

ELLINT is an international network of law firms specialising in employment and labor law, across Europe and in China.

This note has been prepared by ELLINT’s members as a brief guide to national laws relating to the rights of employers to restrict competitive activities by employees after the termination of their employment. Such post-termination restrictions can include: non-competes (which prevent the employee taking up a competitive job); non-solicitation of clients (preventing clients from being approached or dealt with); and non-solicitation of employees (preventing the employer’s staff from being hired by the former employee).

	Austria
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes. Austrian employment law contains mandatory rules regarding post-termination non-compete clauses. They are only enforceable if the employee’s salary at termination exceeds a certain amount (currently EUR3700 per month), which increases every year.</p> <p>The enforceability of the non-compete is also subject to the type of termination. For example, the non-compete is generally valid if the employee gives notice to resign, if there is a mutually agreed termination or a termination by the expiry of a fixed term. However, if the employer gives notice for a reason which is not the employee’s fault, the non-compete is generally not enforceable.</p> <p>In case of a dispute, the labour court may reduce the scope of the non-compete with regard to the balance of interests between the employer and employee.</p> <p>According to case law, non-solicitation clauses to prevent an employee encouraging colleagues to leave the employer are not subject to the rules above and, therefore, may be more likely to be enforceable.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	<p>Austrian law does generally not require any payment to the employee during the non-compete period.</p> <p>However, if the employer gives notice of termination for a reason which is not the employee’s fault (in which case the non-compete is generally not enforceable), the employer nevertheless has the option to insist on compliance with the non-compete. It must declare this at the time of giving notice of termination to the employee and must continue to pay the employee’s average pay for the restricted period (maximum one year).</p>
Is there a maximum period for a non-compete restriction?	One year after the termination of employment.

	Belgium
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, subject to constraints. Three types of non-compete restrictions are permitted in Belgium:</p> <ul style="list-style-type: none"> A. Non-compete clause for sales representatives earning at least EUR 36201 per annum (2021). B. Standard non-compete clause for employees earning at least EUR 72402 per annum (2021) (but in some cases this is lower based on the industry or a collective bargaining agreement). C. Special non-compete clause for companies with an international scope or companies with their own R&D centre, for white-collar employees who gain specific and proprietary knowledge of the company’s business. <p>Non-solicitation clauses may be used as well, subject to legal constraints, and often would be included as part of the non-compete restriction.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	<p>No, for the sales representative at A (although some sales representatives are entitled to a separate end of contract payment).</p> <p>Yes, to enforce the standard and special restrictions at B and C. The employer must pay the employee half of their salary for the duration of the non-compete.</p>
Is there a maximum period for a non-compete restriction?	<p>12 months for A and B. There is no maximum duration for the special restriction C, but higher levels of pay to the employee may be required to enforce a longer non-compete.</p>

	China
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, by agreement with employees.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	<p>Yes. For a non-compete restriction, the parties may negotiate the amount to be paid. If nothing has been agreed, the employee may request compensation paid on a monthly basis, being 30% of their average monthly salary calculated with reference to the 12 months preceding the termination, which shall not be below the local minimum wage. In some areas, the percentage may be increased to 50%.</p> <p>There is no requirement to pay compensation to the employee for non-solicitation restrictions.</p>
Is there a maximum period for a non-compete restriction?	<p>Two years after termination for non-competes. There is no legal limit for non-solicitation restrictions.</p>

	Denmark
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, with limitations. By law, a non-compete clause may only be imposed on an employee holding a particularly trusted position and who is trusted with confidential information. The employer is obliged to inform the employee in writing why the non-compete clause is required. In addition, the employee must have completed six months' employment before the non-compete clause will be enforceable.</p> <p>A non-compete clause cannot be enforced where:</p> <ul style="list-style-type: none"> - the employee does not hold a trusted position; - the employee has less than six months' employment; - the company dismisses the employee without a just reason; or - the employee resigns in response to a fundamental breach of contract by the employer. <p>The law summarised above applies to employees, but not to managing directors. However, non-competes can usually be enforced against managing directors (but not when the termination is unjust or the MD resigns in response to a breach of contract, in which case the non-compete does not apply).</p>
Must the employer pay the employee during the post-termination non-compete restriction?	<p>Yes. The amount of compensation is dependent upon the length of the restriction. For restrictions lasting up to six months, the employee is entitled to 40% of salary, reduced to 16% in the event that the former employee takes up employment elsewhere (although not with a competitor) during the period in which the restriction is in place. For restrictions lasting up to 12 months, the employee is entitled to 60% of salary, reduced to 24% in the event that the former employee takes up employment elsewhere during the period in which the restriction is in place. For combined clauses (non-compete and non-solicitation) which are limited to six months' duration, the employee is entitled to compensation amounting to 60% of the salary, reduced to 24% in the event that the former employee secures employment elsewhere during the applicable period.</p> <p>The first two months' compensation are payable as a one-off amount upon termination of the employment relationship, which is paid regardless of the employee taking up new employment.</p>
Is there a maximum period for a non-compete restriction?	<p>The non-compete term can be no more than 12 months, commencing from the termination of the employment, or 6 months if it is a combined with a non-solicitation clause. Where an employee is terminated without a just reason or where the employee resigns in response to an employer's breach of contract, the non-compete clause will not be enforceable.</p>

	France
Are employers able to use non-compete and non-solicitation restrictions in principle?	Yes, subject to payments to the employee and possible legal challenge. It is standard to provide that the non-compete restriction can be unilaterally waived by the employer when the employment contract terminates. If the restriction is waived the employer does not have to pay, but the employer must pay if the restriction is not waived.
Must the employer pay the employee during the post-termination non-compete restriction?	Yes. There is no specific amount provided by statute, but often national collective bargaining agreements (which are sector-specific) provide for a minimum amount to be paid in order for the clause to be enforceable. This is usually a percentage of the employee's average gross salary, usually no less than 33% and up to 66%. If there is no specific provision in the applicable collective bargaining agreements the employer must pay a reasonable amount which, according to case law, would be at least 33% of average salary.
Is there a maximum period for a non-compete restriction?	Not by law, but national collective bargaining agreements often limit the periods of non-competes. Otherwise, in case of dispute, courts assess all elements of the clause in deciding if the duration is reasonable, with 24 months tending to be the maximum which would be upheld.

	Germany
Are employers able to use non-compete and non-solicitation restrictions in principle?	Yes, subject to subject to limits and compensation. In principle, a non-compete must not unreasonably restrict the employee's professional progress with regard to area, duration and scope. The restriction must be limited to what is necessary to protect the employer's legitimate interests, including territorial and business scope. If the restriction goes too far, it can be reduced to a reasonable extent. The employer cannot simply withdraw at short notice from a post-termination non-compete obligation (and the compensation for non-compete obligation that goes with it) once it has been agreed. As such, non-compete restrictions tend to be applied where employees are employed in key and/or sensitive positions.
Must the employer pay the employee during the post-termination non-compete restriction?	Yes, at least 50% of the employee's final pay during the non-compete and non-solicitation restrictions. This includes variable remuneration components averaged over the prior 36 months as well as all other benefits. Other income earned by the employee during the term of the post-termination non-compete may be offset by the employer against the compensation for non-compete obligation if it exceeds a certain amount.
Is there a maximum period for a non-compete restriction?	Yes, 24 months by law.

	Ireland
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, subject to the courts assessing their validity. There is no statutory regulation of non-compete restrictions in Ireland, and their enforceability is a matter for the courts on a case-by-case basis.</p> <p>Whether a court will enforce a restriction depends on a number of factors, including the reasonableness of the restraint (generally assessed by reference to its duration and geographical application), the seniority of the employee, and the vulnerability of the employer (i.e., does it have a legitimate business interest requiring protection).</p>
Must the employer pay the employee during the post-termination non-compete restriction?	No.
Is there a maximum period for a non-compete restriction?	Not in law, but the courts tend to limit the duration of a restriction based on the circumstances and what is reasonable.

	Italy
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, provided that an agreement is reached between the employer and employee and that it is subject to reasonable limits and employee compensation.</p> <p>Since an employer must pay the employee during the restricted period, employers tend to enter into a non-competition restriction only with strategic employees for whom it is reasonable to invest an extra payment to avoid their competitive activities after termination of employment.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	Yes. The employer must compensate the employee with reasonable pay with regard to the duration and scope of the restrictions. This tends to be around 30% to 60% of pay depending on circumstances and case law. Parties have the freedom to negotiate the amount of pay, but this often leads to disputes over validity of the non-compete. If sums are not negotiated they can be awarded by the court.
Is there a maximum period for a non-compete restriction?	Five years in the case of executives, and three years for middle-managers and other employees.

	Luxembourg
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, but only if the employee earns a gross annual salary above a certain level (currently around EUR 56k).</p> <p>Non-compete clauses can only apply where an employee goes into competition independently, as a free worker. The non-compete will not apply if employer joins an established competitor business.</p> <p>Additionally, the clause can only apply if it seeks to limit competition in a specific occupational sector and activities which are at least similar to those of the employer. Non-compete restrictions must be geographically restricted to areas in which the employee can be deemed to compete within Luxembourg only.</p> <p>A non-compete will not apply if the employment was terminated summarily for alleged serious reasons and Court finds the dismissal was unlawful.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	No. However, the non-compete clause only applies if the employee earns a gross annual salary of at least EUR 56k.
Is there a maximum period for a non-compete restriction?	12 months.

	Netherlands
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, subject to the employer showing it has reasonable interests to protect and subject to Court interpretation. For fixed-term contracts there is an additional requirement for employer to provide written reasons to justify the non-compete clause.</p> <p>The Court can partly reduce or fully set aside any non-compete restriction taking into account both parties' interests.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	No. However, the Court can impose a payment if the restriction is very burdensome, but this is rare in practice.
Is there a maximum period for a non-compete restriction?	Not in law, although in practice one year tends to be the maximum that an employer can justify. Furthermore, the Court can reduce this dependent on the facts and circumstances.

	Poland
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, provided that the clause is in writing as part of the employee’s terms.</p> <p>The employer must compensate an employee for a post-termination non-compete arising from an employment contract, but not necessarily for a non-compete arising from a civil law contract.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	<p>Yes. The employer must pay at least 25% of the total remuneration (including bonuses, awards etc) received by an employee before the end of their employment, calculated by reference to the duration of the non-competition period (i.e. in case of signing a non-compete for a year, the compensation is based on the remuneration received in the last 12 months).</p> <p>This payment requirement does not cover persons/workers working under civil-law contracts, in respect of which the parties may frame their legal relationship at their discretion, subject to legal principles. Based on Polish case law, unpaid non-competes after the end of a service agreement are generally binding, but can be found invalid on a case-by-case basis. It is still sensible to consider securing the effectiveness of a non-competition agreement following termination of a legal relationship by providing compensation.</p>
Is there a maximum period for a non-compete restriction?	No, but an excessively lengthy non-compete may be recognized as void by the court in case of a dispute. It is generally assumed that non-competition clauses should apply for no longer than two years.

	Romania
Are employers able to use non-compete and non-solicitation restrictions in principle?	Yes. Non-solicitation restrictions may be included in a post-termination non-compete agreement. The law relating to unfair competition also prohibits employees from enticing clients by using commercial secrets or information belonging to the former employer company, provided that the employer took reasonable measures to ensure the protection of such secrets or information.
Must the employer pay the employee during the post-termination non-compete restriction?	Yes, the employer has to pay the employee at least 50% of their average monthly salary earned in the six months prior to termination of the employment agreement.
Is there a maximum period for a non-compete restriction?	Two years after termination.

	Spain
Are employers able to use non-compete and non-solicitation restrictions in principle?	Yes, if the employer can demonstrate an interest in requiring this type of covenant to protect its business.
Must the employer pay the employee during the post-termination non-compete restriction?	Yes. An adequate amount, which depends on the employee’s salary. Usually it ranges from 70 to 80% of salary. The compensation is often a component of the initial salary offered for the employment. If the covenant is limited and only prevents the employee from working for a small number of competitors, but the employee is still able to easily find a new job, the compensation may be lower. The compensation can be paid throughout the employment relationship or after (at the time of termination).
Is there a maximum period for a non-compete restriction?	Yes, two years for qualified employees (key employees) and 6 months for unqualified employees (although restrictions are not commonly used for such employees).

	Switzerland
Are employers able to use non-compete and non-solicitation restrictions in principle?	Yes, for employees who obtain valuable information about the employer’s clients or manufacturing and trade secrets. Restrictions must be fair in terms of duration, area and scope. A non-compete restriction includes a prohibition on approaching or dealing with former clients. Any obligation to not solicit former colleagues would have to be agreed separately. By law, a non-compete restriction will lapse if the employer terminates the employment without good cause, or if the employee terminates it for good cause attributable to the employer.
Must the employer pay the employee during the post-termination non-compete restriction?	No, but if the employer does compensate the employee it may assist the employer in justifying the non-compete restriction.
Is there a maximum period for a non-compete restriction?	Six months is a common limit for a non-compete, although even this period might be excessive if the employee is not compensated. A longer duration can apply if the restriction is limited to non-solicitation only and does not prevent the employee joining a competitor. An excessive restriction is not void and unenforceable, but the court may impose limits on it, taking circumstances into account the including any compensation paid by the employer. (By law restrictions cannot exceed three years without special circumstances applying, but this duration is recognised as far too long to be enforceable in practice.)

	United Kingdom
Are employers able to use non-compete and non-solicitation restrictions in principle?	<p>Yes, subject to the courts assessing their validity on a case-by-case basis. There is no statutory regulation of post-termination restrictions in the UK. The court will only enforce a restriction where the employer can demonstrate that it has a legitimate interest to protect, and that the restriction is no wider than reasonably necessary to protect that interest.</p> <p>Whether a court will enforce a restriction depends on a number of factors including what legitimate interest the employer is seeking to protect, and how reasonable the restriction is in this context. The court will take into account factors including the nature of the employer’s business, the duration and scope of the restriction, the seniority of the employee, and whether the employer’s legitimate business interests might be protected by a less onerous restriction.</p>
Must the employer pay the employee during the post-termination non-compete restriction?	<p>No. It is very unusual for an employer to compensate an employee during the restricted period, although it is occasionally seen in specific financial services arrangements.</p>
Is there a maximum period for a non-compete restriction?	<p>Not in law, but the courts will assess whether the duration of a restriction is reasonable based on the circumstances of each case. 12 months tends to be upper limit which the court will uphold for non-compete restrictions for the most senior of employees (CEO/Director-level). 12 months also tends to be the upper limit for non-solicitation restrictions, although longer periods might be upheld in specific cases.</p> <p>If the court finds that the period of the restriction is unreasonably long, the restriction will be void and unenforceable. The court does not have the power to substitute a shorter period of restriction instead.</p>

The information in this document is current at 1 February 2021 and is for general reference purposes only. It does not constitute legal advice and should not be relied upon as such. Specific legal advice about the circumstances should always be sought separately before taking any action.