

STEP RESEARCH PROJECT

ELSA INTERNATIONAL
2020/2021



elsa

The European Law Students' Association

STEP Research Project Guide

Dear National Officers & Members of SRP Working Groups,

After various discussions with the whole network, we have come to the conclusion that the STEP Research Project is an international legal research worth formal publishing. As we already have possible legal publishing partners, it is of utmost importance that our final report is of highest quality, not only with regards to its content, but also style-wise.

This is the reason why we are happy to introduce to you this updated SRP Guide, which will give you the basic academic background, as well as the research questions necessary for your National Reports. Also, the timeframe of the whole Project is incorporated.

Hence, with this updated SRP Guide, as well as the new Style Guide and the new Language Manual published as well, we firmly believe that all National Reports and the final one will meet all the needed criteria and have an excellent quality in general!

For any further inquiries, do not hesitate to contact us via email at assistant.srp@elsa.org.

Yours sincerely,

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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 the International Board of ELSA, aided by the Assistant for the STEP Research Project of the ELSA International Team.

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 Assistant for the SRP of the **ELSA International Team**. For this reason, for any questions or concerns, NGs may always contact the assistant at assistant.srp@elsa.org

Methods

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

Style Guide and Language Manual: The SRP Style Guide outlines the uniform rules of how the research results shall be documented by each NG, whereas the Language Manual provides guidelines regarding formal British legal writing. These two documents have also been introduced to the network, for further support.

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

1 April 2021	The third National Interim Reports Deadline to Submit the First Interim Report of the Year
15 April 2021	Feedback Deadline from ELSA International Feedback on the third Interim Reports is shared with the National Groups by ELSA International
15 June 2021	The National Final Reports Deadline to Submit the Final National Reports
August/September 2021	The International Final Report The research conducted is finalised and shared with the Network and published

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

Digital STEP Traineeships & Remote Work

The questions outlined below in this guide should take into account the circumstances and legal provisions relating to remote work and Digital work experience.

As such, in answering the following questions, researchers should outline the relevant answers including those provisions related to this category of work.

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.

Do they change if the internship is conducted remotely?

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?

Are there any definitions regarding remote work?

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?
- e. What type of contracts are reserved for remote employees if applicable?

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

Are remote interns entitled to a minimum wage?

5. What are the requirements for the termination of an employment relationship/dismissal of an employee?

Distinguish between employee and employer.

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?
- c. What are the insurance requirements regarding remote work?

7. What are the requirements for the work time?

Are there limits on the work week, day, the holidays, extra pay...?

Are there any specific provisions regarding remote work?

8. Are there any other registration/administrative requirements?

E.g. residency permit, national bank account, tax registration...?

Differentiate between EU and non-EU Citizens

Are there any specific requirements for remote work?

9. What types of visa are available/applicable?

Differentiate between EU citizens and non-EU citizens

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?
- d. Are there any specific payment methods or legal provisions regarding remote work?

REPORT STRUCTURE

In order to harmonise the reports received and to ease the final formatting of the documents, we ask that you try to follow the below structure regarding the questions and their answers where possible.

1. Applicable sources

1.1 The applicable sources of labour law

1.2 The regulatory bodies in charge

1.3. Do they change if the internship is conducted remotely?

2. What categories of legal subjects under labour law are defined?

2.1 Employee

2.2 Intern/trainee

2.3 Volunteer

2.4 Any other

2.5. Are there any definitions regarding remote work?

3. Employment contracts

3.1 Is an employment contract always mandatory?

3.2 What are the requirements?

3.3 Can the contract be in any language?

3.4 Are e-signatures valid?

3.5. What types of contracts are reserved for remote employees if applicable?

4. What is the minimum wage? How is it determined and applied? Are remote interns entitled to a minimum wage?

5. What are the requirements for the termination of an employment relationship/dismissal of an employee?

5.1 Employer

i. Termination (Requirements/ cases/ reasons/ notice period)

ii. Dismissal (Requirements/ cases/ reasons/ notice period)

5.2 Employee

i. Termination (Requirements/ cases/ reasons/ notice period)

ii. Dismissal (Requirements/ cases/ reasons/ notice period)

6. Insurance

6.1 What are the insurance requirements for an employee (e.g. health, accident)?

i. Health insurance

ii. Accident insurance

iii. Pension insurance

iv. Unemployment insurance

6.2 Is the employer or the employee responsible for arranging the insurance?

6.3. What are the insurance requirements regarding remote work?

7. What are the requirements for the work time?

7.1 Limits

i. Work day

ii. Work week

iii. Work month

iv. Work year

7.2 Holidays

i. Public holidays

ii. Paid leave

iii. Unpaid leave

7.3 Overtime work

7.4. Are there any specific provisions regarding remote work?

8. Other administrative requirements

8.1 EU citizens

i. Residency permit

ii. National bank account

iii. Tax registration

iv. Specific requirements for remote work

8.2 Non-EU citizens

- i. Residency permit*
- ii. National bank account*
- iii. Tax registration*
- iv. specific requirements for remote work*

9. Visas

9.1 EU citizens

- i. Different types of Visa*
- ii. Requirements, documents, duration*

9.2 Non-EU citizens

- i. Different types of Visa*
- ii. Requirements, documents, duration*

10. Payment

10.1 How may an employee be paid their wage?

10.2 Does the remuneration have to be monetary or can it be fully/partially “in-kind”?

10.3 Who is responsible for the payment of taxes?

10.4 Are there any specific payment methods or legal provisions regarding remote work?

