



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

16 April 2018

Case Document No. 5

European Youth Forum v. Belgium
Complaint No. 150/2017

**SUBMISSIONS BY THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 22 March 2018

COMPLAINT NO.150/2017

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

SUBMISSIONS ON THE MERITS

OF THE COMPLAINT

FOR: THE KINGDOM OF BELGIUM,

RESPONDENT STATE,

Represented by Mr Paul RIETJENS, Director General of Legal Affairs,
Agent for Belgium, whose offices are located at SPF Affaires étrangères,
Rue des Petits Carmes, 15 (Egmont II), 1000 Brussels, Belgium.

AGAINST: The European Youth Forum

COMPLAINANT ORGANISATION,

Represented by Mr Allan Pall, Secretary General, whose offices are
located at Rue de l'Industrie, 10, 1000 Brussels, Belgium,

Having regard to the collective complaint lodged on 24 May 2017 by the “European Youth Forum” organisations,

Having regard to the decision on admissibility adopted by the European Committee of Social Rights on 5 December 2017,

The decentralised structure that emerged in Belgium following several constitutional reforms means that different federal and federated entities may have competence in a given area. Such is the case with this collective complaint. The relevant entities’ contributions to these submissions on the merits of the complaint are presented in the following order:

- I. Federal Public Service for Employment and Equal Opportunities
- II. Federal Public Service for Social Security
- III. The Brussels region employment office Actiris
- IV. Flemish authority (Region and Community)
- V. Walloon region

I. Contribution from the Federal Public Service for Employment

It should be pointed out firstly that the issue of unpaid or underpaid interns is an international one. These internships exist in many small and large international institutions around the world (e.g. International Labour Organization, United Nations, European Union, etc.), with young people eager to acquire experience that will be of use in their future careers or “enhance” their CVs.

This is certainly not a problem specific to Belgium, therefore. It is very much a European phenomenon and indeed the European Youth Forum (hereafter: EYF) itself refers in point 4 of its statement to OECD and European Commission studies.

At the moment, for example, negotiations are under way within the EU’s European Council regarding the Council of Ministers recommendation on a European framework for Quality and Effective Apprenticeships¹ to resolve this problem. Attached hereto is the draft version of this recommendation, as it appeared on the agenda of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) meeting on 15 March.

We would like to start with point 6 of the EYF’s statement, which mentions a series of statistics and percentages taken from a recent EUROBAROMETER survey.

There are, however, no figures that would allow us to accurately determine the number of unpaid and underpaid internships in Belgium, as there is no mandatory registration requirement for such arrangements.

The EYF cites figures taken from a Flash Eurobarometer report entitled “The experience of traineeships in the EU”: *“In a recent Eurobarometer survey, 59% of interns across the EU reported that their last internship was without any financial compensation. Belgium has the highest percentage of unpaid interns in the EU, with only 18% being paid for their services.”*

The first point to note is that the definition of traineeships used in this survey differs from what the European Youth Forum is referring to in its complaint, that is to say, unpaid traineeships after people have finished their studies.

The EYF reports that only 18% of interns are paid for their services, but this figure also includes placements in the context of education and training.

Furthermore, the report indicates that only 64% of respondents in Belgium had had a traineeship and that, of those, only 23% had had one after the end of their studies. This is far below the EU average, where 33% of people have had a traineeship after finishing their studies. The fact that interns who are still studying are overrepresented in this Eurobarometer report gives a distorted picture of the relative number of unpaid trainees.

In addition, 10% of the Belgian respondents said their internship had taken place abroad. This makes it impossible to draw conclusions from these data about the situation regarding

¹ See draft document in the appendix: COM(2017) 563 final 2017/0244 (NLE).

unpaid traineeships in Belgium.

Given the small sample size, we also have doubts about the reliability of the findings as regards financial compensation during the most recent traineeship. In Belgium, only 501 interviews were conducted for a population of 2.5 million young people (15-35 years old). Only half of the respondents answered the question about financial compensation during the last traineeship. In view of these methodological flaws, the survey data should be treated with the utmost caution.

The same can be said for the Flemish Youth Council's 2017 survey, in which only 150 people took part.

In order to address the main points of the complaint, we would like to examine the principal types of work, as set out below:

1. A person may work under an employment contract.

An employment contract is defined as the contract by which an employee undertakes, in return for a wage, to perform work under the authority of an employer.

In order for there to be a contract of employment, therefore, four conditions must be met:

- a) There must be a contract between an employer and an employee. This means consent freely given between two parties, having regard to the rules of law, such as those prescribed by the Civil Code and the Contracts of Employment Act of 3 July 1978.
- b) The subject matter of the contract must be the performance of work. The employer undertakes to provide work and the employee undertakes to carry out the work entrusted to them with care and attention to detail. The term "work" refers to the labour which a person may be called upon to perform under the authority of another and for which they receive compensation.
- c) There must be some form of authority (relationship of subordination). No contract of employment can be said to exist without subordination, therefore. The Court of Cassation describes the exercise of authority as "*an essential element of the employment contract which includes for the employer the power to direct the employee and to exercise supervision over the employee's work*". The employer has the authority, therefore, to exercise leadership over the employee (right to issue orders) and supervision over any orders issued (right of oversight and discipline). In an employment contract, an employer exercises "authority, leadership and supervision" over an employee.
- d) The wage is – within the general meaning of the Contracts of Employment Act - the consideration for the work carried out through performance of a contract of employment.

"A contract of employment exists when the above-mentioned elements are in place, and there can be no contract of employment if one or more of these elements is missing."²

Accordingly, when, in a relationship of subordination in return for pay, work is performed, we talk about a contract of employment if the undertaking in question is the subject of a

² Cass., 16 March 1998, R.W. 1989-99, p. 468.

contract. This is a rule of public policy.³

So, for example, young people can, while at school and once they have reached the age of 15, acquire different types of experience by working under an employment contract. They may enter into a student contract with an employer - an employment contract entitling a student to work 475 hours per calendar year in return for a wage, with social security contributions payable at the reduced rate of 2.71%, and special legal protection for the student (for example, there must always be a written contract).

When an employer concludes a contract of employment with an employee, they must also - in addition to the contractual clauses of the individual employment contract - comply with a number of legal and regulatory obligations.

For example, the employer is always required – before the person starts work - to register them electronically in the DIMONA database of the National Social Security Office (*Office national de sécurité sociale*).

This obligation is a matter of public policy and employers who fail to comply are liable to penalties and fines. Under the Social Criminal Code, such offences carry the most severe penalties available under social law. Failure to declare an employee in advance to the social security bodies is punishable by a level 4 penalty, meaning either imprisonment ranging from six months to three years plus a criminal fine of between €4,800 and €48,000⁴ or one of these penalties only, or an administrative fine of between €2,400 and €24,000 per undeclared worker.

The implementation of this rule is monitored by the various social and labour inspection units of the Federal Public Service for Employment and by the National Social Security Office (ONSS).

Any young person who feels they have been wronged and believes they have been adversely affected in practice by an employment contract can complain to one of the local branches of the inspectorate. Once a complaint has been filed, the inspectorate will examine it and, where appropriate, endeavour to find a solution or issue a penalty notice.

It should also be added that the term "employee" can only be used in the context of a contract of employment and not, for example, in the context of a training course or internship.

2. A person may work under a *contrat d'entreprise* (service contract)

This is equivalent to working as a freelancer. It is a contract whereby one of the parties, the contractor, gives a commitment to the other party (the procuring party) to perform certain work for a certain price.⁵ Whereas a contract of employment may be considered to constitute an obligation of means (the performance of work is the subject of the contract), a service contract should be seen as an obligation to achieve a particular result.

Generally speaking, the difference between a service contract and a contract of employment lies in the presence or absence of subordination.

³ See Antwerp Labour Court, 2 April 2001, *Journal des Tribunaux du Travail* 2001-02, p. 384.

⁴ These amounts include increases in line with the statutory indexation mechanism.

⁵ *Dictionnaire de Droit social*, see *Recueil social du Droit du Travail*, 2017-2018, Kluwer, p. 620.

A *contrat de'entreprise*, therefore, is a contract by which the parties determine a price for the performance of a specific piece of work. This price is freely agreed upon between the parties.

We do not believe that the EJV complaint relates to employment of this kind.

3. A person may undergo practical training

Most internships today take place within the framework of a recognised or regulated training programme via an educational institution. The internship is compulsory and is included in the curriculum which is monitored by the education inspectorates of Belgium's various Communities. Such internships are usually unpaid but during the (short) period in question, the interns remain dependants of their parents, who continue therefore to benefit from tax and social security measures, such as family allowances and tax breaks.

In some professions there is a statutory obligation to complete a traineeship after finishing one's studies, e.g. for doctors, lawyers and barristers. Remuneration for such traineeships is regulated by the relevant professional association, e.g. the Bar Association.

In our opinion, the EJV complaint does not apply to free traineeships of this kind.

A young person may also enter into a contract with the aim of undergoing practical training with an employer (apprenticeship contract) or gaining professional experience.

The purpose of an apprenticeship contract is to learn a trade. The educational aspect is crucial here, whereas with a contract of employment, the main factor is the performance of work in exchange for a wage.⁶ The rules governing apprenticeship contracts vary from one Community to another, but they are set out in a decree (including the rules regarding remuneration).

The ultimate purpose of an internship contract is not to perform work in return for a wage, but rather to acquire practical experience in the trade.⁷

"The wishes of the parties, as set out in the contract, are, also in the case of internships, essential for determining the status of that contract. If the court finds elements which are incompatible with the chosen status, it may refuse to accept the latter."⁸ The educational character of the internship is of major importance in determining which category the contract falls into.

For internship arrangements of this type, use may be made of professional immersion agreements (see below).

4. Professional immersion agreements

For internships of this kind, Belgium offers an arrangement known as professional

⁶ Cass. 22 April 1982, J.T.T. 1983, 383. See also Recueil social du Droit du Travail 2017-2081, Kluwer, p. 421.

⁷ Ghent, 7 February 2005, AR/2004/AR 1000, www.juridat.be, cited in << La convention d'inclusion professionnelle comme cadre pour le stage libre au sein de l'entreprise », Martijn Baert, Annabelle Truyers, Dorien Vandepuit, avocats Claes & Engels en Orientation, 2017/8.

⁸ See article in the footnote on the previous page, p. 19.

immersion agreements. These are governed by the Programme Act of 2 August 2002 (Art. 104 - 110).

The legislation deals with agreements by which a person, hereafter referred to as the intern, acquires in the course of their training certain knowledge or skills from an employer through the provision of labour. A professional immersion contract has to be drawn up individually and in writing for each trainee, no later than the date on which the trainee starts work under the agreement.

The purpose of the regulations governing professional immersion contracts is to provide a basic statutory framework for internships or training arrangements that are not yet covered by other regulations (Doc. Parl. Doc. Chambre 2001-2002, no. 1823/014, p.34 and no. 1823/025, p.5-6).

The principle of this legislation, therefore, is that any forms of internship or training that cannot be included among the exclusions mentioned in Article 104, second paragraph of this Programme Act, are covered by the regulations deriving from Articles 104 to 112 inclusive of the Programme Act.

"The professional immersion agreement may therefore be considered as the general legal framework for freely undertaken internships, or as a "safety net" for internships that are not regulated by any statutory framework and do not form part of a course of studies at an educational institution."⁹

This was also confirmed by a recent decision handed down by Mons Labour Court, which stated: "Thus, if an agreement does not comply with regional or Community regulations on social and occupational training, it necessarily falls within the scope of the professional immersion agreement referred to in the law of 2 August 2002. In effect, these statutory arrangements are intended to cover all forms of apprenticeship, training or work placement which are not covered by any legal framework."¹⁰

Professional immersion agreements are to be considered as mandatory social documentation and failure to possess or issue one is punishable by level 2 sanctions (either a criminal fine ranging from €400 to €4,000 or an administrative fine ranging from €200 to €2,000). In addition, the agreement must stipulate that the intern is to receive certain minimum compensation, the amount of which is set by royal decree.¹¹ In the Flemish Community, this minimum compensation has been increased since 1 January 2017 to not less than half the guaranteed average minimum monthly pay.¹²

In Belgium's French-speaking Community, the minimum compensation is calculated on the basis of a percentage of half national average minimum monthly wage. This percentage varies depending on the age of the trainee (from 64 to 100%).¹³

The EYF's complaint revolves around the fact that, in practice, people do what is called a "volunteering" placement, to which, technically speaking, the rules on professional immersion agreements apply. The complaint accordingly addresses the fact that, in practice, there are some internships where the rules on professional immersion contracts are probably being applied incorrectly.

The complaint is not, therefore, about the absence of regulations, as these do clearly exist in Belgium.

⁹ "La convention d'immersion professionnelle comme encadrement pour le stage libre dans l'entreprise", Martijn Baert, Annabelle Truyers, Dorien Vandeput, avocats Claes & Engels en Orientation 2017/8, p. 21.

¹⁰ Mons Labour Court, 8 January 2015, JTT 2015, nr; 1229, 434 and Mons Labour Court, 8 September 2016, JTT 2016, nr. 1262, 457 and cited in the article in the previous footnote.

¹¹ Royal Decree of 11 March 2003, MB 18 April 2003.

¹² Specifically, compensation in the Flemish Community amounts to €781.30 per month (September 2017)

¹³ Compensation in the French-speaking Community thus ranges from €500.03 to €781.30 per month, depending on age.

5. Volunteering contracts

Lastly, it is also possible to work as a volunteer under a volunteering agreement.

The legislation on the rights of volunteers¹⁴ clearly describes what is meant by volunteering, i.e. to work on a voluntary basis for an organisation that does not aim to make a profit.

The Volunteer Rights Act defines voluntary work as any activity carried out without remuneration or obligation for the benefit of one or more persons belonging to a group, organisation or the community as a whole, which is organised by an organisation other than the person's family or private circle and which is not carried out by the same person and for the same organisation in the context of a contract of employment or service contract or a statutory appointment.

The volunteer has to do this without payment: the volunteering is never remunerated. The law does, however, allow volunteers to receive a small allowance to cover expenses.

The volunteer has to carry out the work of their own free will: nobody can be forced to volunteer.

The purpose of volunteering is to get involved in a disinterested way, to support the vision of a particular organisation and to contribute to the pursuit of its ideals.

The following conclusions may be drawn from the above:

- The assignment and the appropriate form of contract are - by the nature of the contract - determined first and foremost by the wishes of the parties and are therefore a matter of fact. The form a contract takes is not simply a matter of individual preference. There are also public policy rules and laws which must be complied with. Only the courts and tribunals have the power to make sovereign decisions in such matters.
- The internships referred to in the EYF complaint can essentially be considered as internship contracts, the purpose of which is simply to gain experience (and not primarily therefore to perform work in return for a wage). Most of the time, then, with placements of this kind, there is no question of an employment contract, and so no obligation to pay a wage. Nor can the persons undertaking these internships properly be considered to constitute "employees" within the meaning of Articles 4 and 7 of the European Social Charter.
- That does not mean that the interns are not protected. The protective provisions of labour law are essentially the same for anyone working "under authority" (with or without a contract of employment). Accordingly, the provisions on welfare at work,¹⁵ working time, night or Sunday work and breaks¹⁶ also apply here.
- In addition, young people retain their entitlement to certain welfare benefits and may in some cases continue to receive social security benefits (e.g. unemployment) while doing an internship in an organisation.
- If they wish to have a second opinion on their contract, young people can always apply to the social and labour inspectorate or the regional labour inspectorates. An individual

¹⁴ Volunteer Rights Act of 3 July 2005

¹⁵ Welfare of Workers at Work Act of 4 August 1996.

¹⁶ Labour Act, 16 March 1971, Art. 1.

complaint must be submitted by the intern concerned or their manager and the complaint must be sufficiently detailed. The labour inspectorate does not have to issue a penalty notice straightaway; it can also act as a mediator and try to resolve the matter. So far, the inspectorates in question have not received any complaints on this subject. Lastly, interns can always turn to the courts, since only a judge has the power to determine the status of a contract.

- Depending on the nature of the contract, it will fall within the purview of either the Community inspectorate or the federal labour inspectorate.
- An intern may thus lodge a complaint with one of these inspection services and ask for it to be examined in detail. The federal labour inspectorate can intervene in accordance with the regulatory social documents¹⁷ and the Social Criminal Code of 6 June 2010.¹⁸ The addresses of these inspectorates can be found on the websites of the relevant bodies.¹⁹
- Whilst it does not acknowledge that the allegations made in the complaint are justified, Belgium's Federal Public Service for Employment suggests that the EYF contact it to discuss the matter. It will invite the different agencies (inspectorates) and federal and regional policy units to address various points raised in the complaint so that together, based on specific cases, solutions may be found, procedures agreed and additional information provided where necessary.

II. Contribution from SPF Sécurité sociale

This section is concerned only with people who undertake an internship on a voluntary basis, outside the existing legal framework in Belgium. Volunteering or internships undertaken as part of one's studies or under an occupational integration scheme are not discussed here, therefore.

1. Types of internships

Type of internship	Social security cover?
Internships for pupils in secondary technical and vocational education	Interns are treated in the same way as workers but with only limited social security coverage ²⁰ until the year in which they reach the age of 18. From the year following the 18 th birthday, interns are liable for all
Internships for pupils on sandwich courses (i.e. courses combining working and learning)	

¹⁷ Royal Decree No. 5 of 23 October 1978 on the retention of social documents and Royal Decree of 8 August 1980 on the retention of social documents.

¹⁸ Social Criminal Code of 6 June 2010, Article 186.

¹⁹ Addresses of the inspectorates:

Federal: <http://www.werk.belgie.be/defaultTab.aspx?id-6552>

Flemish Community: <https://www.vlaanderen.be/n!/contact/adressengids/administratieve-diensten-van-de-vlaamse-overheid/beleidsdomein-werk-en-sociale-economie/departement-werk-en-sociale-economie/afdeling-vlaamse-sociale-inspectie>

French-speaking Community: <http://emploi.wallonie.be/home/gui-sommes-nous/inspection-sociale.html>

²⁰ Only social security contributions in respect of annual holidays, accidents at work and occupational illnesses are payable. Apprentices are not required to pay the wage moderation contribution, the special FFE contribution (CT 810), contributions to the *fonds de sécurité d'existence* (CT 820, 830, 831, 832 or 833) and to the second pension pillar (CT 825, 827, 835, 837) and the contribution for measures to promote employment and training (CT 852).

	social security contributions, but at a reduced rate.
Internships for higher education students	The educational institution must insure interns against accidents at work and occupational illnesses.
Internships for job seekers/persons with disabilities	Interns keep their benefits and the social security coverage that these bring.
Unpaid internships	No statutory framework for social security since these interns do not fall within the scope of the Social Security Act of 1969. The only statutory requirement is insurance against occupational illness.
Paid internships	Full liability to social security contributions, as the interns are subject to the Contracts of Employment Act of 1978.

The EJF's complaint concerns the existence of voluntary unpaid internships in Belgium and the lack of a statutory framework, which, according to the EJF, is in breach of Articles 4 and 7 of the European Social Charter. It is further alleged that Belgium's Volunteer Rights Act of 3 July 2005 allows unpaid internships and that this is contrary to the provisions of the European Social Charter. The Volunteering Act, however, provides a statutory framework for voluntary work, which is clearly described in the legislation. Unpaid internships, of the kind described in the EYF's complaint, namely internships undertaken after individuals have finished their studies in order to gain experience, are not covered by the statutory framework for voluntary work.

The "volunteers" referred to in the Volunteer Rights Act of 3 July 2005 and the organisations that enlist their services are not subject to the National Social Security Office (ONSS). "Voluntary work" is defined as an activity that:

- is carried out without remuneration or obligation;
- is carried out for the benefit of one or more persons other than the person carrying out the activity²¹ or for the benefit of an organisation or the community as a whole;
- is organised by an organisation other than the family or private circle of the person carrying out the activity;
- is not carried out by the same person and for the same organisation in the context of a contract of employment or service contract or a statutory appointment.

It should be noted that a high proportion of internships in Belgium (paid or unpaid) are undertaken with international institutions based in Belgium (in particular the European Commission and the UN liaison offices). Many of these institutions are not subject to the

²¹ This is a factual issue, it being for the relevant inspectorates to assess whether a volunteering contract is compliant with the regulations.

Belgian social security system, because they have signed agreements with the Belgian government, under which they are permitted to make their own social security arrangements.²²

Interns from outside the European Economic Area (EEA) usually have to apply for a work permit and work visa, and these are linked to the existence of an employment contract. The issue of unpaid interns would seem to apply only to EEA residents, therefore.

2. Social security status of young people undertaking voluntary unpaid internships

Young people who undertake internships on a voluntary basis (and not as part of their studies or under an occupational integration scheme) are only covered by Belgian social security when they have a contract of employment and receive a salary. The Social Security Act of 1969 should be read in conjunction with the Contracts of Employment Act of 1978. Social security is provided for workers, and in order to be classified as a worker, an individual must perform work in exchange for remuneration and under the authority of an employer.

Young people who undertake voluntary unpaid internships in Belgium will not therefore be covered by Belgian social security on the basis of their internship. Such trainees cannot be considered as workers,²³ since they are not in receipt of a wage and therefore do not fall within the scope of the 1969 Social Security Act.²⁴

Art. 7 §7 of the European Social Charter: the right to paid leave shall only apply if a wage is paid. For interns working on an unpaid voluntary basis, this provision does not apply, therefore.

Art. 7 §10 of the European Social Charter: the right to protection against occupational risks for unpaid interns is governed by two different pieces of legislation, namely the Occupational Illnesses Act (3/06/1970) and the Accidents at Work Act (10/04/1971):

- Accidents at work: Belgian employers are not obliged to take out industrial accident insurance for unpaid interns, since this obligation applies only to persons who are bound by a contract of employment.
- Occupational illnesses: Belgian employers are, on the other hand, required to take out occupational illness insurance for unpaid trainees, since the latter are specifically mentioned in the legislation (Art. 2 §1).

III. Brussels region and its employment office Actiris

1. Essence of the complaint

²² The European Union and the United Nations, among others, are not required to affiliate their workers to the Belgian social security system.

²³ This is clearly a factual issue, it being for the relevant inspectorates to assess whether an internship contract is compliant with Belgian labour law.

²⁴ That does not mean that these young people are never covered by social security in Belgium. If they are dependants of a person who is covered by Belgian social security or are permanent residents, they will also be entitled to compulsory sickness insurance.

The complaint focuses on unpaid internships and rests on the view that the vast majority of such internships are unpaid. The fact is, however, that all the internships administered in the Brussels Region by ACTIRIS are paid internships.

The EYF's complaint presumably refers mainly to young people on placements in international institutions based in Belgium, or in the representations and lobbies that revolve around these institutions.

Different types of internships operate alongside one another and are run by specific regional and Community operators who implement them under separate legal arrangements (see attached the Order of 10 March 2016 on internships for job seekers in the Brussels Region).

2. General regulations

The vast majority of internships in Belgium take place within the framework of studies or training. The Public Services for Employment and Training deal with internships available to job seekers.

- The internship is undertaken as part of the process of gaining compulsory practical experience (during the school year or during school holidays) in order to obtain a diploma. It therefore takes place while the person is still studying, at the end of their studies or after graduation. In order to undertake an internship as a student, other than one planned as part of the course, the individual concerned must obtain the express consent of their school.

- As regards internships after obtaining the diploma: the regulations allow individuals to undertake internships while registered as job seekers but only under certain fairly strict conditions.

Apart from these two cases, any internship undertaken without the approval of the school or without the authorisation of the Public Services for Employment or Training is deemed to constitute undeclared work.

3. The different types of internships

Without going into the technical details, here are the different types of internships which are permitted by law in Belgium:

- internships for pupils in technical and vocational secondary education
- internships for pupils on sandwich courses
- internships for higher education students (universities and equivalent)
- internships for job seekers
- volunteering placements
- internships for foreign nationals
- internships abroad

Each of these settings, within which the internships take place, is likewise governed by specific legislation.

4. The concept of remuneration

Where remuneration for interns is concerned, a distinction must be made between interns who have completed secondary or higher education and interns coming to the end of their training or job seekers.

In education, internships are never paid (except where they are part of a sandwich course). The internship is an integral part of the school curriculum and, as such, cannot

be remunerated. It is customary to reimburse expenses incurred for travel between home and the place of work.

As far as end-of-training placements and internships undertaken by job seekers are concerned, companies are obliged to pay their interns a monthly allowance. Very often, the amount is determined by the type of internship and the person's age.

5. ACTIRIS internship scheme

ACTIRIS operates two different types of internship. Each of them has specific objectives, its own eligibility requirements, statutory framework and specific remuneration arrangements:

1. The "First" scheme is aimed at young people who have been registered for six months as unemployed job seekers and who hold, at most, a certificate of upper secondary education.

This internship lasts from 3 to 6 months. The employer pays a bonus of €200 per month to the trainee (from which no social security contributions are deducted). In addition to the monthly bonus, the trainee receives a daily training allowance of €26.82. On average, therefore, the monthly remuneration is around €800.

2. International internships. ACTIRIS runs two types of programmes:

a. "European Internships" programmes intended for young people aged from 18 to 29.

The internships are full time, last 6 months and are available in 32 countries across Europe.

Subject to various conditions (the chief one being that the intern must be resident in the Brussels-Capital Region and registered with ACTIRIS as an unemployed job seeker) a grant is awarded for the duration of the internship. The amount of this grant depends on the country in which the person does their internship and whether or not they are claiming unemployment benefit. If the internship take place in France, for example, interns are entitled to a monthly grant of €830 if they are claiming unemployment benefit, or €1060 if they are not.

b. The "Eurodyssee" exchange programme run by the Assembly of European Regions (AER), which offers 3- to 7-month internships abroad to job seekers aged between 18 and 32.

The objective of these internships is to allow young people to gain some professional experience but also to give them the chance to learn a foreign language or to improve existing language skills.

Interns on the Eurodyssee programme are entitled to language lessons, help with finding accommodation, a wage or a monthly grant (the amount of which depends on the region where the internship is taking place and whether or not the intern is claiming unemployment benefit) to cover housing, food and transport. Interns undertaking an internship in Umbria (Italy), for example, receive a monthly grant of €800 to pay for accommodation, food and transport.

In addition, each intern is entitled to free civil liability and repatriation/health insurance.

IV. Contribution from the Flemish Authority (Region and Community)

Point 1 establishes that a clear distinction needs to be made between contracts of employment and training contracts. The various training courses and internships regulated by the Flemish Authority are also explained.

Point 2 contains information on the *Flanders Trainee Programme*, whereby the Flemish Authority awards grants to young people who undertake unpaid internships with a multilateral organisation.

1 TRAINING COURSES AND INTERNSHIPS REGULATED BY THE FLEMISH AUTHORITY

1.1 Contract of employment v. training contract

Internships which fall within the remit of labour and social economy policy (cf. Articles 4, 16 and 17 of the Special Institutional Reform Act) are part of a job-finding process and/or the person concerned is claiming unemployment benefit or receiving an integration income. The aim here is to reorient job seekers and/or help them to enter the labour market, through *inter alia* on-the-job learning or vocational training (outside of the education system).

The relationship with the employer is a crucial factor here. A distinction needs to be made between an employment contract and a training contract.

An employment contract is a contract by which one party, the employee, gives a commitment to the other party, the employer, to perform work for remuneration, in a relationship of subordination to an employer or subject to the authority of the latter. In order for there to be an employment contract, four elements must be present: the contract, the work, the remuneration and authority/subordination.

Some contracts possess features similar to those of employment contracts yet are nevertheless distinct from them. Training contracts (such as internship contracts and vocational training contracts) differ from employment contracts in terms of the objective pursued by the parties. In the case of training contracts, the educational aspect is key, whereas in the case of employment contracts, the central feature is the performance of work for remuneration. Education and training are thus measures intended to support employment.

Training courses and placements offered in the field of labour and social economy policy do not, according to labour law, fall within the scope of the definition of a contract of employment. Rather they come under the heading of training contracts, the aim of which is to enable a person to subsequently do another job or to gain more experience in the workplace. While undergoing training of this type, the person is usually able to retain their status as a job seeker status or integration income claimant. The list of training courses regulated by the Flemish Authority (outside the framework of secondary or post-secondary education) is given in point 2.2.

1.2 Overview of the internships regulated by the Flemish Authority

1.2.1 Vocational discovery placement

Vocational discovery placements are intended for job seekers who:

- are potentially interested in a particular occupation but do not really know what it involves
- are interested in a particular occupation but do not know whether they have the necessary qualifications, etc.
- possess sufficient professional strengths to successfully complete the internship.

Vocational discovery placements are designed to assist job seekers who have no clear and/or realistic career plan. Through the placement, the job seeker and their career guidance counsellor gather information which can then be used to (re)direct the person towards realistic career choices and to assess what needs to be done to prepare the job seeker for the labour market. The placements are part-time, and the job seeker retains their entitlement to unemployment benefit.

1.2.2 “Activation” placements

These are aimed at job seekers with a (presumed) occupational disability that is blocking their route into gainful employment in the mainstream jobs sector, the social economy or work-based assistance. An assessment needs to be made as to precisely how the person’s problems are likely to affect work arrangements and what types of jobs might be suitable for them. It must thus be determined whether the job seeker can be helped to move into an ordinary job, sheltered employment or work-based assistance and, if not, an explanation must be provided as to why employment is not a viable objective (because occupational integration is not feasible), Besides guidance, such placements are also intended to provide impetus. That means removing medical or psychological barriers to integration into the labour market through enhancement of general basic skills and specialised coaching. The aim is to prepare job seekers for the next phase of their journey to employment. The total duration of the traineeship is 6 months maximum.

The VDAB (Flemish Employment Office) can offer people who are actively seeking work an “activation” placement through an intensive and specific support programme. The placement leads the job seeker towards gainful employment and prepares them for this by improving their general basic competences and by removing barriers that hinder or prevent them from entering the labour market.

1.2.3 “Formative” work placement

The aim of these placements is to learn and work at the same time, as well as to practise and evaluate the skills acquired during vocational training. “Formative” work placements are an integral part of a recognised training course. The emphasis is on learning and the concept is in line with the European objective of providing more work-based learning opportunities for young people. The “formative” placement is the part of vocational training which takes place within a company. On-the-job learning of this type is part of the training delivered by a VDAB skills centre or partner institution. The duration of the placement depends on the skills to be acquired and will be stipulated in the training plan. The trainee has the right to qualitative work placement support from a work placement mentor or coach.

The job seeker retains their entitlement to unemployment benefit.

1.2.4 Individual vocational training (IBO)

Individual vocational training (Individuele Beroepsopleiding, IBO) in the workplace enables job seekers to undergo between 1 and 6 months' training in a company, with the offer of a contract at the end.

. The company agrees a training programme with the VDAB. This programme is designed to teach the job seeker the skills they need for a particular vacant post. The VDAB decides the duration of the training based on the following criteria:

- the skills set needed for the job;
- the applicant's knowledge, skills and qualities;
- the training plan.

IBOs are financially advantageous for employers, who do not have to pay a salary, just a productivity bonus. The training can be modulated according to various specific characteristics of the job seekers invited to take up the scheme. IBOs come in various forms: C-1B0 (longer-term unemployed), G-1B0 (people with an occupational disability), 1B0-interim (people from a disadvantaged background), to name but a few. The acquisition of technical skills can be combined with the learning of languages and general skills useful for the labour market.

1.2.5 Professional immersion agreements (Beroepsinlevingsovereenkomst-BIO)

Job seekers may decide of their own volition to spend time in a company in order to acquire professional experience. The aim is to learn skills that cannot be acquired through traditional education/training. The paid internship takes place on a mutually agreed basis, with no obligation as regards future employment and no support from the VDAB or any partner institution. The BIO provides a legal framework that allows the job seeker to do a placement in a company, of their own accord. It is not a contract of employment but a training arrangement that aims to teach skills and attitudes in a workplace. The training plan must be approved by the VDAB.

Jobseekers, employees, self-employed persons and students, among others, may enter into an agreement of this kind with an employer in the commercial or non-commercial sector. The aim is to acquire skills and develop new attitudes in the workplace.

1.2.6 Introductory work placements

This type of placement is intended for job seekers whose skills fall far short of what the labour market requires but who have potential. The focus is on acquiring generic skills together with recent (and relevant) professional experience. The placement is part of a process aimed at helping people into mainstream jobs. The employer is under no obligation to hire the trainee. The most common use of such placements is probably under the temporary work experience programme.

Persons who take up this scheme are not required to be available for work and the

maximum duration of the placement is 6 months.

Job seekers retain their entitlement to unemployment benefit.

1.2.7 Internship agreements in the context of adult enterprise programmes

The internship agreement is a contract by which a company manager undertakes to provide or arrange for the provision of technical vocational training to the intern. The latter undertakes to learn the skills necessary for a particular occupation under the direction and supervision of a company manager, and to attend the necessary theoretical training courses at a SYNTRA centre (Art. 35). It is also strongly recommended that interns, who must comply with the in-house rules and regulations regarding the running of the company, take a course in business management. The agreement is concluded between the intern and a support worker, who is responsible for ensuring that the terms of the agreement are respected.

The agreement is concluded for a minimum period of three months and may only be extended in writing. Where necessary to enable the participant to successfully complete the programme, the 3-month rule may be waived. The end date of the agreement will be the date on which the enterprise programme is completed. The placement can be full-time or part-time. A part-time placement may be equivalent to three-quarters or four-fifths of a full-time placement. The agreement may be concluded only if it relates to an approved enterprise programme and the vocational training course takes place the same year. The agreement pertains to a single enterprise programme. There are numerous training opportunities, in a wide range of industries such as food, wood- and metal work, construction, as well as in the service sector including caregiving.

2 Flanders Trainee Programme

The *Flanders Trainee Programme* is a scheme whereby the Flemish authorities award grants to people under the age of 35 who undertake unpaid internships in multilateral organisations (<http://www.fdfa.be/en/ftp>). It spans over 80 organisations, including the Council of Europe.²⁵ In 2018, someone undertaking an internship in Belgium would have been eligible for a grant of €991.06 per month.

The Flanders Trainee Programme was launched in 2002 and over 800 young people have been awarded grants to date. The amounts have varied from €1,000 to €8,600, depending on the duration of the internship and where it takes place.

V. Contribution from the Walloon Region

As a general rule, the Public Service of Wallonia (SPW) accepts only unpaid interns under a

²⁵

<http://www.fdfa.be/sites/default/files/atoms/files/FTP%20multilateral%20organizations%20%28web%29.pdf>

tripartite agreement signed between the intern, the SPW and the education or training institution which the young person is attending. Only people who are in education or training can be taken on as interns.

There are no unpaid internships in the various schemes run by the Directorate General for Economy, Employment, Training and Research. In the sphere of socio-occupational integration, for example, the individuals accepted on training programmes in the socio-occupational integration centres (CISPs) are job seekers receiving an allowance, who undergo an approved training process that may include internships. Interns continue to receive their benefits and are entitled to certain perks (as set out in the Walloon Government Decree of 8 February 2002) such as the euro/hour for each hour of training attended, including during internships.

The internships supported by the *Agence pour une Vie de Qualité (AViQ)* for interns with disabilities take place within the framework of:

- . retraining contracts (CAP)
- . training courses in special training and socio-occupational integration centres (CFISPA)

In the appendix are ESF tables showing the number of CFISPA and CAP interns in 2016 (CAP: 1,387, of whom 968 were men and 419 women). CFISPA: 1137 interns - Training - post-training: 740 men and 397 women).

The decrees on the CFISPA and CAP are set out in the CWASS – Walloon Social Action and Health Code (in the case of the CAP <https://wallex.wallonie.be/index.php?doc=21579>, the relevant section is Livre V, Titre 9, Chapitre 5, sections 2 and 3. In the case of the CFISPA, see Articles 905 to 990 <http://www.eiustice.iust.fgov.be/eli/arrete/2014/05/15/2014204186/moniteur>)

The AViQ (Agence pour une Vie de Qualité) also organises discovery placements and so-called Duodays, i.e. two recurring yet brief (week- or day-long) initiatives to enable people to gain unpaid work experience (see *Stages de découverte* and DUODAYS).

Responsibility for professional immersion contracts (CIP), as described in part I, point 4, was transferred from the federal to the Community level by the Special Institutional Reform Act of 6 January 2014, under which “*sandwich schemes in which practical on-the-job training alternates with training in an educational or training institute*” are now considered to be a matter for the Communities (Art 4, 17°).

Belgium’s French-speaking Community has chosen not to retain this responsibility, except in the case of sandwich courses.

Article 3, 4° of the Walloon Region Decree of 11 April 2014 on the competences of the French-speaking Community, the exercise of which has been transferred to the Walloon Region and the French Community Commission, stipulates that this Community matter is to be transferred to the Walloon Region, save where sandwich courses are concerned.

By Walloon Region decree of 17 March 2016, the task of exercising powers and responsibilities within the framework of the Professional Immersion Contract system has been entrusted to the Forum for Employment (Forem).

The 2002 legislation thus applies to FOREM, no superseding decrees having been passed to date. The explanations provided by the Federal Public Service for Employment and the Federal Public Service for Social Security are still valid, therefore.

The provisions of this law serve as a basis for examining any agreements that are submitted to FOREM so that the National Social Security Office can decide whether or not they qualify as professional immersion contracts. FOREM has no specific template that agreements must conform to. The parties submit them in draft form. Responsibility is shared with the other regional employment offices depending on the "training venue", i.e. the officially registered training facility where the majority of the training is to take place.

Since the fifth state reform, any internship contracts submitted to FOREM must meet the conditions laid down for all professional immersion agreements.

If the agreement submitted to FOREM does not satisfy the requirements, it will not be approved by the National Social Security Office.

Lastly, the Brussels French-speaking Public Service organises measures to help people with disabilities into employment. This Service is a Brussels-based agency with various departments (culture, health, etc.), including one dealing with people with disabilities. The latter has 4 sections: information, reception & accommodation, material assistance and employment.

Within the employment sector, there is a system of employment support which aims to integrate people with disabilities into employment in both mainstream and sheltered settings (adapted work enterprises). The scheme receives funding from the European Social Fund.

Among the different types of employment support on offer, there is the discovery work placement. This is a way for people with disabilities to find out about a particular career or work arrangement. It gives them an opportunity to learn about real, everyday work conditions in the career they wish to pursue.

The placement may last from 1 to 20 consecutive days. It is covered by an internship agreement (contract) and for the duration of the placement, the intern is covered by industrial accident insurance.

The intern is supervised by a tutor throughout the placement.

The internship is not paid because it is for observation purposes only. There is no expectation on the part of the employer that the intern will generate a financial return. The intern performs only a few tasks related to the career they wish to learn about. It is a vocational approach.

There is also "Duoday", a nationwide initiative which has recently acquired a European dimension and which takes place once a year. For at least one day, companies

wishing to take part in the initiative open their doors to job seekers with disabilities. A DUO is then formed between the tutor designated by the company and the job seeker. "Duoday" aims to raise awareness among both private and state-owned companies about employing people with disabilities. It affords workers an opportunity to meet, in their usual place of work, with people with disabilities looking for a job or who have questions about occupational training. It also provides a chance to get to grips with the world of work.

This is a win-win initiative, therefore. Administratively speaking, it takes the form of a discovery placement (see below). The placements are unpaid.

STATISTICS

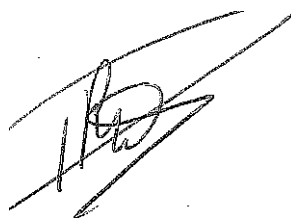
	2015	2016	2017
Discovery placements	40	62	97
Duoday	25	37	58

References:

Article 48, 1° of the decree of 17 January 2014 on the inclusion of persons with disabilities (MB 03/10/2014) Articles 46 to 51 of decree No. 2014/152 of the College of the French Community Commission on individual service provision and employment support for persons with disabilities
Duoday link: www.duoday.be

FOR THESE REASONS,

The respondent state asks the European Committee of Social Rights to declare collective complaint No. 150/2017 unfounded.



For the Kingdom
of Belgium,

Paul RIETJENS

