



Guide to Restrictive Covenants

01. What are the principal types of restrictive covenants used by employers in your jurisdiction in relation to their employees?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Employers in Luxembourg generally rely on a relatively limited but important set of restrictive covenants. In practice, the most common are confidentiality clauses, non-solicitation clauses covering clients and employees, non-disparagement clauses and, more cautiously, non-compete clauses.

A distinction must be drawn between the statutory non-compete clause under Article L.125-8 of the Luxembourg Labour Code and broader contractual restrictions developed in practice. The statutory regime is narrow and principally concerns competition through a personal business after termination. By contrast, broader clauses seeking to restrict work for a competitor, solicitation of clients or staff, or other competitive conduct are assessed mainly through general principles of proportionality, freedom to work and protection of the employer's legitimate interests.

Market practice in Luxembourg remains cautious. Employers typically reserve stronger post-termination restrictions for senior employees, employees with access to confidential information or know-how, or individuals with significant influence over clients, suppliers or key teams.

Last updated on 19/10/2026

02. What general rules apply in determining whether a restrictive covenant is enforceable against an employee?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Luxembourg law does not apply a single test to all restrictive covenants. The starting point is to distinguish between statutory non-compete clauses governed by Article L.125-8 of the Labour Code and broader contractual restraints.

For a statutory non-compete clause to be valid, it must be in writing, apply only to employees aged 18 or over, and only be invoked where the employee's annual remuneration at the time of departure exceeds the statutory threshold (ie, current gross annual remuneration of 67,641.71 EUR, index 992.24 applicable as of 1 June 2026). In addition, it must be limited to activities similar to those of the employer, be confined to a maximum duration of 12 months, be geographically limited to the areas where the employee could genuinely compete and, in any event, not extend beyond Luxembourg, and only prohibit the former employee from operating a competing personal business rather than taking salaried employment with a competitor.

Outside that statutory framework, Luxembourg courts may accept broader contractual restrictions, but they review them carefully. The key question is whether the clause strikes a fair balance between the employer's legitimate business interests and the employee's freedom to work. In practice, this means that duration, geographical scope, material scope, the employee's role and the existence of any financial compensation may all matter.

Luxembourg case law has further confirmed that courts may, in some circumstances, reduce an excessive clause rather than set it aside entirely. That said, employers should not assume that judicial correction will rescue overbroad drafting. The safer approach remains careful, proportionate drafting from the outset.

Last updated on 19/10/2026

03. How do these general rules differ from the general rules that apply in determining whether a restrictive covenant is enforceable in other contexts, for example a commercial agreement, a franchise agreement with an individual who is a franchisee, a shareholders agreement, or incentive arrangements?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

The approach is materially stricter in employment matters. In Luxembourg, restrictive covenants in employment contracts are reviewed through the protective logic of labour law and the employee's freedom to work. Even where a clause is not governed directly by Article L.125-8 of the Labour Code, the courts will still examine whether it is excessive or disproportionate.

By contrast, in commercial relationships such as shareholders' agreements, franchise arrangements, partnership agreements or certain incentive structures, Luxembourg courts generally give more weight to freedom of contract. Restrictions may still be reviewed for proportionality and consistency with public policy, but the scrutiny is usually less exacting because the parties are not viewed through the same protective lens.

As a result, a covenant that may be acceptable in a business or investment context may be unenforceable, or enforceable only in narrower form, in an employment contract.

Last updated on 19/10/2026

04. Can restrictive covenants be enforceable against any level of employee or just certain types and, if so, which types?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

There is no rule limiting restrictive covenants to executives or senior staff only. In principle, they may be agreed with different categories of employees. In practice, however, enforceability depends heavily on the employee's actual role and on the employer's ability to justify the restriction.

Statutory non-compete clauses under Article L.125-8 are already limited by the salary threshold and therefore tend to concern higher-earning employees. Broader contractual restrictions are more likely to be defensible for senior executives, key commercial employees, employees with strategic client influence, or individuals with access to sensitive know-how or confidential information.

By contrast, the same clauses are less likely to be upheld for junior employees or functions that present no real competitive risk. In short, Luxembourg employers should tailor the covenant to the role rather than apply broad standard wording across the workforce.

Last updated on 19/10/2026

05. Is an employer required to make a payment to an employee in order for any restrictive covenant in their employment terms to be potentially enforceable? If so, how much and/or how is that calculated?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Not always. A statutory non-compete clause under Article L.125-8 of the Labour Code does not require separate financial compensation as a matter of law. This reflects the narrow nature of that statutory regime.

The position is different for broader contractual restraints, especially clauses seeking to prevent the former employee from working for a competitor as an employee. In that context, Luxembourg case law indicates that financial compensation is an important factor supporting enforceability, even if it is not a formal statutory requirement.

There is no fixed statutory amount. The adequacy of the payment is assessed as part of the overall proportionality analysis. Luxembourg labour courts have accepted compensation of around 25% of the employee's last monthly base salary for the duration of the restriction as a useful benchmark in some cases. However, compensation is not a safe harbour. A court may still reduce or refuse to enforce an excessive clause despite the payment.

It is also important to note that where an employer has contractually promised compensation in

exchange for the restriction, Luxembourg case law shows that the employer may remain bound by that commitment and cannot easily escape payment by arguing later that the clause was too broad or by attempting to invoke employee-protective nullity rules for its own benefit.

Last updated on 19/10/2026

06. Are there any planned changes in the law of restrictive covenants in your jurisdiction? If so, please provide details.



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

At the time of writing, no specific legislative reform appears to be pending in Luxembourg in relation to restrictive covenants in employment contracts. There is no known project to amend Article L.125-8 of the Labour Code or to redesign the broader framework.

In practice, the main developments are more likely to come from case law than from legislation. Recent decisions already provide useful guidance on issues such as compensated non-competes beyond the statutory model, judicial reduction of excessive clauses, waiver mechanisms and the limits of employer reliance on employee-protective nullity rules. For that reason, careful drafting and close attention to judicial developments remain essential.

Last updated on 19/10/2026

07. Non-compete: Will the courts enforce a restriction seeking to prevent an employee from working for a competitor after they leave the employer's employment? If so,

(a) What conditions must be satisfied?

(b) Specifically, must payment be made to the employee and, if so, at what level and for how long?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Only to a limited extent. Under Article L.125-8 of the Labour Code, the statutory non-compete clause does not allow an employer to prevent a former employee from taking salaried employment with a competitor. The statutory model only covers competition through a personal business.

That said, Luxembourg case law accepts in principle that broader contractual non-compete clauses may be valid, including clauses restricting employment by a competitor. These clauses are reviewed strictly. To have a realistic prospect of enforcement, the clause should protect a legitimate business interest such as confidential information, know-how or customer relationships, remain proportionate (in duration, scope and territory), and be drafted clearly and narrowly.

In practice, financial compensation is advisable and often important. Luxembourg courts have

accepted compensation corresponding to around 25% of gross monthly salary during the restricted period, but this remains an indication rather than a guaranteed standard. Courts may reduce an excessive clause or refuse to enforce it altogether. Recent case law also illustrates that where compensation is contractually promised, the employer may not be able to avoid payment simply by arguing that the clause was excessive.

A cautious and commercially realistic drafting approach is therefore particularly important in Luxembourg.

Last updated on 19/10/2026

08. Garden leave: Do employers use "garden leave" provisions in their employment terms whereby an employee who has either given or received notice of termination of their employment is required to stay away from the workplace and is prevented from having any contact with clients/customers or staff while continuing to be paid? If so,

(a) what conditions must be satisfied and/or are there any limits on the use of garden leave clauses?

(b) will your courts require that the duration of any "garden leave" must be offset against the duration of any restrictive covenants that apply after termination of employment?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Luxembourg law does not formally recognise "garden leave" as a distinct legal concept. In practice, the closest equivalent is a release from duties during the notice period. The employee remains employed, continues to receive salary and benefits, and remains subject to duties arising from the employment relationship for as long as the contract continues.

However, this mechanism is of limited use as a real restrictive covenant. Luxembourg case law indicates that once an employee is released from work, the employer's ability to rely on a duty of non-competition during the notice period may become weaker in practical terms. More fundamentally, a release from duties does not in itself operate as a robust post-employment restraint, and the employee remains free to take up new work during that period. In such circumstances, the former employer will generally remain liable only for any salary differential until the end of the notice period.

There is, to our knowledge, no settled Luxembourg authority requiring a formal set-off between any release-from-work period and a later post-termination restriction. That said, when assessing the proportionality of a broader covenant, a court may look at the overall period during which the employee was effectively kept out of the market.

Last updated on 19/10/2026

09. Confidential information: Will the courts enforce an employment term seeking to prevent an employee from using or disclosing their employer's confidential information after they leave its employment? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Yes, in principle. Luxembourg courts are generally receptive to post-termination confidentiality obligations, provided they protect a legitimate interest and are drafted clearly.

During employment, the employee is already subject to duties of loyalty and good faith. It is nevertheless advisable to include an express confidentiality clause defining the categories of protected information and making clear that the obligation survives termination. To maximise enforceability, the clause should focus on genuinely confidential or commercially sensitive information and should not operate as a disguised non-compete by preventing the employee from using general skills, experience or know-how.

Luxembourg law does not fix a mandatory maximum duration, but the obligation must remain reasonable and last only while the information remains genuinely confidential. Open-ended or perpetual undertakings are unlikely to be valid. The safer approach is therefore to limit the duration by reference to the sector, the nature of the information and the pace of technological and commercial change, and in any event only for so long as the information remains genuinely business sensitive.

Statutory protection may also arise under Luxembourg trade secret legislation and, in certain professions, under professional secrecy rules.

Last updated on 19/10/2026

10. Non-solicitation clients: Will the courts enforce an employment term seeking to restrict an ex- employee from approaching their former employer's clients or customers or potential clients or customers? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Yes, in principle. Luxembourg law does not specifically regulate client non-solicitation clauses in employment contracts, so their validity is assessed under general contractual principles and the requirement of proportionality.

The employer should be able to demonstrate a legitimate interest, usually the protection of client relationships or sensitive commercial information. The clause should be limited to clients or prospects with whom the employee had material dealings, responsibility or meaningful knowledge within a defined period before termination. A broad prohibition extending to the whole market would be significantly harder to defend.

Luxembourg law does not prescribe a fixed maximum duration. In practice, a period of around 12 to 24 months is generally easier to defend, depending on the employee's role and the nature of the client relationship.

Enforcement will often depend not only on validity but also on the employer's ability to prove breach and resulting loss.

Last updated on 19/10/2026

11. Non-dealing clients: Will the courts enforce an employment term seeking to restrict an ex-employee from dealing with their former employer's clients or customers or potential clients or customers even if the client or customer approaches the ex-employee? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Yes, in principle, but with greater caution. A non-dealing clause is more intrusive than a non-solicitation clause because it may prevent the former employee from accepting business even where the customer makes the first approach. For that reason, Luxembourg courts would be expected to review such clauses especially closely. The employer should be able to show a strong legitimate interest, such as preserving client goodwill or protecting strategic commercial information. The restriction should remain tightly limited to clients or prospective clients with whom the employee had direct and significant contact or responsibility.

As for duration, shorter and targeted restrictions are safer. Depending on the context, a period of around six to 12 months may be defensible. Because published Luxembourg case law remains limited, careful drafting is particularly important.

Last updated on 19/10/2026

12. Non-dealing suppliers: Will the courts enforce an employment term seeking to restrict the extent to which an ex-employee can deal with their former employer's suppliers? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Yes, in principle, but usually only on a narrow and well-justified basis. Supplier restrictions are generally more difficult to justify than client-facing restrictions. They are most likely to be defensible where the employee held a senior procurement, sourcing or strategic commercial function and had influence over key supplier relationships. The employer should be able to show a concrete legitimate interest, such as protection of supply continuity, exclusivity structures, pricing arrangements or commercially sensitive procurement information.

The clause should be tightly drafted, limited to suppliers with whom the employee had meaningful

dealings or responsibility, and reasonable in duration and effect. In practice, a period of around six to 12 months is more likely to be defensible than broader or market-wide wording.

Last updated on 19/10/2026

13. Non-solicitation employees: Will the courts enforce an employment term seeking to restrict an ex-employee from approaching any of their former employer's staff to persuade them to leave their employment and become a fellow employee of the ex-employee in their new employment? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Yes, in principle, but the clause should be carefully targeted. Luxembourg law does not contain a specific regime for employee non-solicitation clauses, so the usual standards of legitimate interest and proportionality apply.

The employer should be able to justify the clause by reference to workforce stability, the protection of key teams or the preservation of sensitive know-how. It is easier to defend the clause where the departing employee held a senior or influential role and had real ability to attract colleagues.

The clause should focus on active solicitation rather than amount to a general ban on any hiring from the former employer. Short, targeted restrictions are safer than broad, workforce-wide prohibitions.

Although Luxembourg law sets no fixed maximum duration, a limited period, typically between six and 24 months, depending on the circumstances, is more likely to be upheld.

Last updated on 19/10/2026

14. Non-employ: Will the courts enforce an employment term seeking to restrict an ex-employee from being involved in the process of engaging any of their former employer's staff on behalf of the ex-employee's new employer, even if the former employer's staff member approaches the ex-employee? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Probably only on a narrow and carefully justified basis. A non-employ clause is more intrusive than a pure non-solicitation clause because it may prevent recruitment even where the initiative comes from the colleague rather than the former employee. Luxembourg courts would therefore be likely to review such clauses strictly.

To have any prospect of enforcement, the employer would need to show a legitimate and specific interest, for example in protecting a particularly sensitive team or preserving continuity in a critical function. The clause should be limited to employees or categories of staff with whom the former employee had close managerial, strategic or operational links.

In practice, a short duration is advisable, often around six to 12 months. Luxembourg employers more commonly rely on narrower employee non-solicitation wording than on broader non-employment clauses. More broadly, non-employment restrictions are encountered more often in service agreements and other commercial arrangements than in employment contracts.

Last updated on 19/10/2026

15. Team move: Will the courts enforce what is sometimes called a "team move" covenant which seeks to prevent an employee from leaving the employer's employment and joining other former employees of the employer in working for a competitor of the employer? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

There is no established Luxembourg case law specifically addressing team move covenants in employment contracts. Their enforceability is therefore uncertain.

In principle, an employer might seek to justify such a clause by relying on workforce stability, protection of know-how and prevention of an organised transfer of a key team to a competitor. However, because such a clause may affect not only the departing employee but also, indirectly, the employment choices of others, it would likely be reviewed very strictly.

Any clause of this kind should therefore be drafted very narrowly, define the prohibited conduct with precision and remain limited in scope and duration. A broad prohibition on joining former colleagues at a competitor would face significant enforceability risk under Luxembourg law.

Last updated on 19/10/2026

16. Non-disparagement: Will the courts enforce an employment term seeking to restrict an ex-employee from disparaging or making comments about their former employer which may damage its reputation? If so, what conditions must the employer satisfy and for what duration would the court enforce the restriction?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Luxembourg employees are already subject during employment to duties of loyalty and good faith, which include an obligation not to denigrate the employer. After termination, contractual non-

disparagement clauses may extend that protection, although published case law remains limited.

In practice, such clauses are common, particularly in settlement arrangements. To improve enforceability, they should be drafted clearly and proportionately, focusing on abusive or harmful statements rather than imposing an unduly broad restriction on legitimate expression or freedom of speech. A reciprocal clause may also, where appropriate, help reinforce the overall balance of the provision and may in some cases be commercially sensible.

There is no settled Luxembourg authority on maximum duration, but the clause should be time-limited, as perpetual commitments are unlikely to be valid. A carefully framed clause aimed at legitimate reputational protection is more likely to be defensible than an indefinite or excessively broad restriction.

In practice, enforcement may also be constrained by evidential difficulties, particularly where the alleged statements were made orally and any resulting loss is difficult to establish.

Last updated on 19/10/2026

17. Are there any other types of post-termination restriction which are common? If so, what are they and what conditions must be satisfied?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Yes. In addition to the covenants already mentioned, Luxembourg employers commonly use obligations requiring the return of property, documents, devices and confidential materials, and may also require deletion of employer data.

It is also common to include clauses requiring the former employee to stop presenting themselves as still affiliated with the employer, for example by updating professional profiles, biographies, and social media accounts.

Some employers also use notification clauses, requiring the former employee to inform a future employer about existing post-termination restrictions or to notify the former employer of future competing employment, although such clauses should be approached with care.

Last updated on 19/10/2026

18. Golden handcuffs: Which types of provisions do employers in your jurisdiction use in their employment arrangements which potentially have the effect of restricting the activities of an employee after they leave their employment but which do not overtly seek to restrict those activities? Examples could be:

(a) long term incentive plans in which awards may be forfeited if the employee engages in certain types of competitive activity

(b) commission schemes in which accrued commission otherwise payable to the ex-employee could be forfeited in similar circumstances?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Luxembourg employers do use economic retention mechanisms that may indirectly discourage competition after termination. These may include deferred bonus arrangements, retention schemes, long-term incentive plans, share plans, phantom equity, management incentive arrangements, commission schemes or deferred carried interest, often combined with good-leaver or bad-leaver conditions, deferred payment terms, forfeiture, clawback provisions or, in some cases, repayment obligations.

Such mechanisms are often more practical than express post-termination restraints, but they still need to be assessed carefully. If they operate in substance as a disguised restriction on the employee's freedom to work, they may face challenge under general labour law principles.

Last updated on 19/10/2026

19. Will the courts enforce such provisions? If so:

(a) What conditions must the employer satisfy?

(b) Will the courts enforce all such provisions or only certain types and if so, which types?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

There is no single Luxembourg regime governing all indirect restrictions. Enforceability depends on the nature of the provision, its wording and how it operates in practice.

Luxembourg courts are likely to look at substance rather than label. If a forfeiture, claw-back or repayment mechanism effectively restrains the employee after termination, the courts may examine whether it is justified, proportionate and balanced. Clear drafting and moderation are important.

In addition, where entitlement depends on future conditions, those conditions should be based on objective, sufficiently precise and verifiable criteria, and should not be purely potestative or left to the unfettered discretion of either party.

Training cost reimbursement is one area where Luxembourg law and case law provide useful guidance. Statutory reimbursement may be available in certain circumstances, but clauses going further than the law allows may be void, particularly if they apply to situations such as dismissal with notice where the law does not permit reimbursement.

More broadly, repayment clauses or fixed financial burdens that excessively deter resignation may be vulnerable if they unduly restrict the employee's right to leave employment.

Last updated on 19/10/2026

20 . If an employer wishes to enforce a restrictive covenant:

- (a) What process must it follow and in which court must it seek to enforce the covenant?**
- (b) What remedies can an employer obtain?**
- (c) If a court order preventing breaches/further breaches of the covenant can be obtained, how quickly can the employer obtain this order from the court?**
- (d) Is it a potentially expensive process?**
- (e) What conditions must the employer satisfy to enforce a covenant?**
- (f) How common is it for employers seeking to enforce a restrictive covenant to come to an agreement with the ex-employee without issuing legal proceedings?**
- (g) Are there situations when an otherwise enforceable restrictive covenant is not enforceable (for example if there has been a repudiatory breach of contract)?**



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

- (a) In practice, employers in Luxembourg usually begin with a cease-and-desist letter to the former employee and, where relevant, the new employer, setting out the restrictions and requesting undertakings. If the dispute cannot be resolved, proceedings may then be brought before the competent court, depending on the nature of the claim. Where the dispute concerns obligations arising from the employment contract, the labour courts will generally be central. Claims involving the new employer or unfair competition issues may also raise civil or commercial law questions. The procedural route therefore depends on the legal basis relied upon.
- (b) Potential remedies include damages for proven loss and, where appropriate, an order to cease the infringing conduct, possibly backed by penalty payments. In some cases, claims may also be considered against the new employer if it knowingly participated in the breach.
- (c) Timing is case-specific and depends on the urgency, the court's workload, the evidence available and the type of proceedings chosen. There is no single standard timetable.
- (d) Yes, it can be. Restrictive covenant disputes are often fact-sensitive and evidence-heavy. This is one reason why clear drafting and early pre-litigation strategy are important.
- (e) The employer will generally need to establish that the restriction is valid under Luxembourg law, that the former employee has breached it and, where damages are claimed, that the breach caused actual loss. In practice, this means that evidence matters greatly. Luxembourg case law also shows that the circumstances of termination may matter. For example, under the statutory non-compete regime, the employer may lose the benefit of the clause in certain dismissal scenarios. More generally, the employer's own conduct may influence the court's view of both enforceability and relief.
- (f) Quite common. Many Luxembourg disputes are resolved through correspondence, undertakings or negotiated settlement, often because both sides wish to avoid cost, delay and publicity.
- (g) Yes. Under the statutory non-compete regime, the clause will not always be enforceable if the termination occurred in circumstances where the employer failed to comply with the applicable legal requirements. More broadly, the employer's own conduct and the conditions of departure may affect whether a court is willing to grant relief. Luxembourg case law also underlines another practical point: where a clause includes compensation in favour of the employee, the employer cannot

necessarily rely on employee-protective nullity rules to escape its own payment obligations.

Last updated on 19/10/2026

21. Will a court rewrite a restrictive covenant if it considers that it is too wide in its effect or too long in its duration? If so, what are the conditions that must be satisfied? If not, would the court delete words in the restrictive covenant to make it enforceable?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Luxembourg courts may, in some circumstances, reduce an excessive restrictive covenant rather than strike it down completely. This is particularly illustrated by case law on broader compensated non-compete clauses beyond the strict statutory model. For example, the Luxembourg courts have accepted the principle of an extended compensated non-compete while reducing an excessive geographical scope. This suggests that judicial moderation is possible where it helps restore a fair balance between the employer's legitimate interests and the employee's freedom to work.

That said, this is not a general invitation to draft aggressively. Whether a court will reduce a clause depends on the nature of the covenant and the circumstances. Employers should therefore draft cautiously and not assume that the court will repair overbroad drafting after the event.

Last updated on 19/10/2026

22. If an employment contract is governed by the law of another jurisdiction, which law will the courts apply when determining if the covenant is enforceable?



Luxembourg

Authors: Florence Apostolou, Christiana Goula
at ELVINGER HOSS PRUSSEN

Where an employment contract contains a foreign governing law clause, Luxembourg courts will assess the issue under Regulation (EC) No 593/2008 (Rome I), especially Article 8. The parties may choose the applicable law, but that choice cannot deprive the employee of the protection of the mandatory rules of the law that would otherwise have applied. Failing a choice, the relevant law is determined by a structured test: first, the law of the country in which the employee habitually carries out the work; failing that, the law of the country where the place of business through which the employee was engaged is situated; and, by exception, the law of the country with which the contract is more closely connected.

Under the Luxembourg Labour Code, restrictive covenants are not overriding mandatory rules within the meaning of Article L.010-1. They are, however, likely to be regarded as mandatory employee-protective rules. Accordingly, where Luxembourg law would have applied absent the foreign-law clause, Luxembourg courts may still assess such covenants against Luxembourg's protective

framework, except to the extent the chosen law is more favourable to the employee.

Last updated on 19/10/2026

Contributing editors

Christine Young, *Herbert Smith Freehills*
Kramer

Contributors

Florence Apostolou, *ELVINGER HOSS PRUSSEN, Luxembourg*
Christiana Goula, *ELVINGER HOSS PRUSSEN, Luxembourg*

www.internationalemploymentlawyer.com