guidelines for the use of traineeships. Under this agreement, a traineeship consists of a period of work orientation and training that is not configured as an employment relationship; it aims to enable trainees to consider their vocational choices and to improve their knowledge through on-the-job training. Although trainees do not have the same legal protection as regular workers, they do have public insurance against accidents and private insurance to cover possible third-party loss or damage. Trainees also have to be provided with adequate health and safety information and conditions. They receive a minimum of EUR 300 per month, without any social security contributions being due, although regions can set a higher payment rate, and host institutions can decide to increase the remuneration.

---

64 Legislative Decree no. 150/2015.
66 Rapporto Annuale sulle Comunicazioni Obbligatorie, Ministero del Lavoro e delle Politiche Sociali: the 227,000 traineeships activated in 2014 represented an increase of 10.6% on 2013. According to the most recent data, 355,000 traineeships were activated in 2019.
Traineeships do not grant the right to claim unemployment benefits and access to social benefits is not conditioned upon the acceptance of these traineeships. It should be noted, however, that access to social benefits can be conditioned upon the fulfilment of general activation obligations for people of all ages. For example, access to citizenship income, which is means-tested, is conditioned by immediate availability for work and adherence to a personalized pathway of accompaniment to employment and social inclusion, which may include community service activities, vocational training or the completion of studies, as well as other commitments aimed at integration into the labour market and social inclusion. These programmes should, however, be distinguished from traineeships that are offered in the context of the YGP.

All traineeships have to be based on a written agreement between the promoter (such as public employment services, employment agencies, public vocational training or orientation centres or universities) and the host entity (such as a company, law firm or other professional firm, cooperative or public body). Such an agreement must comply with specific rules, including the requirement to specify the mutual obligations of the parties, certification of the trainee’s skills, details of the monitoring process, and the starting and completion dates. The agreement must be accompanied by a training programme drawn up by the host and the trainee to establish the training objectives, and the parties’ respective rights and duties. The host entity must also: (1) assign a tutor responsible for the training; (2) ensure the trainee receives adequate information about health and safety risks; (3) enable the trainee to carry out the agreed activities; (4) ensure provision of the agreed training; (5) collaborate with the trainee to complete the training file, and (6) guarantee final certification.

In order to avoid the misuse of Youth Guarantee traineeships, trainees are not allowed to perform tasks corresponding to an employed position or replace employees during intense periods of work, vacation, or maternity or sick leave. It is crucial to avoid a situation in which traineeships displace paid employment, or exert downward pressure on wages. Such traineeships are also limited in time, for a maximum of twelve months and a minimum of one month (or fifteen days in certain circumstances), and the training objective must always be guaranteed. Trainee programmes are governed by the specific regional regulation and by the agreement between the promoter and the host entity. A regional regulation also determines the conditions applying to traineeships interrupted by the Covid-19 pandemic.68

---

68 For example, the regulation by Regione Veneto: Decreto n. 386, 19 May 2020 sulla ripresa delle attività di tirocinio.
According to some scholars, traineeships seem to have become the normal way for young people in Italy to access the labour market. But only one in three trainees subsequently makes the transition from a traineeship into employment. At the same time, the increase in the number of traineeships has not resulted in improved skills. This could also be attributable to inefficiencies in the public employment services in the regions, with considerable differences between North and South, and the inability to engage in adequate networking with labour market actors. The Commission’s 2020 report on the implementation of the YGP highlights the importance of closely monitoring traineeships in order to avoid them ‘being misused as an alternative to employment contracts’. The report also highlights the attempts made at a national level to grant tax benefits to organizations hiring young people, ‘but their effectiveness and efficiency has not been yet sufficiently evaluated’. In any event, organizations where the traineeships are performed are not under any obligation to offer trainees a job at the end of their traineeship.

Regarding the most recent outcomes of the YGP in Italy, the Commission’s 2020 report shows a multiform situation. On the one hand, 60% of the 1.5 million young NEETs registered with the YGP completed a YGP pathway, with an average placement rate of 55.5%. Progress has been achieved through a partnership strategy, a strong profiling methodology for a personalized approach, campaigns and an ad hoc webpage, and by promoting examples of best practices. On the other hand, youth unemployment remains a major challenge for Italy, with its rate of 29.4% in 2020 being one of the highest in the EU. Its NEET rate is also the highest in the EU; this means highly skilled young people have limited opportunities to enter the labour market and so often move abroad. Furthermore, those who do not receive an offer within four months are likely to have to wait a year or more before receiving one. Finally, NEETs’ participation in the YGP remains low (12.7%), and the YGP does not generally seem able to ensure long-term effectiveness.

---

70 Ibid.
71 Tania Bazzani, Coordination and Cooperation Activities in the Labour Market 213, and Contractualization of Social Rights and Actors in the LM: Denmark, Italy, and Spain 189, both in Tania Bazzani & Reinhard Singer, Dealing with Unemployment: Labour Market Policy Trends (Humboldt University, Berlin 2018).
73 Ibid., at 5.
74 Ibid., at 5.
Spain: Emphasis on Vocational Training and Lack of Evaluation

Spain, which had a Eurostat youth unemployment rate (15–29 years) of 29.2% in 2020 (and a pre-COVID rate of 24.7% in 2019, which had fallen from a peak of 42.4% in 2014), has mainly implemented the Youth Guarantee through the *Iniciativa de Empleo Joven* (YEI). Until 2018, when the general unemployment rate decreased to 15%, some of the measures restricted to people in the 16–25 age range were extended up to the age of 30.

Between 2013 and 2017, around 15.5% of the total budget allocated to the initiative was focused on broadly defined subsidies for all types of employment contracts (training, fixed-term or open-ended contracts) without any specific conditions being imposed. Since 2018, however, and because this system proved ineffective, the measures have been limited to apprenticeship contracts within the context of ALMPs.

A total of 80% of the YEI actions relating to labour market orientation (550,000 participants), while 11% related to education (96,000 participants) or various forms of vocational training (87,000 participants; this accounted for 50% of the initiative’s total budget, of which 43% is used to subsidize apprenticeship contracts). Some of the training initiatives use short-term traineeships for the practical component of the courses.

The rules applying to these traineeships (referred to as ‘practical training modules’) are laid down in Article 5bis of Royal Decree 34/2008 regulating training recognized by official certificates; this integrates them as a form of dual vocational training. In the case of training not recognized by official certificates, traineeships are regulated (as well as dual vocational training instruments) by Article 24.3 of Royal Decree 694/2017 and limited to unemployed people who have not previously worked in a similar activity. These arrangements could be seen as closer to apprenticeships than traineeships used for the transition from formal training to employment. With regard to the latter, only 0.6% of the actions took place as part of smaller, local employment programmes (11,489 participants, for an average duration of fifteen days, and accounting for 0.1% of the budget). These traineeships are regulated by Royal Decree 1543/2011 and reserved for unemployed people between the ages of 18 and 25 and with a degree or vocational certificate, but less than three months of work experience in the corresponding activity. Such traineeships have to be for between three and nine months and part of a specific framework agreement between the company and the Public Employment Service (PES). This agreement has to be based on a proposal by the company specifying the contents of the traineeship and its training component, the

---

duration, the system of evaluation and tutoring, and the mechanisms by which the PES will exercise control. The individual agreement with the trainee has to specify the contents, duration, working times and hours, the system of tutorship, and the certificate to be awarded upon completion. The only rule designed (indirectly) to avoid regular employment being crowded out is the requirement for the workers’ representative body in the company to be informed of all traineeships (this also applies to the dual vocational training traineeships). The Royal Decree also guarantees payment of an allowance of at least EUR 451.20 (in 2021), as well as payment by the company of social security contributions. These contributions cover most social risks, except unemployment. However, these trainees do not enjoy any employment rights other than those that may be inferred from the constitutional nature of fundamental rights, even though these rights may be considered speculative in the absence of clear jurisprudence on the matter.

While Article 11 of the Spanish Labour Code provides for traineeships under a specific employment contract, these provisions are generally intended for, but not restricted to, open-market traineeships, and there is no evidence of them being applied in the context of the YEI or ALMPs in general.

It is important to note that the YEI does not include social benefits. Combined with the exclusion of most young people from social assistance benefits or from access to unemployment benefits due to lack of sufficient contribution periods, this means that there is virtually no conditionality on participation.

According to the European Commission, short – and long-term data for Spain show that 59% of participants in 2018 were known to be in a positive situation six months after exiting the guarantee. However, despite efforts to evaluate the results for the period 2013–2017, there was still a general lack of evidence in 2018 concerning the effectiveness of the various programmes. For this reason, the objectives in the 2019–2021 ‘shock plan’ for youth employment (which has a broader scope than the Youth Guarantee) included the intention to improve data collection and the evaluation of Youth Guarantee measures. However, no results have yet been published. Based on the 2018 report, it would seem that respondents to a state-wide survey regard the ‘training programmes with guarantees of employment’ as beneficial (i.e., where regional PES grant subsidies to training organizations that ensure that at least 30% of participants will be hired upon

---

76 In addition to classifying trainees under general labour law rules.
77 For example, although occupational health and safety (OHS) legislation does not apply, the ‘employer’ has to guarantee the trainee’s fundamental right to health, and this would involve the indirect application of some OHS provisions. In addition, and if the trainee is covered by social security, legislation on occupational accidents would apply, with the result that the ‘employer’ would be liable in the absence of the necessary prevention measures.
79 Ministerio de Trabajo, Migraciones y Seguridad Social, supra n. 75.
completion of the programme, with loss of the subsidy if that threshold is not attained). However according to the same report, regression analysis shows an improvement of only a few percentage points in labour market integration compared to the situation of young unemployed people who did not participate in the programme. There is limited evidence, therefore, that the impact of the Youth Guarantee programmes exceeded the overall improvement in the employment situation in the years before the pandemic. There are also significant doubts as to the effectiveness of these traineeships in facilitating the transition from formal training into employment. This should give rise to concerns, given that these traineeships do not ensure labour rights, even if they include remuneration (or some form of pay), guaranteed training and monitoring of training, and social security coverage.

3.3 The Netherlands: The welfare-to-work approach

The Eurostat unemployment rate for young people in the Netherlands has increased since the start of the Covid-19 pandemic, but is still relatively low: 7.1% in 2020 (2019: 5.4%). For the Dutch government, the Youth Guarantee is an initiative that has not altered existing Dutch youth unemployment policies, which focus on people under the age of twenty-seven. These policies have two main objectives: first, young people should not leave school without a ‘starter qualification’ (i.e., a secondary school qualification or at least two years of secondary vocational training, attested by a diploma) and, second, people under twenty-seven should either be in employment or education. These policies were introduced in the Investing in Young People Act [WIJ] of 2009, which was incorporated into the Participation Act [Participatiewet] of 2015. Municipalities are responsible for implementing the Participation Act, which regulates matters such as the right to social assistance and ways of activating recipients of such benefits.

Since our focus is on ALMP traineeships for young unemployed people, we will examine the provisions and implementation of the Participation Act. Under Article 13 of this Act, unemployed school-leavers under the age of 27 are eligible for social assistance benefits, providing they are not or are no longer eligible for a publicly funded study grant. Municipalities should encourage and help young unemployed people to find a job, or a paid apprenticeship combined with vocational education (BBL arrangements). To this end, they work with regional

---

80 Ibid., at 109.
employer service points’ to actively find job vacancies and apprenticeships, usually in collaboration with regular vocational schools. Where young recipients of social assistance are unable to enter or re-enter vocational training, or if they already have a starter qualification, they may be required to work on unpaid traineeships arranged by the employer service points (‘external traineeships’) or the municipality (‘internal traineeships’). If they do not comply with these or other work-related obligations, recipients under twenty-seven will be refused social assistance. This sanction makes young welfare recipients particularly vulnerable to abuse. A few years ago, for example, the city of Amsterdam fired some work supervisors after they turned out to have been abusing their power over young unemployed trainees for several years.

Young people combining a paid apprenticeship with vocational education usually have an employment contract. However, this is not the case for recipients of social assistance as they are on unpaid traineeships. As a result, these participants do not earn a minimum wage, but receive social assistance; depending on their personal situation, these benefits may be well below the minimum wage. For example, while the minimum net monthly wage of workers aged 21 is EUR 1685 (July 2021), recipients of social assistance aged 21 and who are living with their parents receive only about EUR 500. In addition, recipients of social assistance who participate in a traineeship are not covered by the legislation and regulations providing other forms of employment protection, except for the provisions on employers’ liability in the Civil Code, the Dutch Working Times Act and the Health and Safety Act. Municipality regulations and contracts for unpaid traineeships do not normally include any additional employment protection for such trainees, except for employers’ liability for accidents at work and annual leave, and compliance with health and safety regulations is not necessarily actively monitored by municipalities.

The traineeships that municipalities provide for young unemployed people do not need to ensure vocational training. Indeed, they may include very simple work such as assembly line work or maintenance of public spaces. The acquisition of basic workers’ skills, such as being on time or listening to a boss, is usually sufficient for arrangements to be considered a traineeship. Recent research suggests that these traineeships (which are free of charge for employers) may result in regular work

83 Article 8.3.4 Vocational Education Act [WEB].
84 Article 13(2)(d) Participation Act.
86 Though not as extensive as for regular employees.
87 Anja Eleveld, Werkstages geregeld: de re-integratie van bijstandsontvangers in drie gemeenten (VU 2019).
being crowded out, as participants are sometimes used to replace regular workers on sick leave, or are pressured to ‘keep production running’.\footnote{Anja Eleveld, Disrespect or Dignity? Experiences of Mandatory Work Participants in the Netherlands From the Perspective of the Right to Work, 29(2) J. Poverty & Soc. Justice 162–163 (2021).}

The Participation Act does not stipulate that unpaid traineeships should result in regular work, nor that their effectiveness should be evaluated. Some empirical case studies suggest that unpaid traineeships for the young unemployed, which focus on learning general workers’ skills, are not particularly effective in terms of the transition from welfare to work, unless the traineeships and guidance are tailored to recipients’ needs\footnote{Petra Oden, Monique Beukeveld & Ellen Offers, Partnerschap door regelruimte (Groningen: Hanzehogeschool 2018).} and implemented in a real work situation\footnote{OIS Gemeente Amsterdam, Evaluatie Leerstages (Amsterdam 2016).} or include a contract forcing the employer to hire the recipient after completion of the probationary period.\footnote{Eleveld, supra n. 88.} In reality, however, employment contracts offered are often contracts with a temporary employment agency for a maximum of six months and are not extended after this period.\footnote{Ibid.}

The European Commission has generally deemed the (general) Dutch Youth Guarantee Scheme to be ineffective\footnote{European Commission, Youth Guarantee Country by Country. Netherlands (Jan. 2020).} since, despite the low rate of youth unemployment, the scheme scores relatively low on offers of employment, education or training within four months.\footnote{On the Dutch case, see also Beryl ter Haar, Design and Influence of the EU’s Youth OMC. A Case Study of the NEET’s Needs and the Netherlands, 1 Hungarian Lab. L. E-J. (2020).}

3.4 Poland: Traineeships and the Relevance of Guaranteed Employment

Poland is one of the countries with both a low overall unemployment rate and a low youth unemployment rate. According to Eurostat, Poland’s overall unemployment rate in 2020 was 3.2%, and 7.1% among people aged 15–29. However, it is worth noting that unemployment still mainly affects young people as, at the end of December 2020, people under thirty comprised 25.9% of the total number of unemployed.\footnote{Registered Unemployment I – IV quarter 2020, 9 (Warsaw: Statistic Poland 2021).}

The actions implemented to activate young unemployed people in Poland clearly follow the 2013 Council Recommendation on Establishing a Youth Guarantee and are durably supported by Polish legislation and regulations. The Recommendation has been implemented through a series of solutions laid down in the Act on Employment Promotion and Labour Market Institutions of 20
April 2004. These solutions focus on the young unemployed and are meant to help them get on a fast track to employment. Under Article 50 of this Act, a local labour office should offer unemployed people under twenty-five employment or other gainful work, training, a traineeship, adult vocational training or employment as part of an intervention or public works, or another form of assistance specified in the Act, in the first four months after they register as unemployed.

Concurrently, the Polish legislator has also specified that the targeted group should include unemployed people up to the age of 30 (Article 49(1) of the Employment Promotion Act) and that special labour market instruments designed exclusively for young people’s needs should apply to unemployed people up to thirty years of age.

Traineeships are one of the most popular labour market instruments in Poland for helping the young unemployed. Under Article 2(1)(34) of the Employment Promotion Act, a traineeship comprises a period of work experience in which an unemployed person learns the practical skills needed for a job by performing tasks in the workplace, without entering into an employment contract with the employer.

Traineeships are based on agreements between the employment authority and the employer. Trainees, however, are not parties to these agreements as they are referred to the traineeships by the employment authority. The tasks to be performed by the unemployed, and the qualifications or vocational skills they are intended to obtain, are specified in the traineeship programme.

A traineeship for unemployed people under thirty lasts for a maximum of twelve months, during which period the trainee is eligible for a traineeship allowance funded from the Labour Fund and equivalent to 120% of unemployment benefit, and from which social security and health insurance contributions are deducted.

---

96 Consolidated text of 2021, item 1100 (’the Employment Promotion Act’).
97 This is fully compatible with recommendation no. 1 of the Council Recommendation 2013/C 120/01 on establishing a Youth Guarantee.
98 These special instruments can only be used by unemployed persons up to the age of 30.
99 Labour market instruments targeting the young unemployed can be divided into two groups: the first comprises instruments not automatically resulting in immediate employment under an employment contract, but designed to facilitate this type of employment (e.g., traineeships), while the second consists of instruments immediately generating employee status (e.g., subsidized employment). More broadly on this subject, see Ewa Staszewska, New Labour Market Instruments Aiming to Activate Disadvantaged Groups in the Labour Market in the Light of the Act on Employment Promotion and Labour Market Institutions 6(326) Acta Universitatis Lodzianae. Folia Oeconomica (2016).
100 Traineeships for people over thirty may last for up to six months.
101 The Labour Fund is a special purpose state fund used to finance tasks related to the vocational activation of the unemployed. Thus, an employer who accepts an unemployed person on a traineeship does not have to pay the costs of the trainee’s traineeship allowance.
Although trainees do not have employee status, some of their rights are similar to those enjoyed by employees. The status of trainees is regulated in detail in the Minister of Labour and Social Policy’s Regulation of 20 August 2009 on the specific conditions applying to traineeships for the unemployed. Under section 7 of the Regulation, a trainee is not allowed to work for more than eight hours a day and 40 hours a week. An unemployed person on a traineeship is entitled, then, to the same rest periods as employees. Trainees are also entitled to a form of holiday leave, i.e., two days off for every thirty calendar days on the traineeship.

Trainees are guaranteed the right to equal treatment in line with the provisions of the Labour Code. They are also assured of safe and hygienic working conditions in accordance with the rules applying to employees (including preventive health protection and training). Section 9 of the Regulation allows a traineeship to be terminated early if the employer fails to comply with the required conditions or the trainee fails to fulfil obligations.

Statistics for 2019 show a post-internship employment effectiveness rate of 84.19%. It should be emphasized that employment effectiveness is understood as meaning not only employment under a contract of employment, but also employment based on a civil law contract or starting a business. As a result, it may not always refer to appropriate employment with decent pay.

A specific form of traineeship is the traineeship voucher, which guarantees referral to a six-month traineeship, with the employer selected by the unemployed person, and the employer having to commit to employing the specific individual for a period of six months after completion of the traineeship (Article 66l of the Employment Promotion Act). Employers who meet these conditions receive a monetary bonus from the labour office.

The consequences of a young unemployed person refusing to accept forms of support are also worth noting. Those who refuse an offer of a traineeship or employment without good reason lose their unemployment status for a certain period (this also results in them losing the right to health insurance). They also

102 OJ no. 142 of 2009, item 1160.
103 If the trainee has a significant or moderate degree of disability, the working times are seven hours a day and 35 hours a week.
105 Ministry of Family, Labour and Social Policy. Department of Funds, Effectiveness of Basic Forms of Vocational Activation Implemented as Part of the Programmes for Promotion of Employment and Mitigation of Unemployment, and Vocational Activation in 2019 (2020).
107 Article 33 of the Employment Promotion Act.
lose the right to a traineeship allowance if they cause the traineeship to be interrupted.

The conclusions in the Employment Committee’s multilateral surveillance review of youth employment found the Youth Guarantee to be well established in Poland and to be complemented by an effective monitoring system and a strong partnership framework with youth NGOs. It was also noted that while the compliance of traineeships with the Quality Framework for Traineeships is ensured, efforts to further increase their supply and quality need to continue.108

4 IMPLEMENTATION OF THE YOUTH GUARANTEE BY MEMBER STATES AND THE RIGHT TO WORK

The first element of our ‘right to work evaluation framework’ outlined in section three concerns the contribution of traineeships to the transition to decent and non-precarious, freely chosen work. No clear data is available in Italy and Spain regarding the general effectiveness of ALMPs for young unemployed people in general, in part because of the lack of policy evaluation. In this respect, Spain also functions as a contrasting case, given the marginal recourse to ALMP traineeships under the Youth Guarantee.109 In the Netherlands and Poland, too, we find contrasting results. While research suggests that implementation of the Youth Guarantee in the Netherlands is not effective, the Polish trainee programmes show high transition rates. In the Polish case study, however, former trainees do not necessarily receive adequate pay.

From a legal perspective we were also interested in the extent to which participants received some sort of legal guarantee of employment after successfully completing a traineeship. In this respect, only Poland and Spain were found to include a job guarantee in some of their programmes (even if, in the case of Spain, the guarantee centres on vocational training instruments rather than traineeships). However, most of the trainees in these programmes were found to be offered precarious, fixed-term contracts.

From the perspective of the right to work, it is also essential for the training component to be guaranteed. And here the country comparison provides a mixed picture. While Italy and Spain formally safeguard training objectives by, for example, requiring the trainee and host to draw up an agreement that includes guaranteed training and monitoring, this is not necessarily guaranteed in the other countries. In Poland, the traineeship programme specifies the type of qualifications

109 This does not exclude the extended use of unregulated or precarious traineeships outside the Youth Guarantee framework.
The right to work is fundamental for individuals, regardless of their level of education or vocational skills to be acquired by the trainee, while the unpaid programmes in the Netherlands that are not related to vocational education do not usually have a training component (other than learning basic workers’ skills).

Only countries such as Poland and the Netherlands, where access to social benefits is conditional upon accepting a traineeship or apprenticeship, allow the right to freely chosen work to be infringed. This risk increases if the allocation of a specific traineeship is not discussed with the young unemployed applicant. In addition, and as the Dutch case illustrates, the duty to accept a traineeship may also violate the right to dignity.

To be in compliance with the right to work, the activities performed during the traineeship must be decent work. The requirement for basic working conditions, including the right to adequate remuneration, will usually be met if the traineeship involves an employment contract. The country comparison indicates that, except in the case of Poland, and the Dutch combination of paid traineeships with vocational education, trainees are not guaranteed employment rights. Nonetheless, trainees are at least entitled in most cases to basic health and safety conditions and decent working hours. Poland stands out, given that the situation of trainees there is similar to the status of employees because of certain rights being implemented ‘on the terms provided for employees’. In Spain and Poland, social security contributions are paid throughout the traineeship (even though the coverage provided is incomplete). There is also no entitlement to minimum wages: in Italy and Spain trainees receive small allowances, while in Poland they receive 120% of unemployment benefits, and in the Netherlands they receive social assistance.

The final element in our evaluation framework involved assessing whether the right to work was compromised by traineeships causing regular work to be crowded out or creating downward pressure on wages. Although specific substantial rules for that purpose were reported in the case of Italy, the general lack of improvement in trainees’ skills could point to them being used to provide low-cost labour, as in the Dutch and Polish cases.

In summary, the country reports indicate that it remains to be seen whether the traineeships considered in our research comply with the right to work, or even the goals formulated in the Youth Guarantee. The results of the case studies confirm the 2016 report of the European Commission on the implementation of the guidelines proposed by the Quality Framework for Traineeships. This report identified major gaps relating, inter alia, to insufficient learning content and a lack of rules on proper recognition of traineeships. The case studies also suggest that the

---

ALMPs for young workers infringe the right to work, in that: (1) overall, it can be doubted whether the programmes result in the transition to proper jobs or that their results are even sufficiently assessed; (2) ALMPs do not necessarily include a training component, or only include such a component ‘on paper’; (3) where eligibility for social assistance is conditional upon the acceptance of traineeships, this may infringe on the right to freely chosen work; (4) particularly where trainees perform productive work, it is doubtful whether, in all cases, the ‘allowances’ are in conformity with the right to equal wages for work of equal value; (5) trainees sometimes perform similar work to that of regular employees, and this may result in work being crowded out, or in downward pressure on wages.

The next question, therefore, is how to develop ALMPs for young people that are in compliance with the right to work. Regarding the effectiveness of these programmes, it should be noted that measurement is difficult because the results of an employment stimulation programme might well have been achieved even without the programme; i.e., such a programme would employ people who would have been employed anyway. It is important, therefore, for the group of participants to be limited to people who would not be able to enter the labour market by themselves, for example, due to the lack of specific skills. Nonetheless, other countries could learn from good practices that we observed in each of the four countries. In order, for example, to ensure that an ALMP includes a training or vocational programme, a traineeship could require the trainee and the host or employer to draw up an agreement, as in Italy, that includes guaranteed training and monitoring. To prevent misuse of the scheme, employers could also be required to offer an employment contract to trainees who successfully complete the traineeship, preferably a contract for at least six months, as is the case in Poland (traineeship voucher). In addition, trainees could be granted employment and social security protection comparable to that provided to regular workers, as in Spain (in the case of social security), providing their allowances amount to at least the minimum wages. Where, as in the Netherlands and Poland, eligibility for social benefits is conditional upon accepting a traineeship, it is recommended that traineeships should be tailored to trainees’ previous education and work experience, and that the individuals themselves should have a say in the choice of traineeship. Not only will this increase the chances of a successful transition to regular work, but it will also be more aligned with the right to freely chosen work. Finally, traineeships should ideally take the form of paid employment in combination with vocational education, such as the BBL arrangements in the Netherlands.
5 CONCLUSIONS

The Youth Guarantee should be implemented by the Member States in a way that creates conditions enabling the right to work (including the right to a first job), construed as a fundamental right, to be fully exercised. As well as ensuring that participation in the Youth Guarantee leads to paid employment, Member States must ensure appropriate working conditions, including pay, for trainees without an employment contract, but who nevertheless contribute to the activities of the company responsible for their training (maybe above all, if the traineeship is funded from the public budget). Suffice it to say that this interpretation of the right to work is consistent with the concept of a worker under EU law.

Apart from creating effective systems for evaluating Youth Guarantee programmes, each Member State should also put in place safeguards against the use of instruments that do not lead to job stability but simply give employers recourse to ‘cheap labour’. One of the first steps in this direction would be to shift from a perspective based on the (elusive) concept of employability as the justification for policies and towards an approach based on rights. As we explained, this would also require the guarantee of effective training to be strengthened, as well as the right to equal pay and decent working conditions when using work-related instruments.

These aspects are particularly important at the time of the Coronavirus disease 2019 (COVID-19) pandemic, which has caused unprecedented economic problems in the EU and is likely to trigger another dramatic upsurge in the number of young unemployed and NEETs, while the position of these people in the labour market was already precarious or they struggled to access employment before the pandemic. Now, therefore, it may be even more difficult for them to find their first job.

This has been highlighted in recent International Labour Organization (ILO) reports, which state that the COVID-19 crisis has severely affected labour markets around the world, and impacted more on young people than on other age groups: globally, youth employment fell by 8.7% in 2020, compared with a fall of 3.7% for other adults.\footnote{ILO, Statistical Brief. An Update on the Youth Labour Market Impact of the COVID-19 Crisis 1 (Jun. 2021).} Another ILO report states that the pandemic has also adversely affected the provision of traineeships, with businesses increasingly inclined to scale down or suspend their traineeship programmes.\footnote{ILO, Skilling, Upskilling and Reskilling of Employees, Apprentices & Interns During COVID-19 Pandemic. Findings From a Global Survey of Enterprises 31 (2021).} In this light, the Youth Guarantee needs to be strengthened, not only as a means of guaranteeing the right to a first job, but also as an end in itself so that participants can perform work, under decent working conditions, as part of their transition to a first job.