European Employers' Institute

The Right to Training in European Union Law

A legal study on the constitutional limits of EU action under Article 166(4) TFEU







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Summary

The question is one of competence, not of skills policy. This study asks whether the European Union (EU) may, by a binding act of secondary law, create a general right to vocational training enforceable by the worker against the employer, applied uniformly across twenty-seven national systems. The constitutional difficulty attaches to the right as such, whatever its precise content. It does not ask whether training matters, or whether the EU may support and fund it. It may, and it does.

The answer is no. On the Treaties as they stand, no such general right exists in EU law (EU law regulates training without conferring an entitlement to it), and none may be created without crossing the express harmonisation prohibition in Article 166(4) TFEU. The prohibition cannot be displaced by re-labelling the measure or by reaching for a more general legal basis.

The argument rests on four propositions, each sufficient on its own and jointly conclusive:

1. **Express exclusion.** Article 166(4) TFEU permits supporting measures but excludes any harmonisation of national laws on vocational training. The exclusion is an operative constitutional bar, not a drafting hurdle.
2. **No alternative working-conditions basis.** The centre-of-gravity doctrine forecloses Article 153 TFEU: a measure whose substance is the content and organisation of training cannot be rescued by calling it a working-conditions directive.
3. **No Charter route.** Article 51(2) of the Charter prevents Article 14 from creating a competence the Treaties withhold.
4. **No residual basis.** Article 352 TFEU is a gap-filler; it cannot recover what a special basis has withheld.

Two independent layers reinforce the conclusion:

- ***Institutional practice:*** across more than three decades the Commission has never proposed a directive whose primary aim is the harmonisation of training; its binding interventions are anchored in distinct Article 153 TFEU objectives, with training appearing only instrumentally, while its wider skills ambitions travel through soft law.
- ***Comparative evidence:*** only two Member States impose a statutory employer training quantum in general labour law, and some of the highest-performing systems impose none. National heterogeneity is the constitutional design working as intended, not a deficit awaiting repair.

The Adequate Minimum Wages judgment of 11 November 2025 confirms the discipline that matters here: an express Treaty reservation is real, justiciable, and capable of producing the annulment of the provisions of a directive that cross it – even years after adoption, on the application of a single Member State. A directive establishing a general right to training would be exposed to the same fate.

In short

A European right to training is politically attractive but constitutionally untenable. The Treaty answer to a field of structural national diversity is to support and supplement, not to harmonise.

Keywords: Article 166 TFEU; harmonisation prohibition; vocational training; right to training; Article 153 TFEU; legal-basis selection; centre-of-gravity doctrine; subsidiarity; Union of Skills.

1. Introduction and legal question

A European right to training is politically attractive; constitutionally, it is untenable. Any directive establishing such a right would be exposed to annulment before the Court of Justice. The issue is therefore not a debate about skills policy; it is a test of the outer limits of EU constitutional competence. In 2026 that test sits on the desk of the Berlaymont, and three developments have placed it there. On 5 March 2025 the Commission adopted the Union of Skills Communication, the principal skills initiative of the second von der Leyen mandate, expressly framed as soft law.[1] The same day, several stakeholders, most visibly the European Trade Union Confederation, called for employers to be made legally accountable for the provision of continuous training, free of charge and within working hours.[2]

That demand has since acquired legislative momentum on two fronts: the Quality Jobs Act announced in the Commission Work Programme for 2026, and the European Parliament's legislative own-initiative resolution of 20 January 2026, adopted under Article 225 TFEU, requesting EU legislative action on the just transition that would, among other things, establish a right to training during working hours.[3]

That is the institutional setting in which the legal question addressed by this study arises: under the Treaties as they stand, may the EU establish, by binding act of secondary legislation, a general right to vocational training enforceable by the worker against the employer? The difficulty does not depend on whether the right is expressed in a quantum of hours, days or monetary credit: it attaches to the creation of the right as such. The answer defended below is the only one consistent with the Treaty, and it is a matter of competence, not of policy preference.

A preliminary distinction frames the whole enquiry. A right to training, in the sense in issue here, is an enforceable individual entitlement of the worker to training, claimable against the employer or the State, whether or not expressed in a determinate quantum. It must be distinguished from rules about training: the instrumental, conditional and procedural obligations, attached to other objectives, that presuppose such an entitlement rather than create it. EU law contains the latter and not the former. Even Article 14 of the Charter, which speaks of a right of access to vocational and continuing training, is no exception: it is a principle operating within the existing distribution of competences under Article 51(2) of the Charter, not a self-standing title enforceable against an employer. The distinction also fixes the burden of the enquiry. To establish that a right to training exists, it is not enough to point to EU activity in the field; one must identify the instrument that confers the entitlement. None does.

The boundary is tested from four directions, each of which independently confirms the conclusion. First, the Treaty drafters expressly withheld harmonisation in this field; Article 166(4) TFEU is the text. Second, the Court of Justice treats express harmonisation prohibitions as justiciable bars, not as drafting hurdles to be cleared by recital – a point reinforced by the Grand Chamber in Denmark v Parliament and Council (Adequate Minimum Wages), which partially annulled Directive (EU) 2022/2041 for crossing the reservation in Article 153(5) TFEU, a reservation structurally parallel to that in Article 166(4) TFEU.[4]

[1] Commission Communication, Union of Skills, COM(2025) 90 final, 5 March 2025. The Communication is expressly framed as a strategic, non-binding instrument and contains no proposal for a directive establishing employer training obligations.
[2] ETUC, Right to training missing from Union of Skills (statement, Brussels, 5 March 2025).
[3] European Parliament resolution of 20 January 2026 on a just transition directive in the world of work: ensuring the creation of jobs and revitalising local economies (2025/2131(INL)), adopted by 420 votes to 207. Express references to a directive were removed from the operative text in plenary and survive in the title of the resolution and of its annex. See also the Commission Work Programme for 2026, COM(2025) 902 final of 21 October 2025, which announces the Quality Jobs Act.
[4] Case C-19/23, Kingdom of Denmark v European Parliament and Council of the European Union (Adequate Minimum Wages), Grand Chamber, judgment of 11 November 2025, EU:C:2025:865. The Court partially annulled Directive (EU) 2022/2041, holding that part of Article 5(1), Article 5(2) and part of Article 5(3) of that directive trespassed on the reservation of competence in Article 153(5) TFEU. The reasoning is canvassed in Part III.

Third, the binding acquis on training is thin, and has been kept so: the four directives that touch the field regulate training only instrumentally, attached to objectives within Article 153 TFEU, and none creates a freestanding individual entitlement. That pattern, sustained across thirty-five years and four legislative generations, is an institutional admission of where the constitutional perimeter lies.[5] Fourth, the comparative survey in the Annex, covering all twenty-seven Member State legal orders, shows that regulatory diversity is not a defect awaiting repair at EU level but the intended product of the Treaty's allocation of competences.[6]

Two propositions are not in dispute. The EU has competence to support, coordinate, fund and benchmark training; Article 166(1) TFEU says so, and the institutions have used that competence repeatedly – through Council Recommendations, the European Social Fund Plus, the Just Transition Fund,[7] the Pact for Skills, the Recommendation on Individual Learning Accounts of 16 June 2022,[8] and the Union of Skills itself. Equally, the importance of training is not contested. Neither proposition advances the case for harmonisation. The constitutional question turns on the narrower point that the current calls for a binding entitlement have not yet engaged: whether the Treaties permit binding harmonisation of training obligations across the Member States. It is in respect of that specific exercise of power, and only of it, that Article 166(4) TFEU operates as a constitutional bar.

The study proceeds in seven parts. Part II sets out the Treaty framework, with attention to the tension between Articles 166 and 153 TFEU, the carve-out in Article 153(5) TFEU, the Charter as a constraint rather than a source of competence, and the foreclosure of Article 352 TFEU. Part III turns to the Court's case law on legal-basis selection and the centre-of-gravity test, and to the migration of the regulated object from working condition to employability policy. Part IV reviews the binding acquis and the soft-law landscape and addresses the just-transition agenda. Part V asks how training rights actually function on the ground in the twenty-seven Member States. Part VI applies subsidiarity and proportionality and identifies the admissible alternatives. Part VII concludes.

In short

The boundary that follows is tested from four directions – Treaty text, legal-basis case law, the acquis, and the comparative evidence – and it holds at each. Whether training should be encouraged is not in issue; whether it may be harmonised is.



[5] Council Directive 89/391/EEC of 12 June 1989 (occupational safety and health); Directive 2002/14/EC of 11 March 2002 (information and consultation); Directive (EU) 2019/1152 of 20 June 2019 (transparent and predictable working conditions); Directive (EU) 2024/2831 of 23 October 2024 (platform work). Each is examined in Part IV.

[6] See the Annex to this study for the country-by-country comparative survey, drawn from the Eurofound European Restructuring Monitor legal database and from national primary sources.

[7] Regulation (EU) 2021/1056 of 24 June 2021 establishing the Just Transition Fund, OJ L 231, 30.6.2021, p. 1.

[8] Council Recommendation of 16 June 2022 on individual learning accounts, OJ C 243, 27.6.2022, p. 26.

2. The Treaty framework: Articles 166 and 153 TFEU

2.1. Article 166 TFEU as the specific basis on vocational training

Article 166 TFEU is the Treaty's specific provision on vocational training, and its drafting is precise. The EU, says paragraph 1, shall implement a policy that supports and supplements the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.[9] Article 6(e) TFEU places the field in the most restrictive category of EU competence: support, coordination or supplement of national action. Read together, the EU may help, but may not legislate substitutively. A supporting competence is, moreover, the wrong kind of power to generate a right of the sort now claimed. To support and supplement national action is to assist what the Member States do, not to confer on individuals an entitlement enforceable against their employers. Even the competence that Article 166 TFEU does grant is therefore structurally incapable of producing a freestanding right to training, and the prohibition in paragraph 4 makes explicit what the nature of the competence already implies.

What gives the provision its constitutional weight is paragraph 4. The legislator may adopt measures to contribute to the Article's objectives, excluding any harmonisation of the laws and regulations of the Member States.[10] Express prohibitions of harmonisation are rare in the Treaties; this is one of them. They are operative norms, not category labels: where a supporting competence might be argued away by re-classification, an express prohibition is a substantive bar that withholds, in plain language, a tool of action. The reasons are well-rehearsed. National vocational training systems are heterogeneous in design, governance and funding to a degree with no real parallel in social policy. The comparative survey in the Annex confirms it: regulation of employer-provided training across the twenty-seven Member States spans the full range of technique – statutory minima in hours or days; portable individual accounts of monetary value; sectoral collective bargaining with no statutory backbone; programmatic statutory duties without quantitative content; and architectures of co-determination and public co-financing in which the employer faces no statutory minimum at all. The express prohibition is the legal form of a conscious choice: this diversity shall not be levelled by EU legislative action. The Lisbon Treaty did not soften that choice; by inserting the supporting-competence category into Article 6 TFEU, it consolidated it.

2.2. Article 153 TFEU and the limits of the working-conditions basis

Article 153 TFEU operates in a different register. It is the central social-policy basis on which the EU may adopt minimum-harmonisation directives in the fields enumerated in its first paragraph, working conditions included (Article 153(1)(b)). The directives are floors, not ceilings: Article 153(4) preserves the right of Member States to maintain or introduce more protective measures, in line with the reflexive-harmonisation logic that has framed the labour-law scholarship on this provision since the early 2000s.[11]

[9] Article 166(1) TFEU, consolidated by Article 6(e) TFEU, which classifies education and vocational training among the fields in which the EU may only support, coordinate or supplement national action.
[10] Article 166(4) TFEU. The express prohibition has no equivalent in the working-conditions provisions of Article 153 TFEU; its closest structural parallel within the social-policy chapter is the reservation in Article 153(5) TFEU.
[11] C. Barnard and S. Deakin, "Negative" and "Positive" Harmonisation of Labour Law in the European Union (2002) 8(3) Columbia Journal of European Law 389, at 408-409, defining reflexive harmonisation as regulation that achieves its ends by inducing second-order effects on social actors rather than occupying the field. See further S. Deakin, Legal Diversity and Regulatory Competition: Which Model for Europe? (2006) 12(4) European Law Journal 440, at 442-447; on the minimum/maximum-harmonisation distinction generally, P. Craig and G. de Búrca, EU Law: Text, Cases, and Materials (7th edn, OUP 2020) 661.

Two features bear directly on the analysis. The first is the carve-out in Article 153(5), which excludes from the EU's social-policy competence pay, the right of association, the right to strike and the right to impose lock-outs. Its very existence is instructive: the Treaties recognise zones of bounded competence within otherwise active legal bases, and those zones cannot be eroded by switching to a different basis. The structural parallel with Article 166(4) TFEU is exact: both reserve, within the architecture of social and labour-market regulation, fields in which Member States retain regulatory autonomy. The second feature is more familiar: directives under Article 153 TFEU set minima, not maxima, and the EU floor does not displace national settlements that protect more.

One reading might still try to bring an employer's obligation to provide training within the working-conditions field of Article 153(1)(b) TFEU. The argument has surface plausibility: the obligation runs against the employer, shapes the employment relationship and imposes structural costs. But, as Part III shows, surface plausibility is not constitutional legitimacy. The legal-basis enquiry is conducted by reference to the objective content and aim of the act, not the framing chosen by its drafters. A measure whose centre of gravity rests on the content and organisation of vocational training cannot be salvaged from Article 166(4) TFEU by being labelled a working-conditions directive.

2.3. The Charter of Fundamental Rights: Article 14 and the limits of Article 51(2)

Article 14 of the Charter recognises the right of access to vocational and continuing training. It is sometimes invoked as a self-standing foundation for an EU-level right to training enforceable by the worker. The argument falls at the first hurdle. Article 51(2) could hardly be more explicit: the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task.[12] Treating Article 14 as competence-creating would invert the architecture established by Article 6 TEU and Article 51(2) itself, converting a rights catalogue – expressly subordinated to the existing distribution of competences – into a basis for displacing the prohibition in Article 166(4) TFEU. The Charter conditions the exercise of competences that already exist; it does not create them. Nor does its use of the word 'right' establish one: Article 14 guarantees access within existing competences, not an individual entitlement enforceable against the employer. In this field the competence that exists is the supporting competence in Article 166(1) TFEU, and the limit on its exercise is the prohibition in Article 166(4) TFEU. Article 14 operates within that boundary; it does not move it.

2.4. Article 352 TFEU as foreclosed residual basis

If Article 153 TFEU is foreclosed by the centre-of-gravity doctrine and Article 14 by Article 51(2), the next move available to a proponent of harmonisation is Article 352 TFEU, the flexibility clause. It is foreclosed by its own text. Article 352(1) applies where action proves necessary to attain a Treaty objective and the Treaties have not provided the necessary powers. The provision is a gap-filler; it operates where the Treaties are silent.

Here, the Treaties are not silent. They have provided the powers – in Article 166(1) TFEU – and have expressly delimited them – in Article 166(4) TFEU. Where the special basis is both available and constitutionally circumscribed, Article 352 TFEU cannot recover what the special basis withholds. The Court held as much in Opinion 2/94[13]: Article 352 TFEU cannot serve as a basis for measures whose effect would, in substance, amend the Treaty without following the revision procedure. A directive establishing a generalised right to training, founded on Article 352 TFEU after the failure of Article 153 TFEU, would breach Article 352 itself and would breach Article 166(4) TFEU. Article 352 TFEU is, in this field, a closed door.

In short

Every route to harmonisation is sealed: the special basis excludes it, the working-conditions basis is foreclosed by the centre of gravity, the Charter cannot create competence, and the flexibility clause cannot recover what is withheld.

[12] Article 51(2) of the Charter of Fundamental Rights, read together with Article 6(1) TEU.

[13] Opinion 2/94, Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, EU:C:1996:140, [1996] ECR I-1759, paras 29-30, holding that Article 235 EEC (now Article 352 TFEU) cannot serve as the basis for measures whose effect would, in substance, amount to amendment of the Treaty without following the prescribed revision procedure

3. Case law and the harmonisation prohibition

Part II showed that the Treaty text seals every route to harmonisation. Whether that seal holds in practice depends on how the Court polices the choice of legal basis — and here the jurisprudence is both settled and, as of 2025, freshly confirmed.

3.1. Legal basis as a justiciable question

The choice of legal basis is a question of law, not of legislative preference. Since Commission v Council (Generalised Tariff Preferences), the Court has consistently held that the choice must rest on objective factors open to judicial review: in essence, on what the measure actually says and does.[14] Two consequences follow. First, the label the legislator attaches to a measure does not bind the Court, which examines its real content. Second, where more than one basis could apply, the Court asks where the principal aim and content of the measure lie – the centre-of-gravity test. A basis cannot be chosen for procedural convenience, still less to circumvent a more restrictive provision.

The scholarship points in the same direction: courts enjoy latitude on questions of method, but the limits of EU competence are a different matter – there the principle of conferral in Article 5 TEU calls for a firm constitutional defence.[15] The harmonisation prohibition in Article 166(4) TFEU sits at this latter level.

3.2. The centre-of-gravity doctrine: Titanium Dioxide and Tobacco Advertising

The doctrine was first given canonical expression in Titanium Dioxide, where the Court annulled a directive adopted under the environmental basis because its principal object was the harmonisation of conditions of competition.[16] Two points have remained good law ever since: where a measure pursues two objectives the basis must reflect the dominant one, and the choice cannot be made instrumentally to secure a procedural advantage. The doctrine acquired its full constitutional weight in Tobacco Advertising I – the first occasion on which the Court annulled an EU legislative act for exceeding the limits of the internal-market harmonisation competence (then Article 100a EC, now Article 114 TFEU) – which establishes the proposition that governs this study: where the Treaty contains an express prohibition of harmonisation in a field, that prohibition cannot be circumvented by recourse to a general basis. The prohibition then in issue, on public health, is structurally analogous to Article 166(4) TFEU.[17]

Tobacco Advertising II then drew the line that disposes of the present question: harmonisation under a general basis is admissible where the measure addresses appreciable cross-border effects, and inadmissible where, in substance, it regulates a field withheld by an express prohibition.[18] Vocational training falls plainly on the second side. A directive harmonising the content, organisation, certification, financing or quantum of training does not address a cross-border externality; it operates on the very domain that Article 166(4) TFEU reserves. The quantum is the most visible illustration, but the prohibition is not confined to it: it catches any binding act whose centre of gravity lies in the content or organisation of training itself.

[14] Case 45/86, Commission v Council (Generalised Tariff Preferences), EU:C:1987:163, [1987] ECR 1493, para 11.
[15] S. Weatherill, The Limits of Legislative Harmonization Ten Years after Tobacco Advertising: How the Court's Case Law Has Become a "Drafting Guide" (2011) 12 German Law Journal 827, distinguishing wide discretion in method from the firmer constitutional limit that the principle of conferral under Article 5 TEU requires.
[16] Case C-300/89, Commission v Council (Titanium Dioxide), EU:C:1991:244, [1991] ECR I-2867.
[17] Case C-376/98, Germany v Parliament and Council (Tobacco Advertising I), EU:C:2000:544, [2000] ECR I-8419. The express prohibition then in issue was Article 129(4) EC, now Article 168(5) TFEU — structurally analogous to Article 166(4) TFEU.
[18] Case C-380/03, Germany v Parliament and Council (Tobacco Advertising II), EU:C:2006:772, [2006] ECR I-11573.



3.3. Adequate Minimum Wages: the 2025 confirmation

The most recent confirmation came on 11 November 2025, when the Grand Chamber decided Adequate Minimum Wages. Denmark, supported by Sweden, sought annulment of Directive (EU) 2022/2041, contending that it interfered directly in the determination of pay, a field excluded from EU competence by Article 153(5) TFEU. Applying the same substance-over-form review, the Court asked whether the contested provisions amounted to direct interference in the reserved field, and annulled those that did. The annulled provisions were Article 5(2), which prescribed criteria for setting and updating statutory minimum wages; the reference to those criteria in Article 5(1); and the part of Article 5(3) preventing an indexation mechanism from reducing the minimum wage.[19] The exclusions in Article 153(5) TFEU are thus real, justiciable reservations, not policy presumptions.

The transposition to training is direct. Article 166(4) TFEU is an express reservation of the same kind, operating in a field adjacent to an active social-policy competence; a directive imposing on employers a generalised obligation to provide training – with or without a determinate quantum – would harmonise the constituent elements of national training systems, and would fall foul of it on the same logic that defeated the contested parts of Article 5. The institutional lesson is equally direct: a single Member State obtained the partial annulment of a directive years after its adoption, on a reservation the legislator had misread – a cost in legal certainty and credibility that the legislator should be especially reluctant to incur where the reservation is, if anything, more explicit than that of Article 153(5) TFEU.

3.4. The Working Time Directive: the instructive counter-example

United Kingdom v Council supplies the contrast. The Court upheld the Working Time Directive because it genuinely pursued the protection of workers' health and safety – a field of express EU competence with a recognised transnational dimension.[20] The relevance is twofold. Vocational training has no comparable transnational dimension: participation, design and outcomes are determined principally by national factors, and there is no equivalent of the cross-border health-and-safety externality. And the existence of an express prohibition in Article 166(4) TFEU – which had no counterpart for working time under Article 118a EEC – is decisive: even an otherwise proportionate measure cannot be adopted in a field expressly closed to harmonisation. The post-Lisbon subsidiarity test, moreover, is applied by reference to the scale or effects of the proposed action, not Member State by Member State; in a field as nationally configured as training, no such EU-wide scale effect can plausibly be demonstrated.[21]

[19] Case C-19/23 (above). The Court annulled the words in the fifth sentence of Article 5(1) referring back to the criteria of Article 5(2), Article 5(2) itself, and the closing part of Article 5(3) of Directive (EU) 2022/2041, as direct interference with the determination of pay reserved to the Member States under Article 153(5) TFEU.
[20] Case C-84/94, United Kingdom v Council (Working Time Directive), EU:C:1996:431, [1996] ECR I-5755. The Court emphasised the transnational dimension of health and safety as the principal jurisdictional justification.
[21] Case C-508/13, Estonia v Parliament and Council, EU:C:2015:403, paras 45, 48 and 53.

3.5. The migration of the object: from working condition to employability policy

The analysis so far has assumed a settled understanding of the object regulated. A closer reading of the contemporary debate discloses that the object has itself been migrating, with direct consequences for the centre-of-gravity test. The migration consists of a gradual reframing, across a decade of EU policy documents, of training from a workplace-bound condition of employment into a transversal employability policy – and it works against the legal-basis argument that proponents of a binding right advance.

Historically, employer-provided training was conceived as instrumentally bound to the specific work post: induction, adaptation to new equipment, safety briefings, periodic refresh of qualifications required by the function. That is the conception underlying Article 12 of Directive 89/391/EEC and Article 13 of Directive (EU) 2019/1152, and it makes Article 153 TFEU the natural basis for any binding rule on the conditions of such training. So conceived, training is a working condition in the proper legal sense.

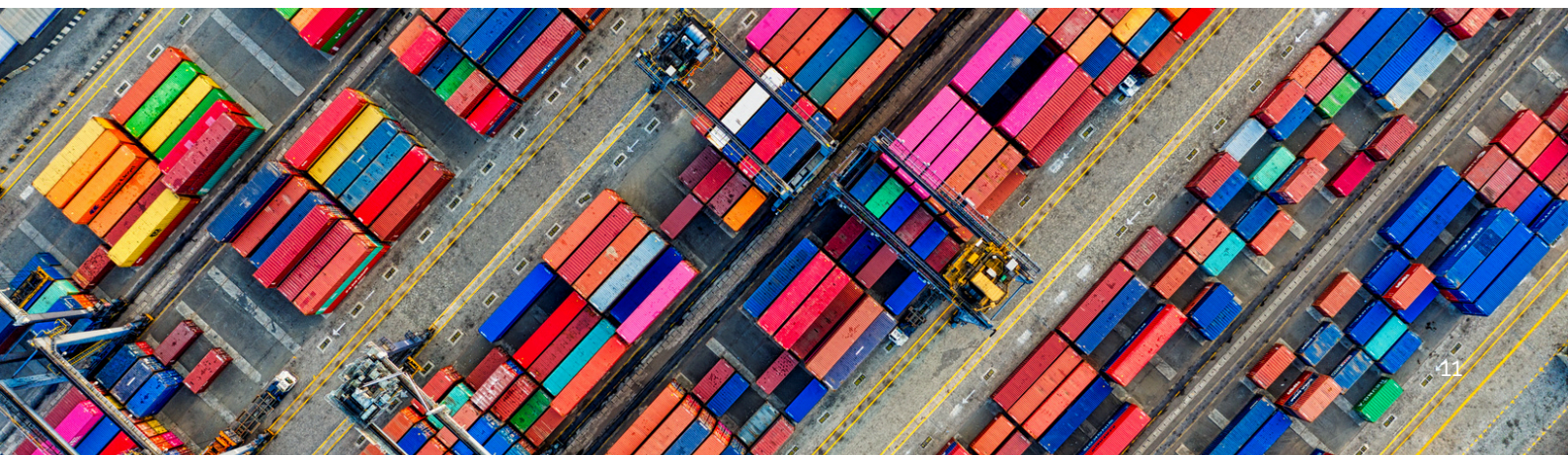
What is now claimed at EU level – in the Union of Skills, in Principle 1 of the European Pillar of Social Rights, in the 2022 Recommendation on Individual Learning Accounts, and in the just-transition resolution of 20 January 2026 – is structurally different. The right asserted is a right to upskilling and reskilling, intentionally portable across employers, sectors and forms of work. This is no longer training as a working condition; it is training as a labour-market intervention – public policy on skills in the wider economy. The constitutional consequence is direct: the further training drifts from the specific employment relationship and the closer it moves to employability policy, the more clearly its centre of gravity comes to rest on vocational training within Article 166 TFEU, and the more clearly the prohibition in Article 166(4) TFEU applies.

The migration, therefore, does more than describe contemporary policy: it anchors the centre-of-gravity finding in this field. There is, moreover, a recurring internal dissociation in the case for a binding right: when its urgency is described, the vocabulary is that of labour-market transitions, reskilling for the wider economy and preparation for future occupations – the lexicon of employability, the material content of Article 166 TFEU; when the legal basis is named, the register changes and training is reframed as a working condition under Article 153 TFEU. That dissociation is the very operation the Court has declined to countenance since Generalised Tariff Preferences: the description of the object supplies the centre-of-gravity finding against the measure.[22]

In short

Case law turns the policy case on its head: the more a right to training is justified by the green and digital transitions and the portability of skills, the more firmly it belongs to Article 166 TFEU – and the more clearly it is barred.

[22] Case C-155/07, Parliament v Council, EU:C:2008:605; Case C-130/10, Parliament v Council, EU:C:2012:472. Where a measure has a twofold purpose and one is identifiable as predominant, the act must be founded on the basis required by that predominant purpose.



4. The existing acquis and the soft-law landscape

If the analysis in Parts II and III is correct, the binding acquis should display a consistent pattern: each instrument should regulate training only to the extent that it is instrumentally tied to a distinct objective within an active EU competence, and none should impose a general training entitlement freestanding from such a tie. The acquis confirms exactly that. Four directives are decisive, each anchored in a primary Article 153 TFEU objective – occupational safety, information and consultation, predictable working conditions, the regulation of platform work – to which a training obligation is instrumentally attached. The moment the training obligation becomes the principal aim – the moment a directive seeks to establish training as an entitlement in itself, whatever its precise content – the measure crosses from Article 153 TFEU into the domain reserved by Article 166(4) TFEU. The soft-law landscape confirms the same point from the other direction.

4.1. Directive 89/391/EEC: training instrumental to occupational safety

The starting point is Council Directive 89/391/EEC, adopted on the basis of Article 118a EEC (now Article 153 TFEU), which requires the employer to ensure that each worker receives adequate health and safety training – on recruitment, on transfer, on the introduction of new equipment, and in emergencies – free of charge and, for the matters in paragraph 1, during working hours.[23] It is the oldest and most robust EU training obligation, and its features anticipate the model later generalised by Directive (EU) 2019/1152. But its scope is strictly delimited to safety training adapted to the specific work post, not vocational training in the wider sense. The basis was admissible precisely because occupational safety has a transnational dimension – unequal national standards generate cross-border externalities and competitive distortions – a genuine added-value justification that wider vocational training, by its national character, lacks.

4.2. Directive 2002/14/EC: a procedural framework, not a substantive right

Thirteen years later, Directive 2002/14/EC followed on the basis of Article 137 EC (now Article 153 TFEU), establishing a general framework for informing and consulting employees. It subjects to mandatory information and consultation decisions likely to lead to substantial changes in work organisation – a category that captures training plans at face value.[24] Two features delimit it. It operates exclusively at the procedural level – imposing obligations of information and consultation, not obligations as to substantive content – and it does not create a right to training. Article 9 of Directive (EU) 2024/2831 extends the same procedural framework to digital labour platforms, confirming its function as a horizontal procedural instrument rather than a substantive training right.

[23] Article 12 of Council Directive 89/391/EEC, read with Article 6(3)(c) on the employer's duty to ensure adequate information and training. Legal basis: Article 118a EEC (now Article 153 TFEU).
[24] Article 4(2)(c) of Directive 2002/14/EC. Recital 8 makes clear that the directive operates at the procedural level and that decisions on substantive content remain with the employer.





4.3. Directive (EU) 2019/1152: training as a conditional working condition

The closest the binding acquis comes to the subject is Directive (EU) 2019/1152, on transparent and predictable working conditions, adopted on the basis of Article 153(2)(b) TFEU. Its Article 13 provides that, where an employer is required by EU or national law, or by collective agreement, to provide training for the worker to perform the work for which he or she is employed, that training must be free of charge, must count as working time and, where possible, must take place during working hours.[25]

The architectural feature is decisive. The directive does not create any obligation to provide training. It regulates the conditions under which a pre-existing obligation – imposed by national law or collective agreement – must be fulfilled when it exists. The fit with Article 153 TFEU is exact: what is harmonised is a working condition (the cost and timing of mandatory training), not the substantive obligation to train. Had the legislator prescribed a training quantum of its own, it would have crossed into the domain reserved by Article 166(4) TFEU. The choice is itself instructive: at the point of closest contact with the subject, the legislator regulated the conditions of training and declined to create the right to it – confirming, from within the acquis, that no such right exists. Read with the Court's judgment in BX, which held that compulsory training imposed by the employer outside normal hours counts as working time, Article 13 forms a closed system: where training is mandatory, it is free of charge and counts as working time.[26] What that system does not contain — and what the Treaty does not allow it to contain — is a freestanding EU obligation to train of determinate quantitative content.

4.4. Directive (EU) 2024/2831: functional training in the algorithmic workplace

The most recent addition, Directive (EU) 2024/2831 on improving working conditions in platform work, rests on Articles 153(2)(b) and 16(2) TFEU. Its training provisions are distinctive in two respects. Article 6 lists access to training among the categories of decision subject to algorithmic-management transparency. And Articles 8(2) and 17(2) require that persons charged with the human supervision of automated decisions possess the necessary competence, training and authority to perform that role.[27] Both confirm the pattern: Article 6 imposes a procedural obligation of transparency, not a substantive obligation to train; Articles 8(2) and 17(2) impose a functional training obligation tied to a defined regulatory role, analogous to the safety-training obligation in Directive 89/391/EEC. The confinement to a defined functional perimeter, and the choice of Article 153 TFEU rather than Article 166 TFEU, reflects an entirely consistent reading of the constitutional architecture.

4.5. The soft-law landscape: self-restraint as constitutional acknowledgement

Beyond the four directives, the substantial EU activity in this field has been channelled through soft law. Principle 1 of the European Pillar of Social Rights recognises a right to quality and inclusive education, training and lifelong learning – but the Pillar, by design, conditions the exercise of competences without generating new ones. The Recommendation on Individual Learning Accounts of 16 June 2022 was adopted on Articles 165 and 166 TFEU and takes a non-binding form precisely because those provisions do not permit harmonisation; its recitals expressly acknowledge that Member States retain full competence over the organisation of their training systems. The Pact for Skills and the Union of Skills follow the same template.[28]

[25] Article 13 of Directive (EU) 2019/1152. The provision applies only to training already mandatory under EU or national law, or under a collective agreement; it does not create a freestanding obligation to provide training.
[26] Case C-909/19, BX v Unitatea Administrativ Teritorială D., EU:C:2021:893 (judgment of 28 October 2021), reading Article 2(1) of Directive 2003/88/EC to include compulsory training imposed by the employer and performed outside the usual workplace.
[27] Articles 6, 8(2) and 17(2) of Directive (EU) 2024/2831. Legal basis: Article 153(2)(b) TFEU, with Article 16(2) TFEU for the data-protection dimension.
[28] European Pillar of Social Rights, proclaimed at Gothenburg, 17 November 2017, Principle 1; Council Recommendation of 16 June 2022 on individual learning accounts (above); Pact for Skills, launched November 2020.

The choice of instrument reflects a considered institutional reading of the Treaty limits rather than mere habit. Across more than three decades, the Commission has never proposed a directive whose principal object would be the harmonisation of vocational training itself. That sustained pattern is hard to dismiss as timidity: the institution that holds the monopoly of legislative initiative under Article 17(2) TEU has, in practice, treated the prohibition in Article 166(4) TFEU as a binding constitutional constraint. A recent and striking confirmation comes from the bifurcated structure of the 2024 traineeships package – a directive on working conditions of trainees under Article 153 TFEU, coupled with a separate Council Recommendation on a reinforced quality framework under Articles 153, 165 and 166 TFEU. As Helme has shown, the bifurcation tracks the constitutional limit: the training dimension could not be harmonised through a directive and had to be channelled into a Recommendation.[29]

4.6. The just transition agenda: a test case for the architecture

The just-transition agenda is the most acute current test. Since the European Green Deal of 2019, the EU has developed an articulated set of instruments – the Just Transition Fund, the dedicated InvestEU programme, the Public Sector Loan Facility – to support workers and regions affected by the green and digital transitions. Crucially, this entire architecture has operated through financial support, not through harmonisation: Member States retain full competence over the design of their training systems while drawing on EU funding to support national choices.[30]

The European Parliament resolution of 20 January 2026 requests EU legislative action establishing, among other elements, a right to training during working hours; the express call for a directive, removed from the operative text in plenary, survives in the title of the resolution and of its annex. The Commission must now decide what follow-up to give it. The constitutional analysis applies with full force. The invocation of Article 225 TFEU does not extend the EU's substantive competence: an own-initiative report cannot grant powers the Treaties withhold. So far as a Just Transition Directive confines itself to consolidating existing Article 153 TFEU competences – information and consultation in restructuring, working conditions in transitions – it would be constitutionally orthodox. Once it crosses into the harmonisation of training entitlements – by fixing a quantum of hours per worker per year, by creating a portable individual right enforceable against successive employers, or by harmonising the substantive content of upskilling programmes – it would, on the Tobacco Advertising and Adequate Minimum Wages line of authority, be open to annulment under Article 166(4) TFEU. The political pressure does not alter the analysis; it merely raises the stakes of disregarding it.

None of this denies the real concerns in the public debate – the participation gap, the uneven distribution of training across categories of workers, the relative weakness of provision in small and medium-sized undertakings. These warrant a coordinated European response. The argument here is the narrower constitutional one: that response cannot take the form of a binding harmonising directive without crossing the limit that Article 166(4) TFEU expressly inscribes, and the admissible alternatives examined in Part VI are not poor substitutes for harmonisation but the very instruments the Treaty design provides for a field of structural national diversity.

In short

Every binding instrument keeps training instrumental to an Article 153 objective; every attempt to act on training as such has been confined to soft law. The acquis is itself an institutional acknowledgement of the prohibition.

[29] Commission Proposal for a Directive on improving and enforcing working conditions of trainees, COM(2024) 132 final, 20 March 2024, with the Proposal for a Council Recommendation on a Reinforced Quality Framework for Traineeships, COM(2024) 133 final, of the same date. See J. Helme, The Problems and Paradoxes with the EU's Regulation of Traineeships: A Way Forward (2024) 53(4) Industrial Law Journal 679, esp. at 685 and 703, noting that the European Parliament's June 2023 proposal was split into a draft directive (Article 153 TFEU) and a separate draft decision (Article 166 TFEU) because the competence restrictions in Article 166(4) TFEU would not permit a single instrument.

[30] Commission Communication, The European Green Deal, COM(2019) 640 final, 11 December 2019, especially the sections on a just transition; see also Regulation (EU) 2021/1056 (above).

5. Training rights at national level: the empirical picture

The constitutional analysis does not stand alone. The comparative survey of the twenty-seven Member State legal frameworks, set out in the Annex, supplies a parallel argument: the heterogeneity of national systems reflects legitimate national choices on the architecture of labour relations and education systems, not a regulatory deficit awaiting correction.

5.1. Methodological note

A surface comparison (a tabulation of statutory minimum hours where they exist) is liable to mislead. The number of hours prescribed in a Labour Code does not reveal how much training workers actually receive, how it is funded, who bears its incidence, or how it interacts with the employment relationship. The Annex therefore avoids forcing each system into a rigid taxonomy: several Member States combine more than one regulatory technique, and the precise regulatory mix is itself a fact of constitutional significance. What follows is not a typology of models but an **evidence-based reading of a heterogeneous landscape.**

5.2. The heterogeneity of national regimes

Two findings carry the argument. The first is quantitative. Of the twenty-seven Member States, only two prescribe a quantum of employer-provided training in hours or days directly in the general labour-law framework, universally and individually enforceable against the employer. Portugal does so in Article 131 of the Labour Code, which prescribes forty hours of certified continuous training per worker per year, with credit-of-hours and severance-compensation mechanisms.[31] Belgium does so through the Law of 3 October 2022, prescribing five days of training per year in undertakings of twenty or more employees and one day in undertakings of ten to nineteen, with the smallest excluded.[32] No other Member State imposes, in the general labour-law framework and through a generally applicable statutory norm, a quantitative employer obligation of the same character. The remaining twenty-five proceed through minimalist transposition of Directive (EU) 2019/1152, sectoral collective bargaining, programmatic statutory duties without quantitative content, worker-activated individual training-leave entitlements, individual learning accounts, and architectures of co-determination and public co-financing in which no statutory employer minimum is imposed at all.

The second finding is qualitative. High training participation is achieved through institutional configurations that differ radically, and the highest-performing systems are not those with the most prescriptive statutory minima. According to the Eurostat EU Labour Force Survey for 2024, Sweden (64.0%), Denmark (58.8%), Finland (56.8%) and Estonia (56.7%) reported adult participation rates well above the EU-27 average of 33.8%, while the lowest figures were in Bulgaria (10.5%), Greece (14.4%) and Croatia (18.5%).[33] None of the top-performing systems imposes a quantitative statutory training obligation of the kind found in Portugal or Belgium, whose participation rates stand at 39.3% and 40.8% respectively.

[31] Article 131 of the Portuguese Labour Code (Lei nº 7/2009, of 12 February, as amended): 40 hours of certified continuous training per worker per year; Article 132 establishes the credit-of-hours mechanism; Article 134 provides for compensation where the obligation is not discharged.
[32] Loi du 3 octobre 2022 portant des dispositions diverses relatives au travail, Moniteur belge of 10 November 2022; in force since 20 November 2022, applicable to the individual right as from 1 January 2024.
[33] Eurostat, Participation rate in education and training (last 12 months), dataset trng_lfs_17, EU Labour Force Survey, age class 18–64, both sexes (data extracted 27 May 2026). Figures for several Member States for 2024 are flagged in the dataset as "break in time series" and should be read with that qualification.

The Danish AMU system achieves its rates through a sectoral co-financing levy rather than a statutory quantum imposed on the individual employer.[34] Germany illustrates the point from the opposite direction: notwithstanding its deep-rooted dual training tradition and a sophisticated framework of co-determination and federal co-financing – and without any statutory employer minimum of hours – adult participation stood at 26.0% in 2024, below the EU average.[35] France, for its part, relies on a portable individual account (the Compte personnel de formation) – a worker-activated right monetised through accumulated rights, not an employer-imposed quantum.[36]

5.3. Three empirical observations

First, statutory employer minima are the exception, not the rule. The two Member States that impose them – Portugal and Belgium – represent particular national choices made in particular labour market contexts. Generalising those choices to the EU as a whole, through a directive harmonising employer obligations across twenty-seven legal orders, would project two specific settlements onto twenty-five that have, in the exercise of legitimate constitutional autonomy, chosen otherwise.

Second, statutory minima are neither necessary nor sufficient for high participation. Portugal and Belgium, with adult participation rates of 39.3% and 40.8% respectively, sit above the EU-27 average of 33.8% but well below the four highest-performing systems (all above 56%), none of which imposes a statutory quantum; Germany, with its dense institutional architecture but no employer minimum, sits below the average at 26.0%. The data support a narrative of institutional pluralism, in which outcomes are driven by funding architectures, bargaining density, social-dialogue traditions and labour-market structure – factors well beyond what a directive harmonising employer training quanta could address.

Third, uniform legal prescription does not drive empirical convergence. Participation in training ranges from 64.0% in Sweden to 10.5% in Bulgaria – a spread of more than six to one – that cannot be explained by the presence or absence of a statutory minimum, since that variable is binary across only two Member States while the outcome is continuous across all twenty-seven. An EU directive imposing a uniform minimum of, say, twenty or forty hours per worker per year would change the legal form of the obligation in twenty-five Member States without any defensible basis for predicting that it would change the participation outcome. The crowding-out effect – by which a statutory floor displaces collective-bargaining settlements producing higher protection – is well documented in adjacent domains, and there is no reason to suppose training would be exempt.[37]

5.4. Implications for the legal analysis

The constitutional and empirical analyses point in the same direction by different routes. The constitutional analysis establishes that Article 166(4) TFEU forecloses harmonisation and that no admissible alternative basis is available. The empirical analysis establishes that a harmonised training entitlement would change the legal form of the obligation in twenty-five Member States without a defensible basis for predicting that it would change the outcome the policy debate is concerned with. The heterogeneity documented in the Annex is not a deficit awaiting EU remedy; it is the Treaty design working as intended. The available evidence does not suggest that the Treaty designers were mistaken to draw the line where they did.

In short

Only two Member States impose a statutory employer quantum, and the best-performing systems impose none. There is no market failure and no cross-border externality for harmonisation to cure.

[34] Lov om arbejdsmarkedsuddannelser m.v., LBK nº 144 of 14 February 2024. The AMU system is financed through the Arbejdsgivernes Uddannelsesbidrag (AUB), an employer levy collected centrally and redistributed to sectoral providers, rather than through a statutory quantum imposed on the individual employer.

[35] Berufsbildungsgesetz of 23 March 2005 (BBiG); §§ 96–98 Betriebsverfassungsgesetz; Qualifizierungschancengesetz of 2018 (§ 82 SGB III) and Qualifizierungsgeld of 2024 (§ 82a SGB III).

[36] Compte personnel de formation, introduced by the Loi nº 2014-288 of 5 March 2014 and reformed by the Loi nº 2018-771 of 5 September 2018, and further amended by the Loi de finances pour 2023 (Loi nº 2022-1726 of 30 December 2022) and Décret nº 2024-394 of 29 April 2024, which introduced a mandatory holder co-payment (participation forfaitaire) for the mobilisation of CPF rights; Articles L6323-1 et seq. of the Code du travail. The structural feature relevant here is that it is a worker-activated individual right, not an employer-imposed quantum.

[37] The dynamic by which minimum standards may displace collective-bargaining mechanisms producing higher protection is discussed in Barnard and Deakin (above), in the context of reflexive harmonisation.

6. Subsidiarity, proportionality and admissible alternatives

The empirical picture in Part V feeds directly into the two principles that discipline any exercise of non-exclusive competence – subsidiarity and proportionality – and, finally, into the practical question of what the EU may legitimately do instead.

6.1. Subsidiarity (Article 5(3) TEU)

Subsidiarity requires that, in areas outside its exclusive competence, the EU act only where the objectives cannot be sufficiently achieved by the Member States but can, by reason of the scale or effects of the proposed action, be better achieved at EU level. The post-Lisbon test is applied by reference to the scale or effects of the action, not Member State by Member State.[38] The comparative evidence shows that the objective of supporting training is not better achieved at EU level by a harmonising directive: Member States with markedly different configurations reach widely differing outcomes, with the variation cutting across regulatory technique rather than tracking it. No scale effect that a uniform EU floor could deliver, and that the existing diverse mechanisms cannot, has been identified – and there is no cross-border externality of the kind that justified EU action in occupational safety or algorithmic management. The subsidiarity test is not satisfied, even before Article 166(4) TFEU is brought into play.

6.2. Proportionality (Article 5(4) TEU)

Even if a competence basis were available, proportionality would defeat a uniform EU floor on training. The objection has three independent dimensions, any one dispositive on its own. Redundancy: in Portugal and Belgium, where statutory minima already exist, a directive prescribing a comparable or lower quantum would add no protection and would only displace the existing settlement. Regressiveness: in Denmark, Sweden, Finland and the Netherlands, where collective bargaining, sectoral co-financing and tripartite governance deliver participation well above any plausible EU floor, a binding EU entitlement risks displacing the very mechanisms that produce those outcomes; a directive that required all Member States to match the most protective national settlement would not be minimum harmonisation but maximum harmonisation in disguise, exposed to annulment on the reasoning of both Tobacco Advertising I and Adequate Minimum Wages. Institutional misfit: where training rights are delivered through sectoral bargaining, programmatic duties without quantitative content, or public-funding architectures detached from a direct employer obligation, a uniform entitlement grafted onto the individual employment relationship would be a poor fit, requiring substantial transposition adjustments without a corresponding improvement in outcomes.[39]

Taken together – redundant where statutory protection already meets the floor, regressive where bargaining and co-financing deliver above it, and structurally misfitted where the regulatory technique is of a different kind altogether – a uniform EU floor is not, in any plausible scenario, the least restrictive means of advancing the EU's objectives. The proportionality test of Article 5(4) TEU is decisively unmet. Nor is the objection met by casting the directive as a mere framework, leaving delivery to national law or collective agreement: a framework that obliges Member States to guarantee an individual entitlement still determines the existence and structure of the right, and it is the creation of the right, not the choice of delivery vehicle, that engages both the proportionality objection and the prohibition in Article 166(4) TFEU.

[38] Article 5(3) TEU and Protocol (No 2) to the Treaties; see also Estonia v Parliament and Council (above).
[39] On the crowding-out dynamic relied on here, see Barnard and Deakin (above).



6.3. The admissible alternatives

The Treaty does not leave the EU without instruments. Several admissible alternatives, each respecting the prohibition in Article 166(4) TFEU, form a graduated scale of less restrictive means. **Council Recommendations under Article 292 TFEU** – the Recommendation on Individual Learning Accounts is the model – articulate a common direction of travel and set benchmarks without the constitutional difficulties of a directive.

Financial support through the ESF+ and the Just Transition Fund allows the EU to fund and condition training initiatives, and to incentivise upward convergence, without imposing harmonising substantive rules.[40] **The Open Method of Coordination** – common indicators, peer review, benchmarking – sustains pressure towards quality and participation without harmonising the underlying regimes, and was the procedural model for the European Pillar of Social Rights Action Plan and its 60% headline target for 2030.[41]

Finally, autonomous social-partner agreements under Article 155 TFEU – as with the framework agreements on telework (2002) and work-related stress (2004) – could deliver substantive content on lifelong learning in a manner that respects subsidiarity and the prohibition, with the added legitimacy of having been negotiated rather than imposed.[42]

6.4. The annulment risk

The analysis translates directly into the assessment that the Council and Commission legal services, and the legal advisers to the permanent representations, will conduct when a draft directive of the contemplated kind arrives. **Standing is the easy part.** Under Article 263(2) TFEU the Member States enjoy privileged standing; *Adequate Minimum Wages* was brought and won on the application of a single Member State. On the comparative survey, twenty-five of the twenty-seven Member States do not impose a quantitative employer training obligation of the kind a directive would establish, so the reservation reasoning is available to most of the EU. The two-month limit in Article 263(6) TFEU is short, but short enough to close the window for challenge well before transposition has run a quarter of its course.

The grounds are two, cumulative rather than alternative. The principal ground is lack of competence: the centre of gravity of a generalised right to training rests on Article 166 TFEU; Article 166(4) TFEU forecloses harmonisation; and neither Article 153 TFEU, nor Article 14 of the Charter, nor Article 352 TFEU supplies an admissible alternative basis. The secondary ground is infringement of an essential procedural requirement under Article 296 TFEU: a recital cannot supply a legal basis where the centre-of-gravity test cuts the other way. As to remedy, Article 264 TFEU leaves the Court the choice between total annulment (as in Tobacco Advertising I) and partial annulment (as in Adequate Minimum Wages), with discretion to limit temporal effects.

[40] Regulation (EU) 2021/1057 of 24 June 2021 establishing the European Social Fund Plus, OJ L 231, 30.6.2021, p. 21; see also Regulation (EU) 2021/1056 (above).
[41] The OMC's legal foundations lie in the Treaty provisions on coordination (Articles 145–150 TFEU on employment; Articles 156 and 165(2) TFEU on social policy and education). Its constitutional admissibility as an instrument respecting Article 166(4) TFEU is uncontested.
[42] Framework Agreement on Telework (16 July 2002) and Framework Agreement on Work-Related Stress (8 October 2004), implemented in line with the second paragraph of Article 155(2) TFEU.



On the structural parallel between Article 153(5) and Article 166(4) TFEU, the second precedent operates a fortiori: Article 166(4) TFEU is more explicit, and the field it protects is more clearly external to the social-policy chapter.

There is a further indication that the difficulty is recognised in practice even by actors who would prefer otherwise. The European Parliament's June 2023 resolution on quality traineeships – a closely related field – split its proposal into two instruments precisely because of Article 166(4) TFEU: a draft directive under Article 153 TFEU for the working-conditions dimension, and a separate draft decision under Article 166 TFEU for the vocational-qualification dimension that could not be harmonised by directive. The Commission's March 2024 package was built on the same logic.[43]

When the institutions most inclined to legislate on training are themselves designing around Article 166 TFEU, the prohibition is not an antiquarian observation; it is the operative constraint drafters already work within.

A directive establishing a generalised right to training is, on current law, an act exposed to annulment from the day of its publication, and its transposition period would be a period of constitutional uncertainty. Employers, Member States and the legislator share an interest in not repeating the experience of the Adequate Minimum Wages Directive, in which years of national transposition activity were expended on provisions whose validity was contested from the outset and which the Grand Chamber has now removed from the legal order, the remainder of the Directive standing.

In short

The legal services will see it at once: a generalised right to training is annullable from the day it is published. The institutions are already bifurcating their instruments to avoid exactly this.

[43] See Helme (above), at 703 and 707, on the bifurcation of the Parliament's June 2023 proposal and the Commission's March 2024 traineeships package (directive under Article 153 TFEU; Council Recommendation under Articles 153, 165 and 166 TFEU).



7. Conclusion

The question addressed by this study – whether the EU may, by binding act of secondary law, establish a general right to training enforceable against the employer – must be answered in the negative. No general right to vocational training currently exists in EU law. The four binding directives that touch on training do so only instrumentally, each anchored in an objective within Article 153 TFEU rather than Article 166 TFEU: occupational safety in Directive 89/391/EEC; procedural information in Directive 2002/14/EC; the conditions of mandatory training in Directive (EU) 2019/1152; and the algorithmic-management context of platform work in Directive (EU) 2024/2831. Not one creates a freestanding individual entitlement. What the acquis offers, consistently, is rules that operate on training already made mandatory by some other source, never an EU-made entitlement to training as such. The EU has kept its binding action within the perimeter of Article 153 TFEU and channelled its wider ambitions through soft law.

No such general right may be created at the EU level without offending the express prohibition in Article 166(4) TFEU. The point is not stylistic. The Court's case law on legal-basis selection – from Case 45/86 of 1987, through C-300/89, C-376/98 and C-380/03, to C-19/23 of 11 November 2025 – treats express harmonisation prohibitions as constitutional reservations that cannot be displaced by recourse to a general basis, however carefully framed.[44] The same body of authority confirms that the contemporary migration of training from a workplace-bound condition of employment to a transversal employability policy **aggravates** the difficulty rather than relieving it: the further training drifts from the specific employment relationship, the more clearly its centre of gravity rests on Article 166 TFEU. The Commission's own recent practice acknowledges this, and Adequate Minimum Wages has now shown, in the most concrete way available to a constitutional court, that a reservation of this kind can be enforced, years after adoption, against the very provisions of a directive that disregard it.

To say that the EU lacks competence to harmonise training is not to say that it lacks competence in this field. Article 166(1) TFEU is explicit: the EU shall support and supplement the action of the Member States. The Treaty's prohibition is targeted; what it withholds is the harmonisation tool, not EU action as such. The admissible alternatives identified in Part VI – Council Recommendations, financial support through the ESF+ and the Just Transition Fund, the Open Method of Coordination, and autonomous social-partner agreements under Article 155 TFEU – are constitutionally orthodox and, on the evidence of the comparative survey, capable of supporting continued upward convergence in participation without violating the architecture of competence allocation.

[44] Case 45/86; Case C-300/89; Case C-376/98; Case C-380/03; Case C-19/23 (all above).



The position defended here is not a position against training. It is a position about the constitutional grammar of the EU: what cannot be achieved by harmonising legislation may still be achieved – and, in this field, must be achieved – by other instruments.

The implications for the 2026-2027 legislative cycle are direct. The Quality Jobs Act, the just-transition resolution of 20 January 2026, and any subsequent Commission proposal under Article 225 TFEU should each be measured against the constitutional perimeter set out here. So long as they confine themselves to consolidating existing Article 153 TFEU competences, they remain within the space available to the legislator. Once they cross into the harmonisation of training entitlements – by fixing a quantum of hours, by creating a portable individual right enforceable against successive employers, or by harmonising the substantive content of upskilling and reskilling programmes – they expose the resulting acts to annulment under Article 263 TFEU.

The harmonisation prohibition in Article 166(4) TFEU is not a drafting accident. It was put there by the Treaty makers; it has been left there across four major revisions; and the Grand Chamber has now confirmed, in a structurally parallel reservation, that prohibitions of this kind bind the legislator and will be enforced. The case for harmonisation has not, in its present form, engaged that prohibition. Until it does, the case has not been made. Pursuing a directive on training would not strengthen EU social policy; it would repeat the institutional mistake of the Minimum Wages Directive — and risk its judicial unravelling.

In short

Support and fund: yes. Harmonise: no. The constitutional answer is settled; the only open question is whether the legislator will heed it before, rather than after, the Court does.

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Annex: National legal frameworks on employer' provided training in the twenty-seven Member States

Country-by-country survey drawn from national primary legislation and the Eurofound European Restructuring Monitor legal database. July 2026.

Country	Legal basis	Quantum	Primary source	Brief notes
Austria	§ 11b AVRAG (2024 amendment, transposition of Dir. 2019/1152)	No statutory minimum	ris.bka.gv.at	Training mandatory by law or CBA: free of charge, counted as working time. Sectoral CBAs provide detail.
Belgium	Law of 3 October 2022, Ch. 12 (Arts. 50-61). Paid educational leave: Recovery Act of 22 January 1985, s. 6 (regionalised); Flemish Government Decree of 21 December 2018; Brussels-Capital Government Decree of 29 June 2023	Employer obligation: 5 days/year (≥20 employees); 1 day/year (10-19 employees); none (<10 employees). Paid educational leave (worker-activated): Flanders max. 125 hours/year/FTE ; Brussels max. 80-180 hours/year depending on the training	2022-10-03 - Loi portant des dispositions diverses relatives au travail. - M.B. 2022-11-10, p. 81963 - Strada lex; Recovery Act of 22 January 1985, s. 6 (ejustice); Flemish Decree of 21 December 2018 (Codex Vlaanderen); Brussels Decree of 29 June 2023 (ejustice)	Tiered statutory entitlement since 2024. Paid educational leave is a distinct, worker-activated scheme, regionalised since the Sixth State Reform; it does not impose a training quantum on the employer.
Bulgaria	Arts. 228a-228b, 229, 230, 234-237 Labour Code	No statutory minimum	Lex.bg - Laws, Regulations, Constitution, Codes, State Gazette, Implementing Regulations	Programmatic obligation to create conditions for qualification; cooperation with the National Employment Agency.

Country	Legal basis	Quantum	Primary source	Brief notes
Croatia	Arts. 54-55 and 86 Labour Act (Zakon o radu)	No statutory minimum	Zakon o radu - Zakon.hr	Programmatic obligation to enable professional development; no quantum. Works council consultation on training plans.
Cyprus	HRDA Law of 1999 (as amended); Termination of Employment Law	No statutory minimum	The Human Resources Development Law of 1999 - 125(I)/1999	Levy-grant model administered by the Human Resource Development Authority (HRDA). In the banking sector specifically, the collective agreement foresees a minimum of 2 training days per year for all bank employees.
Czech Republic	§§ 227-235 Labour Code (Act 262/2006)	No statutory minimum	262/2006 Coll. Labour Code	Distinguishes between training to maintain qualification (employer's cost) and qualification-raising (mixed regime).
Denmark	LBK no. 364/2026 (AMU)	No statutory minimum	Executive Order on the Act on Labour Market Training, etc.	Flexicurity model: high training participation without a statutory obligation. Collective agreements central to training access, including increased funding for the Financial Competence Fund. High participation in skills development driven by competence funds and collectively agreed training rights. Broad lifelong learning model: training extends beyond AMU courses, with diverse sector-specific programmes, especially in finance.
Estonia	§ 28(5) Employment Contracts Act	No statutory minimum	https://www.riigiteataja.ee/en/eli/ee/RK/Act/511022026002/consolide	Concise provision: employer must provide training in the company's interest; average remuneration maintained during training.
Finland	Employment Contracts Act (55/2001); Cooperation Act (1333/2021); Subsidised Training Act (1136/2013)	No statutory minimum (skills-development plan mandatory for ≥50 employees)	Employment Contracts Act | Decree 55/2001 | Legislation | Finlex	Mandatory development plan for firms ≥50 employees. Training tax incentive withdrawn in January 2025.

Country	Legal basis	Quantum	Primary source	Brief notes
France	Arts. L6321-1, L6323-1 ff. Code du travail (Loi Avenir prof. 2018)	CPF: 500 €/year (cap 5,000 €); adaptation obligation: no quantum, but employer training contribution (apprenticeship excluded): 1% of total payroll (≥11 employees); 0.55% (<11 employees)	Code du travail (Légifrance)	Three-component structure: employer adaptation obligation, training contribution levy and portable CPF. Sanction for missed four-year career development review ('entretien de parcours professionnel'): 3,000 € corrective top-up.
Germany	BetrVG §§ 96-98; BBiG; §§ 81-85 SGB III (Qualifizierungschancengesetz 2018); Länder educational leave acts	No statutory minimum	Eurofound ERM (Germany)	Rights of works councils in the context of training range from consultation to co-determination depending on the context. Educational leave under Land legislation is a worker-activated entitlement, not an employer training quantum.
Greece	Law 4921/2022 of 18 April 2022 ("Δουλειές Ξανά" / "Jobs Again"); Art. 12 of Law 5053/2023 (GG 158/A/26-09-2023), adding Art. 70A to the Individual Labour Law Code (transposing Art. 13 of Dir. (EU) 2019/1152)	No statutory minimum	Νόμος 4921/2022 - ΦΕΚ 75/Α/18-4-2022 (Κωδικοποιημένος) - ΕΡΓΑΣΙΑ - ΚΟΙΝΩΝΙΚΗ ΑΣΦΑΛΙΣΗ	Training channelled through public programmes; sectoral collective bargaining provides residual coverage. The provisions cited apply to the private sector; in the public sector, mandatory training runs through a dedicated State agency. See also Laws 5082/2024 and 5237/2025, restructuring public vocational education and training (renaming of IEK as SAEK; Vocational Training Academies) without imposing obligations on employers. The employer is under no general statutory obligation to provide continuing vocational training to its workforce.
Hungary	Act I of 2012 on the Labour Code, §§ 46(J) and 55/1(g)	No statutory minimum	Act I of 2012 - National Register of Legislation	Employer must provide the training necessary to perform the work.
Ireland	Industrial Training Act 1967; National Training Fund Act 2000; Further Education and Training Act 2013; Safety, Health and Welfare at Work Act 2005; S.I. No. 686/2022 (transposing Directive 2019/1152)	No statutory minimum	National Training Fund Act, 2000	No statutory training right and no general system of sectoral collective bargaining on training. Skillnet Ireland operates as a network-based training model co-funded by employers (via the National Training Fund levy) and the State.

Country	Legal basis	Quantum	Primary source	Brief notes
Italy	Italian Constitution (Arts. 35 and 117); Law 845/1978; Law 53/2000; Legislative Decree 81/2008 (art.37); Legislative Decree 104/2022; Interministerial decree 6 marzo 2013; Agreement of 17 April 2025 (Rep. Acts no. 59/CSR)	No statutory minimum at national level. Rights set by sectoral collective bargaining	COSTITUZIONE - Normattiva LEGGE 21 dicembre 1978, n. 845 - Normattiva LEGGE 8 marzo 2000, n. 53 - Normattiva DECRETO LEGISLATIVO 9 aprile 2008, n. 81 - Normattiva DECRETO LEGISLATIVO 27 giugno 2022, n. 104 - Normattiva Decreto Interministeriale 6 marzo 2013 | Ministero del Lavoro e delle Politiche Sociali Accordo Stato-Regioni del 17 aprile 2025 in materia di formazione | Ministero del Lavoro e delle Politiche Sociali	No general statutory minimum exists, but leading national collective labor agreement establishes individual training hours. For example, in the banking sector, the hours of professional training provided for each worker by the National Collective Agreement are 50 hours per year (art. 80 CCNL 23 November 2023)
Latvia	Labour Law, Arts. 96-97	No statutory minimum	Darba likums	Programmatic provision; training time counted as working time when training is required by the employer.
Lithuania	Labour Code, Arts. 29-30	No statutory minimum	XII-2603 Republic of Lithuania Law on the Approval, Entry into Force and Implementation of the Labour Code	General duty to support employees' professional development; no quantum.
Luxem-bourg	Code du travail, Arts. L. 542-1 ff.; Law of 22 June 1999 (INFPC); Law of 31 July 2006 on training co-financing	No statutory minimum; framework of public co-financing for company training plans	Code du travail - Legilux	Hybrid model based on public co-financing of company training plans by INFPC: no individual portable entitlement and no statutory minimum. The classification as "individual account" sometimes found in the literature reflects the existence of the system, not its legal architecture.

Country	Legal basis	Quantum	Primary source	Brief notes
Malta	Employment and Industrial Relations Act (Ch. 452)	No statutory minimum	LEĠIŻLAZZJONI MALTA	No specific training right; general provisions on conditions of work.
Netherlands	Art. 7:611a Civil Code (1.8.2022 amendment, transposition of Dir. 2019/1152)	No statutory minimum	wetten.nl - Regulation - Civil Code Book 7 - BWBR0005290	Mandatory training for the post: free, counted as working time, repayment clauses void.
Poland	Arts. 17 and 103^1-103^6 Labour Code (Act of 26.06.1974)	No statutory minimum	isap.sejm.gov.pl	Art. 17 highly general; Arts. 103^1-103^6 apply only to higher qualifications via written agreement.
Portugal	Art. 131 Labour Code (Law 7/2009, as amended by Law 93/2019)	40 hours/year per worker; convertible into hours of credit if not delivered within the two years after falling due	dre.pt	The only EU Member State with an annual minimum in hours fixed directly in the Labour Code, without collective-agreement intermediation.
Romania	Arts. 192-195 Labour Code (Law 53/2003); Gov. Ordinance 129/2000	Periodicity, not hours: one training every 2 years (≥21 employees); every 3 years (<21 employees)	LAW 53 24/01/2003 - Legislative Portal	Unique frequency obligation rather than hours quantum: training periodicity is statutorily fixed by company size, but no number of hours is set. Annual training plan mandatory for employers with more than 20 employees.
Slovakia	Arts. 140, 153-155 Labour Code	No statutory minimum	311/2001 Z. z. - Zákonník práce	Employer obligation to ensure conditions for qualification maintenance and development; sectoral CBAs may add quantum.
Slovenia	Arts. 170-171 Employment Relationships Act (ZDR-1)	No statutory minimum	Employment Relations Act (ZDR-1) (PISRS)	Employer obligation to provide training necessary for the post; works council participation in training plans.
Spain	Art. 23(3) Statute of Workers (RD 2/2015)	20 hours/year of paid leave for training linked to the firm's activity, accumulable up to 5 years (100 hours)	boe.es	Permiso retribuido: a right of access to paid time off for training related to the firm's activity, not an obligation on the employer to deliver training. Considered discharged if the employer offers a training plan, regardless of actual take-up by the worker.
Sweden	Employment Protection Act (LAS); Tripartite Agreement 2022 (Omställningsstudiestöd)	No statutory minimum	Lag (1974:981) om arbetstagares rätt till ledighet för utbildning. | Sveriges riksdag	Sweden imposes no general statutory duty on the employer to provide vocational training. 2022 reform created the Omställningsstudiestöd public reskilling allowance without statutory training obligation.





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The European Employers' Institute is a not-for-profit association established in Brussels in 2024. The Institute aims to support its members to promote social dialogue and develop a business-friendly regulatory environment by collecting documentation, conducting research, and producing studies on strategically important issues in the world of work.

Its areas of work include labour market and social policy, industrial relations, occupational health and safety (OHS), skills development and workplace transformation. Its members are cross-industry and sectoral employers' organisations operating at both European and national levels.

The EEI's activities consist of collecting data and information, analysing topics relevant to employers, conducting studies, establishing networks of researchers and research organisations in the fields of industrial relations and labour law, running of EU-funded projects and supporting social dialogue on horizontal and sectoral levels.

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