**Caution: "No-Poaching" Agreements Under Scrutiny by Competition Authorities**

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For a long time, it was generally accepted that competition rules did not apply to employment relationships, since they concern the market behavior of companies, whereas labor law governs their relationships with natural persons (employees). However, this understanding has been significantly refined, as reflected in practice and in the decisions of the European Commission and national competition authorities.

**Legal Framework**

The key competition rules are set forth in Article 101 of the Treaty on the Functioning of the European Union ("TFEU"). While it may seem surprising at first that these rules are enshrined in primary law, this actually reflects the economic origins of the European Union.

Article 101 TFEU was incorporated, largely unchanged, into Article 5 of Romania's Competition Law No. 21/1996. Accordingly, agreements between undertakings, decisions by associations of undertakings, and concerted practices that have as their object or effect the prevention, restriction, or distortion of competition within the internal market are incompatible with the internal market and prohibited. This applies in particular to

a) the setting of purchase or sale prices or other terms and conditions of business;
b) the restriction or control of production, sales, technical development, or investment;
c) the division of markets or sources of supply;
d) applying different terms and conditions to trading partners for equivalent services, thereby placing them at a competitive disadvantage;
e) a condition attached to the conclusion of contracts requiring the contracting parties to accept additional services that are unrelated to the subject matter of the contract.

**Commission Investigation [1]**

Based on the above-mentioned provisions, the Commission launched an investigation against Glovoapp23 SA and Delivery Hero SE in June 2022. Among other things, the investigation focused on a "No-Poaching" agreement under which the companies committed not to poach or hire each other's employees.

The arrangement took place in the context of Delivery Hero's minority stake in Glovo, which facilitated numerous contacts between the companies — which remained competitors — as well as the exchange of commercially sensitive and thus potentially anti-competitive information.

The investigation concluded in 2025 with a decision that, for the first time, explicitly found that "no-poaching" constitutes an anti-competitive practice and imposed substantial fines (approximately 220 million EUR on Delivery Hero and approximately 100 million EUR on Glovo).

[1] https://competition-cases.ec.europa.eu/cases/AT.40795

**Investigation in France and Romania – The DACIA-Renault Case**

Starting in late 2021, the Romanian and French competition authorities launched investigations into companies within the DACIA-Renault Group and their service providers. This was done in close coordination, particularly through the exchange of information and evidence.

Both authorities followed the European Commission's lead and found that the companies involved had violated Article 101 of the TFEU and Article 5 of Romanian law—in some cases for up to 14 years — through "No-Poaching" agreements, and imposed substantial fines (calculated as a percentage of their annual worldwide turnover).

**Legal Characterisation**

An important and still controversial aspect is whether the infringement should be classified as a restriction by object or by effect.

If an agreement is entered into with the *intent* to restrict competition (e.g., as a cartel), the competition authority is not required to conduct a detailed market analysis that is, it does not need to demonstrate specific effects on the relevant market or on consumers. If, on the other hand, the violation is merely a restriction by effect, a comprehensive market analysis is required to establish that the agreement is anticompetitive.

Both the Romanian and French competition authorities have classified the violation as a restriction by object. Both decisions have been challenged before the courts; judicial review — including on this aspect — is still pending.

The authorities also examined the companies' arguments, which were based on legitimate purposes such as the protection of trade secrets and technology know-how, investments in specialized training, and the protection of confidentiality. They determined that these objectives can also be achieved through measures under labor law alone, such as agreements regarding confidentiality, non-compete clauses, reimbursement of training costs, etc.

**Conclusion**

Until recently, the legal status of "no-poaching" clauses was unclear due to the lack of a uniform position at the EU and national levels.

However, the position is now clear: such practices significantly impair competition among employers in the (specialized) labor market and have a negative impact on employees — for example, in terms of mobility, career opportunities, and compensation.

Another important point: the agreement does not have to be concluded between traditional competitors; it is sufficient that the parties compete for the same specialized workers.

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