



RESEARCH PAPER

No 23

Payback clauses in  
Europe: supporting  
company investment  
in training

Final report





# Payback clauses in Europe: supporting company investment in training

Final report

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A great deal of additional information on the European Union is available on the Internet.

It can be accessed through the Europa server (<http://europa.eu>).

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## Foreword

The need for lifelong learning is linked to increasing competition on the global market, rapid technological progress, ageing societies and longer working lives. There is growing recognition that adults need constantly to update and upgrade their knowledge, skills and competences to stay employable, participate fully in society, and prosper. For employers, providing training to employees is a key element in staying competitive and increasing companies' productivity. However, adult participation in lifelong learning and employers' willingness to support employee training are below optimal levels.

The EU 2020 strategy acknowledges the challenges and urges Member States to take adequate measures to equip the adult population with 'new skills for new jobs'. It recognises explicitly the role of vocational education and training in reaching this goal. The Bruges communiqué calls for a review of the incentives, rights and obligations of all stakeholders and appropriate action at national level to encourage participation in continuing vocational education and training.

According to the adult education survey, time constraints and cost are the biggest barriers. Companies may also fear failed investment, for example if an employee leaves (shortly) after training. Therefore, most countries apply different forms of financial and non-financial incentives and regulatory measures to promote adult participation in education and training and to encourage shared responsibility between individuals and employers.

In the present study, Cedefop looks at payback clauses, a regulatory instrument to safeguard company investments in training.

So far, information on payback clauses and their regulation has been rather limited. This report fills the gap, offering the first comprehensive comparative analysis of the use of payback clauses to promote adult participation in education and training in Europe. It also examines their strengths and weaknesses.

I trust that this report on payback clauses in Europe will serve policy learning.

Christian F. Lettmayr  
*Acting Director*

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## Executive Summary

Research on the operation and performance of incentives and funding instruments to support investment and participation in adult learning has become more significant since the Lisbon strategy set the target for lifelong learning. The Education and Training 2020 strategy has now set the benchmark for adult participation in learning at 15%, to be reached by 2020. This is a great challenge considering that the current European average is still below 10%. It can only be achieved with the active involvement and commitment of states, social partners, companies and individuals.

Public investment in adult learning alone will not be sufficient to ensure the total coverage of the training demand, particularly for those who have already entered the labour market. Since compulsory education and initial vocational education and training (IVET) is funded in general by governments in most European countries, individuals and companies are requested to cater for their own training needs in the labour market. Although employers are major investors in continuing vocational education and training (CVET), they do not cover all employee training needs satisfactorily due to various market failures. One of the core investment risks is when the employee leaves the company shortly after the termination of training, for example for a more challenging or better paid job. The new employer then reaps the benefits from the training provided by the former employer. Payback clauses are a means of overcoming this risk and so promote training investment.

### Scope and methodological approach

When payback clauses apply, an employee who terminates an employment relationship within contractual retention period is to reimburse (part of the) training costs borne by the employer.

The conditions on reimbursement can be regulated:

- (a) at national level by law;
- (b) in collective agreements between social partners;
- (c) at company level in individual contracts of employment or training agreements.

These regulations usually include the following terms:

- (a) form of agreement (written);

- (b) type of training, groups of employees/type of contracts for which payback clauses apply;
- (c) costs to be reimbursed;
- (d) contractual retention period (a certain period of time following training during which employee is expected to stay within the company in compensation for provision of training by employer);
- (e) redemption form (the share of the training cost that has to be reimbursed depending on the time elapsed after training and contractual retention period);
- (f) exceptions of applicability, enforceability or validity.

This report reviews where and how payback clauses are regulated and applied in Europe and reflects on their strengths and weaknesses as instruments contributing to increasing employer investment and employee participation in training.

Several documents and literature were reviewed and analysed; an online survey was distributed to stakeholders across 33 European countries; case studies were conducted in Germany, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Sweden, and the UK. In these countries, representatives of the ministries of education and labour, employers' federations, trade unions and companies responded to the detailed survey <sup>(1)</sup> and provided further information (including through interviews).

## Key findings

### **The level of regulation of payback clauses**

The review of 33 European countries has revealed that payback clauses can be regulated at different levels. In 14 countries (Belgium, Bulgaria, Czech Republic, Estonia, France, Lithuania, Luxemburg, Hungary, Austria, Poland, Portugal, Romania, Slovenia and Slovakia) relevant national regulations exist. In three countries (the Former Yugoslavian Republic of Macedonia [FYROM], the Netherlands and Norway) payback clauses are primarily a matter of collective agreements between social partners (and not of national law). In 10 countries (Croatia, Germany, Italy, Ireland, Latvia, Malta, Spain, Sweden, Turkey, and the UK) payback clauses are agreed at company level either in company agreements between management and trade unions, work councils or individually. Payback

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<sup>(1)</sup> The survey was carried out between January and March 2011.

clauses have not been encountered in six countries: Cyprus, Denmark, Finland, Greece, Iceland and Liechtenstein <sup>(2)</sup>.

National regulations and collective agreements may serve as a guide for agreements at company level. Most of the labour codes allow amendment of regulations, provided that the conditions are more favourable for employees than those established in national statutes.

### **The conditions of payback clauses**

Payback clauses are usually applicable for almost all employees. No distinction is made between permanent, full-time or part-time employment. Exceptions exist in some countries; the Estonian labour code prohibits agreements on reimbursement with minors. In Germany, payback clauses cannot be applied to training contracts for IVET. In Luxembourg apprentices cannot be a subject of payback clauses. Finally, employees on fixed-term contracts are often not covered by payback clauses, as case studies in Germany and Italy show.

The national statutes and collective agreements on training and payback clauses have set rather general criteria for the type of training for which payback clauses are applicable. Usually labour codes allow the use of payback clauses for general (transferable) training. For firm-specific training that is directly related to current or future work tasks within the company, the employer usually bears 100% of the cost of training and no reimbursement is enforceable if the employee leaves the company (shortly) after training. A mixed form, where reimbursement of training costs can be requested for both general and firm-specific training, exists in the Netherlands.

Some countries establish either the minimum costs or duration of training to be legally considered for an agreement on payback clauses. These minimum costs and/or the length suggest that payback clauses are applicable for expensive and/or time-intensive training courses; in Slovakia and the Czech Republic the labour code set a minimum training cost of EUR 3 320 and EUR 3 000, respectively. In Romania training shall last more than 60 days. Belgium offers the options of eligibility between minimum training costs (EUR 2 830) or minimum length (80 hours). In countries and sectors that do not limit minimum training costs, employers and employees arrange reimbursement conditions case by case.

The contractual retention period of an employment contract after training is defined by most of the labour codes and collective agreements that contain

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<sup>(2)</sup> However, examples of companies applying payback clauses may exist but could not be identified in this research.

payback clauses and comprises between three and five years. Exceptions are Lithuania which has a relatively short maximum contractual retention period of one year, Austria with a longer period of up to eight years, and France and Slovenia where the contractual retention period is agreed individually. Dutch collective agreements usually set a contractual retention period of up to two years. If no national or collective agreement applies, companies set up this period case by case.

The legal statutes and collective agreements reviewed are usually very unspecific regarding the costs that have to be reimbursed in case of termination of employment. Only the Austrian labour code explicitly states that not only actual costs of training (e.g. cost of enrolment and fees) but also wages paid during training can be included in the reimbursement. In Romania, salaries paid can also be protected by agreements on payback clauses. Some Dutch collective agreements also establish the reimbursement of direct costs of training and wages paid during training.

The amount to be reimbursed depends on the time elapsed after training and contractual retention period. Most national statutes set out the redemption of cost by year. A monthly redemption of costs is mostly recommended in collective agreements in the Netherlands as well as in individual contracts in many countries.

### **The use of payback clauses**

Although payback clauses can be found in most European countries, little data is available on their implementation in employment or training contracts or their enforcement.

From this research, it appears that medium and large companies are more likely to use payback clauses because they invest more in training and the regulations can be considered as an investment incentive. In addition, they are more likely to have framework regulations even for less regular matters in their employment contracts, while small and micro companies rely more on case-by-case agreements, when it comes to specific requests. However, the latter may also offer greater flexibility in dealing with such specific requests.

According to the stakeholders surveyed, some sectors include payback clauses more frequently in employment contracts than others. For instance, in the Netherlands, payback clauses are found in several sectors, yet the financial and the information and communication technology (ICT) sectors include them in employment contracts more frequently. In Italy, the mechanical, ICT, plastic production, handcraft technology and pharmaceutical industries use agreements on payback clauses.

Although white-collar employees seem to reach agreements on payback clauses more frequently than other colleagues, payback clauses may also be used with low-skilled employees to finance their training plans (there are examples in the UK).

### **The role of payback clauses**

Payback clauses can motivate employers to increase investment in employee training as they can reduce the risk of loss of investment in training and help avoid the loss of human resources with important know-how. Even when employer-financed training reinforces the relationship between employers and employees (because the employer supports the employee's personal training engagement, which can be conceived as sign of trust in the employee's capacity for professional development within the same company) the payback clause may serve as an insurance mechanism for the employer. Particularly in times of financial crisis, companies want to be sure about their investments; although companies tend to invest less in training, payback clauses are security for their investments.

Overregulation at national or sectoral level may lead to underinvestment in training. If the conditions set are restrictive they may exclude cases where employers would otherwise apply payback clauses. For example, if the cost of training must be higher than EUR 3 000 or the training has to last more than 60 days to be considered for reimbursement (in case of employment contract termination) employers may be reluctant to provide training which is less expensive or of shorter duration.

In contrast, lack of regulations (at national or sectoral level) can cause legal disputes (at company level) in cases in which enforcement of a payback clause is required. This suggests that some frame conditions should be set at higher operational level (national or sectoral) to avoid major misunderstandings between employer and employee.

Defining conditions in collective agreements at sectoral level or in companies seems a more suitable approach, allowing the rules on payback clauses to adapt better to sector/branch or the company and employee training needs (for example Dutch collective agreements).

The agreements on payback clauses are assumed as a contractual instrument for protecting the interests of contract parties. The contractual retention period is a safeguard for both employers (who may avoid fluctuation of trained staff and maintain and employees committed to the company) and employees (who may feel more secure about continuity of employment).

It should be noted, though, that companies have also other ways to incentivise workers to stay with the firms after a period of training, including promotions and salary increases. Payback clauses and linking participation in training to career/better working conditions have a similar objective: ensuring that the investing company will not lose out. The first instrument does this by ensuring the company that the investment costs would be recouped if employee leaves; the second does so by increasing the likelihood that the benefit from training will accrue to the investing firm (a promoted worker is less likely to leave the firm). It goes without saying that an agreement on a contractual retention period with a perspective of higher benefits after training (which is a motivation for the employee to undertake training) would be more easily accepted by employees.

Payback clauses also serve to support both parties in providing and participating in training. Payback clauses that apply when the employee does not complete (successfully) the training course can be useful in motivating employees to finish the training (disciplinary effect) and making them reflect on the importance of training for their career development. This may further encourage employers to invest.

## Recommendations

Governments, particularly ministries of education and labour, stakeholders such as employers' federations and trade unions, plus company representatives, should work together to design functional payback clauses (with the aim of tailoring them to the particular needs of a sector and/or company) and to promote them:

- (a) design payback clauses in such a way that would allow balance specificity (to ensure security for employers and employees involved) with flexibility (to be able to specify regulations where necessary). This could be done through:
  - (i) allowing the labour code to be amended at sectoral and/or company level; the labour code itself would allow the use of payback clauses explicitly, mention exceptions and underline the reasonableness of payback clause conditions;
  - (ii) specifying more detailed conditions at sectoral and/or company level (with the aim of tailoring them to the particular needs of a sector and/or company);
- (b) allow the use of payback clauses for training which may not be particularly expensive or of long duration;

- (c) target companies and employees currently not addressed (e.g. SMEs that may not provide expensive training, fixed-term employees);
- (d) combine the regulations on payback clauses with regulations on training leave and mitigate/eliminate possible inconsistencies: although in many countries training leave is financed from (sectoral) training funds they might not cover all training needs/related training costs; further employer investment could be encouraged through payback clauses;
- (e) provide information and advisory services in relation to payback clauses; develop guidelines on the use of the instrument; implement campaigns promoting the provision and participation in training by using payback clauses (where no other more appropriate instruments exist).

## CHAPTER 1.

# Introduction

### 1.1. Rationale of the study

One of the seven flagship initiatives of the Europe 2020 strategy is developing an agenda for new skills and jobs with the aim of creating conditions for modernising labour markets. This should help in raising employment levels and ensuring the sustainability of European social models. It means empowering people through the acquisition of new skills, to enable the current and future workforce to adapt to new conditions and potential career shifts, reduce unemployment and raise labour productivity (European Commission, 2010).

In addition to European Commission strategies to achieve this target across Europe, the Member States are requested to ensure that the competences required for further learning and the labour market are acquired and recognised through general, vocational, higher and adult education, including non-formal and informal learning (European Commission, 2010). While compulsory education and IVET are covered generally by the State in European countries, employers and employees are requested to invest more in the skills development required after entering the labour market and throughout one's working life. One of the most important challenges for governments is to create the appropriate conditions for smooth and well-managed cooperation between stakeholders regarding investment in training. In particular, investments by companies in VET need to be increased and protected, especially in those countries where public support for the initiative is rather low.

In some countries, State intervention in funding VET is reflected via the introduction and operation of cost-sharing instruments on a compulsory or voluntary basis. One example is training levy schemes where companies and sometimes also employees pay a certain percentage of their payroll into a training fund (Cedefop, 2008; 2009a); another example is tax incentives (Cedefop, 2009b). There are also other instruments such as vouchers, grants, saving schemes and ILAs (Cedefop, 2009a; 2009c) where the costs are shared mainly by the State and individuals.

Despite government initiatives to (co-)finance employee VET, there may be insufficient skills demand coverage in the European labour market. Companies and employees are expected to invest more in their own training needs. For this, governments and social partners coordinate the design of regulatory framework conditions to support private investment by companies in VET, such as (paid)

training leave and payback clauses for employer-financed training; in some cases these can be related to each other. The regulatory framework for employer-financed VET can be considered as complementary to public funding and cost-sharing instruments between individuals and/or employers and the State, particularly in countries where public provision and investment in VET cannot cover individual and company training demands satisfactorily.

Regulations on training leave allow employees to undergo training without interrupting their salary payment (paid training leave) and/or with the benefit of maintaining their employment contract until they return from training (unpaid training leave). Employers may also bear other costs, such as direct costs of fees, travel and accommodation. When salary payment is maintained during training, such payment is considered an indirect cost for the employer <sup>(3)</sup>. To reduce the risk of investment failure – for example, if an employee leaves the company (shortly) after the training, a practice which may hamper the employers' willingness to pay for training – payback clauses may serve as insurance or safeguard. If the payback clause becomes effective, i.e. when the employee resigns the contract and the employer claims reimbursement, either the employee or the new employer will have to reimburse the costs of training or at least a certain share of them.

Payback clauses for employer-provided training remain an unexplored topic. This report aims to fill identified research gap.

## 1.2. Rationale and nature of payback clauses

Payback clauses do not allocate funds directly to training but their existence can support employer investment in training.

They are essentially a legal instrument that encourages companies to bear the cost of training by allowing them to bind employees for a certain period of time after training in compensation for its provision. Employees are free to move to another company but, if they terminate the contract within the contractual retention period, they can be requested to reimburse (a share of) the cost of training. The conditions of reimbursement have to be appropriately designed to be enforceable.

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<sup>(3)</sup> The loss of productivity arising from the employee's absence from the workplace during training may also be considered an indirect cost. In this case, the salary would not have to be counted separately as it is part of the productivity loss.

The main objective of payback clauses is to reduce employer uncertainty about the ability to appropriate of the benefits from training. They deter poaching by other companies seeking a 'free ride' by hiring workers trained by other firms.

However, to be open to such poaching firms must first understand the importance of training and be willing to invest in it. Payback clauses will not make firms that do not understand the importance of training any more appreciative of the benefits that they might obtain from it; such clauses will not change organisations' attitudes toward the importance of training.

In general, payback clauses can be set out at national level, for example in the labour code, in collective agreements between social partners (employer federations and trade unions) and/or at company level, either as an agreement between union representatives or workers' council and the management or in individual contracts. The regulations usually describe:

- (a) the groups of employees, kind of training and contracts for which payback clauses can be applied;
- (b) the type of costs that may be included in the agreement on reimbursement;
- (c) the length of the period of time an employee may be requested to reimburse the cost of training after its completion (contractual retention period);
- (d) the share of the training cost that has to be reimbursed depending on the time elapsed after training (redemption of training costs).

The conditions laid down in payback clauses, such as the kind of training that may be covered, the contractual retention period and amount to be reimbursed after training, can limit their use in practice and may even rule out the kind of training that employers would finance, provided they can protect their investment by means of payback clauses at the same time.

Payback clauses apply particularly to training that can be transferable to other companies and particularly for expensive training. This will be shown by the analysis of the conditions that usually determine the cost thresholds of training for the use of a payback clause in a training or employment contract.

A further reason why payback clauses might not be used so often is that training increases job satisfaction, though it is not clear if this is from the training itself or the ensuing expected career advancement. Employer provided (i.e. paid for) training correlates with increased job satisfaction across Europe, and the relationship is best understood in terms of a gift exchange model: the employer, by financing training, gives the workers something he/she values; the employees then reciprocate this gift by staying with the firm and producing higher levels of effort. However, when the training is subject to payback clauses, employees might perceive that they are not receiving a gift since the employer, implicitly, does not trust their loyalty or willingness to return the gift. Employees might feel

that they participate in the cost of training by giving up their freedom to move (at no cost). As a consequence the expected return in higher productivity through additional effort might not materialise when employers offer (and pay for) training under payback clauses agreements.

Lastly, the need for payback clauses is linked to the potential for poaching. There is evidence, however, that the turnover of trained personnel during the first and second year after training is relatively low. Bassanini et al. (2007) estimate a quit rate of 7 to 10%, so employers may not see any need to reach an agreement on reimbursement.

### 1.3. Objective and structure of the report

The objective of this report is to gain better understanding of the use of payback clauses in Europe, and in particular:

- (a) provide an overview of whether and how payback clauses for employer-financed training are regulated in European countries;
- (b) get insight into practical use of payback clauses;
- (c) reflect on strengths and weaknesses of payback clauses and on the role they (can) play as support to employer-financed training and participation in VET.

The analysis of the use of payback clauses considers the following:

- (a) the existence of regulation, which refers to the legal framework in which the conditions for the use of payback clauses are established;
- (b) the implementation, which relates to the extent to which payback clauses are included in employment contracts and training agreements;
- (c) enforceability/enforcement, which refers to those cases where reimbursement of training costs was requested because the employee left the company before the end of the contractual retention period agreed in the contract or established by law.

This study is structured as follows: after outlining the rationale, object and objectives of the report, Chapter 2 focuses on the research strategy and the steps undertaken for carrying out the investigation on the use of payback clauses in 33 European countries, and in particular in the eight countries selected for the in-depth analysis. Chapter 3 presents the main operational features of payback clauses: how they are regulated in each country and the conditions set out in the regulations. Chapter 4 provides analysis of payback clauses in the countries selected for the in-depth studies (Germany, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Sweden and the UK). This serves as the basis for the

analysis in Chapter 5, which compares the design of payback clauses and experiences in implementing them; it indicates strengths and weaknesses based on responses from stakeholders and the opinions of VET experts. Chapter 6 offers recommendations for further research and development of a policy framework for payback clauses in the European context.

A more detailed description of the regulations and use of payback clauses in the remaining countries (not covered by in-depth analysis) can be found in Chapter 7. The chapter also provides brief information on the countries in which regulations on payback clauses were not found (Cyprus, Denmark, Finland, Greece, Iceland and Liechtenstein).

## CHAPTER 2.

# Methodological approach

## 2.1. Research strategy

### 2.1.1. Review of relevant literature documents

The most important task at the beginning of the research was to identify level of regulation of payback clauses. The literature review showed that they may be regulated at national, collective or company level (between the management and the representatives of trade union or between employer and individual).

The labour legislation in each country and, in some cases, the existing codes on continuing education were reviewed <sup>(4)</sup>.

In countries that do not regulate payback clauses at national level, provisions on payback clauses may be a subject of social partner or company-level agreements. Therefore, along with labour codes, ReferNet VET in Europe country reports from 2009 and 2010 <sup>(5)</sup> were reviewed to obtain additional information on VET (for employees) in each respective country, which could help to identify the possible level of regulation.

### 2.1.2. Online survey

An online survey was disseminated in October 2010 to individuals across Europe with the aim of confirming and complementing information on the existence and operation of payback clauses in each country. The sample consists of continuing (vocational) education and training experts from each of the 33 countries as well as members of groups working on issues related to workforce development at European level <sup>(6)</sup>. The questionnaire comprises 25 basic questions on the following topics:

- (a) existence of payback clauses;
- (b) level of regulation;
- (c) types of training and costs that may be covered;

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<sup>(4)</sup> Several countries provide official translations of the labour code in English. In other cases, relevant paragraphs had to be translated from the original language.

<sup>(5)</sup> ReferNet VET in Europe – country reports can be found in:  
<http://www.cedefop.europa.eu/EN/Information-services/vet-in-europe-country-reports.aspx>

<sup>(6)</sup> Please see the detailed description of the sample groups in Annex 4.

- (d) type of employees entitled to employer-financed training and liable to reimburse;
- (e) share of costs to be reimbursed and description of the depreciation of costs depending on the time elapsed since training;
- (f) exceptions or special regulations;
- (g) key objectives of payback clauses;
- (h) impact and achievement of the objectives;
- (i) extent of application of payback clauses.

While most of the questions were relevant for all levels of regulation (national, social partner or company agreements, individual contracts), some questions were tailored to obtain further information on region <sup>(7)</sup> or branch/sector in which payback clauses would be applied.

The answers from respondents who provided more detailed information formed part of the source material for the country descriptions for the regulation of payback clauses in Chapter 3.

The country description is mainly based on the results of the literature review, documents and, particularly, the labour codes/law. It is supplemented by the findings of the online survey.

### **2.1.3. In-depth cases**

Eight countries – Germany, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Sweden and the UK – were selected for further investigation into the operation and performance of payback clauses. These are spread across Europe, covering all European regions, different country sizes in terms of the population, national structures (centralised and federal political systems), as well as status, i.e. EU-15 and newer Member States. As a result, the full – or at least a broad – range of country/regulation models are covered as well, including regulations for public sector employment.

In addition to further reviews of literature and data in the eight countries, three separate questionnaires were prepared for those involved in the development and implementation of payback clauses at each level of regulation: one for the ministries of labour and education, one for the social partners and one for companies.

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<sup>(7)</sup> A question about the existence of regulations of payback clauses at regional level was included in the online survey but according to the response they are practically inexistent at this level.

The questionnaires for the in-depth cases are divided into four aspects:

- (a) general aspects of VET and operation of payback clauses. The key objectives of this part in the questionnaire are: (re)confirming the level of regulation, finding out if payback clauses are regulated at more than one level within a country, and if sectoral and/or company-level agreements can amend or replace the national regulations of payback clauses where they are part of the labour code;
- (b) detailed arrangements, (i.e. specific conditions set in regulations) on payback clauses depending on their level of regulation (national, sectoral, company level);
- (c) questions about the performance of payback clauses and framework conditions. The answers form the basis of the comparative and SWOT analyses;
- (d) quantitative aspects (if applicable): some questions have been included attempting to gain (approximate) information regarding collective agreements or agreements at company level to assess the real impact of payback clauses as support for employer-financed training. However, the experience with this study suggests that there is little statistical data on the implementation of payback clauses.

The four sections of the questionnaire can be found in Annex 1 and the response table in Annex 2.

#### **2.1.4. Limitations of research**

The literature review revealed no evaluations or (systemic) documentation on the operation of payback clauses: this report is a pioneer in gathering, classifying and assessing such information. To gain better understanding of the use of payback clauses, European labour codes were reviewed (as a starting point).

The review of documents and relevant literature was limited by a lack of information on the topic, especially in the common European working languages (English, French and German), particularly in eastern and northern European countries.

The online survey was carried out to obtain further details about the regulation, provisions and implementation of payback clauses, and to supplement the information in the literature review. One of the most important objectives of the survey was to find out how relevant payback clauses are in promoting employer-financed training. The response rate was low and results are scarce: this may have several causes including lack of commitment of some (potential) respondents to the research, the specificity of the theme, the method of dissemination (online), the chosen sample, technical constraints (spam settings),

etc. It certainly suggests that the knowledge of payback clauses is fairly limited. Some respondents (who have indicated the existence of payback clauses in their countries) could not provide the expected information on the subject (but they have shown interest in the research). The early detection of a relatively low response rate was important in adjusting the method of investigation towards a different course and focus, for example, giving more importance to assessment questions in the in-depth cases.

However, sectoral and individual agreements between employers and employees were also hard to identify on a systematic basis from the in-depth cases. A systematic overview required identification of companies meeting the criteria of being more likely to invest in VET and, therefore, more likely to reach agreements on payback clauses.

Even though much effort was spent on this task, it was not possible to reach a definitive conclusion on whether payback clauses exist in all countries concerned. In six countries no regulations on payback clauses were found (Chapter 3). It might be that in some of these countries there are examples of applying payback clauses, at least at company level, while in others they most probably do not exist, particularly in countries with highly developed and publicly financed VET systems. Yet, some final uncertainty remains.

## CHAPTER 3.

# Key findings: payback clauses in 33 European countries

This chapter summarises the main characteristics of payback clause regulations in the 33 European countries. According to the organisations that regulate payback clauses within a country (government, social partners and companies), the countries have been classified as follows:

- (a) countries with regulations at national level in the labour code;
- (b) countries with collective agreements on payback clauses between social partners (employer federations and trade unions);
- (c) countries with agreements at company level, either between management and union representatives/workers' council or in individual contracts between employer and employee.

Table 1 **Level of regulation of payback clauses**

<b>National level (14)</b>	<b>Social partners (3)</b>	<b>In companies (10)</b>	<b>Not encountered (6)</b>
Austria	FYROM	Croatia	Cyprus
Belgium	Netherlands	Germany	Denmark
Bulgaria	Norway	Ireland	Finland
Czech Rep.		Italy	Greece
Estonia		Latvia	Iceland
France		Malta	Liechtenstein
Hungary		Spain	
Lithuania		Sweden	
Luxembourg		Turkey	
Poland		UK	
Portugal			
Romania			
Slovakia			
Slovenia			

Each of the countries with payback clause regulations in the labour and/or civil code have been assigned to the main category, national level, although the corresponding law explicitly allows amendments or the replacement of regulations by collective agreements between social partners and/or agreements at company level. The same applies for the countries whose main category of regulation is at sectoral level, since collective agreements usually recommend

reaching agreements on payback clauses but do not establish concrete conditions for a contractual retention period or for the form of reimbursement or redemption. National regulations and/or social partner agreements on payback clauses can be amended within companies, provided that the conditions established are more favourable to the employee than those set out in the labour code and/or the collective agreement. Otherwise, in the case of legal disputes, (labour) courts would have to verify that the conditions are reasonable.

The research results clearly suggest that national (legal) regulations of payback clauses exist in 14 countries (42%), while another three (9%) apply primarily to social partner agreements. This means that more 'centralised' regulations on payback clauses exist in slightly more than half (51%) of the countries under review. The findings also show that almost one third (30%) of the countries do not have overarching regulations, although agreements may exist, either at company level or individually, between employer and employee. No information has been found on the existence of payback clauses in six countries <sup>(8)</sup>.

The findings also reveal regional differences. While national regulations are particularly prevalent in the central and east European countries (except Latvia), specific national regulations on payback clauses could not be identified in the northern countries. Payback clauses are also regulated at national level in most west European countries (except the Netherlands and the UK), while the south European countries have no national regulations (except Portugal).

Social partner agreements on payback clauses exist in one northern country (Norway), one western country (the Netherlands) and one south eastern country (FYROM).

The 10 countries applying individual (company) regulations are geographically spread across Europe:

- (a) three western countries (Germany, Ireland and the UK);
- (b) three south-western countries (Italy, Malta and Spain);
- (c) two south-eastern countries (Croatia and Turkey);
- (d) one northern country (Sweden);
- (e) one Baltic country (Latvia).

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<sup>(8)</sup> Payback clauses could not be identified in Cyprus, Denmark, Finland, Greece, Iceland and Liechtenstein.

### 3.1. Regulations at national level

As shown in Table 1, legal provisions on payback clauses at national level have been found in 14 of the 33 countries under investigation. The legal regulations can cover several conditions:

- (a) form of agreement (written);
- (b) length and maximum duration (contractual retention period);
- (c) types of training;
- (d) type of employee and/or contract which payback clauses apply to;
- (e) costs to be reimbursed;
- (f) redemption form;
- (g) exceptions of applicability or validity.

The more specifications included in the labour code, the higher the degree of detail on payback clauses. A closer look at the conditions outlined in the law reveals that the level of detail varies by country. Countries can be classified into high, medium and low degree of detail as shown in Table 2.

Table 2 **Level of detail of regulations at national level**

Countries	Level of detail
Belgium Luxembourg Slovakia	High: higher level of detail relates to the number of specifications on payback clauses in the labour code of a country. Regulations with a higher degree of detail usually specify the contractual retention period, the share of cost to be reimbursed, the redemption of reimbursement as well as the exceptions and special regulations.
Czech Rep. Austria Romania	Medium: usually, regulations with medium level of detail define the frame conditions of payback clauses but allow specific definitions of terms of payback clauses in individual contracts at company level.
Bulgaria Estonia France Lithuania Hungary Poland Portugal Slovenia	Low: low level of regulation means, in most cases, explicit legal permission to develop clauses through collective or contractual agreements but the terms under which the clauses may be agreed are not exactly defined by law. For example, the labour codes for Bulgaria, Estonia, Hungary, Lithuania and Slovenia define the period of validity for payback clauses but not the share of costs to be reimbursed or the redemption during the contractual retention period after training.

It can be assumed that the level of detail influences the use of payback clauses, i.e. the extent to which payback clauses are included in employment contracts and training agreements and may become enforceable after training. For instance, employers can be hampered by restrictive specifications for the use of payback clauses (e.g. only for expensive training courses). In contrast, employees could be reluctant to accept payback clauses when overarching regulations are not very clear and thus they cannot estimate how much they would have to reimburse in the case of termination of employment. This issue will

be analysed in the following sections from the answers gathered by the in-depth case studies.

In general, payback clauses can be applied for training that has been undertaken voluntarily by the employee and is not mandatory as a part of the work activity. The labour codes in France, Luxembourg and Hungary emphasise this condition. The labour codes in Belgium and Luxembourg allow for the use of payback clauses for general training, i.e. training that particularly benefits the employee (firm-specific training is difficult to transfer to future employment). The labour codes from Bulgaria, the Czech Republic and Slovakia mention that the training shall serve for improving, upgrading and acquiring qualifications. Slovakia and Hungary include both study and apprenticeships as kinds of training for which payback clauses can be applied, while Austria and Bulgaria only include the latter. Some of the countries with a low degree of detail on the conditions of payback clauses in the labour code, such as Estonia, Poland, Portugal and Slovenia, do not establish the kind of training courses for which payback clauses apply. In principle, employers and employees can reach an agreement on payback clauses for any kind of training desired.

Payback clauses may be applied to almost all employees such as managerial, clerical, non-managerial/clerical employees and trainees. No distinction is made between permanent full-time and part-time contracts. Some countries specify exceptions; according to the Estonian labour code, payback clauses are not applicable to minors and in Luxembourg apprentices are excluded from such clauses.

Some countries establish either the minimum costs or duration of training to be legally considered for an agreement on payback clauses. Slovakia and the Czech Republic set a minimum amount of costs related to training of EUR 3 320 and EUR 3 000, respectively. In Romania there is no cost limit but the training shall last more than 60 days; Belgium offers the options of eligibility between minimum training costs (EUR 2 830) or minimum duration (80 hours). Adding up, these minimum cost levels of and/or the length suggests that payback clauses are applicable for expensive and/or time-intensive training courses. However, in the eight countries with no limits on the minimum cost of training stated in law, employers and employees shall arrange these conditions on reimbursement case by case.

With regard to the costs to be reimbursed, only the Austrian labour code states explicitly that not only actual training costs (e.g. cost of enrolment and fees) but also wages paid during training can be included in the reimbursement. In the statutes from the remaining countries there is no concrete specification in this regard.

The contractual retention period for the employment relationship is between three and five years. Exceptions are Lithuania, which has a relatively short maximum contractual retention period of one year and Austria with a longer period of up to eight years. The contractual retention period is agreed individually in France and Slovenia.

The amount to be reimbursed may be adjusted according to the time elapsed after training. In Belgium and Luxembourg the amount to be reimbursed is calculated by year after the termination of training; in most countries it is agreed individually related to the costs and the period elapsed after training, for example by month.

In most countries, payback clauses can be invoked by voluntary resignation of the employee and by dismissal due to a serious breach of the employment contract. In Bulgaria and Hungary, the non-completion of training is also a valid cause for a reimbursement request. Table 3 provides an overview of the countries with payback clause regulations in the labour code and the degree of detail, including the most important specifications. A detailed description of the selected countries can be found in Section 4.1.

### 3.2. Regulations at sectoral level

Regulation of payback clauses primarily at sectoral level is relatively uncommon. Only FYROM, the Netherlands and Norway have collective agreements with regulations on payback clauses between employers' federations and trade unions.

The specifications contained in these agreements are similar to those from the countries with regulations at national level but, in some cases, there is more detail as to the amount covered, the kind of training, and the share of reimbursement by time elapsed after training. In the Netherlands, individual arrangements for training are often made in the context of collective agreements and agreements at company level. In FYROM, the labour code allows social partners to agree on special regulations for VET, for example for public servants. Further, payback clauses have been encountered in the collective agreements for public servants in this country. Finally, collective agreements in Norway may have regulations on payback clauses.

Table 4 summarises the conditions of payback clauses encountered in Dutch collective agreements. A detailed description can be found in Section 4.2.1.

Table 3 Regulations on payback clauses at national level

		Country	Type of training	Specification	Costs to be reimbursed	Amount	Contractual retention period (years)	Reimbursement cause	Exceptions
HIGH	1	Luxembourg	General training	Training that costs more than EUR 1 240	Reimbursement required if the remaining training costs are higher than EUR 1 240	2nd year: 60% 3rd year: 30% Deduction of EUR 1 240 p.a.	Maximum three	Resignation Dismissal due to misconduct	Employer's misconduct Direct benefits for company
	2	Slovakia	Study Further education and training	Further education and training: if costs more than EUR 3 320	Individual agreement	Maximum 75% of costs and proportional reduction	Maximum five	Non completion of studies	Probationary period
	3	Belgium	General training	More than 80 hours or more than EUR 2 830. Permanent contract Minimum wage: EUR 30 227		1st year: 80% 2nd year: 50% 3rd year: 20%	Maximum three	Resignation Dismissal by extraordinary reasons	Breach of employer Dismissal; Non-use of qualification for six months in the last 12 months
MEDIUM	4	Romania	Internship Training courses	More than 60 days	Expenses related to training	Proportional	Minimum three	Dismissal on disciplinary reasons Resignation	
	5	Austria	Traineeship General training (employees)		Actual costs of training wages paid	Proportional	Maximum eight	Resignation Mutual termination	Minors
	6	Czech Republic	Improvement Upgrading	More than EUR 3 000 (not mandatory training)	–	Proportional	Upgrading Maximum five	–	Incapacity for work

LOW	7	Bulgaria	Acquiring qualification (higher qualification and retraining) Apprenticeship		Individual agreement	Individual agreement	Maximum three, five or six years depending on the kind of training	Termination of contract Non completion of training	–
	8	Estonia	–	–	–	Proportional	Maximum three years	Resignation, dismissal due to breach of the employment obligations	Minors
	9	France	Voluntary training	If costs go beyond legal ceiling defined in the labour code	–	Proportional	Individual agreement	–	–
	10	Hungary	Voluntary study/training	–	–	Proportional	Maximum five years	Non completion of studies No start of work Resignation	Mandatory training
	11	Lithuania	–	–	–	Costs incurred last year	One year	Resignation	–
	12	Poland	–	–	–	Proportional	Maximum three years	Resignation, dismissal due to breach of training of employment contract.	–
	13	Portugal	–	–	Individual agreement	Individual agreement	Maximum three years	Resignation	–
	14	Slovenia	–	–	Individual agreement	Individual agreement	–	–	–

Table 4 Payback clauses in collective agreements in the Netherlands

	Agreement	Type of training covered by the employer	Costs to be reimbursed and redemption	
Sectoral agreements	1	WOS	<p>Share of cost varies by kind of training as follows:</p> <ul style="list-style-type: none"> <li>• 100% for firm-specific training which is required for the currently work activity</li> <li>• 75% for training courses that are not considered as necessary for the performance of current work but for improving employees' labour market position</li> <li>• 50% for preparation of exams</li> </ul>	<ul style="list-style-type: none"> <li>• 25% of training course fees if the employee fails to pass the training</li> <li>• 100% of the cost covered if the employee leaves the company within the first year after training</li> <li>• 50% of training course within the second year after training</li> <li>• Binding period: two years after termination of training</li> </ul>
	2	Information, communication and office technology branch	<p>General training: 100% of fees, exams and administration costs and 50% for learning material. Training must take place as much as possible during working hours.</p>	<ul style="list-style-type: none"> <li>• 100% within the first year after completion of training</li> <li>• 50% within the second year after completion of training</li> <li>• Contractual retention period: two years after termination of training</li> </ul>
Company agreements	3	De Lage Landen International, Athlon Car Lease International	<p>Firm-specific with total cost less than EUR 7 500:</p> <ul style="list-style-type: none"> <li>• 100% of training for current work or future task within the company</li> <li>• 50% of cost for training that may not be imminent for the current work</li> </ul>	<p>Reimbursement can be reclaimed only if the remaining amount after redemption is more than EUR 2 000. Travelling expenses cannot be recouped.</p> <ul style="list-style-type: none"> <li>• 90% within the first year, 50% after the second year and 20% if training is interrupted or final examination failed</li> <li>• Paid training leave if training lasts more than 50 hours. Therefore 90% of the hours have to be reimbursed within the first year and 50% within the second year</li> <li>• Contractual retention period: 24 months after termination of training</li> </ul>
	4	Delta Lloyd Group	All kinds of training	<ul style="list-style-type: none"> <li>• Training related to the current function or mandatory training on bank and insurance matters have not to be reimbursed</li> <li>• For training up to EUR 4 500: 1/12 of the costs for each month remaining until expiration of the contractual retention period</li> <li>• For training over EUR 4 500: 1/24 of the costs for each month remaining until expiration of the contractual retention period</li> <li>• In case of interruption of training, the training cost borne by the employer already can be deducted from the employees' salary</li> <li>• Contractual retention period: 12 or 24 months respectively</li> </ul>
	5	Hapag Lloyd Group	All kinds of training exceeding EUR 950	<ul style="list-style-type: none"> <li>• 60% within the first year after training; 30% during the second year</li> <li>• 50% for non-completion of training or non-acquisition of diploma</li> <li>• 100% for non-completion of training or non-acquisition of diploma due to carelessness. In this case, reimbursement can be deducted from salary</li> <li>• Contractual retention period: three years</li> </ul>

6	Odfjell Terminals	Certificated training. Employer covers the cost of training after completion. Training costs are defined as fees and training materials	<ul style="list-style-type: none"> <li>• 100% of the cost within the first year and 50% within two years</li> <li>• Contractual retention period: two years</li> </ul>
7	DMS Biologics	Training directly or indirectly connected with the current or future work task within the company (promotion and/or transfer) and amounts more than EUR 2 500	<ul style="list-style-type: none"> <li>• 1/24 for each month remaining until expiration of contractual retention period</li> <li>• Contractual retention period: two years</li> </ul>
8	DHL	No specification for kind of training	<ul style="list-style-type: none"> <li>• 100% in case of non-completion of training and 50% of training costs borne by the employer within one year after training</li> <li>• Contractual retention period: one year</li> </ul>

### 3.3. Agreements at company level

Identifying regulations in companies is an even more difficult task than for social partner agreements. Evidence has been provided by online survey and examples given by interview partners from the ministries, representatives of social partner organisations and companies.

Table 5 **Countries with regulation of payback clauses at company level**

Country	Individual contracts/company level	Specification
Croatia	Payback clauses may be included in individual contracts for general training.	
Germany	Payback clauses may be included in individual contracts for training and traineeship.	Regulation can be designed according to the civil law and recommendations of the labour court.
Italy	Payback clauses can be regulated by employment contracts.	
Ireland	Payback clauses can be regulated by employment contracts.	Reimbursement has to be agreed before the start of training.
Latvia	Payback procedure can be part of a separate agreement.	
Malta		Agreement when training expenses exceed EUR 1 000 (not statutory statement).
Spain	Implementation in individual agreements (employment contract) is possible.	
Sweden	Payback clauses can be regulated by employment contracts.	
Turkey	Payback clauses can be regulated by employment contracts.	
UK	Payback clauses in employment contracts are becoming more common.	

Germany, Italy, Sweden and the UK are the countries selected for the in-depth studies where neither national regulation nor sectoral agreements on payback clauses exist. In these countries, some companies provided examples and opinions of their application on payback clauses that will be shown in more detail in Section 4.3.

Table 6 **Examples of agreements at company level**

	<b>Example</b>	<b>Type of training, contract/employee and cost covered by the company</b>	<b>Reimbursement conditions</b>
DE	Steel and technology group with more than 23 000 employees	<ul style="list-style-type: none"> <li>• Higher education and postgraduate programmes which conclude with a final examination.</li> <li>• Costs included are fees and payments for training courses, costs of teaching materials and travel and subsistence payments</li> <li>• All employees except those on fixed term contracts</li> </ul>	Contractual retention period may not be longer than half of the period of the training time. The redemption for costs to be reimbursed is made pro rata temporis by month. In cases where the employee faces liquidity constraints, exceptions can be made after an assessment of the particular case. In general, the period of reimbursement can be extended or cancelled.
DE	Deutsche Bahn AG	<ul style="list-style-type: none"> <li>• Voluntary training that is recognised as helpful for the current occupation or considered relevant as a measure for improving local or professional mobility</li> <li>• The DB AG assumes partially or fully the costs of training programmes if they are not covered by a third party</li> </ul>	Contractual retention period of max. 18 months after the completion of the training programme. DB AG can demand reimbursement of the amount expended on training in whole or in part, depending on the circumstances of the individual case.
DE	Hamburger Hafen und Logistik	<ul style="list-style-type: none"> <li>• Training that is directly related to the current or foreseeable future job requirements in this company</li> <li>• In individual cases, some kinds of training which do not meet the general conditions can also be promoted</li> </ul>	Contractual retention period: two years after completion of training.
IT	Business school for SMEs	<ul style="list-style-type: none"> <li>• General, external vocational and planned on-the-job training. Training on very specific internal tasks, such as internal quality system management, is not included in the clauses</li> <li>• Employees with part-time or fixed time contracts are excluded</li> </ul>	No contractual retention period but employee shall give notice of leaving the company, for example six months in advance. This condition is adaptable case by case.
SE	Appliance maker company with around 2 500 employees	<ul style="list-style-type: none"> <li>• Higher and postgraduate education programmes</li> <li>• Clauses include fees and payments for training courses as well as travel and subsistence costs</li> <li>• Employees with permanent contract only</li> </ul>	The contractual retention period and the conditions of reimbursement are specified by case in relation to the amount of training expenses but the following example is a common pattern: 100% of course fee has to be reimbursed prior to completion of training and within six months; 75% within one year; 50% within two years and 25% of course fee within three years.
UK	Employer E1 – Medium size multi-site electronics retailer	<ul style="list-style-type: none"> <li>• Broad kind of training</li> <li>• Fees, materials and travel costs</li> </ul>	Usually, trained employees are expected to stay a minimum of one year, but they can be requested to reimburse 100% of the cost if they leave within the first year and 50% within the second year after training.

UK	Employer E2 – Medium size publicly owned private health care company	<ul style="list-style-type: none"> <li>• Professional nursing staff with full-time contracts upgrading from Level 2 (non-graduate) to Level 1 (graduate)</li> <li>• Fees and payments for training courses</li> </ul>	The employee has to reimburse 100% of the costs if s/he leaves during the first year of training and 50% during the second year after training.
UK	Employer E3 – Medium size publicly owned private hospital	<ul style="list-style-type: none"> <li>• Generally, external training but also management training programmes</li> </ul>	Employees may agree to reimburse 100% of the training cost if they leave the company during the first year and 10% in second year after training.
UK	Employer E4 – Large size higher education provider	<ul style="list-style-type: none"> <li>• Courses offered by the organisation itself.</li> <li>• Primarily higher level courses</li> </ul>	Employees are generally expected to remain for two years after the end of the course. If the employee leaves then the costs can be recovered through a deduction from the final salary payment.
UK	Employer E5 – Medium size Higher Education Research Organisation	<ul style="list-style-type: none"> <li>• Part-time higher education. Where the request for training is made on the employee's initiative, there is likely to be negotiation about the course of study to ensure that it is relevant to the employer</li> </ul>	It is common for employers to expect a minimum of two years employment after the study is completed.
UK	Employer E6 – UK division of a global mining and mineral company	<ul style="list-style-type: none"> <li>• Job related and general external training</li> </ul>	<p>Employees are requested to reimburse 60% of job-related course fees incurred in the academic year the course is ongoing. Where a course has been completed, any fees incurred will not have to be reimbursed. For training that is not a condition of employment, leading to the employee's acquisition of specific qualifications or professional status, fees for courses and examinations are to be reimbursed as follows:</p> <p>100% for ongoing courses; 95% within one month after completion; 80% between one and three months; 60% between four and six months; 30% between seven and nine months; 10% between nine and 12 months.</p>

## CHAPTER 4.

# In-depth case studies

Table 7 summarises the countries selected for the in-depth analyses.

Table 7 **In-depth cases**

Region	Level of regulation		
	National	Social partner agreements	Company/individual contracts
Western Europe	Luxembourg	Netherlands	Germany; UK
Northern Europe			Sweden
Southern Europe			Italy
Eastern Europe	Romania; Slovakia		

Ministries, social partners and companies in the selected countries were surveyed on the regulations and operation of payback clauses (Annex 2). All four European regions (northern, southern, western and eastern Europe) and all three levels (national, sectoral or company) are covered by at least one country. However, payback clauses are rarely regulated by social partner agreements, being predominantly regulated through national regulations or at company level.

Luxembourg, Romania and Slovakia, selected as countries with regulations at national level, were used in the analysis of the influence of overarching national regulations on the practical use of payback clauses.

In the Netherlands, social partners are traditionally the decision-makers for the labour market and they play an important role in the organisation of VET policy. The Dutch collective agreements on VET often include regulations on payback clauses.

Four countries that reach agreements only at company level (Germany, Italy, Sweden the United Kingdom) were fundamental, not only for providing different examples of reimbursement arrangements but also in showing if (labour) courts play a role where there is disagreement between the contract parties.

Germany could be classified as a country with national regulations due to the general conditions set out in the civil code. However, given that the practical design of conditions is structured by case, this country is clustered with those that regulate payback clauses at company level.

## 4.1. Countries with national regulations

### 4.1.1. Luxembourg

Payback clauses may be relevant for employer-financed training, particularly for expensive training. The regulation was established in June 1999 in the labour code and amended in April 2010.

According to the labour code, employees can be requested to reimburse the cost of employer-financed training incurred in the last three years if the employment contract is terminated on the initiative of the employee or by the employer due to a serious instance of employee misconduct. The employee cannot be obliged to reimburse training that benefits the company directly (compulsory or firm-specific training). The redemption is foreseen as follows: the employee has to reimburse 100% of the cost incurred in the current year; 60% for the second year and 30% for the third year. Also, the amount to be reimbursed is reduced by EUR 1 240 per year <sup>(9)</sup>.

The cost of training must be higher than EUR 1 240 for payback clauses to become applicable, at least in the first year after training; otherwise there is no legally enforceable reason for the employer to claim reimbursement of training costs. For a contractual retention period of two years the cost of training would have to amount to at least EUR 2 480 and for three years, at least EUR 3 720. Thus, payback clauses only apply for relatively expensive and general (transferable) training courses.

Regulations on payback clauses apply for all employees, all kinds of contracts and all kinds of costs, except for apprentices participating in IVET, who are not considered as full-time employees by the labour code. The longest period of payback clause validity is three years and the amount owed to the company can be paid in one or in several instalments, according to the stipulations in the labour code regarding the redemption and the amount to be deducted per year elapsed. In the case of misunderstanding between employer and employee on the conditions of reimbursement, both can refer to the corresponding employer federation and trade union. In the event of legal dispute, which is a rare occurrence, each party can directly address the labour court.

Information provided by the Ministry of Education confirmed that regulations at national level are applicable and enforceable when no other agreement applies. The conditions on payback clauses established in the labour code can be amended or replaced by collective agreements at sectoral or company level

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<sup>(9)</sup> Summarised from the original text in French (Luxembourg; *Labour code*, 2011, Art. L.542-15 to 19).

provided that such conditions are less strict than the national regulations. The law establishes minimum standards that should be considered for the design of agreements between social partners or within companies. The Ministry of Education also indicated that payback clauses are used only in specific branches, such as airlines and the financial sector.

At sectoral level, several collective agreements were reviewed in search of reimbursement conditions for employer-financed training, but only in the *Collective bargaining agreement for bank employees* were any payback clauses that differed from the national regulations identified.

**Box 1      Collective agreement for bank employees in Luxembourg**

According to this agreement, individual access to different types of training is based on a consensus reached with the employer. The employer evaluates the employee's request for training and determines whether training is needed.

The agreement in the bank sector foresees employee tailored training activities according to the current stage of their careers from induction training, employment training, ongoing professional training, as well as retraining and advanced training. For each type of training the employer may contact any appropriate public or private institute, which is recognised by the public authorities and can issue diplomas and certificates recognised by the same authorities as well. The banking sector has its own Institute for Training in Banking (IFTB), which provides specific training for the sector.

Enrolment costs are advanced by the employer and then fully paid by him/her if the employee completes the course successfully. In the case of failure, after the required course attendance and sitting the relevant examination, the employee is liable to bear 50% of the training costs. In the event of failure without proper attendance or sitting the examination, 100% of the costs are payable by the employee and deductible from the 13th month allowance <sup>(a)</sup>.

The payback clauses in this agreement do not establish either a contractual retention period for the contract after training or redemption of training costs.

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<sup>(a)</sup> In the banking sector, employees are entitled to the payment of a 13th month allowance equal to the salary plus the household allowance, and respectively the seniority allowance payable by the employer to the employee in December.

Source: Luxembourg; *Collective bargaining agreement for bank employees*, 2010.

#### **4.1.2. Slovakia**

Similar to most European countries, IVET is primarily funded from public sources and CVET by employers and/or individual participants. Alongside individual self-financing and those resources obtained from EU funds, companies are the

second most important providers of CVET financing in Slovakia <sup>(10)</sup>. Aggregate data confirm that the share of companies investing in CVT increases with the size of the company, larger companies being generally more willing to invest in training (ReferNet Slovakia, 2010).

The Slovakian labour code foresees separate provisions on payback clauses for study and for further education and training:

- (a) for study: employers may support employees increasing qualifications providing them with time off, wage compensation and the reimbursement of study costs. In compensation, employees must be committed to remaining in the employment relationship for a certain period of time after the termination of study or reimburse the costs associated with the study. The reimbursement clause also applies when employees terminate the employment relationship prior to the completion of the study. The contractual retention period may not exceed five years, and the maximum costs to be reimbursed in case of termination of employment may not be higher than 75% of the total costs invested. The obligation to reimburse shall be reduced proportionately to the time elapsed after training and the remaining period of validity of the clause;
- (b) for further education and training, the employer and employee may conclude an agreement if the anticipated costs of training amount to at least EUR 3 319.39 and EUR 1 659.70 for companies with 20 or less employees. However, due to the relatively high costs that would have to be reimbursed, the training may not be compulsory for the employee <sup>(11)</sup>.

In both cases, for studies and further education and training, the obligation of an employee to reimburse costs shall not arise, particularly if:

- (a) the employer ceased to provide time off from work and wage compensation during the course, if the employee became incapacitated, over the long term, from performing such work for which s/he was improving his/her qualifications;

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<sup>(10)</sup> In 2008, 26% of the total expenditure in CVET was borne by employers, 29% by individuals and 21.6% by sources of EU funds, 14.7% by the State, 4.4% by labour offices, 1.7% by municipalities, 1% by foundations and 1.8% by other sources. This is based on a survey response of 521 institutions performed by the Institute of Information and Prognoses of Education in 2008 (ReferNet Slovakia, 2010).

<sup>(11)</sup> At the time of this research, there was a draft for the amendment of this paragraph. According to this, a new level of costs of EUR 1 700 will be set for study and further education and training, regardless of the number of employees. This measure is introduced with the aim of treating employers equally and reducing the level of costs required by law (Vantuch, 2011).

- (b) the employer terminated the employment relationship;
- (c) an employee becomes redundant by formal notification from the competent body or the employer following change of duties, technical equipment, reduction in the number of employees with the aim of increasing work efficiency, or other organisational changes;
- (d) the employer did not use the qualification that the employee had undertaken, for a period of at least six months in the preceding 12 months.

(*Labour code Slovakia: collection of laws 2001-09, §§ 63 and 155*).

According to paragraph 53 of the labour code, payback clauses are also applicable for the conclusion of an employment contract with a vocational school trainee. In this case, the trainee commits to staying in the company for a predetermined period of time, the maximum being three years. This written agreement may be concluded in the employment contract with a trainee aged at least 15 years. Unless otherwise agreed, if the trainee enters into a new employment relationship with a different employer during the contractual retention period and uses the qualifications acquired through training, the new employer shall be obliged to reimburse a proportionate part of the cost of training to the former employer. Currently, the amendment of this paragraph is underway. According to this, the trainee would be obliged to commit to remaining in employment or reimbursing the costs by him/herself, shifting the required reimbursement from the new employer to the apprentice.

The costs to be reimbursed shall correspond to the unfulfilled period of validity. The obligation for an employer to settle the costs shall not arise if:

- (a) the employee is unable, according to medical opinion, to execute the work for which s/he has been trained or to perform his/her current work;
- (b) the preceding employer violates the obligation towards the employee set in the employment contract, collective agreement or legal regulations;
- (c) the employee accompanies his/her spouse to the spouse's place of residence, or an adolescent employee accompanies his/her parents to a new place of residence;
- (d) the previous employer terminates the employment relationship with the employee, without serious misconduct on the part of the employee;
- (e) by virtue of the data in the preceding employer's confirmation of employment, the obligation to reimburse such costs is not applicable to the other employer.

(*Labour code Slovakia: collection of laws 2001-09, §§ 53, 63 and 68*).

Payback clauses are also applicable to public sector employees. If a civil servant does not remain in the employment relationship after achieving his/her qualification, s/he shall be obliged to cover the costs entirely or partially,

depending on the duration of his/her civil service employment relationship. This shall not apply in the case of a precarious state of health or in the case of a reduction in the number of civil service posts due to systematisation; in this case a civil servant shall be provided with the compensation to the amount of five times his/her service salary (*312 Act of 2 July 2001 on civil service and on amendments to certain acts*).

The results of research suggest that payback clauses are not part of collective bargaining agreements in Slovakia. Interviews with representatives of employer federations and trade unions reveal that payback clauses are not considered as crucial to discussion, in contrast with aspects such as wages or working conditions as is seen from existing general agreements.

Some 19 general agreements displayed on the respective Labour Ministry websites at the time of research were reviewed: none has an agreement addressing payback clauses and specific agreements on VET do not go substantially beyond the conditions set out in the labour code.

However, according to a trade union representative, the energy sector, chemistry, energy, pharmaceutical and rubber companies are more likely to use payback clauses. National regulations can be amended at sectoral and company level.

No problems with payback clauses were discovered during informal interviews with representatives of national authorities, trade unions and employers, except one case related to apprentices in the past that resulted in the new wording of the country's labour code.

An interviewee from a large international company, in the electrical sector, spoke of earlier problems with regard to the 'weak' regulation of contracts among trainees and employers. According to the regulation, reimbursement from the new employer can be requested if the trainee enters in a position where s/he uses the knowledge and skills acquired through the training financed by the former employer. However, if the trainee starts a new job where the skills acquired are not explicitly applied it is not possible for the former employer to enforce reimbursement. A company from the electrical sector used to cofinance IVET but often found that trainees managed to bypass the reimbursement obligation of their future employment by not entering the new employment in the same position held in the original company. The interviewee (active also at government level) initiated the amendment of the labour code to address this problem.

#### **4.1.3. Romania**

In Romania, payback clauses are regulated in the labour code and can be adapted or modified in sectoral and/or company agreements provided the conditions of these are made public and applied with the approval of the government. Otherwise, they are not applicable or enforceable.

According to the labour code (Art. 193), the following kinds of vocational training can be undertaken:

- (a) participation in courses organised by the employer or by the providers of vocational training services in Romania or abroad;
- (b) periods of vocational adjustment to the requirements of the position or workplace;
- (c) periods of practice and specialisation in Romania and abroad;
- (d) on-the-job apprenticeship;
- (e) individual training;
- (f) other training forms agreed upon by the employer and the employee.

In accordance with the provisions of Art 194 of the labour code, the employer is required to provide employees with regular access to vocational training. Employers are required to create appropriate conditions to encourage their employees to participate in vocational training programmes, at least once every two years, for companies that employ 21 or more persons, and at least once every three years for companies with less than 21 employees. Employers with more than 20 employees are required to set out annual plans on vocational training (after consultation with trade union or employee representatives), which will form a part of the collective labour agreement of the company.

When the employer does not provide funding for vocational training to an employee who is entitled to receive support, the employee is entitled to demand up to 10 days paid training leave or up to 80 working hours for vocational training.

Payback clauses exist for employer-financed training, undertaken at employer's initiative; there is a minimum length of three years (contractual retention period) for courses or internships exceeding 60 days. This applies in cases where the employee received basic pay, seniority pay or an appropriate benefit paid by the employer during training. If the employee does not comply with the contractual retention period, s/he shall bear all training expenses in proportion to the time not worked during the period agreed upon in the clause in the individual employment contract or in the training agreement and/or as specified in the national regulations or in the collective agreements. This obligation shall also apply to employees dismissed within the agreed period, due to disciplinary reasons, or due to preventive custody for more than 60 days, after the final judicial conviction for a criminal offence related to their work, or when the

exercise of the profession is temporarily or permanently prohibited by decision of the a criminal court.

Where training is initiated by employee, the labour code leaves to the employer the decision on terms of participation, coverage of training costs and reimbursement. (*Romanian labour code*, Title IV: Vocational training).

According to the civil service law <sup>(12)</sup>, civil servants who attend, during paid training leave, a training programme for a minimum period of three months have to sign an agreement whereby they commit to remain working for one to five years within the respective public entity or institution. If this commitment is not fulfilled, the employee is requested to bear the expenses proportionally for the period of time remaining until the expiration of the agreement. This regulation cannot be applied when the civil servant is no longer employed for reasons that are not imputable to him/her or in the case of transfer.

Police staff are also liable to reimburse all expenditures incurred in training when they graduated from a training establishment of the Ministry of the Interior and they cause termination of the work relationship during their first 10 years of service. The amount must be directly proportional to the period of time remaining up to completion of 10 years of service <sup>(13)</sup>.

At sectoral and company level, the maximum length of validity, the proportion to be reimbursed and the form of reimbursement can be agreed on and can differ from the national regulations. Otherwise, national regulations are applicable and enforceable.

In principle, payback clauses are applicable in all kind of companies, for all groups of employees and all for types of contracts, but their implementation is more likely to occur in medium- and large-sized companies for employees with full-time and permanent contracts. Any kind of training can involve payback clauses if the training is certified and nationally recognised, for the upgrading of skills related to the current job, and transferable to future employment. Reimbursement of training course fees, the costs of teaching materials, travel and subsistence, rather than direct and indirect labour costs related to the training undertaken, can be requested.

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<sup>(12)</sup> *Law No 188/1999 from December 8th 1999 regarding the regulations of civil servants*, Art. 48.

<sup>(13)</sup> Summarised from the original text in Romanian (*Police status, law No 360 of June 6, 2002*, Art. 70).

## Box 2 **Romanian collective agreements with regulations on payback clauses**

According to information provided by the Ministry of Labour, collective agreements with regulations on VET and payback clauses exist in the following sectors:

- glass industry and fine ceramics (Art. 83);
- food, beverages and tobacco industry (Art. 80);
- textile industry and textile products (Art. 111);
- electronic and electro-technical industry, precision engineering (Art. 126);
- construction materials and cement industry (Art. 94);
- construction (Art. 95);
- machine construction (Art. 186);
- mining and geology (Art. 115);
- wood processing (Art. 84);
- tourism, hotels and restaurants (Art. 77);
- commerce (Art. 82);
- agriculture, pisciculture, fishery (Art. 99);
- ferrous and non-ferrous metallurgy (Art. 92);
- chemical and petrochemical sector (Art. 124).

Further description of the payback clauses contained in these agreements as well as the sources can be found in Annex 5.

Employees are generally liable to reimburse training costs. Only in extraordinary cases will new employers take over the reimbursement of training financed by former employers; this may be when the employee is specialised in a niche job and the new employer sees potential to save time and at least a part of the funding for training. As employers in Romania still consider participation in training a concern for employees and/or former employers, the practice of future employers assuming reimbursement responsibilities is still very unusual.

According to the representatives that participated in this study, support for employer-financed training is considered to be the most important objective for the introduction of payback clauses in Romania. Such clauses are meant to be a tool to help reduce employer risk of investment in VET and avoid abuse of the employer-financed VET by employees. Recovering the cost of training in the case of the early termination of the employment relationship does not seem to be particularly important.

## 4.2. **Social partner agreements**

### 4.2.1. **The Netherlands**

In the Netherlands there are about 200 sectoral and 800 company collective agreements, with around 84% of all employees covered by one of them. By 2009,

135 sectoral training funds were connected to collective agreements, 92 including the goal of training and human capital development. The agreements include provisions for financing training in the dual system, personal development plans, training leave of one or more days, leave to take exams, accreditation of prior learning, training for specific groups and training for union participation. Company-based arrangements for training are often made in the context of collective agreements in each industry sector and are valid for a specified time, usually one or two years. Some of these sectoral and company arrangements include extra provisions to accommodate specific regional demands or circumstances (Cedefop ReferNet Netherlands, 2009; 2010).

In the case of employer-financed training, conditions for support and reimbursement are also foreseen in some collective agreements. They describe the kind of courses employers finance and the share of costs they undertake depending on the scope of training. For example, the provisions on vocational education and training established in the collective agreements distinguish between training for current work tasks, for future work tasks, and for maintaining and enhancing employability. The employer normally assumes a greater part of the costs for training for current and future work tasks. There are also collective agreements that mention payback clauses but the conditions of such reimbursements may be agreed on by the employer and employee. While collective agreements allow payback clauses in employment and training contracts, in the event of claims, the conditions may be analysed before the court.

A research study on participation in post initial training carried out for the year 2010 shows that around 50% of the surveyed employees (n = 3 061) participated in at least one training course during the preceding 12 months: 85% of the training courses were paid for by the employer and 47% of employees reported a payback clause in the employment contract. In 1999 this was 10%, in 2000, 28%, and in 2005, 46% (Buisman and van Wijk, 2011).

Table 8 shows that payback clauses are present in several sectors, with the financial and the ICT sectors including them in contracts of employment more often (66% and 58% respectively). In contrast, only one third of the contracts in the cultural and the construction sectors apply payback clauses for some kind of training.

According to the results of the survey, almost one fifth of employees are unaware of the existence of payback clauses in their contracts of employment but employees with high levels of education are more often aware, particularly for selected training courses.

Table 8 Payback clauses in case of training

	Yes, all (%)	Yes, some (%)	No (%)	No answer (%)	Do not know (%)	n
<b>By sector</b>						
Agriculture/fishery	4	37	11	30	17	46
Industry sector	19	33	18	11	20	245
Construction	13	20	20	31	16	166
Trade	20	26	17	23	14	230
Transport	17	28	17	21	17	138
Catering industry	5	21	25	23	26	57
Financial sector	21	45	15	7	12	104
Business services	19	33	17	24	6	264
Education	16	28	27	10	20	218
Health	16	33	22	11	18	609
Culture	5	26	11	47	11	19
ICT	16	42	16	14	12	165
Other	13	30	19	18	21	796
<b>By level of education</b>						
Low	14	20	20	22	23	649
Middle	16	30	20	17	18	1 410
High	16	41	17	14	12	973

Source: Buisman and van Wijk (2011).

Boxes 3 to 11 give examples of collective agreements with provisions on the reimbursement of training costs.

### *Examples of Dutch collective agreements at sectoral level*

#### Box 3 Agreement for the sport sector

##### **Further education and training conditions of WOS <sup>(a)</sup>**

By this collective agreement employers are requested to reserve at least 1% of the payroll for the training and enhancement of professional expertise. The following regulations apply only for office staff and do not include sportspersons.

The employer may contribute to the study costs for:

- tuition fees, books, exam costs and travel expenses on the basis of second class public transport;
- full compensation for the time required for the type of vocational education involved such as study, course, training session or coaching;
- expenses for preparation for any exams.

In accordance with the study costs allowance scheme the employer shall contribute 100% of the costs listed above when the company considers the training as necessary for the proper performance of the employee's current or future job function, or to increase the employee's chances of employment in the labour market. This contribution to expenses will also apply if the training activity is defined as a

compulsory requirement by a certified professional organisation under the stipulations of a registration scheme, for example, for sports doctors.

In cases where the training course is considered useful but not necessary for the employee's performance of his/her work or to improve the employee's position in the labour market the employer shall cover 75% of costs listed above, and extra compensation to be agreed on with the employee for the required investment in time. But, when employee's salary is between EUR 1 397 and EUR 2 456 per month, full coverage of training costs by the employer is recommended.

For courses that are taken by the employee voluntarily and will help him/her to perform work duties better or to improve his/her position in the labour market, the employer can be requested to contribute 50% of the expenses listed above, and an extra time compensation for taking exams.

No contribution to expenses or time is granted for leisure time courses.

#### **Reimbursement of training costs**

The organisation may demand reimbursement of the costs of a course up to a maximum of 25% if the employee fails to pass the training. In case of voluntary termination of the employment by the employee, the company may also demand 100% of the training costs within the first year and 50% within the second year after conclusion of the training.

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<sup>(a)</sup> Werkgeversorganisatie in de sport [Dutch employers' association of the sport branch].  
Summary of collective agreement provided by the representative of this organisation.

Source: Summary of the collective agreement sport sector in the Netherlands, 2006.

#### **Box 4 Agreement for information, communication and technology sector**

In this sector, companies are requested to design a concept for easier access to qualification programmes. This agreement states how employers shall contribute financially to the development of employee's skills and acquisition of qualifications depending on the kind of training. The following differentiations are made:

- training for current functions or tasks that need to be fulfilled on short notice within the company;
- training for future tasks within the company.

In both cases, expenses are to be borne by the employer and training should take place as much as possible during working hours.

In the case of training for maintaining and increasing employability that has no direct connection to the current employee's function or a task s/he will fulfil in the near future, but which can be regarded as reasonable for a possible future task, the following differences are to be made:

The employer shall grant full financial support for tuition and enrolment fees, exams and administration costs, and 50% for the expenses for learning materials such as books for training that leads to a diploma or certificate within the period of time agreed prior to training. The qualification units shall take place as much as possible during working hours.

### **Reimbursement of training costs**

The employer has the right to reclaim reimbursement of costs in case of training interruption by the employee without specific justification and due to termination of employment shortly after completion of training. The employee can be requested to reimburse 100% of the costs within the first year and 50% during the second year after completion of training.

These standards are also valid if the employee is dismissed for reasonable causes.

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*Source: Collective agreement for information, communication and office technology branch 2010, Cluster 7, 1.*

### **Box 5 Other collective agreements**

#### **Collective agreement for Dutch Universities (2007)**

According to Article 6 § 5, 'the employer shall provide the employee with the necessary resources for training, even when there is little relation between the study or training course and the current or future position, if this contributes to the employee's career development'. According to § 6, 'the employer shall lay down further rules on reimbursement of the costs and can decide on further rules regarding the provision of facilities as referred to in § 5'.

#### **Collective agreement for temporary agency workers (2010, Art. 47, § 12).**

Private employment agencies are authorised to reach a reasonable reimbursement arrangement with the temporary agency worker, when he or she does not successfully complete the training or the employment contract is terminated before the training has been completed at the initiative of, or due to the fault of, the temporary agency worker.

#### **Collective agreement for research centres (2008-10)**

Collective agreement for research centres dedicates Chapter 6 to training, employability and career development of academic research staff. This chapter provides a description of the rights and duties of the employer and employee concerning training. It does not specify any regulations about reimbursement of training cost but includes a statement that allows employers to determine 'other' rules on training.

### *Examples of Dutch collective agreements at company level*

### **Box 6 Agreement De Lage Landen International**

Collective agreement between De Lage Landen International B.V., Athlon Car Lease International BV and Athlon Car Lease Netherlands BV and Trade Union FNV on behalf of the employees working in these companies.

According to this agreement, employers shall bear 100% of costs for training related to the current function or task in the nearby future and 50% of the cost for training that is not imminent, but might be important in the long run. In both cases the total cost may not exceed EUR 7 500. This amount comprises tuition, exam fees, learning

materials, travelling expenses, and expenses for room and boarding connected to training.

Employers are entitled to reclaim the cost of training if the employee resigns or is dismissed for serious reasons. However, the reimbursement may only be reclaimed within 24 months after the completion of training. Travelling expenses are excluded. Employers can only reclaim reimbursement of training fees after the employee's resignation, if the amount to be reimbursed is still higher than EUR 2 000, as follows:

- 90% can be reclaimed during the first year;
- 50% during the second year after the termination of training;
- 20% of the financial aid and the educational leave can be reclaimed, in case of interrupting the qualification unit or not passing the exam.

Reimbursement of paid educational leave can also be reclaimed for training activities that last a minimum of 50 hours applying the redemption in the same way as for the training costs outlined above.

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*Source: Collective agreement Lage Landen International B.V., 2010.*

#### Box 7 **Agreement Delta Lloyd Group**

According to this agreement, no reimbursement is required for training for the current function or mandatory training units on bank and insurance matters.

The contractual retention period for all other kinds of training of up to EUR 4 500 is 12 months after the completion of training. In the case of voluntary termination of the employment relationship or dismissal for a justified reason, the employee is liable to reimburse part of the training cost, depending on the time elapsed after its completion. Therefore, the total costs of training borne by the employer are divided by 12 and the employee has to refund 1/12 for each month remaining until the expiration of the contractual retention period.

For training exceeding EUR 4 500, the contractual retention period is 24 months. Similar to the redemption described above, the total costs of training may be divided by 24 and the employee has to refund 1/24 for each month remaining after the termination of training and prior to the expiry of the contractual retention period.

If the employee interrupts or ends the training units without reasonable cause, the expenses will be compensated through his salary on a monthly basis.

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*Source: Collective agreement Delta Lloyd Group, 2009.*

#### Box 8 **Agreement Hapag Lloyd Branch**

Training expenses incurred by or in the name of the company, exceeding a total of EUR 950, are to be reimbursed if employment ends within two years of the completion of training. The reimbursement is scaled as follows:

A total of 60% of the expenses have to be compensated by the employee if the employment contract is terminated within one year and a total of 30% if the contract is terminated within two years of completing training.

When the employee does not acquire the diploma or certificate s/he intended to obtain, s/he has to reimburse 50% of the financial aid granted; this includes a situation where the employee ends the employment before acquiring the diploma. Employees who do not complete the training or do not acquire the diploma due to personal failure or carelessness, have to reimburse 100% of the financial support. The surplus of financial aid that has already been granted can be deducted from the employee's salary. The reimbursement can be deducted from the employee's salary.

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*Source: Collective agreement Hapag-Lloyd, 2010.*

#### Box 9 **Agreement Odfjell Terminals (Rotterdam)**

The company Odfjell Terminals grants employees financial support for further qualification and training related to the professional needs of the company or to current or future tasks foreseen for the employee. The financial aid is provided after receiving the diploma or certificate, as long as it was acquired in an adequate period of time. Additional to the acquired diploma and/or certificate, a receipt detailing explicitly any expenses, made out to the person in question, must be included.

According to Article 23, 5a, if employment is ended by the employee within two years after the acquisition of diploma or certificate for which financial support was granted, the employee has to return 100% within the first and 50% within the second year after the diploma was acquired. The training related expenses are defined as tuition, exam fees and study material (books, etc.).

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*Source: Collective agreement Odfjell Terminals, 2010.*

#### Box 10 **Agreement DSM Biologics Company**

Employees can apply for financial support from the employer if the expenses are connected to additional training and qualification. To be eligible for financial aid, the training has to be connected directly or indirectly to the current function of the employee or to a possible function in the future (promotion or transfer). In this case, 50% of the tuition will be compensated by the employer (fees for enrolment and tuition).

Starting from 1 January 2007, employer-financed training that amounts to more than EUR 2 500 can be reclaimed if the employee leaves the company or is dismissed for valid reasons within two years after the conclusion of training. In this case, the employee has to reimburse 1/24 for each month remaining till the expiry of the contractual retention period. The cost of training that was necessary or mandatory for the current function cannot be reclaimed.

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*Source: Collective agreement DSM biologics company, 2010.*

**Box 11 Agreement DHL Express**

According to the Article 53 of the DHL collective agreement, employees can be requested to reimburse employer-financed training where there is interruption of training course or termination of the employment contract by the employee, unless due to force majeure. In the latter case, reimbursement commitment has to be assessed on an individual basis.

If an employee leaves DHL of his/her own choice within the first year after completion of training, 50% of the financial aid granted has to be reimbursed to the company.

If there has been no forthcoming and timely payment for the certificate or diploma within an appropriate time limit, the employee will be requested to reimburse the financial aid s/he already obtained. The refund can be held back from the employee's salary.

Source: *Collective agreement DHL express Netherlands 2009-10.*

A good example of the scaled reimbursement of costs is practised in the company Brocacef Holding (health care branch), which also uses payback clauses for training with moderate course fees.

**Table 9 Reimbursement of costs by month elapsed in Brocacef Holding**

Month	Cost of training				
	Up to EUR 500	EUR 500 to 1 000	EUR 1 000 to 1 500	More than EUR 1 500	
1	100%	100%	100%	100%	
2					
3					
4	50%	75%	100%	100%	
5					
6					
7	No reimbursement	50%	75%	75%	
8					
9		25%	50%		
10					
11		No reimbursement	25%		50%
12					
13-18	No reimbursement	No reimbursement	25%		
19-24					

Source: *Collective agreement Brocacef, 2010-11.*

A similar pattern of financing training by companies and payback clause conditions can be found in large groups such as IKEA <sup>(14)</sup>, Moog FC <sup>(15)</sup>, Rabo Vastgoed Group <sup>(16)</sup>, Plukon Poultry Holding <sup>(17)</sup> and Stater <sup>(18)</sup>. Further information about the conditions of payback clauses established in these agreements can be found in Annex 5.

### 4.3. Regulations within companies

#### 4.3.1. Germany

In Germany, payback clauses for employer-financed training are generally allowed by § 305 of the civil law but there is no standardised national regulation on specific conditions for their implementation and enforceability.

However, the German Labour Court (Bundesarbeitsgericht) has compiled some general conditions and recommendations that have to be considered by employers:

- (a) payback clauses have to meet conditions regarding the civil law for contracts (§§ 305 to 310 BGB) <sup>(19)</sup>;
- (b) the training must offer one or more benefits to the employee:
  - (i) financially, for example when training enables the employee to undertake work tasks which lead to higher remuneration;
  - (ii) professional/occupational advancement can be expected;
  - (iii) competitiveness of the employee in the labour market has been increased through the acquired skills and/or qualification;
- (c) the contractual retention period after training must be reasonable;
- (d) the cost and length of training, the amount to be reimbursed and the form of reimbursement have to be considered in individual cases to determine the contractual retention period. These factors must be agreed in a suitable relationship to each other. As a general rule, the contractual retention period can be agreed as shown in Table 10.

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<sup>(14)</sup> *Collective agreement IKEA CAO*, 2010-11.

<sup>(15)</sup> *Collective agreement Moog FCS PLC*, 2007-09.

<sup>(16)</sup> *Collective labour agreement of Rabo Vastgoed holding N.V.*, 2010-11.

<sup>(17)</sup> *Collective agreement Plukon Poultry Holding B.V.*, 2010.

<sup>(18)</sup> *Collective agreement Stater*, 2010.

<sup>(19)</sup> BGB, Bürgerliches Gesetzbuch [German civil law].

Table 10 **Contractual retention period recommended by the German Federal Labour Court**

<b>Training</b>	<b>Contractual retention period</b>
Up to one month	Up to six months
Up to two months	Up to one year
Between three and four months	Up to two years
Between six months and one year	Up to three years
Two years	Up to five years

Source: Bundesarbeitsgericht [Federal Labour Court] (2009).

In some cases a longer contractual retention period can be justified for shorter training, if the costs borne by the employer are evidently high and the benefits for the employee are assessable and verifiable. The legal consequence of an immoderately long contractual retention period is the unenforceability of payback clauses.

The amount to be reimbursed has to be reasonable. The expected reimbursement must not exceed the actual cost of training borne by the employer or the amount agreed by both contract parties. Whether or not the employees claim before the court on the (previously agreed) amount to be reimbursed, employers are always requested to explain the reason for demanding a particular amount (Bundesarbeitsgericht, 2009).

Reimbursement causes can include:

- (a) early voluntary termination of employment by the employee;
- (b) dismissal due to a serious breach of contract conditions;
- (c) non-completion of training.

According to the German *Vocational education Act* (2005, Art. 12, § 2, 26), payback clauses are prohibited for initial vocational training contracts.

The *Federal public servants salary Act* (2011, §§ 59 to 63) outlines the reimbursement of study or training costs and financial support that a public servant received during the time of study or training (in which s/he was a candidate to become a public servant). The contractual retention period is five years and the amount to be reimbursed diminishes one fifth for each year that the public servant remains in public service in the same kind of employment (career).

According to two respondents who confirmed the existence of payback clauses within companies, 'the German VET is legally defined by the Law on vocational education and training (BBiG). Only academic or semi-academic vocational tracks could be linked to such payback clauses. Large companies finance studies and make contracts with the students to become employees after finishing their studies. Otherwise they have to pay back part of the funded costs.

**Box 12 The experience of employers' associations**

An organisation representing the local machinery and industrial equipment manufacturers stated that payback clauses can be implemented in different ways due to the general regulations in the civil code. Basically, agreements on reimbursement of training costs can be reached for any kind of training such as further education courses, study fees or language courses. There are no criteria for eligibility or exclusion for the content of training courses and potential beneficiaries. Each case is analysed individually. However, the most important criteria for setting the contractual retention period and the costs to be reimbursed are the length and costs of training; these conditions must not prevent the employee from feeling free to change his/her workplace or to continue with professional development.

The collective agreement of the Federal Employers' Association for the chemistry sector <sup>(a)</sup> allows agreement on payback clauses at company level but generally considers training as a shared responsibility of both employers and employees; both parts must share the cost of training. For example, the employer should finance training activities and the employee should commit himself or herself to participate in training during own time. It is more a recommendation than a commitment or obligation.

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<sup>(a)</sup> The collective and sociopolitical umbrella organisation of the chemical and pharmaceutical industries as well as large parts of the rubber and plastics processing industry. It represents the interests of 10 regional associations with 1 900 member companies and 550 000 workers including trade unions, politicians and the public in general.

**Box 13 The opinion of the German Service Trade Union**

According to Jaich (2011), the topic of further training should increasingly be governed by collective agreements in Germany.

From the unions' point of view, the participation of the groups underrepresented in CVET (such as employees with a low school level/without a vocational qualification and of elderly employees) should be encouraged. For such groups, much shorter training measures of up to one week would be more suitable.

Payback clauses appear to be particularly relevant for longer training, for example for acquiring qualification. According to German Federal Labour Court recommendation (Table 10), for a training measure of, for example, two months, a contractual retention period of one year would be set. The question is: what contractual retention period should be set for training of four to five working days? It seems that for very short courses, the payback clauses make no sense as the administrative effort might be higher than the benefit. According to unions, payback clauses have a deterrent effect for the groups mentioned above: they are not keen to sign collective agreements with payback clauses. Unions are of the opinion that the level of participation of the above groups can only be considerably increased for a long time if collective financial instruments – training funds – are introduced based on collective agreements.

So far, payback clauses have played a marginal role in collective bargaining agreements in Germany.

**Box 14 The experience of a large company**

A steel and technology company with more than 23 000 employees states that agreements on payback clauses can be reached between employer and individual employees. General national regulations and social partner agreements establish framework conditions that allow the use of payback clauses in individual contracts but the real design takes place at company level. This group has corporate guidelines that ensure a consistent application of payback clauses. In this company, payback clauses are usually implemented for all types of contracts except fixed-term contracts usually for higher education and postgraduate programmes which conclude with a final examination. Costs included are fees and payments for training courses, costs of teaching materials and travel and subsistence payments. The contractual retention period may be no longer than half of the period of the training time.

In the event of voluntary termination of the contract by the employee or dismissal for reasons of misconduct, prior to the expiry of the previously agreed contractual retention period, the redemption for costs to be reimbursed is made pro rata temporis. For example, if the contractual retention period lasts 15 months, the costs of training are divided by 15 and the employee has to reimburse 1/15 of the training costs per month remaining between termination of the contract and the expiry of the contractual retention period. In cases when the employee faces liquidity constraints, exceptions can be made after an assessment of the particular case. The period of reimbursement can generally be extended or cancelled.

In some cases, the company takes over the reimbursement of training costs, when the qualification acquired by the employee and financed by the former employer benefits the company directly.

However, the use of payback clauses in this firm is rare, because several internal and external training measures are available for employees where neither a contractual retention period nor reimbursement clauses are necessary. Only one case of enforcement occurred in the past five years.

**Box 15 Examples of collective agreements at company level in Germany**

***Collective agreement between Froebel e.V. and the Education and Science Workers' Union (2009)***

Froebel is a childcare, kindergarten and education consulting company with establishments throughout Germany and more than 1 500 employees. According to § 13 of the company agreement, training costs shall be shared between the employer and employee. Training and payback clauses may be agreed individually for training and further education contracts.

***Collective agreement Deutsche Bahn AG and Trade Union IG BAU (1994)***

According to § 17 of the collective agreement, when an employee participates successfully in voluntary training that is recognised as helpful for his current occupation or considered as relevant as a measure for improving local or professional mobility, the DB AG assumes partially or fully the costs of training programmes if they are not covered by a third party.

If the employee leaves the company within 18 months of completion of the training programme at his/her own request, or due to his/her cause, DB AG can demand reimbursement of the amount expended on training in whole or in part, depending on the circumstances of the individual case.

***Collective agreement Hamburger Harbor and Logistics AG (HHLA) (2006)***

A core requirement for employer-financed training is its direct relationship with current or foreseeable future job requirements at the HHLA, for the employee. Support to CVET can include both financing and offering training leave. In individual cases, some kinds of training can be promoted although they do not meet the general conditions. A reimbursement clause may regulate the reimbursement of training costs if the employee leaves the company within two years of completion of training.

**4.3.2. Italy**

In Italy, organising and providing initial and continuing vocational education and training is constitutionally the responsibility of the regions. The State is liable for the provision of minimum levels of supply. Whereas IVET is financed mostly by the Ministry of Education and partially by regions and provinces, CVT is funded mainly by employers' federations and trade unions with a minor contribution from the State (less than 15%) (ReferNet Italy, 2010).

Despite public instruments for financing CVT, investment in training by private companies remains highly relevant for several reasons: government training policies do not meet companies' needs satisfactorily and applications for financial support are excessively bureaucratic. Moreover, CVT courses offered by public adult learning providers are geared mainly to the individual needs of participants and are less job-oriented (Giaccone, 2009).

Italian experts and the representatives of stakeholders confirmed that payback clauses are usually agreed on at company level in individual contracts between employers and employees. Representatives of four companies (a mechanical engineering company, a further education provider, a provider of logistic solutions and a metal and raw materials company) were able to describe the implementation and some detailed arrangements of their clauses. None of the companies provided details such as the share of reimbursement and the contractual retention period. Thus, their answers are compiled together with the main tendencies in the following paragraphs.

According to the respondents, agreements on payback clauses are usually reached in the following business fields:

- (a) information and communication companies,
- (b) metal and mechanic industry,
- (c) trade and commerce,
- (d) handicraft companies,
- (e) high technology research,
- (f) plastics industry,
- (g) packaging industry,

(h) service companies.

For companies, the most important objective of payback clauses is to reduce the risk associated with investment in VET. Other objectives mentioned are to ensure that employers have qualified employees who can cope with technological and structural change, and to develop lifelong learning strategies.

Payback clauses can be applied in all types of company for all kinds of employees and contracts, except for employees on fixed-term contracts. In practice, agreements are usually between employers and managerial employees, whose training can be expensive.

In Italy, the most common type of training is apprenticeship, which allows the company to reduce the employee's income. Salary can therefore be lower than normal. Accepting a lower salary is considered as the employee's contribution to his/her own training and is not covered by agreements on payback clauses. However, if an apprentice receives a 'normal' salary and pursues expansive training, the payback clause may be applied.

As each company adopts its own regulations on payback clauses, it is not possible to generalise about reimbursement arrangements when a contract is terminated after training. While two of the companies do not expect to be reimbursed for training courses that are seen as being part of work (work-related training), in the other two companies the reimbursement conditions, such as the amount, the contractual retention period and the form of redemption, are dependent on the cost of the training, irrespectively of the type of training. In any event, the contractual retention period seems to be more important than the conditions on reimbursement and the reimbursement of training costs. In Italy, as in most countries, employees are liable to reimburse only if they resign voluntarily, if they are dismissed or if they fail to complete the training. Future employers are not explicitly required to reimburse the investment in training made by former employers.

In none of the four companies studied did the employer assume responsibility for reimbursement of the training costs of newly hired employees. According to the representative of one company, 'it would be the case only for employees that have acquired qualifications that may be of interest for the company'.

Inside companies, not only employers but also employees can seek information and advice from the HR department. External organisations such as consultancies can also offer help. The evaluation and monitoring of the operation of payback clauses is very informal owing to the lack of national regulations.

Box 16     **The experience of a business school for SMEs**

A private company providing training and consultancy services for SMEs with more than 25 years of experience in the field and about 65 employees uses payback clauses for general, external vocational and planned on-the-job training. Employees with part-time or fixed-time contracts are excluded.

The training course must be related to the work performed by the employee, upgrade the employees' qualifications and must be longer than one month. However, training on very specific internal themes, such as the internal quality management system, is not covered by the clauses.

The payback clauses kick in in the event of the voluntary resignation of the employee within the contractual retention period. Additionally, special agreements can be reached in specific cases. Payback clauses for the employee are not necessarily designed to ensure the recovery of money. They can constitute an agreement to give at least six months' notice. This can protect the company to some extent against staff leaving shortly after the training.

The advice on the implementation of payback clauses is provided by the management board and the administration. Every contract is concluded with individuals, so they can differ. The agreement on reimbursement or retention must be in writing and contracts must be signed by both parties before the training commences. In case of disputes, labour or civil courts decide whether or not the qualifications gained through training are transferrable to future employment. Forty per cent of individual contracts contain payback clauses.

According to the company's representative, payback clauses have advantages and disadvantages. Thus, employees are more motivated after receiving suitable training. They are keen to take advantage of the opportunity to train and they are aware they can improve their role inside the company and of course they do not want to waste their personal investment. Moreover, companies do not squander time and resources on training someone who will leave soon after the training. Further, employees find a move to another company less attractive because through training they can obtain better positions inside the company. The possibility of recouping training costs if a contract is terminated has a positive impact on investment in training because there is less turnover of staff so the company can invest more money. Nevertheless, some weaknesses of payback clauses are also mentioned. Sometimes such clauses are not easy to accept because the employees can have the impression that they are being threatened by the company. Several potential employees had problems in signing an employment contract with a payback clause, but the problems were resolved after negotiation. Sometimes employees considered the contractual retention period too long.

**Example 1:** An account manager was employed by the organisation, and he was assigned with specific economic and qualitative tasks. He was eligible for several bonuses if he met his objectives within a predetermined period. To facilitate his work, a training scheme was designed specifically for him. An external expert consultant was engaged as a personal trainer to support him so that he could acquire the necessary skills for his new job. A considerable amount of money was invested to pay the external consultant and to train the new employee. The company and the account manager signed a contract under which the employee was required to give at least six months' notice before leaving the company or reimburse a percentage of the investment in training. The percentage decreased according to the number of years he worked for the company. Less than one year after receiving the training he decided to leave the company because he had found a better job. The company

decided to enforce the payback clause and requested him to reimburse a percentage of the training costs. The account manager disagreed and decided to consult trade unions and lawyers. He subsequently negotiated with the company about the amount of the reimbursement. Finally, he was liable to reimburse 50% of the training costs.

**Example 2:** An assistant was employed and trained as an operator in the secretarial area, entailing basically answering the telephone and receptionist duties. The contract provided for a notice period of at least four months. The secretary decided to leave the company for personal reasons (another job closer to home) a couple of months after the training. The company did not apply any payback clause and just 45 days' notice was considered sufficient.

#### 4.3.3. Sweden

In addition to a highly developed education and training system that receives considerable public funding and that has been providing participants with fee-free courses, grants and loans independent of (parental) income since the mid-1970s, employees who have been in employment for at least six months are entitled to unpaid training leave regardless of the length or the type of training <sup>(20)</sup>. However, there is no national law requiring companies and employers to provide employees with training and/or to finance it. Instead, commitments on training plans and programmes are often negotiated between the social partners either at the sectoral or at the company level.

Thus, it is primarily collective agreements and not national regulations that govern CVET in Sweden, which has one of the best performing in-company CVET systems in Europe. Most in-company training is financed by companies rather than State subsidies or training levies or funds (Cedefop, 2008).

Several sectors have agreements between employers' federations and trade unions on education and training or have signed development agreements on the subject. Paid education and training leave can be negotiated at company or – more usually – at individual level. Moreover, employees are entitled to participate in training arranged by trade unions (ReferNet Sweden, 2010).

Payback clauses do not seem to be part of collective agreements on training.

However, since employees are legally entitled to unpaid training leave, employers may be willing to support employees financially during training, or employees may request such support. In return, employees may agree to a contractual retention period in their employment contracts after training. Thus, payback clauses are more an issue of individual agreement between employer and employee in a company.

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<sup>(20)</sup> Act [1974:981] on the right of workers to time off for training.

According to the stakeholders surveyed, payback clauses can apply to all employment contracts and course types; conditions on the contractual retention period and the share and form of reimbursement, as well as exceptions and special conditions, are defined on a case-by-case basis. Collective agreements between the social partners and in companies must be in line with the national law on employment contracts and training leave. Therefore, conditions that differ from national legislation should be more favourable to employees; agreements that restrict employee's rights pursuant to national law are invalid.

Swedish companies with many employees usually reach individual agreements on the reimbursement of training costs, particularly for expensive training courses that last a considerable period of time, such as MBAs, specialisations and master's degrees. In return, employees who have been on educational leave and return to work are guaranteed the same job or one with equivalent working conditions and terms of employment, so that they are in the same position as they would have been if they had not been on educational leave <sup>(21)</sup>.

Two examples of agreements in companies have been provided by two different companies in Sweden. They should be interpreted as examples of regulations that have to be adapted to every single case.

#### **4.3.4. United Kingdom**

In the last decade (public) funding for adult learning has become an important issue targeted by governments in England, Wales, Scotland and Northern Ireland with the aim of meeting the needs of employers and hence fostering the economic competitiveness of each country. For this purpose, several mechanisms have been (re)designed and implemented. Due to limited public resources, state funding is focused notably on vulnerable groups that display evidence of market failure, particularly to young people, the low-skilled (education level 1-2) and the unemployed. In addition, another government priority is to stimulate participation in work-related learning and increase employers' investment in financing and providing learners with time off, although it is not mandatory by law (as yet). However, employers remain the main contributors to CVET with an estimated annual expenditure of around EUR 40 billion, mostly outside publicly funded institutions. Further, a higher contribution is expected from companies and from learners who already have a level 2 qualification as they are more likely to go on with further learning and thus will benefit from higher earnings (ReferNet United Kingdom, 2010).

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<sup>(21)</sup> Law (1974:981) on workers' right to training leave.

### Box 17 The experience of an appliance manufacturing company in Sweden

A large Swedish appliance manufacturer with around 2 500 employees promotes career development by providing training. For higher and postgraduate education programmes the company reaches agreements on payback clauses only with employees with permanent employment contracts. The clause includes fees and payments for training courses as well as travel and subsistence costs. The contractual retention period and the reimbursement conditions are specified case-by-case according to the amount of training expenses, but the following example is typical:

- contracts on the obligation to reimburse the cost of paid training;
- the employee (name) has been offered and has accepted the invitation to attend the training course called XXXX on Trade;
- the cost of training amounts to SEK (amount);
- the training is conducted during the period up to (date);
- the employee (name) agrees to reimburse part of the training cost upon the employee's voluntary termination of employment as follows:
  - 100% of course fee has to be reimbursed prior to the completion of training;
  - 100% of course fee within six months after the completion of training;
  - 75% of course fee within one year after training;
  - 50% of course fee within two years after training;
  - 25% of course fee within three years after training.

In the event that a newly hired employee has to reimburse the cost of training provided by former employers, the company assumes the reimbursement obligation if the new employee has left his or her former employer explicitly to join the company for professional reasons.

Currently, only around 10 contracts contain agreements on payback clauses in this company. As the share of employees who undertake training and subsequently resign within the contractual retention period is equal to zero, there have been no reimbursement requests in the last year and so far the company has never brought legal proceedings to obtain reimbursement from employees unwilling to reimburse.

### Box 18 Example of an agreement in the appliance manufacturing company

#### **Agreement on contractual retention period and reimbursement of training costs**

Between ENTERPRISE XX, Org. No 000000-0000 and NAME OF EMPLOYEE, personal No 000000-0000, 2007-00-00, the following agreement has been reached:

§ 1 (NAME OF EMPLOYEE) must be given two years to follow the training course 'Executive MBA' at the Stockholm School of Economics. The training covers a total of 16 weeks and takes place in blocks of five days every five weeks. Other absences, for example for reading and project work, shall be taken in agreement with the line manager. The first training day is on 9.10.2001.

The total training cost amounts to SEK 275 000 excl. VAT, payable by the company directly to the school. 50% of the total amount, SEK 137 500, shall be paid by EMPLOYEE according to Paragraph 2.

§ 2 EMPLOYEE accepts that 50% of education costs of SEK 137 500 is to be paid off by monthly gross salary deductions for 36 months starting as of October 2001.

EMPLOYEE recognises that the gross deduction affects the employee's sickness, maternity and pension income.

During long periods of planned leave – parental leave, annual leave, etc. – a special arrangement can be made whereby the total gross salary deductions are paid within the agreed 36-month period.

The long-term absence an individual agreement for instalment plan has to be reached.

§ 3 The company's share of the total cost, SEK 137 500, shall be reimbursed over 48 months, i.e. during the study period and for 24 months after training. If the EMPLOYEE takes a lengthy period of planned leave, such as parental leave or unpaid leave, the reimbursement period shall be extended by a corresponding period.

§ 4 If the EMPLOYEE decides to end his employment at the company, he must pay the balance in respect of Paragraph 2 to the COMPANY through deductions from his final salary or as a cash deposit. He is also obliged to pay to the COMPANY the proportion of the cost remaining after depreciation under Paragraph 3.

§ 5 The training initiatives are undertaken as part of the company's focus on leadership development and skills development in the IT field.

This Agreement is drawn up in two copies; the parties have each received one.

BUSINESS XXXX Staff –Human Resources Department

According to Roydens (2005) and information found on his legal consultants' website, including payback clauses in employment contracts has become a common practice in the UK. The usual method is to include a reimbursement clause in the employment contract whereby the training costs are 'deemed' to constitute a loan if the employee leaves employment within a certain period after the termination of training. Accordingly, if during the contractual retention period the employer has benefited from the employee's having followed the training course or attained a professional qualification (e.g. by charging customers more for an employee's services), the amount to be recovered from the employee should be reduced to reflect that benefit. The agreement should also contain a sliding scale of reimbursement that reduce the amount to be reimbursed according to the length of time the employee remains with the employer after the termination of training. This also applies if the employee is dismissed during the contractual retention period for misconduct. The agreement should allow the employer to deduct the amount owed under the agreement directly from the employee's salary or any other payments due to the employee on termination to avoid long legal proceedings <sup>(22)</sup> (Roydens, 2005).

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<sup>(22)</sup> Deductions of bonuses and any accrued holiday pay owing, etc.

This area of public policy is overseen by the Department for Business Innovation and Skills. In the absence of official legislation or regulation, no formal comment could be made by the stakeholders surveyed. Informally, reference was made to the overall trend of public policy of reducing regulatory burdens on business. Therefore, according to a VET expert from the UK, there seems little likelihood of any official action on the issue. With respect to skills more generally, there is a major revision of government policy in progress, following the change of government in 2010.

The primary new driver is the licence to practise, which is seen as a way to encourage more skills development without the need for detailed interference at company level. The recent decision not to extend the right to request training to (time to train <sup>(23)</sup>) companies employing fewer than 250 people is seen as an indicator of the likely reluctance to consider any additional compulsory training legislation. Should employers wish to adopt payback clauses as 'good practice', that is and should be their free choice.

According to Fox (2011) and the interview with a representative of the Trades Union Congress (TUC), the University of Leeds conducted an analysis of 280 collective learning agreements between trades unions and employers for the TUC, which revealed no apparent inclusion of a reference to a training payback clause. The TUC is working on the 'right to request training' and would be interested in producing a payback clause for use by its union representatives.

While some employers offer such clauses, they would not wish to see it formally regulated by new legislation. The assumption is that the clause is most relevant to higher-level professional training. Clauses can be covered by normal contract law. In general, employers (would) prefer to reimburse course fees on successful completion of individually organised training than to anticipate the cost of training. However, reimbursement of training costs may be effective for fees and payments of training courses covered by the employer.

Besides the social partners, representatives of six companies from different business sectors were interviewed about the use of payback clauses. They provided their opinion about the operation of payback clauses and factual information such as the proportion to be reimbursed within the contractual retention period. The following statements must be interpreted as the opinions of company representatives rather than as general trends in the application of

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<sup>(23)</sup> 'Time to train' is the statutory right. Employees working in an organisation with 250 or more have to request time for study or training. (See Directgov, *Time to train: request time at work to learn new skills*. [http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG\\_183635](http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG_183635) [accessed 2.3.2012].

payback clauses. For the same reason, companies participating in our survey wished to remain anonymous.

Box 19 **Operation of payback clauses: examples from the UK**

**Employer E1 – Medium-sized multi-site electronics retailer**

In this company, payback clauses are used as a strategy for encouraging staff to think seriously about their training and development. Payback clauses make the company slightly more willing to support an individual employee's development, but the financial dimension is not the most important factor. This enterprise takes a broad view of the type of training to be supported but would normally cover only direct fees, materials and travel costs. Departments would not offer to cover the time costs, so there would be a need to reach local agreement on time for study arrangements. They have not needed to take legal action to recover money but the option is important. Usually, trained employees are expected to stay for a minimum of one year, but they can be requested to reimburse 100% of the cost if they leave within the first year and 50% within the second year after training.

**Employer E2 – Medium-sized publicly owned private health care company** working on two sites in two public hospitals. In this company payback clauses have been used for professional nursing staff with full-time contracts upgrading from Level 2 (non-graduate) to Level 1 (graduate). Costs considered for reimbursement are fees and payments for training courses. Similar to the company referred to above, the employee has to reimburse 100% of the costs if he or she leaves during the first year of training and 50% during the second year after training. In total, only four employees were involved and there was no need to seek enforcement of payback clauses because all employees concerned remained in the company beyond the contractual retention period. Nonetheless, it is intended to use the scheme more frequently. If it could be enforced legally, then it would be used more, not only by nursing staff but also by other staff more generally. The main reason for the clause is that staff might leave for better paid jobs elsewhere once they become qualified. This company would welcome confirmation that agreements are binding and enforceable but at the same time it would be reluctant to see a statutory or regulatory framework.

**Employer E3 – Medium-sized publicly owned private hospital** working on one site performing specialist operations privately paid for or under contract with the public health authority.

This company considers payback clauses to be desirable and they are routinely used for approximately 10% of staff each year (20 to 25 employees). Generally, they are used for external training but also recently for management training programmes. The organisation is firmly committed to training as an investment, but it is concerned that staff might not reimburse the training investment. Thus, employees may agree to reimburse 100% of the training cost if they leave the company during the first year and 10% in the second year after training. Legal action would be taken if there was a default, but it has not been necessary so far. The company believes that the necessary contract law and civil court mechanisms for effective operation of a payback clause system are already in place; there is no need for any further statutory or regulatory framework.

**Employer E4 – Large higher education provider**

Payback clauses are used to cover staff enrolling for courses offered by the organisation itself. Most recently this is primarily for higher level courses; changes in course funding rules mean that staff are less likely to take the shorter vocational

courses provided. The choice of course is negotiated on the basis of the potential benefit to the employer and to the individual learner. Employees are generally expected to remain for two years after the end of the course. If the employee leaves the costs can be recovered through a deduction from the final salary. Former employees are no longer eligible to continue to receive the fee waiver if they leave in mid-course.

**Employer E5 – Medium-sized higher education research organisation**

As part of a study on participation in part-time higher education, the organisation has gained some awareness of payback clauses used by employers. Based on feedback from a self-selecting sample of 294 students, it is common for employers to expect a minimum of two years' employment after the study is completed. Where the request for training is made at the employee's initiative, there is likely to be negotiation about the course of study to ensure that it is relevant to the employer. For students from universities, there is a greater willingness to accept that the student may move to another university so that the knowledge is not lost.

**Employer E6 – UK division of a global mining and mineral company**

One of the world's biggest mining and mineral companies stated that payback clauses are routinely used for a wide range of staff, primarily as a management tool for monitoring external training activity and ensuring that the training is being given appropriate attention by line managers and employees. Payback clauses are signed off by the Human Resources Department. In the event of an employee leaving the company, he or she is requested to reimburse 60% of course fees incurred in the academic year in which course fees have been paid and the course is taking place. Where a course has been completed, any fees incurred will not have to be reimbursed.

For training courses that are not a condition of employment but the employee is expected to acquire specific qualifications or a professional status, the company can agree to sponsor the employee. In this case, the following scale of reimbursement applies:

Where course and examination fees have been paid and the course is still ongoing, all fees are liable for reimbursement. When training has been completed, course fees and examination fees are liable for reimbursement as follows:

- 95% within one month after completion,
- 80% between one and three months,
- 60% between four and six months,
- 30% between seven and nine months,
- 10% between 9 and 12 months.

## CHAPTER 5.

# Comparative analysis

This chapter aims at conducting a comparative analysis of payback clauses in the 33 countries in general and eight selected countries (Germany, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Sweden and the UK) in particular. This analysis compares the design of the different aspects of payback clauses and experiences made with them to identify their advantages and disadvantages (to prepare a SWOT analysis).

### 5.1. Payback clause terms

Table 11 **Payback clause terms**

<p>Kinds of employee:</p> <ul style="list-style-type: none"> <li>• full-time</li> <li>• part-time</li> </ul>	<p>Types of training:</p> <ul style="list-style-type: none"> <li>• general training</li> <li>• sector/branch-specific training</li> <li>• internal/external CVET courses</li> <li>• higher education programmes</li> <li>• in some cases firm-specific training</li> </ul>	<p>Contractual retention period:</p> <p>reasonable period can be from two to five years depending on the cost and length of training</p>
<p>Type of contract:</p> <ul style="list-style-type: none"> <li>• permanent contract</li> <li>• apprenticeship contracts (if wage is 100% of the desired position after training)</li> </ul>	<p>Payback clauses</p>	<p>Reimbursement cause:</p> <ul style="list-style-type: none"> <li>• employees' voluntary termination of employment</li> <li>• dismissal due to misconduct</li> <li>• sometimes non-completion of training/failure to pass exam</li> </ul>
<p>Type of costs:</p> <ul style="list-style-type: none"> <li>• fees, teaching materials</li> <li>• direct labour costs</li> <li>• travel and subsistence payments</li> </ul>	<p>Exceptions:</p> <ul style="list-style-type: none"> <li>• minors</li> <li>• apprentices (if wages are lower than normal for the target position after termination of training)</li> <li>• mandatory, usually firm-specific training (not transferable to future employments)</li> <li>• fixed-term employees</li> </ul>	<p>Share of reimbursement:</p> <p>scaled by year or by month elapsed after training or remaining until expiration of contractual retention period</p>

#### 5.1.1. Kinds of employee and types of contract

Collective agreements between the social partners usually do not define the kinds of employee to which payback clauses may apply. They are defined in the national regulations. For payback clauses at company level, practice varies from case to case.

Payback clauses are applicable for almost all employees such as managerial, clerical, non-managerial/clerical employees, trainees and in some countries also apprentices in the IVET system. No distinction is made between

permanent full-time and part-time contracts. Belgium sets a minimum income threshold for reimbursement of training costs. Only employees with permanent contracts and an annual income of EUR 30 227 can be requested to reimburse the cost of training. This amount can be reduced proportionally for part-time employees.

Exceptions exist in some countries, for instance:

- (a) the Estonian labour code prohibits agreements on reimbursement with minors;
- (b) in Germany, payback clauses cannot be applied to apprenticeship/training contracts for IVET because apprentices contribute to the financing of their own training by accepting a low salary during the apprenticeship;
- (c) in Luxembourg apprentices are also excluded from payback clauses because they are not considered as employees by law.

An exception in this regard is Slovakia where apprentices who are at least 15 years old can be bound to the employer for a maximum of three years after training. If they decide to leave the company within this period, the new employer is requested to reimburse an appropriate part of the training costs until completion of the contractual retention period.

Finally, payback clauses are often not applied to employees on fixed-term contracts, as the company cases from Germany and Italy reveal.

### **5.1.2. Types of training**

The national statutes and collective agreements contain more general criteria for the types of training for which payback clauses are applicable. They describe only the nature of the training by type, such as general and specific, voluntary or compulsory, study or further education and training, and the improvement and upgrading of skills. There is no specific mention of the types of course that payback clauses applied to, for example the level of qualification and type of certificate.

Apart from 'general' or 'firm-specific', there is no description of the subject matter of the training or the place it takes place. It can be assumed that payback clauses are meant for training that is not part of compulsory education, which is usually funded by the State. It can also be deduced that in some cases agreements on payback clauses can only be reached for formal training, particularly in countries where the law mentions 'transferability' of skills to future employment, for example in Austria (Section 7.1.2), and in countries where a minimum threshold is established for training costs to ensure the acceptability of agreements on payback clauses (expensive training).

According to the surveys, payback clauses apply in particular to general training that may be characterised by the transferability of acquired knowledge, skills and competences to future employment <sup>(24)</sup>.

However, in the Netherlands the provisions of several collective agreements suggest that reimbursement of training costs can be requested for both general and firm-specific training.

The results also show that internal training, usually firm-specific, can be also subject to payback clauses, probably because it can be more important for employers to retain personnel with specific training in the company (binding factor). This fact was confirmed by those respondents who answered that employer-financed VET is mostly directed to firm-specific training and/or training related to the current work task.

Further, certification is also an important aspect but it does not seem to be the most significant criterion for the provision and financing of training and the application of payback clauses.

### **5.1.3. Contractual retention period**

The contractual retention period of an employment contract after training is defined by most of the labour codes and collective agreements that contain payback clauses.

In the case of nationally regulated payback clauses, the length varies depending on the kind of training and the costs borne by the employer. In some countries where public servants receive training by the State (e.g. Slovakia), the contractual retention period is up to 10 years, which is longer than in the private sector. It can be related to the costs covered by the State, such as training costs, wages, living costs and special working conditions accorded by the government, such as employment status, health insurance, preferential treatment and discounts on public services or extra payments that usually are not provided to the same extent by private companies.

Three Romanian companies that participated in the study calculate the contractual retention period on the basis of the costs of training, regardless of national legal provisions.

In countries where payback clauses are regulated in collective agreements and/or individually, the calculation of the contractual retention period varies, as well. For example, most of the Dutch collective agreements set a contractual retention period of up to two years. At company level, the German labour courts

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<sup>(24)</sup> Italy, Romania, Sweden and the UK can be said to be over-represented in the responses compared to Luxembourg, Germany, the Netherlands and Slovakia.

recommend establishing the contractual retention period according to the length of training, starting with six months for training that lasts up to one month. However, the maximum contractual retention period accepted is five years for training that lasts two years or longer. Examples provided from Swedish companies have a maximum contractual retention period of up to three years. Three of the six companies interviewed from the UK have a maximum contractual retention period of two years while the Italian companies set up this period in a case by case manner. One of the Italian companies does not set a contractual retention period but trained employees have to give notice on the termination of employment at least six months before they leave.

#### **5.1.4. Types of costs to be reimbursed**

The legal statutes and collective agreements reviewed are very unspecific regarding the costs that have to be reimbursed if employment is terminated. For example, the Luxembourg labour code refers to the 'cost incurred by the employer' but there is no further description of the types of cost. Only one collective agreement at company level provides for reimbursement of the direct costs of training and wages paid during training (see collective agreement De Lage Landen International in Section 4.2.1, Box 6).

According to the respondents from the in-depth cases, the costs that may be covered by payback clauses include, payments that can be easily documented and validated such as fees and payments for training courses<sup>(25)</sup> and travel expenses<sup>(26)</sup>. Other costs such as direct<sup>(27)</sup> and indirect labour costs<sup>(28)</sup> seem to be less likely to be considered as eligible for reimbursement. However, in

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<sup>(25)</sup> According to definition of the manual of the third continuing vocational education and training survey (CVTS3), fees and payments for training courses are 'the costs of (external) courses, made to external organisations for the provision of CVT courses and services. They include course fees, the cost of assessors and examiners and the cost of external trainers used to support internal courses' (2006).

<sup>(26)</sup> This refers to actual payments made to cover the travel and subsistence of persons employed participating in (CVT) training courses (Eurostat, 2006).

<sup>(27)</sup> Total labour costs of persons employed (excluding persons employed with an apprenticeship or training contract) is defined as the sum of the direct and indirect labour costs. The estimate of total labour costs represents all expenditure borne by employers in order to employ workers. It should include direct labour costs such as: direct pay, other bonuses and gratuities, payments for days not worked and benefits in kind) (Eurostat, 2006).

<sup>(28)</sup> Indirect labour costs: statutory social security contributions and family allowances, non-statutory payments, other social expenditure, vocational training costs (gross), taxes, less subsidies on labour (ebd.).

Romania and Austria, according to law, the actual costs of training and salaries paid can be protected by agreements on payback clauses.

In countries or sectors where the law and/or collective agreements do not provide for payback clauses covering direct and indirect labour costs, it can be assumed that employers may not finance training and may hire trained staff; or they may cover only the training costs and not the salaries and statutory social security contributions of the employees undertaking training – unpaid training leave. The non-protection of direct and indirect labour costs by payback clauses can thus be a constraint on employees who want to participate in training provided that they receive paid training leave. This situation can lead to lack of action on both sides: employers would not offer paid training leave without legal protection for the direct and indirect costs if the employment contract is terminated, and employees that cannot themselves afford the (direct and indirect) cost of training will not undertake training.

#### **5.1.5. Reimbursement**

Provisions of labour codes and collective agreements on the share of reimbursement differ according to country and sector. Two main approaches can be distinguished. The first is to define the proportion to be reimbursed on the basis of the number of years that have elapsed since the training took place and time remaining until the contractual retention period expires. The second approach is to calculate the reimbursement of costs on the basis of the number of months that have elapsed.

Most national statutes provide for the reimbursement of costs based on the number of years that have elapsed. Thus, employees are liable to reimburse a certain share of costs when they leave the company within the first year after training and a smaller share of the amount within the second year, and so on. This method of redemption can be disadvantageous for employees because the share of the costs to be reimbursed remains the same whether they leave the company at the beginning or at the end of a year. In contrast, calculation of the amount to be reimbursed on a monthly basis seems fair to both parties since the amount to be reimbursed is calculated more precisely. A monthly reimbursement of costs is the approach mainly recommended in collective agreements. Moreover, the German labour court recommends monthly reimbursement, as indicated by one of the respondents from the steel and technology company (Section 4.3.1, Box 13).

The main reason why employers request employees to reimburse the cost of the training they provide is voluntary termination of the employment relationship. In most of statutes and collective agreements employees are also liable to

reimburse such costs when they are dismissed for a serious breach of the employment conditions. In this case, if employees do not consider the reason for dismissal to be acceptable and the amount to be reimbursed is high, they may be reluctant to make the reimbursement. Consequently, legal disputes can arise and the enforceability and effectiveness of payback clauses may be decided by the labour court.

Another important reason for reimbursement is non-completion of training or, in some cases, not passing the examination. For example in Luxembourg's banking sector (Section 4.1.1) when employees are not dismissed failing exams, they can be requested to reimburse a share of the cost of training. Other examples in this regard are to be found in the Netherlands collective agreements.

Depending on the reason for reimbursement, the share of the costs to be reimbursed vary.

There are some exceptions where reimbursement is not required or cannot be requested, such as partial or total work disability confirmed by a medical institution, mass dismissal or change of place of residence, such as in the case of apprenticeships in Slovakia.

The results of the surveys indicate that in case of parental leave, temporary sickness and liquidity constraints, the reimbursement period can be agreed on individually, allowing the individual to pay later or to pay less. These terms are agreed on a case-by-case basis.

## 5.2. Experience of payback clauses

What follows is based on the responses to the third section of the questionnaire for the in-depth cases (Annex 1, Part 3). Most responses should be interpreted more as opinions than as factual information. They reflect local experiences and assumptions and provide valuable information for future policy development.

### 5.2.1. Payback clauses and investment in training

According to the responses, the most important objectives of payback clauses are:

- (a) to protect employers from staff turnover (to avoid failed investment and poaching);
- (b) to increase employer-provided VET.

Respondents also mentioned the objective of helping employers to recover part of the direct and/or indirect training costs but they attached less importance to it.

Payback clauses can increase employers' investment in employee training because companies feel secure after the training has taken place because of the protection offered by national or sectoral regulations.

Payback clauses help companies to avoid losing employees with important know-how acquired through training and job experience and to ensure they remain committed to the company. This is because payback clauses highlight the importance of training, reinforce the relationship between employer and employee and make both sides more aware of their responsibilities. The employers, who will finance the training, will think more consciously about training that may bind employees to the company. They will assess training needs more carefully to ensure that it benefits both the employee and the company. Employees who will have to reimburse the cost of the training if they leave their jobs, will feel more committed to the training and the job after training. They will want to avoid the penalty provided for in the training agreement and they will also seek to achieve better positions and roles within the same company following training. Therefore, they may be less inclined to leave the company.

Respondents also identified some limitations of payback clauses due to a series of factors related to the employee on the one hand and the attitude of the employer towards training on the other.

Employees may have to stay in the same company after training owing to the lack of other opportunities and not because of a reimbursement agreement. Moreover, there are personal factors that prevent employees from changing jobs, such as family reasons. Some respondents mention other ways of binding employees to the company after training that may make payback clauses redundant, such as better working conditions. The risk of failed investment is always present if the trained person is not right for the job he or she is to perform after training. Finally, in the case of poaching, if the new job offer is attractive enough, employees will leave regardless of payback clauses.

Despite the possibility of using payback clauses and avoiding lost investment, investment in training is limited in some companies. For example, respondents from Italy stated that some companies do not contribute to employee training because they do not have the resources required such as money and time or because they are not aware of the benefits training may bring to the company. However, companies invest in training, particularly when it has very clear objectives linked to the restructuration of the organisation and production. According to one representative of an Italian trade union, 'there are some companies that decide to invest in training as a tool for innovation and to increase productivity, although there are many that do not trust continuing training very much'.

## **5.2.2. Support for and opposition to payback clauses**

### *5.2.2.1. Employees*

The information available suggests that employment contracts do not usually include payback clauses for training. In any event, in times of crisis and rising unemployment, employees may not reject an employment contract because it contains a payback clause.

The answers given to the question whether employees are more willing to accept payback clauses because of the possible impact training can have are controversial. The acceptability of participation in training, the contractual retention period and reimbursement agreements increase with the expectation of benefits after training. When employees see a possibility of a better position and an increase in their earning potential within the company after training, they are more willing to accept such clauses. Further, some employees interpret payback clauses as insurance for remaining in employment after training. Therefore, the contractual retention period is not only important for the employer but also for the employee.

However, on a few occasions the contractual retention period to the employment contract has been renegotiated because it seemed to be too long for the employee. Therefore, the contractual retention period should always be calculated taking into account the length of the training, the costs borne by the employer and the expected increase in productivity and benefits for the company after training.

In some cases, employees are not aware of the importance of training for the career development s and so they would not accept payback clauses. Moreover, some employees may be reluctant to sign agreements on payback clauses because they see the benefits accruing only to the company and so they feel threatened by their employers.

### *5.2.2.2. The social partners*

With regard to the position of the social partners on regulations and use of payback clauses, most respondents who answered this question stated both employers' federations and trade unions support payback clauses. While employers' federations want to protect the employers' right to recoup the cost of training and so avoid failed investment, trade unions want to define the conditions under which employees must reimburse training costs. Only the Romanian trade unions expressed their opposition to the regulations on payback clauses, although without providing explanations.

The opposition in Romania could be due to the kind of training to which payback clauses apply. In Romania, payback clauses can be applied only if the course lasts for more than 60 days and if the employee has received basic pay and/or appropriate benefits from the employer during training. Employers are required by law to cover the cost of all other types of training. Consequently, it can be assumed that these conditions lead to underinvestment in training, as they limit application of payback clauses and restrict cases in which employers would invest if their investment was protected. Another assumption can be that trade unions oppose payback clauses because they consider that it is the duty of employers to provide and finance training.

### **5.2.3. The degree of detail of the legal basis and the level of its adoption – Effect on the use of payback clauses**

The level of detail in the regulation on payback clauses may be a constraint on or an advantage for their implementation and enforceability.

#### *5.2.3.1. Effect on implementation*

Very detailed regulations can lead to underinvestment in training because they exclude many cases in which employers would invest if they could apply payback clauses. At the other extreme, absence of a general regulation may deter employee from accepting a payback clause.

In practice, in some of the eastern European countries, such as the Czech Republic, Romania and Slovakia, payback clauses are limited to training that meets the conditions laid down in law. This means that some types of training, such as short-term training, are excluded. As a result, training may not always be provided by employers because the types of training they would finance cannot be protected against the turnover of trained personnel and poaching. Thus, national regulations on payback clauses designed by public authorities can have a negative effect on the investment of companies (and individuals) in training if the conditions are too detailed and restrictive in terms of the costs that may be protected.

Collective agreements at sectoral and company level seem to be more adaptable to the company's and employee's' training needs. For example, some Dutch collective agreements allow payback clauses for moderate training costs, distinguishing between training for current or for future work in the company on the one hand, and training for enhancing employability in the labour market on the other. Some collective agreements are more specific about the direct and indirect costs of the training to be covered by the employer. It is therefore easy

for employees to understand what type of costs they would have to reimburse if they leave their jobs.

Collective agreements seem to be more suitable than national regulations because the unique features of the sector are taken into account when designing the payback clause. For instance, training in hi-tech and the health branch can be more expensive than in service branches, so the contractual retention period may be longer for the former.

Agreements within companies or individual agreements are expected to be even more flexible and tailored on a case-by-case basis. However, employees are more likely to sign an agreement with payback clauses if they can consult, for example, a national regulation or a sectoral collective agreement to find out what constitutes reasonable conditions.

Regarding the responses to the survey, while employers would prefer a general national rule which could be amended at company level (as mentioned by one representative from an Italian employers' federation), representatives of trade unions in the countries under study preferred more detailed conditions to avoid misunderstandings and unfavourable conditions for employees.

Sometimes payback clauses may be misused when employers impose payback clauses even when they are required by law to bear the cost of training because, for example, firm-specific training can be very expensive and the employer wants employees to commit themselves to remain with the company after training. This may be the case in Romanian and Italian companies (according to interviews from these countries).

#### 5.2.3.2. *Effect on enforcement*

The absence of a general regulation can give rise to legal disputes if employers need to enforce the clauses, which can be costly in terms of legal fees and the extra time both parties must wait.

This is confirmed by the answers of the respondents on the role of civil and labour courts in enforcement.

According to most respondents from the countries where payback clauses are regulated at national level (Luxembourg, Romania and Slovakia), when the regulations are clear in the national law the courts do not play an important role. Thus, employers and employees decide if they want to agree on training on the conditions laid down in law, depending on whether they suit both parties. In contrast, in countries where there are no national regulations or collective agreements on payback, the labour courts or civil courts are called on to settle disagreements or misunderstandings.

Nonetheless, regardless of whether payback clauses are regulated at the national or individual level, legal disputes occur seldom. This can be due to the well-designed agreements, the rarity of staff turnover or mobility in certain sectors or employees' willingness to reimburse in the event of early termination of the contract or finally, the rare use of payback clauses in a country. None of the countries examined have bodies that provide advice or information on or monitor programmes specifically on payback clauses.

#### **5.2.4. Type of employee and sector and the use of payback clauses**

In theory, payback clauses can be applied to all types of employees, but responses show that they are more likely to be applied to those with higher qualifications, who are also more likely to follow expensive training. According to some respondents on the in-depth cases, some sectors, generally skill-intensive, implement payback clauses more frequently than others. Medium-sized and large companies benefit from payback clauses because they are more likely to invest in training and the regulations provide them with another incentive to increase their investment.

In Italy, the mechanical, ICT, plastic production, handicraft, technology and pharmaceutical industries all use payback clauses. Especially, the metal sector in Italy is keen on financing training on the basis of payback clauses to avoid the loss of financial and human resources when a trained employee leaves the company early. In the Netherlands, payback clauses are used more frequently in the financial and the ICT sectors.

Employees who work with technical machinery, for example in the mechanical sector, and who have very high-level job profiles and qualified roles (managers, etc.) and employees working in ICT positions are more likely to undertake training and conclude an agreement on payback clauses. However, the Italian respondents also stated that low-skilled employees use payback clauses to finance their training plans.

Additionally, most of the respondents from Romania state that white-collar employees reach agreements on payback clauses more frequently than other types of employee because in some cases the regulations are applicable only to training programmes that tend to be expensive, such as MBAs and postgraduate courses. This is also the case in Sweden. In the UK, not only white-collar but also clerical, blue-collar and low-skilled employees can benefit from payback clauses. The regulations offer them the possibility of undertaking training by assuring their employers that they will agree to stay with the company after training or to reimburse the costs if they do not. This is case in particular for apprentices and young employees who have no other resources to invest in training.

Table 12 **Strength and weaknesses of payback clauses**

	<b>Employers</b>	<b>Employees</b>
<b>Strengths</b>	<ul style="list-style-type: none"> <li>• In countries where financial instruments for CVET and public financial resources are not sufficient, payback clauses can be an incentive for employers to invest in training because they may reduce the risk of poaching.</li> <li>• Employers can reduce the loss of trained employees after training through the contractual retention period.</li> <li>• The cost of training, or part of it, can be recouped when employees decide to leave the company or are dismissed due to a serious breach of contract conditions.</li> </ul> <p>Moreover:</p> <ul style="list-style-type: none"> <li>• Employers may become more involved in staff development planning.</li> <li>• Companies could become more attractive to employees and jobseekers if they finance CVET.</li> </ul>	<p>Employees can benefit from payback clauses because:</p> <ul style="list-style-type: none"> <li>• they can take the initiative and propose training to the employer, who can be more willing to anticipate and bear the cost of training if the failed investment risk is reduced by payback clauses;</li> <li>• employees may find a backer for their training (e.g. an alternative to loans), particularly if it is advantageous for employer, and thus cover the cost of training they could not otherwise afford;</li> <li>• they can feel more committed to the company and sure about the continuity of the employment relationship during the contractual retention period.</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• The regulations at national or at the social partner level may limit the use of payback clauses to individual cases if they are too restrictive.</li> <li>• In some regulations, payback clauses are enforceable only for general training, which is transferable to future employers. It may be argued that this limits the use of payback clauses and reduce employers' willingness to invest in training.</li> <li>• Regulations limit the cost covered by payback clauses to the actual and direct cost of training; indirect costs such as wages and opportunity cost are not expressly regarded as training-related costs. This limits the incentive for employers to invest.</li> <li>• New employees may be reluctant to sign contracts with payback clauses..</li> <li>• The cost of legal disputes may be higher than the costs to be recovered after training.</li> </ul>	<ul style="list-style-type: none"> <li>• In some cases, the contractual retention period may be excessive in relation to the costs and length of training.</li> <li>• Where indirect costs are not part of the cost to be reimbursed, employers are less willing to finance training. In case of lower financing by the employer, the employee might not undertake training.</li> <li>• Employees may be reluctant to undergo training (due to risk of reimburse reimbursement).</li> <li>• Employees may refrain from signing new employment contracts because of payback clauses.</li> <li>• Payback clauses can be interpreted as an employer's 'trick' when they bind employees after training without a salary increase to reflect the increase in productivity that occurs after training.</li> <li>• Employees may not want the employer to receive information about their future plans.</li> </ul>

### 5.2.5. The financial crisis and the use of payback clauses

The impact of the current financial crisis differs depending on the country and the company. While representatives of some companies indicated that they have cut investment in training to save money, other companies see training as means of retaining employees even if the amount of work decreases temporarily. Particularly in times of financial crisis, companies want to be sure about their

investments. Thus, the use of payback clauses may increase to avoid the loss of human and capital resources during and after economic slumps. To sum up, during economic crises companies tend to invest less in training in times of economic crisis, but payback clauses may safeguard their investment. Nevertheless, most respondents have not observed changes in the implementation of payback clauses over the last five years.

### 5.3. Strengths and weaknesses

The last sections have analysed different aspects of payback clauses and discussed their advantages and disadvantages. This section summarises and highlights some strengths and weaknesses of payback clauses as an instrument that may increase employers' investment and employees' participation in training. Table 12 presents how payback clauses may affect the training behaviour of employers and employees.

## CHAPTER 6.

# Conclusions and recommendations

The overview of the 33 European countries with special attention placed on the eight in-depth cases has shown that payback clauses can be regulated at different levels. Regulations at national level and collective agreements between social partners may serve as a guide for individual arrangements at company level. Most labour codes allow regulations to be amended provided that the conditions become more favourable to the employee. The advantage of national regulations and collective agreements on payback clauses is that they define framework conditions. Thus, employers and employees are clear from the beginning of the training about what they can expect from one another if the employment relationship ends within the contractual retention period. Further, both parties can rely on national regulations or on the corresponding collective agreement to avoid misunderstandings. For instance, when national regulations or collective agreements determine the maximum length of the contractual retention period or the maximum share of costs to be reimbursed, there is less possibility of the parties taking legal action. The disadvantage of overarching regulations is the fact that they are general. General rules are the result of analysis of the most common cases, and do not take into account unusual cases. Consequently, national and collective regulations can exclude some groups of individuals and companies from financing and participating in training, for example if the conditions laid down in labour codes are extremely strict and cannot be applied in practice. For this reason, most labour codes and collective agreements allow individual contracts to introduce amendments.

In principle, payback clauses are a means of safeguarding employers' investment in training if employees resign. In fact, they also protect employers from high staff turnover and the poaching of trained personnel after they invested in training. At the same time, the law attempts to protect employees from possible employer abuse, for example requests to reimburse the cost of training that is planned as part of the job. Some regulations set out very demanding conditions. For example, the cost of training must be higher than EUR 3 000 or the training has to last more than 60 days to be eligible for reimbursement in case of early termination of the employment contract. Employers must pay for less costly or shorter training without expecting to be reimbursed. Since training costs may exceed the limits set out in the labour code for the use of payback clauses, and since some companies would not provide training if their investment was not protected, employers could be reluctant to provide training

below the amount that entitles them to legally enforce reimbursement. This finding suggests that over-regulation and overprotection of employees may lead to the under-provision of training. The Netherlands system could be a suitable model for the design of regulations. The Netherlands regulations define conditions in collective agreements at sectoral and company levels. Most of Netherlands agreements with provisions on vocational training include more or less detailed payback clauses that are tailored to the training needs of the branch or company.

The contractual retention period is a safety net for both employers and employees. Most countries with provisions on payback clauses in the labour code set a maximum length for the contractual retention period. This guideline can be useful for the calculation of the amount to be reimbursed in case the employment relationship is terminated during the contractual retention period. It can also help to avoid the misuse of payback clauses in individual agreements. However, employees are allowed to rescind their employment contract prior to the expiry of the payback clause.

In principle, employees are free to choose their employer. Thus, the reimbursement condition offers the possibility of changing employer if the employee (or new employer) is prepared to share the training costs borne by the previous employer.

For employees, the benefits of training extend beyond the contractual retention period. What is more, an employee's move to another company can be due to the training undertaken – and paid for by the previous employer – that increases his or her attractiveness to other employers, at the cost of the previous employer. Thus, requesting reimbursement of training costs when an employee leaves the company within the contractual retention period seems fair. Yet this view is not necessarily that of the employee, who may feel bound to the employer.

The analysis of the effects of the contractual retention period are complicated by several factors related to the design of payback clauses. First, the prime motivation of employees to undertake training is not only to improve their skills but also to earn a higher salary after training, particularly if their responsibility and range of tasks increase after training. Thus, even if the employer bears the cost of training, employees may expect their salaries to reflect their new position and skills. Otherwise, employees can leave the company regardless of the contractual retention period, particularly if they find another employer who is willing to pay a higher salary and/or to assume the cost of training borne by the former employer. An agreement on a contractual retention period without the prospect of a salary increase after training can cause

employees to reject such an agreement or to find another way of leaving the company after training. Thus, better working conditions after training can be a better incentive than agreement provision on a contractual retention period in an employment contract. However, in very competitive branches, there is always the chance that the employee will leave the company, no matter how much the employer who provided training tries to retain him or her. In cases where the qualifications acquired through employer-financed training help the employee to move to another company and the new employer hires the employee due to these qualifications, it should also be possible to make the new employer responsible for reimbursement.

This study answered the following question: which European countries have regulations on payback clauses? What conditions apply to the use of payback clauses? Why are they more important in some countries and sectors as incentives for employers to finance and employees to participate in VET? However, it is not easy to assess the extent to which payback clauses have been implemented in employment or training contracts and enforced owing to a lack of data on the prevalence of payback clauses at the national or social partner levels or in companies. Results from the field phase indicate that payback clauses exist in most European countries but they are seen as a contractual instrument for protecting the interests of the contracting parties more than as an instrument for sharing the cost of training. However, in fact payback clauses may serve more to make both parties more aware of their responsibility to provide and participate in training. Further, payback clauses that are triggered if the employee does not complete the training can provide employees with an incentive to complete the course, as is the case in most collective agreements in the Netherlands. Payback clauses then have a disciplinary effect on the employee, making him or her aware of responsibility for the employer's invest effort. However, for employees from more vulnerable social groups (low educated, low income) this may be an overly restrictive condition that could discourage them from taking part in the course. They may lack confidence in their ability to perform in learning environments that are usually associated with payback clauses (formal training leading to certification).

It is clear from the review of the use of payback clauses in European countries that factual information is extremely limited for example on the inclusion of payback clauses in employment contracts, the level of their enforcement or their possible role in increasing employer-funding for adult learning. Further research should be conducted to gain more detailed knowledge and to support future development and design of payback clauses. Such research should be more representative than this study. For example interviews should be conducted

with a representative sample of the social partners (i.e. employers' federations and trade unions), companies and individuals (employees) throughout Europe.

## Policy recommendations

Despite the limited information on the application and enforcement of payback clauses, it seems likely that they will play a bigger role in the future. Given that the average employee's working life will be extended to about 50 or even more years, continuing education and training will become more important to allow employees to keep up with changing job requirements or changing interests and work aspirations. More training than in the past will take place in universities for which higher fees will be charged, and it will include longer periods of other forms of expensive training and require additional or new funding sources. Since it is unlikely that all costly training will be financed by governments, employers may play an increasing role in this area, particularly with regard to keeping highly qualified and motivated employees. Payback clauses are a natural means to safeguard employers' training investment.

In this sense, agreements with payback clauses can serve as a bridge to increase investment and participation in training, provided they are well designed and promoted. This study suggests that the social partner level may be more suitable than the national level for developing regulations on payback clauses, at least as far as 'framework regulations' are concerned. Unlike national regulations, they can target the needs of a particular sector and be more specific, for example on the costs to be covered by any reimbursement, the (monthly) reduction of the reimbursement, the contractual retention period, etc. The crucial issue is to achieve a balance between the interests of the employers and employees involved, with sufficient flexibility to amend the regulations if necessary, for example to address training requirements that are not covered by the framework regulations.

The payback clause conditions set out in national and sectoral regulations should therefore be adapted, or at least adaptable, to these cases to find a way to balance the type of training, the amount of the costs and the contractual retention period in a contract against the reimbursement that can be expected in case of termination of the employment relationship. Thus, national regulations should allow the use of payback clauses in the labour code, mention exceptions where payback clauses do not apply (e.g. minors) and underline that conditions must be reasonable. National regulations could be amended at sectoral level or in companies. In that case, the detailed formulation of the conditions should take place at sectoral level because the social partners should agree on the

applicability of payback clauses to sectoral and firm-specific training, or in the company for individual contracts. In any event, the reimbursement and its terms should be negotiated and signed by both parties before training starts in a separate agreement to avoid legal disputes. Only signed agreements should be binding.

The regulations on payback clauses should also allow payback clauses to be used for training that may not be particularly expensive or lengthy to encourage employers to provide training and employees to take it more seriously. This may discourage employees from dropping out of training.

Payback clauses should also be extended to companies and employees not explicitly or implicitly covered so far, such as small companies that cannot provide employees with expensive and long training and employees on fixed-term contracts.

Regulations on payback clauses should be combined with regulations on training leave to mitigate possible inconsistencies between them. In most European countries, there are several training leave instruments, in some cases supported by national or sectoral training funds. However, these instruments may cover only a share of training costs. Employers should therefore be encouraged to provide paid training leave by allowing agreements on payback clauses to cover the direct and indirect cost of training.

The statements of respondents and further research showed that although there are payback clauses in most countries and an implicit right to use them <sup>(29)</sup>, no country has official government agencies to provide information and advice on their implementation. Stakeholders therefore may not know how to implement the clauses correctly to avoid future difficulties. A review of the literature did not reveal document describing the use of payback clauses. Thus, the stakeholders involved, for example the tripartite commissions on the development of lifelong learning policies, should themselves develop the information and advisory agencies and the specialised material for the use of payback clauses, on the basis of a consensus, particularly between employers and employees.

A more general – but also significant recommendation – is to develop campaigns to promote the provision of and participation in training through the use of payback clauses where no other more appropriate instrument exists. Governments could create encourage interaction between the social partners and companies by giving them more freedom of choice in designing the conditions on which they invest in human capital development, for example in the design of

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<sup>(29)</sup> In principle, where payback clauses are not explicitly prohibited by law, they can be used.

payback clauses. However, the proper functioning of this and other instruments should be monitored and evaluated. This should raise awareness of the short-, medium- and long-term benefits for individuals, companies and countries. Consideration should therefore be given to the role of the actors involved in the provision of training, and in particular in defining the terms of support for participation in training.

## CHAPTER 7.

# Country descriptions

## 7.1. Description of countries with regulations at national level

### 7.1.1. High level of regulation

#### *Belgium*

In Belgium, apprenticeships, unpaid and training leave, learning time accounts and professional training programmes are all part of employer-financed training.

The Belgian regulations on payback clauses came into force on the 23 December 2005 and contain the following provisions <sup>(30)</sup>:

- (a) payback clauses only apply to employees with a permanent contract if their annual minimum income exceeds EUR 30 535 (for 2011). The amount may be reduced proportionally for part-time employees;
- (b) payback clauses can be agreed only for general training of a minimum of 80 hours or, in the case of training for less than 80 hours, if the costs are more than twice the monthly guaranteed minimum income (EUR 2 830 from 1 October 2010);
- (c) the period of validity of the payback clause may be proportional to the cost and duration of the training, but no more than three years after the completion of training;
- (d) if an employee leaves the company before the agreement expires, the share of reimbursement may be as follows:
  - (i) 80% of the training costs within the first third of the agreed time frame;
  - (ii) 50% within the second third and 20% thereafter;
- (e) the amount to be reimbursed may not exceed 30% of the employee's annual income.

Payback clauses do not apply when:

- (a) the employment ends during the probationary period;
- (b) the employee was dismissed, although payback clauses may apply when the reasons for dismissal are extraordinary.

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<sup>(30)</sup> Summarised from the original text in French (*Keys for employment contracts*, 2011).

### 7.1.2. Medium level of regulation

#### *Austria*

Regulations on the reimbursement of training costs under work and traineeship contracts were introduced by law on 18 March 2006 and are common in Austria. According to the national labour code, payback clauses can be agreed on between the contracting parties, provided that:

- (a) the training provides the employee with theoretical and practical knowledge that can be transferred to other employment;
- (b) the employer may only claim the actual cost of training and the wages paid during the training but not additional costs (e.g. loss of productivity) due to the absence of the employee;
- (c) payback clauses must be valid for five years or for a maximum of eight years in special cases. This limit may be reduced if the training is of little value to the employee.

Austrian courts normally consider three to five years to be an acceptable period of validity for payback clauses. The amount of costs to be reimbursed may be reduced progressively during the contractual retention period after training until the clause expires. Otherwise, payback clauses are null and void by law. Further, payback clauses that extend the period of reimbursement beyond the statutory maximum of eight years are completely invalid. The claim to reimburse costs is also invalid when:

- (a) employment is terminated during the probationary period;
- (b) the agreed period of validity of the employment contract expires;
- (c) dismissal is unjustified or due to permanent incapacitation for work;
- (d) the termination of employment is employer-induced.

In cases where the employee resigns or the employment contract is terminated by mutual agreement, the payback clauses remain valid <sup>(31)</sup> (Arbeiterkammer, 2009).

According to one of the respondents in the online survey, the regulation on payback clauses applies to all employees and contracts (managerial, clerical, apprentices with permanent or fixed-term contracts) and a contractual retention period of three years can also be valid for very short-term training (of some days only). Moreover, according to one of the respondents in the online survey, 'payback clauses become more common in Austria year by year and are

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<sup>(31)</sup> Summarised from the original text in German. The relevant paragraph was introduced on 18 March 2006 (*Labour Contract Act*, § 2d AVRAG)

extended to new professions, such as, hairdressers. In Austria, it seems clear that payback clauses tend to be abused by companies to prevent their employees from exercising their right to end a labour contract'. Further, 'possible time frames are criticised as being too long (up to three years) even for short training courses of a only a few days' [...] 'These clauses often seem to be part of the contracts of the companies only to stop their employees finding a better paid employment'.

### *Czech Republic*

According to the Czech labour code, introduced in January 2007, there are two different types of training that may be supported by the employer: training for the improvement of qualification and training for qualification upgrading. 'Improvement of qualification' means updating, maintaining and 'refreshing qualifications' in which the nature of the employee's qualification does not change, while 'qualification upgrading' aims at a higher level of qualification.

An agreement on improvement of qualification may be reached if the estimated costs of the training exceed CZK 75 000 (EUR 3 000). In that case, the training may not be mandatory for the employee owing to the relatively high cost. The law does not define the maximum period of liability for the employee. In contrast, the statutory maximum contractual retention period in the case of qualification upgrading is five years. The minimum costs for qualification upgrading are not specified, but the employee may be liable for reimbursement if the training commitment has not been successfully completed.

For both types of training, the contractual retention period for the employee and the obligation to reimburse the costs should be reduced proportionally to the time that has elapsed after training.

Payback clauses do not apply if the employer has stopped providing the employee with the agreed funding during the training, particularly if the employee becomes incapacitated over the long term for the type of work for which the training was undertaken. The invalidity must be certificated by an occupational health establishment or in accordance with the provisions of the competent administrative authority (*Labour code*, 2006, Sections 227-235).

### **7.1.3. Low level of regulation**

#### *Bulgaria*

The most recent version of the Bulgarian labour code entered into force on 1 August 2004. Articles 229 to 234 distinguish three types of training contract for three different groups of employees. They also specify the maximum length of

time that an employee may be liable to work in the same company after completion of training for each type of contract. The conditions for the reimbursement of training costs laid down in the labour code are more general and less detailed than, for example, the Austrian and Belgian regulations.

Table 13 **Conditions for reimbursement in Bulgaria**

Type of contract	Maximum contractual retention period	Regulation reimbursement of training costs
Contract for acquiring qualification (Art. 229)	6 years	Agreements on reimbursement of cost considering the civil law
Apprenticeship contract (Art. 232)	3 years	Compensation in proportion to the non-performance in an amount agreed on by both parties. This amount may not exceed three times the minimum monthly salary for the country.
Contract for higher qualification training and retraining (Art. 234)	5 years	The contract may include the conditions establishing liability in case of non-completion of training.

Contract for acquiring qualification: for a person who enters or has entered a training institution.  
Apprenticeship Contract: training of a novice while working in a specified profession or speciality.  
The duration of training cannot be longer than six months.

Source: Table based on the Articles 231-233 of the Bulgarian labour code (2004).

In conclusion, the Labour code defines a maximum period during which payback clauses are valid, but the conditions for reimbursement may be endorsed by the employer and the employee depending on the cost of training. In Bulgaria, payback clauses may also be regulated by social partner agreements and by agreements within companies.

### *Estonia*

The most recent version of the Estonian Employment Contracts Act entered into force on 1 July 2009. In Estonia, employees are obliged by law to improve their skills. For this purpose, employers are also responsible for developing the knowledge and skills of their employees and they are required to provide employees with training according to their interests, to bear the costs and to pay the usual wage during the training.

According to the Estonian labour code, employees and employers may agree on financial support for training to be paid by the employer. In return, the employee is expected to work for the employer for an agreed period after training, depending on the length and the cost of the training. However, the employee

cannot be bound for more than three years. He or she is statutorily liable to reimburse the training costs if the employment relationship is ended voluntarily by the employee. The employee is also liable for reimbursement if the employer decides to cancel the employment contract because the employee has committed a fundamental breach of its terms. In any event, reimbursement should be proportional to the time worked in the company after training. Agreements on reimbursement of training costs negotiated with a minor or to reimburse expenses related to the performance of the employer's statutory training obligation are void. (*Employment Contracts Act*, 2009, §§ 15 and 34).

According to one of the respondents in the online survey, payback clauses can be implemented in agreements on internal and external continuing vocational training courses, on-the-job training, job rotation, exchanges, internships or study visits and participation in learning or quality circles as well as self-directed learning. Fees and payments for training courses, the labour costs of internal trainers or mentors and travel and subsistence payments can be included in the costs to be reimbursed. Other costs may be defined in the training agreement. In general, liability usually rests with the employee.

The length of the contractual retention period depends on the cost of training, and the share to be reimbursed depends on the time between the training and the termination of the contract, and the costs of training can be reimbursed in one or in several instalments, depending on the amount. The contractual retention period cannot exceed three years or be unreasonably long considering the training expenses. The fact that the legislation does not impose a minimum or maximum cost to be reimbursed suggests that the courts will decide whether or not a payback clause applies.

### *France*

In France, payback clauses are governed by the amended French labour code of 17 October 2010, but its provisions are more general. The courts will decide whether a contractual agreement on the reimbursement of training costs is enforceable on the basis of the following:

- (a) the reimbursement clause must be concluded before the training commences and must specify the date, nature and duration of training, its real cost to the employer, and the refund arrangements available to the employee;
- (b) a reimbursement agreement may be concluded only if the training costs exceed the amount of the convention or if the employer is legally bound to participate in the development of vocational training;

- (c) the clause must be proportional to the length of the commitment and the cost of the training;
- (d) the employer may respect his other training commitments with regard to financing and paid leave;
- (e) employers must ensure that employees are free to rescind the employment contract at any time;
- (f) agreements are valid for only voluntary and not for compulsory training <sup>(32)</sup>.

### *Hungary*

Employees are entitled to employer-financed apprenticeships, unpaid and paid training leave, learning time accounts and vocational training programmes.

According to the Hungarian labour code of 1992, employers and employees may conclude study contracts to meet the company's requirements for skilled experts. In these contracts, the employer agrees to support the employee financially during the study period while the employee agrees to work for the employer for a fixed period of time after graduation. This period may not be longer than five years. Study contracts may not be concluded if the employer pledges the employee to complete his or her studies or when the support is provided as a condition of the employment relationship (e.g. statutory share of the cost to be covered by the employer).

In Hungary, the employer is entitled to claim a refund of the expenses incurred for the studies if the employee does not complete the studies, does not begin to work after graduation or interrupts the employment before the end of the period. In the latter case, the amount to be reimbursed is calculated according to the remaining period of validity of the clauses (*Labour code*, 1992, Sections 110 to 116).

### *Lithuania*

The Lithuanian labour code of 4 June 2002 includes a general clause on the reimbursement of training costs incurred by the employer in the last year in the event that the employee resigns without a valid reason (according to the law or contract terms). Detailed conditions may be agreed upon for employment contracts. The law does not specify the exact (share of) costs to be reimbursed or the type of training that payback clauses may apply to (*Labour code*, 1992, Art. 127, § 2). As a consequence, either the employee or the future employer may be liable to reimburse the cost of training according to the agreement. The timeframe

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<sup>(32)</sup> Summarised from the original text in French (*French Labour Code: consolidated version*, 2010, Arts L6111-1 to L6111-5).

for reimbursement and the share of the training costs depend on the cost of the training. The amount to be reimbursed depends on the time between the training and the termination of the contract. Internal and external continuing vocational training courses can be covered by payback clauses and employees can therefore be required to reimburse not only the fees and payments for training courses but also direct and indirect labour costs.

### *Poland*

In Poland, the regulation on payback clauses was amended on 16 July 2010. According to Article 103 of the Polish labour code, employees are liable to reimburse training costs for a contractual retention period of no more than three years after the training agreement. The clause may take effect in the case not only of voluntary resignation but also dismissal due to a breach of the contractual obligations. Employees are also required to reimburse employer's training costs if the training has not been followed or has been interrupted by the employee without good reason. The reimbursement of costs may be reduced progressively in accordance with the period of employment after training. (*Labour code, Act of 26 June 1974*)<sup>(33)</sup>.

### *Portugal*

According to the new Portuguese labour code of 12 February 2009, contractual parties may agree that an employee cannot rescind the work contract for a period of up to three years to compensate an employer for the expenses incurred for the employee's vocational training. Employee are not bound by the contractual retention period if they reimburse the (share of) training costs (*Labour code, 2009, Art. 137*)<sup>(34)</sup>.

### *Slovenia*

The Slovenian labour code entered into force on 1 January 2003 and regulates the rights and duties of the contractual parties in a general way. The duration and the type of training as well as the rights of the contracting parties during and after the training are determined on an individual basis in the contract as regards the present level of education or in a collective agreement (*Employment Relations Act, Art. 172*)<sup>(35)</sup>; Cedefop, 2009a).

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<sup>(33)</sup> Summarised from the original text in Polish.

<sup>(34)</sup> Summarised from the original in Portuguese.

<sup>(35)</sup> Unofficial translation received by the International Labour Office only for information purposes.

## 7.2. Countries with payback clauses regulated by social partner agreements

### *FYROM*

In FYROM, collective agreements can regulate the rights, obligations and responsibilities of employees and employers, subject to legislation and other regulations, and the means of fulfilling the rights, obligations and other stipulations relating to the interests of employees and employers and the procedures for the settlement of disputes. Collective agreements are implemented directly and are mandatory in organisations which have concluded such agreements on behalf of all employees and employers (*Labour Relations Law, 2007*).

However, neither the Macedonian labour code nor the collective agreement for the public sector or the collective agreement for private sector employees even mentions how collective agreements or individual contracts of employment can regulate payback clauses. On the contrary, in both types of collective agreement, employers are liable to cover the costs of vocational training and retraining that is necessary for the company, but the legislation also states that further conditions can be part of collective or individual agreements (*General collective agreement of the public sector in the Republic of Macedonia, 2009, Art. 34; General collective agreement for the economy of the Republic of Macedonia, 2009, Art. 53*) <sup>(36)</sup>.

### *Norway*

Payback clauses are not required by law but they are permitted within 'certain limits' <sup>(37)</sup> in individual contracts or collective agreements (OECD, 2003).

## 7.3. Agreements within companies

### *Croatia*

According to the Croatian labour law of 21 September 2004, the improvement of employees' skills is a duty of both employer and employees, particularly in the case of work-related training or when changes are made, for example the introduction of a new method or organisation of work (*Labour Act, 2004, Art. 32*).

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<sup>(36)</sup> Summarised from the original text in Macedonian.

<sup>(37)</sup> The term 'certain limits' is not specified.

According to one survey respondent, payback clauses may be concluded at national level through the Ministry of Education, but this information could not be confirmed through research on legal provisions. Two respondents mentioned the existence of social partner agreements and agreements within companies in Croatia. One of the respondents indicated that payback clauses can be applied for managerial employees only and that the contractual retention period and share of reimbursement may be agreed upon and depend on the cost of the training. This information could not be verified through documents or literature. However, those statements suggest the existence of provisions in individual contracts, but only for general (and expensive) training because firm-related training must by law be financed by employers.

#### *Ireland*

According to 'Chambers Ireland' <sup>(38)</sup>, payback clauses can be contained in employment contracts. Employers may calculate the specific schedule of reimbursement of training costs, but such training agreements usually stipulate a reimbursement of 100% of the training costs if the employee resigns within 3 months after completing training; 75% reimbursement after 3 to 6 months; 50% after 6 to 9 months and 25% after 9 to 12 months. One year after training, employees are not usually asked to reimburse training costs.

Reimbursement of training costs must always be agreed on before the start of training, with the employee's consent, because the reimbursement is deducted from wages and employees must therefore be protected from any unlawful pay cuts. A deduction of this kind without the employee's prior agreement is illegal. Such reimbursement clauses cannot be implemented retroactively.

#### *Latvia*

According to Latvian labour law, employers must provide continuing professional improvement for their employees.

If an employee studies for a university degree or qualification, the employer's financial support and the payback arrangements can be the subject of a separate agreement (Cedefop, 2009a). The existence of payback clauses in companies has also been confirmed by one survey respondent from Latvia.

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<sup>(38)</sup> Chambers Ireland is a social partnership organisation and the largest business network with more than 13 000 members (local business representatives) in Ireland (<http://www.chambers.ie>).

### *Malta*

Payback clauses are not regulated by law, but they are said to be common when training provided to an employee is expensive or lasts longer than one month (Cedefop, 2009a). Usually, such payback agreements are signed between the employer and the individual employee. Also, as 'suggested by the national VET experts, employers would normally include a payback agreement when training expenses exceed EUR 1 000' (Cedefop, 2009a). One respondent from Malta confirmed that payback clauses are regulated within companies.

### *Spain*

According to more informal (personal) sources, agreements on the reimbursement of training costs seem to exist between employers and managerial and clerical employees, whose training is usually expensive and cannot be covered by public funds.

### *Turkey*

According to Cinop (2009), the provision of VET is a matter of individual employment contracts, which is becoming more important for the social partners and labour and education legislation.

## 7.4. No regulation encountered or probably not existing

In six of the 33 European countries under investigation evidence was not found about the regulation and use of payback clauses. However, there may be a few examples of companies applying payback clauses.

There are two reasons why there may be no payback clauses: first, in countries with high public expenditure on education and VET – for example Cyprus, Denmark, Finland and Liechtenstein – the need for payback clauses may be very limited; second, in the countries where cost-sharing arrangements, such as national and sectoral training funds or grants for companies exist (and are effective), the use of payback clauses may be redundant. The second reason may reinforce the first one, or may be seen as the main reason as in Iceland.

In Denmark participants in CVET programmes normally pay a fee, but courses are free of charge for participants who are entitled to financial compensation corresponding to unemployment benefits (*voksen- og efteruddannelsesgodtgørelse* – VEU). The compensation is paid to employed people in CVET and to the unemployed. Companies often supplement it. Owing

to higher course fees and the introduction of tuition fees, particularly for customised courses for employees at managerial level, private companies' expenditure on CVET has also increased (ReferNet Denmark, 2009).

Training funds are of major relevance to the provision of vocational education and training in Cyprus, Greece and Iceland. In Cyprus training is primarily financed through the multisector Human Resources Development Fund, administered mainly by the Ministry of Education and Culture. It is estimated that 20 to 25% of expenditure on human resource development is borne by the State and the rest by private funds. The public funds are financed by a human resources development levy of 0.5%, on the payroll of eligible employees and directly from employers. In terms of tax incentives, all expenditure on human resource development is tax-deductible for companies. In addition, the European Social Fund (ESF) supplement financial resources devoted to VET (ReferNet Cyprus, 2009; Cedefop, 2009a). A similar financing structure can be found in Greece where the ESF together with national resources are the main sources of funding for publicly promoted CVET.

Sectoral training funds exist in Denmark and in Iceland. In Denmark, collective bargaining agreements determine the goals and the means of financing the funds (Cedefop, 2008; Eurostat, 2006). While they play only a minor role in Denmark, sectoral funds are more important in Iceland. Investment in these funds is determined by the wage level, which also holds true for Greece. In several agreements between unions and employers signed since 2000, it has been decided that each employee must pay 0.05% of his/her salary into an education and training fund and that all employers must pay 0.15% on the same basis. The State also contributes to these funds through the Unemployment Security Fund (Atvinnuleysistryggingarsjóður). Employees can apply for funding from the training funds according to their needs, and companies can also apply for funding to support specific courses in the work place (ReferNet Iceland, 2009). Further, in 1992 a national employee education fund was established in Iceland (Law on vocational training No 19/1992).

## List of abbreviations

Art.	Article
CVET	Continuing vocational education and training
FYROM	Former Yugoslavian Republic of Macedonia
ICT	Information and communications technology
IVET	Initial vocational education and training
MBA	Master of business administration
SMEs	Small and medium-sized enterprises
TUC	Trades Union Congress
VET	Vocational education and training
WOS	Werkgeverorganisatie in de sport Nederlands [Employers' Federation sport branch Netherlands]

## Country codes

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IS	Iceland
IT	Italy

LI	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia
(*)	FYROM
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
TR	Turkey
UK	United Kingdom

(\*) To be defined.

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## ANNEX 1.

# Questionnaire for the in-depth cases

<b>Part 1: General aspects of VET and payback clauses</b>	
Entitlement to training	<p>Are employees in your country entitled to one or more of the following types of employer-financed VET?</p> <ul style="list-style-type: none"> <li>• Apprenticeship</li> <li>• Unpaid training leave</li> <li>• Paid training leave</li> <li>• Learning time accounts</li> <li>• Professional training programmes</li> </ul>
Level of regulation	<p>How are payback clauses regulated in your country?</p> <ul style="list-style-type: none"> <li>• As legal provisions at national level (which ministry?)</li> <li>• As legal provisions at regional level (which regions?)</li> <li>• As collective agreements between social partners (in which sectors?)</li> <li>• As agreement at company level (either as agreement between union and management or individually)</li> </ul>
Regulations at sectoral and/or company level	Does the collective agreement for your branch apply at national or regional level?
	Can agreements on VET and payback clauses between the social partners amend and/or replace national statutory regulations?
	Can agreements on payback clauses at company level replace/amend collective agreements and/or statutory regulations at national level?
<b>Part 2: Detailed arrangements of regulations of payback clauses</b>	
Key objectives of the introduction of payback clauses	To foster employer-financed VET
	To reduce employers' risk of investment in VET
	To help employers to recover (part of) the direct or indirect training cost, if contract is terminated
	To avoid abuse of employer financed VET through employees.
Eligibility	For which (kind of) companies, groups of employees, types of contracts and types of training do payback clauses apply?
	What are the formal requirements for training activities to be eligible for financing as the object of payback clauses?
	Are there any special regulations/exceptions on the type of the courses, content of training, subjects, levels of education, etc., for being eligible for payback clauses?
	Which training related costs may apply to payback clauses according to the national/sector/company regulations?
Repayment conditions	How long are employees obliged to repay the training related costs after training?
	What share of the training costs has to be repaid, if the employee resigns or is dismissed due to serious breach of contract conditions by the employee' before the expiration of payback clauses?
	In which cases may payback clauses become effective? (voluntary termination of employment, dismissal, etc.)
	Who is liable to repay the cost of training, if the employee discontinues the employment relationship shortly after the training (before the expiry of the binding period)? (e.g. only the employee, new employer)
	How have former employees and/or future employers to repay the (share of) training costs?
	Do special regulations apply to certain target groups of employees? (elderly workers, employees in parental leave, with liquidity constraints, etc.)

	Special regulations can be exceptions, special repayment conditions, enforcement restrictions, reduction of (share/time of) repayment, etc.
	Are there special regulations for (former) employees with liquidity constraints in case they have to repay, for example due to unfavourable circumstances such as unemployment, lack of credit worthiness, force majeure, parental leave, temporary and/or permanent work disability?
	Do companies take over the repayment of training cost for newly hired employees who would have to repay training costs of their former employer?
	In which branches, sectors and/or (kinds of) companies is common practice that training costs of the former employer are paid by the new employer?
	In which cases do employers repay the training costs of newly hired employees?
	Are some companies and/or branches excluded from the regulations on payback clauses at national level such as, for example, SMEs (small and medium enterprises), public sector companies, companies with a limited annual turnover, etc.?

### Part 3: Assessment questions

Impact of payback clauses on achieving the key objectives	<p>Has the existence of payback clauses had an impact on achieving the following objectives?</p> <ul style="list-style-type: none"> <li>• To increase VET in general</li> <li>• To increase employer-provided VET</li> <li>• To protect employer of staff fluctuation after training</li> <li>• To help employers to recover (part of) the (direct or indirect) training costs</li> <li>• To avoid abuse of employer-provided VET</li> <li>• To reduce the public investment in VET</li> <li>• To avoid failed investments in human capital for companies</li> <li>• To avoid poaching from trained personnel</li> </ul>
Expectations of employers and employees on investment in VET	<p>Does the expectation of increasing productivity through training have a positive impact on employers' investment in training in your country?</p> <p>Does the expected impact of training courses, such as acquisition of new skills, job prospects, qualifications, interest in training, earnings, etc., increase the willingness of the employee to accept an agreement on payback clauses?</p> <p>Does the possibility of recouping training costs in case of termination of contract have an impact on training investment by employers and companies, such as higher or lower investment in training?</p> <p>Does the existence of payback clauses in an employment contract have an impact on the training behaviour of employees, such as higher or lower participation in training?</p>
Renegotiation or refraining from employment contracts due to payback clauses	<p>Have employment contracts been renegotiated in companies because of the payback clauses contained in it?</p> <p>Do employees refrain from signing an employment contract if it contains a payback clause?</p>
Definition of conditions and design of regulations	<p>Is the non- or inexact definition of conditions of payback clauses to become effective a constraint for their use</p> <p>Is the detailed specification of conditions of payback clauses to become effective a constraint for their use?</p> <p>Are the regulations of payback clauses properly designed to achieve and support their key objectives in your country/sector/company?</p>
Misuse of payback clauses	Do some employers include payback clauses on individual contracts even if they are requested to bear (part of) the training cost and/or (some) employees are entitled to employer-financed training by law?

Reasons for leaving the companies	What are the reasons for employees to resign after training?
	No increase of salary after training, poaching, etc.
Impact of the current financial crisis on implementation of payback clauses	Does the current financial crisis have an impact on investment in training and the use of payback clauses connected with this?
	Have changes in the implementation of payback clauses taken place during the last five years (Increasing, decreasing, abolition, redefinition, etc.)?
Beneficiaries of the implementation of payback clauses	Which sectors, companies and individuals benefit directly through the existence of regulations on payback clauses?
Support and/or rejection of payback clauses	Do stakeholders such as employers' federations, trade unions, work councils and training institutes support or oppose regulations and use of payback clauses?
Role of civil and labour courts on enforcement of payback clauses	What role do labour and/or civil courts play on the enforcement and/or effectiveness of payback clauses?
	If labour/civil courts take decisions about the enforcement of payback clauses, what are their standards of payback clauses to become effective/enforceable?

#### Part 4: Quantitative aspects

How many of the companies implement payback clauses in employment contracts or training agreements in your country/sector/company?

How many companies which are entitled to implement payback clauses really apply them?

How many employees work in companies where payback clauses can be applied?

If applicable and/or known: Number of individual contracts or agreements containing regulations of payback clauses.

Which share of employees who undertake training resigns after training within the binding period?

Number of sectoral agreements and the share of them containing regulations on payback clauses which are different from the national regulations on payback clauses

If applicable and/or known: Number of companies with agreements at company level containing regulations of payback clauses at company level that are different from the national regulations.

If known: Total amount of repayment for the last year or the annual average.

If known: Annual average amount of repayment in relation of the total training costs.

If known: Number of cases where payback clauses have been legally enforced in the last five years.

Publications, statutes and relevant documents with more information on the regulation of payback clauses in your country/sector/company.

## ANNEX 2.

# Respondents: in-depth cases

In-depth cases – Survey participants			
Country	File	Organisation	Description
Germany	1	DE/CO1	Company
	2	DE/TU1	Trade union
Italy	3	IT/MoL	Ministry of Labour
	4	IT/MoE	Ministry of Education
	5	IT/EF1	Employers' federation
	6	IT/EF2	Employers' federation
	7	IT/TU1	Trade union
	8	IT/TU2	Trade union
	9	IT/CO1	Company
	10	IT/CO2	Company
	11	IT/CO3	Company
	12	IT/CO4	Company
Luxembourg	13	LU/MoE	Ministry of Education
Netherlands	14	NL/EF1	Employers' federation
Romania	15	RO/MoL	Ministry of Labour
	16	RO/MoE	Ministry of Education
	17	RO/EF1	Employers' federation
	18	RO/EF2	Employers' federation
	19	RO/TU1	Trade union
	20	RO/TU2	Trade union
	21	RO/CO1	Company
	22	RO/CO2	Company
Slovakia	25	SK/MoE	Ministry of Education
	26	SE/MoL	Ministry of Labour
Sweden	27	SE/EF1	Employers' federation
	28	SE/CO1	Company
	29	SE/CO2	Company
	30	SE/CO3	Company
UK	31	UK/EF1	Employers' federation
	32	UK/TU1	Trade union
	33	UK/CO1	Company
	34	UK/CO2	Company
	35	UK/CO3	Company

### ANNEX 3.

## Sample: Online survey (groups)

Committee (Members)	Description
EEO (28)	The European Employment Observatory (EEO) contributes to the development of the European Employment Strategy through the provision of information, comparative research and evaluation on employment policies and labour market trends in the countries covered by the EEO. The EEO improves the information base for policy-makers of the European Employment Strategy and other stakeholders. The EEO covers the 27 EU Member States as well as the EEA-EFTA states Norway and Iceland (in the context of the EEA agreement) and Croatia, Turkey, FYROM, Serbia and Iceland.
ELLN (35)	The establishment of a network of European labour law experts was initiated by Prof. Guus Heerma van Voss of the Labour law Department at the University of Leiden (the Netherlands) and Prof. Bernd Waas of the Labour law Department at the University of Frankfurt (Germany). The constituting conference of the European labour law network (ELLN) took place in Hagen (Germany) in 2005. The ELLN consists of a team of non-governmental legal experts including all European Member States and EEA countries, and of a scientific committee. The network is supervised by an external consultant. The ELLN is entirely independent and has no affiliation to trade unions, employers' associations or individual employers.
EMCO (101)	The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities works towards the creation of more and better jobs, an inclusive society and equal opportunities for all. EU employment and social policies bring practical benefits to citizens, for example, in finding a job, moving to another Member State for work or other reasons, upgrading skills, etc. In partnership with national authorities, social partners, civil society organisations and other stakeholders, the Directorate-General addresses challenges linked to globalisation, the ageing of Europe's population and changing social realities.
Business-europe (71)	Confederation of European Business (Businesseurope, formerly UNICE) (1958) is the largest European employers' organisation in terms of economic coverage. It includes 41 employers' associations from 34 European countries (among them all the EU countries) and represents its members' economic and industrial interests at European level. Businesseurope represents some 20 million businesses in Europe. Decisions (including in the field of social dialogue) are taken by the council of presidents, voting unanimously. European Commission.
CEEP (15)	European centre of employers and enterprises providing public services (CEEP) (1961) is an employers' association for public sector entities, networked businesses (e.g. local transport, post offices, energy, water, ports) and, in some countries, local authorities. The CEEP has national sections in 17 European countries and permanent links with its member businesses. CEEP decisions are taken by the general assembly. European Commission. Employment.
UEAPME (41)	European association of craft, small and medium-sized enterprises (UEAPME) (1979) is the employer's organisation representing the interests of European crafts, trades and small businesses at EU level. UEAPME numbers 44 member organisations (from 26 European countries) including national cross-sectoral SME federations, European branch federations and other associate members supporting small businesses. According to its own figures, UEAPME represents 11 million businesses employing 50 million people across Europe. In December 1998, UEAPME reached an agreement with Businesseurope allowing it to take part in the European social dialogue. European Commission. Employment.
Eurocadres (50)	Eurocadres is the council of professional and managerial staff in Europe representing all branches of industry, public and private services and administrative departments. It gathers 46 organisations from 46 European countries. It is associated with the ETUC and has more than 5 million staff in membership. European Commission. Employment.

National experts (92)	This group is a combination of education and policy experts from different countries, committees and/or unions.
EESC (361)	Committed to European integration, the EESC contributes to strengthening the democratic legitimacy and effectiveness of the European Union by enabling civil society organisations from the Member States to express their views at European level.
EQARF-ECVET (291)	ECVET is a credit system based on learning outcomes. On the basis of common trust it aims to promote transnational mobility in VET and enhance lifelong learning. In April 2009, the recommendation of the European Commission on ECVET was adopted by the European Parliament and the Council. Implementation of ECVET in the Member States is voluntary. The purpose of ECVET is to enable recognition of learning achievements during periods of cross-border mobility. ECVET targets to support the recognition of learning outcomes without extending learning periods.
CoR (638)	The Committee of the Regions (CoR) is the political assembly that provides the regional and local levels with a voice in EU policy development and EU legislation. The Treaties oblige the Commission, Parliament and Council to consult the Committee of the Regions whenever new proposals are made in areas that affect the regional or local level. The CoR has 344 members from the 27 EU Member States, and its work is organised in six different commissions. They examine proposals, debate and discuss in order to write official opinions on key issues. To learn more about the role of the CoR, the members or the commissions,
CEA	Croatian employers' association

ANNEX 4.

## Collective labour agreements with payback clauses in Romania

### 1. Branch of glass and fine ceramic industry

Art. 81 – The employees, who have concluded an addendum to their individual labour contract for vocational training, can be required to reimburse the training fees, if they leave the company for reasons attributable to them, before the end of a period of three years after the completion of training.

### 2. Branch of food, beverage and tobacco industry

Art. 80 – When the employee is the one who takes the initiative to participate in vocational training that requires training leave, the employer will review the employee's request together with the trade union and will decide within 15 days of the receipt of the request if the training can be approved. Also, in case of approval, the employer will decide on the conditions on which he or she will allow the employee to participate in the vocational training, including whether or not the company covers part or all of the cost.

### 3. Branch of community-dwelling household utilities, transports

Art. 102 – The employees who have concluded addendums to the individual labour contracts and have benefited from a vocational training course or internship training of more than 60 days with training leave are obliged to reimburse the expenses incurred for the training, proportionally with the period not worked from the period established under the Addendum to the Individual Labour Contract, if they leave the company for reasons attributable to them within three years from the graduation date. This does not apply in the cases listed in Article 77 § 3.

Art. 77 § 3 – The administration will not be able to claim compensation for the remaining contractual retention period if the termination of the employment contract is not its fault.

#### 4. Branch textiles, garments

Art. 111 – Employees who have completed addenda to the individual employment contract and who have attended a course or a vocational training course of more than 60 days out of work. If they leave the unit for reasons attributable to them within three years from graduation they are required to bear the expenses related to the training, except as provided for by Article 79 § 3 in proportion to the period not worked from the established period, determined in accordance with the addendum to the employment contract.

#### 5. Electrical, electronics, fine mechanics and defence branches

Art. 126 – Employees who have signed addenda to the individual employment contract on attending vocational training will be required to bear the expenses incurred for the training proportionally to the time not worked, except in the cases provided for in Article 86 § 3, if they leave the unit for reasons attributable to them within three years from graduation.

#### 6. Construction branch

Art. 95e. – Employees who have signed addenda to the individual employment contract on attending vocational training could be required to bear the expenses incurred for the training, except as provided in Article 88, if they leave the unit for reasons attributable to them within the period stipulated in the training contract from the date of graduation from the course.

Art. 95f. – Employees who have attended a vocational training course of more than 60 days, according to Article 194 §§ 2 and 3 of the labour code, cannot terminate their individual employment contract for at least three years after graduation.

## 7. Construction machinery branch

Art. 186 – Employees who have completed addenda to individual employment contract on attending vocational training will be required to bear the expenses incurred for the course if they leave the unit, for reasons attributable to them, within a minimum term of three years from the date of graduation.

## 8. Mining industry and geology branch

Art. 115 – If employees who have completed addenda to the individual employment contract and who have attended a course or a vocational training course of more than 60 days out of work leave the unit for reasons attributable to them within three years from graduation are required to bear the expenses related to the training in proportion to the period not worked from the established period, determined in accordance with the addendum to the employment contract. Exceptions are laid down in Article 98 § 4.

## 9. Wood industry branch

Art. 84 – Employees who have signed addenda to the individual employment contract on attending vocational training course could be required to bear the expenses incurred for the training if they leave the unit, for reasons attributable to them, within two years from graduation. Exceptions are laid down in Article 64 § 3.

## 10. Pulp and paper industry branch

Art. 99 – Employees who have completed an addendum to individual employment contract on attending a vocational training course could be required to bear the expenses incurred for the training if they leave the unit within three years, except if they leave for reasons that cannot be attributed to them.

## 11. Tourism branch

Art. 77 – Employees who have signed an addendum to the individual employment contract on attending vocational training course could be required to bear the expenses incurred for the training, except as provided for in Article 79 §

3, if they leave the unit for reasons attributable to them within three years from the date of graduation.

## 12. COMAT branch

Art. 89. – Employees who have signed addenda to the individual employment contract on attending a vocational training course could be required to bear the expenses incurred for the course, except as provided for in Article 60 § 3, if they leave the unit for reasons attributable to them within three years from graduation.

## 13. Commerce branch

Art. 82 – If employees who have completed addenda to the individual employment contract and who have attended a course or a vocational training course of more than 60 days out of work leave the unit for reasons attributable to them within three years from the date of graduation, they must bear the expenses related to the training, except as provided for in Article 79 § 3, in proportion to the period not worked from the established period in accordance with the addendum to the employment contract.

## 14. Branch agriculture, fisheries

Art. 99 – Employees who have signed addenda to the individual employment contract on attending a vocational training course could be required to bear the expenses incurred for the course if they leave the unit, for reasons attributable to them, within the period stipulated in the training contract; the expenses are reimbursed in proportion to the contact period not worked.

## 15. Ferrous metallurgy, non-ferrous and refractory products branch

Art. 92. – Employees who have completed an addendum to the individual employment contract on vocational training will be required to bear the costs of the training in proportion to the period from the period established under the addendum not worked, if they leave the unit voluntarily or for personal reasons, except for physical or mental unfitness.

## 16. Branch of construction materials industry

Art. 94 – According to Article 194, § 2b and § 3) of the labour code, employees who have attended a professional training course lasting more than 60 days cannot terminate their employment contract for at least three years after graduation.

## 17. Petrochemical chemistry branch

Art. 124 – If employees who have completed addenda to the individual employment contract and who have attended a vocational training course entailing more than 60 days out of work leave the unit for reasons attributable to them within three years from graduation, they must to bear the expenses related to the course in proportion to the period not worked from the period stipulated in the addendum to the employment contract.

## ANNEX 5.

# Collective agreements with payback clauses in the Netherlands

## 1. Ikea

- A. Premature termination of the training is to be reported to Human Resources and costs are to be reimbursed. This also applies when the trainee leaves the service during training.
- B. When the training course lasts more than one year, the costs must be reimbursed pro years.
- C. Upon termination of employment within two years after the training, the allowance provided must be wholly or partially reimbursed according to the following table:

Time of termination of the employment contract	Reimbursement
During training	100% of costs
Within 6 to 12 months	75% of costs
Within 12 to 18 months	50% of costs
Within 18 to 24 months	25% of costs

- D. Provided the fees are recovered:
  - 1. When the employee voluntarily discontinues the training: 100%
  - 2. When the study results are unsatisfactory or when no certification is reached: 100%
  - 3. When the employment relationship ends during the training: 100%
  - 4. Upon termination of employment after graduating, before the end of the contractual retention period (see therefore paragraph C of this Article).
- E. Exception: the Human Resources department can decide, in consultation with the (store) manager, to allow an exemption from this article in favour of the employee.

## 2. Mog FCS

The employee will partially or totally reimburse the tuition fees when he or she terminates the employment relationship during the training or within a maximum of three years thereafter. The reimbursement takes effect if the employment

relationship is terminated at the request of the employee or on grounds of urgency.

The recovery is determined on the basis of the following table:

Study cost for the whole training	Level	Recovery
Less than EUR 2 269	–	–
EUR 2 269 to EUR 4 538	75%	During training and/or within one year after completion of training
	50%	Within two years after completion of training
More than EUR 4 538	75%	During training and/or within one year after completion of training
	50%	Within two years after completion of training
	25%	Within three years after completion of training

### 3. Rabo Vastgoed groep

Recovery of costs for career-oriented education. Refund of tuition will be requested in principle only if the training was career-oriented. For on-the-job training no recovery of costs is foreseen.

The reimbursement obligation applies when:

- (a) the training is not complete unless the manager considers that such recovery must be regarded as unreasonable considering the circumstances. Not achieving the study-related degree or certificate is considered as non-completion of training;
- (b) the contract is terminated early for urgent reasons or at the request of the employee during training or within one year after training.

Employee are required to reimburse all expenses incurred by the employer if they do not complete the course or leave the employer during the course. If employees leave the company within 12 months after completing the course, they are required to reimburse one twelfth of the total amount for each month remaining until the end of the contractual retention period.

For career-oriented study or training that costs more than EUR 5 000 per year, the contractual retention period is 36 months. In this case, an agreement must be reached before the start of training on the arrangements for reimbursement.

### 4. Plukon

Reimbursement: refund of full cost of training is requested in the following cases:

- (a) When the employee discontinues training without presentation of the final exam;
- (b) When the employee voluntarily leaves the company or is dismissed for important reasons before obtaining the certificate;
- (c) When the employee leaves the company voluntarily or is dismissed for important reasons within the first year after training, he or she must reimburse 100%. Between one and two years 50% must be reimbursed. No reimbursement is requested after two years.

## 5. Stater

When employees terminate their employment on their own initiative or when Stater terminates the contract for a reason attributable to the employee within three years after the completion of training, (part of) the costs of training that exceeded EUR 2 500 including VAT must be reimbursed as follows, unless prior arrangements have been made.

<b>Time of termination of the employment contract</b>	<b>Reimbursement</b>
During training	100% of costs
Within one year after completion of training	75% of costs
After one year but within two years after completion of training	50% of costs
After two years but within three years after completion of training	25% of costs

The reimbursement shall as far as possible be in the form of a salary deduction. For internal training courses organised by Stater no reimbursement is required.



**CEDEFOP**

European Centre for the Development  
of Vocational Training

# Payback clauses in Europe: supporting company investment in training

## Final report

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# Payback clauses in Europe: supporting company investment in training

## Final report

Payback clauses are a legal instrument that may encourage companies to invest in training by allowing them to bind employees for a certain period of time after training in return for providing the training. In fact, employees are free to move to another company but may be requested to reimburse the cost of the training, or part of the cost.

This Cedefop report provides an overview of whether payback clauses for employer-financed training are regulated in 33 European countries, and if so how they are regulated. In-depth analysis is carried out for eight selected countries: Germany, Italy, Luxembourg, the Netherlands, Romania, Slovakia, Sweden and the UK.

The report is largely based on information collected in surveys of key national stakeholders – representatives of ministries, employers' organisations and trade unions – and from company cases.

The analysis of legal framework covers aspects such as: the level of regulation (national law, collective/sectoral level agreements and individual/company level agreements) and the conditions laid down in law (contractual retention period, types of training and categories of employees/contracts that payback clauses may apply to, costs to be reimbursed by employees, redemption form, etc.).

The results of research show that there is relatively little information on the practical use of payback clauses: their implementation (the extent to which the payback clauses are actually included in employment contracts and training agreements) and enforceability (when reimbursement of training costs was indeed requested by employer).

On the basis of information collected, the strengths and weaknesses of the instrument are discussed. Finally, recommendations for policy, research and practice are formulated.

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