

STEP RESEARCH PROJECT

ELSA INTERNATIONAL
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elsa

The European Law Students' Association

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ABBREVIATIONS

ELSA	European Law Students' Association
EU	European Union
ICM	International Council Meeting
KAM	Key Area Meeting
MS	Member State
NG	National Group
SRP	STEP Research Project
STEP	Student Trainee Exchange Programme
TFEU	Treaty on the Functioning of the European Union

STEP RESEARCH PROJECT

The STEP Research Project (SRP) is a novel initiative of ELSA introduced in autumn 2019 at the Key Area Meeting (KAM) in Istanbul, Turkey. In a nutshell, SRP entails **comparative, multi-jurisdictional legal research on topics of labour law of direct relevance to the operation of ELSA's flagship project, the Student Trainee Exchange Programme (STEP)**. SRP is internationally coordinated by ELSA International and engages the whole ELSA Network.

Purpose

The aim of SRP is to address the legal issues affecting the operation of STEP across the ELSA Network where there is an ELSA National Group (NG) present. SRP strives to research in a unified manner under international coordination the labour regulations in over 40 jurisdictions encompassed by ELSA.

The vision of ELSA is a *'just world in which there is respect for human dignity and cultural diversity'*. SRP contributes to the fulfilment of the aims of ELSA as a non-political and non-profit association for law students and graduates. These aims include the promotion, establishment and development of *mutual understanding, cooperation and personal contact* among law students and young legal professionals from different States, legal systems and cultural backgrounds, thereby equipping them for professional life in an increasingly international environment.

Accordingly, SRP contributes to ELSA's philosophy statement in the following ways by:

- *Contributing to legal education* by encouraging law students and graduates to research the national and supranational regulation of labour conditions and contractual relations directly relevant to them as prospective interns and employees themselves;
- *Fostering mutual understanding* between the representatives of the future generation of legal professionals by providing an opportunity for them to learn about other legal systems and traditions through the means of comparative legal research; and

- *Promoting social responsibility* by focusing on labour conditions in the 44 National Groups and encouraging the participation in critical discussions about the quality standards of legal internships and employment.

Outcome

The goal outcome of the SRP is a **comprehensive international database** that documents answers to a set of research questions. The contributions thereto are collected over a period of time specified in the **SRP Timeline** through (1) *national interim reports* and (2) *national final reports*, leading to the *international final report*, i.e. the SRP outcome.

The SRP outcome is meant for internal use to support the future development and regulation of STEP in a sustainable and pragmatic manner. Subsequently, this is to also serve better the audience that ELSA represents and the STEP Traineeship Providers. Following SRP, ELSA can respond to the needs and challenges as identified during the research process.

Moreover, the SRP outcome may serve the **civil society** as large. SRP may form a basis for opinion papers and further international legal research by ELSA, contributing to the development of the labour conditions across Europe.

Coordination

SRP is an international project that is coordinated by ELSA International. It falls under the responsibilities of the Vice President in charge of STEP of ELSA International.

Each NG shall coordinate internally the execution of SRP, i.e. research and collection of data from their respective jurisdiction. The NGs are supported by the **STEP Coaching Team** of ELSA International.

Methods

Research Framework: The SRP Research Framework consists of the research questions to which each NG shall research comprehensive answers as instructed.

Style Guide: The SRP Style Guide outlines the uniform rules how the research results shall be documented by each NG.

SRP Timeline: As positively recommended by the STEP Workshop participants at the 76th International Council Meeting (ICM) of ELSA in Constanta, Romania, the SRP Timeline is as follows:

17 Jan 2020	The SRP Launch The SRP Research Framework including other materials are shared with the Network
15 March 2020	The first National Interim Reports The interim results are discussed during the 77 th ICM in Malta at STEP Workshops
22 June 2020	The second National Final Reports The research conducted so far prepared for transition
Autumn 2020	The third National Interim Reports The interim results are discussed during the 78 th ICM at STEP Workshops
Spring 2021	The National Final Reports The final results are discussed during the 79 th ICM at STEP Workshops
June 2021	The International Final Report The research conducted is finalised and shared with the Network

Finances

As such, SRP and its execution has no financial needs. This is for the reason that SRP does not have to be published in a physical format and its coordination and the necessary research work can be conducted fully electronically.

Financial needs may nevertheless arise on international and national levels during the research process for reasons of e.g. consulting professional legal services to verify the information gathered, implementing the necessary operational changes to STEP, or legal compliance.

ELSA International would within its capabilities and with its discretion extend financial assistance to any such expenses by resorting to *inter alia* the STEP Project Budget of ELSA International which consists of the income from External Applicant Fee and the STEP Partners as well as ELSA's alumni network that may set a general fundraising campaign to support ELSA's legal compliance initiatives internationally.

Recognition

Each individual contributing to SRP is entitled to a **certificate of participation** issued jointly by ELSA and Caselex. This certificate attests that the individual has participated in a multi-jurisdictional research project on the topic of labour law which has a practical outcome supported by social responsibility objectives. This certificate is supposed to encourage proactive engagement across the Network.

Caselex

Caselex is ELSA's SRP Partner. Caselex is a unique and fast-growing organisation based in the Netherlands. It provides legal information services for antitrust/competition and M&A professionals globally. Caselex has developed since autumn 2016 a comprehensive database of English market definition summaries from 31 jurisdictions around Europe. Its client portfolio has expanded rapidly to over 100 top law firms and competition authorities around Europe and beyond.

Caselex supports the SRP specifically with:

- Drafting the academic framework;
- Implementing the centralised system of data collection; and
- Providing feedback on the progress made

LABOUR LAW

Labour law is rooted in the rationale that employees have an **unequal bargaining power** which justifies substitution of rules in property and contract with positive social rights.

European labour law

The competences of the European Union (EU) to regulate in relation to labour law issues flow from the Community Charter of the Fundamental Social Rights of Workers 1989 as codified in the Treaty of Maastricht's "social chapter". As regulated in the Treaty on the Functioning of the European Union (TFEU), the EU may use ordinary legislation powers and procedure in relation to a range of labour law issues with the notable exception of:

- Wage regulation;
- Collective bargaining;
- Unjust dismissal;
- Pay;
- The right of association;
- The right to strike; and
- The right to impose lock-outs.¹

EU powers over labour law cover four main fields:

1. Individual labour rights;
2. Anti-discrimination regulations;
3. Rights to information, consultation, and participation at work; and
4. Rights to job security

¹ Art. 153(1) and 153(5) TFEU

Moreover, the mandate of the EU is to ‘support and complement the activities of its Member States (MS) in the following fields’:²

- a) Improvement in particular of the working environment to protect workers’ health and safety;
- b) Working conditions;
- c) Social security and social protection of workers;
- d) Protection of workers where their employment contract is terminated;
- e) The information and consultation of workers;
- f) Representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- g) Conditions of employment for third-country nationals legally residing in Union territory;
- h) The integration of persons excluded from the labour market, without prejudice to Article 166;
- i) Equality between men and women with regard to labour market opportunities and treatment at work;
- j) The combatting of social exclusion;
- k) The modernisation of social protection systems without prejudice to point (c).

Naturally, MS may create and implement rights that are more beneficial to workers than those laid out by the EU.

Employment contract

Under EU law, the **Employment Information Directive 91/553/EEC** requires that every employee (however defined by MS law) has the right to a written statement of their employment contract. It requires MS to introduce legislation giving employees within their jurisdiction the right to be notified in writing of the essential aspects of their employment relationship when it starts or shortly afterwards.

Some, but not all MS, require the conclusion of a detailed written employment contract.

² Art. 151 TFEU

The mandatory requirements of an employment contract are specified under Art. 2(2):

- a) Identity of parties;
- b) Place of work or employer's domicile;
- c) Title, grade, category or nature of work, or a brief description of the work;
- d) Commencement date;
- e) For temporary contract, the expectation duration;
- f) Paid leave;
- g) Periods of notice or method of determining;
- h) Initial pay;
- i) Working time;
- j) Where appropriate, the collective agreement or joint representation institutions

The coverage of the employment contract varies between MS, since it is linked to the definition of an employment contract/employment relationship adopted by the relevant MS. Some MS have chosen to exclude short-term contracts, short working weeks and casual labour from the scope of their implementing legislation.

Working time

Under EU law, the **Working Time Directive 2003/88/EC** requires a minimum of four weeks (28 days) paid holidays each year, a minimum of 20-minute paid rest breaks for 6-hour work shifts, limits on night work or dangerous work, and a maximum 48-hour working week unless a worker individually otherwise consents. MS may opt out of the 48-hour working week.

Occupational safety

Under EU law, the **Safety and Health at Work Directive 91/383/EEC** establishes the minimum criteria to prevent workplace risks.

The legal status of an ‘employee’

There is no single transnational definition for what constitutes an ‘employee’. Therefore, the definition thereof is largely dependent on national law.

Under EU law, the **European Court of Justice (CJEU)** has consistently defined an ‘employee’ as someone who is, first, the weaker party in an employment contract and, second, working under the direction of another.³

The legal status of interns and trainees

Under EU law, people who do not have ordinary full-time, permanent contracts may not be treated less favourably than their full-time colleagues. However, the scope of the protected worker is left to MS to define.

Instruments of relevance include *inter alia*:

- **Part-time Work Directive 97/81/EC** (part-time employees may not be treated less favourably than full-time employees);
- **Fixed-term Work Directive 99/70/EC** (applicable to employment contracts of a limited duration); and
- **Temporary Agency Work Directive 2008/104/EC** (applicable to ‘basic working conditions’, e.g. pay, working hours, participation rights, and covers the people working through employment agencies)

³ E.g. *Lawrie-Blum v Land Baden-Württemberg* (1986) C-66/85, at 17;
Pfeiffer v Deutsches Rotes Kreuz (2005) C-397/01, at 82

RESEARCH QUESTIONS

- 1. Identify (a) the applicable sources of labour law, and (b) the regulatory bodies in charge.**
Sources of labour law refer to the primary sources of legislation which regulate employment-related issues (inter alia acts, common law, cases, equity). The regulatory bodies in charge refer to those organisations that may lawfully regulate employment-related issues.
- 2. What categories of legal subjects under labour law are defined?**
Are there definitions for (a) “employee”, (b) “intern/trainee”, (c) “volunteer”, (d) any other?
- 3. Employment contracts**
 - a. Is an employment contract always mandatory?
 - b. What are the requirements?
 - c. Can the contract be in any language?
 - d. Are e-signatures valid?
- 4. What is the minimum wage? How is it determined and applied?**
- 5. What are the requirements for the termination of an employment relationship/dismissal of an employee?**
- 6. Insurance**
 - a. What are the insurance requirements for an employee (e.g. health, accident)?
 - b. Is the employer or the employee responsible for arranging the insurance?
- 7. What are the requirements for the work time?**
Are there limits on the work week, day, the holidays, extra pay...?
- 8. Are there any other registration/administrative requirements?**
E.g. residency permit, national bank account, tax registration...?
- 9. What types of visa are available/applicable?**
- 10. Payment**
 - a. Are there any requirements on the method of paying an employee?
 - b. Does the remuneration have to be monetary or can it be fully/partially “in-kind”?
 - c. Who is responsible for the payment of taxes? What are the applicable tax limits?

Research structure

Answering the research questions specified below, pay attention to structure your answer according to the following four sub-topics:

- i. **Description of your answer**
- ii. **Practical tips for STEP (if any)**
- iii. **Source(s)s**
- iv. **National contact(s)**

LANGUAGE GUIDE

Language

- British English
- Refer to the [ELSA Law Review Language Manual](#)

Main text

- Garamond, size 12 pt., justified, no paragraph spacing, 1.5 line spacing
- **Titles** and **sub-titles** should conform to the questions and be numbered respectively
 - Titles: Garamond, bold, size 14 pt., justified, no paragraph spacing, 1.5 line spacing;
 - Sub-titles: Garamond, italic, size 12 pt., justified, no paragraph spacing, 1.5 line spacing

Referencing

- **The Oxford University Standard for the Citation of Legal Authorities (OSCOLA)**
 - The [4th ed](#)
 - The [quick referencing guide](#)
- **Footnotes** are meant for citations of the source – all references should be cited as footnotes!
 - Garamond, size 10 pt., not justified but aligned to the left, no paragraph spacing, 1.0 line spacing
- **Quotations**
 - Single quotation marks ('like these') are for quotations by the author; they must be faithful to the original text
 - Double quotation marks ("like these") are for quotations when a second quotation is embedded within a quotation ("so when a quote "includes another quote therein".")
 - Quotations should be as brief as necessary
 - Shorter than three lines: embedded within the text of the paragraph
 - Over three lines: laid out in a separate paragraph with an indentation

EXAMPLE

The following example is from Finland to demonstrate the structuring and formatting of the answers.

4. What is the minimum wage? How is it determined and applied?

4.1. Description

There is neither one fixed minimum wage nor any legislation regulating this matter specifically. Minimum wages are regulated by (i) industry-specific collective agreements or (ii) national/representative collective agreements. All employers belonging to an employers' association must conform to the collective agreement as regulated by the Collective Agreements Act.

Where an employer is not a member of an employers' association, they must conform to the national collective agreements whenever the activities of their employees fall within the scope of application thereof.

In the absence of any collective agreement in the employer's sector, the remuneration rate may be fixed between the employer and the employee. The Employment Contract Act contains no reference to minimum wage, yet it states that any remuneration must be 'reasonable' and 'normal'.⁴

4.2. Practical tips

Published statistics (e.g. Statistics Finland)⁵ may be a useful reference in determining an appropriate level of pay for STEP Trainees depending on the industry/sector at issue.

4.3. Source(s)

- [Collective Agreement Act](#) (7.6.1946/436 *Työehtosopimuslaki*)

⁴ Art. 10, Employment Contracts Act 1946 (Finland)

⁵ 'Wages, Salaries and Labour Costs' (Statistics Finland) <http://www.stat.fi/til/pal_en.html> accessed 9 January 2020

- [Act on Confirmation of the General Applicability of Collective Agreements](#) (26.1.2001/56 Laki *työehtosopimuksen yleissitovuuden vahvistamisesta*)
- [Employment Contracts Act](#) (26.1.2001/55 *Työsopimuslaki*)

4.4. National contact(s)

- [Ministry of Economic Affairs and Employment of Finland](#) (*Työ- ja elinkeinoministeriö*)
- [Occupational Safety and Health Administration \(OSHA\)](#) (*Työsuojeluhallinto*)