

Workplace Investigations

Contributing Editors

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16. If there is a works council or trade union, does it have any right to be informed or involved in the investigation?

Italy

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Generally speaking, a workplace investigation does not require the involvement of a trade union (on the assumption that no specific union agreement has been reached at a company level to entitle trade unions to specific forms of consultation or involvement in workplace investigations, which is not common).

According to section 4 of the Workers' Statute, as stated above, the involvement of the trade union is necessary regarding the installation and use of specific equipment (such as cameras, switchboards, software) that potentially allows the employer to remotely monitor working activity, and which can be done only with prior agreement of the unions (or authorised by the labour inspectorate). The union agreement must be made before the installation of the system, and therefore would normally be already in place when an investigation starts.

Pursuant to the WB Decree (Art. 4), union representatives (or external unions) should be "heard" before the employer activates a WB reporting channel^[1].

^[1] According to certain guidelines issued by the industrial trade association (Confindustria), the involvement should be purely for information purposes.

Last updated on 10/01/2024

Switzerland

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In general, works councils and trade unions are not very common in Switzerland and there are no statutory rules that would provide a works council or trade union a right to be informed or involved in an ongoing internal investigation. However, respective obligations might be foreseen in an applicable collective

bargaining agreement, internal regulations or similar.

Last updated on 15/09/2022



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Aside from the statutory right to be accompanied (see question 15), any further involvement by the works council or trade union would depend on the terms of the relevant works council or trade union recognition agreement.

Last updated on 15/09/2022

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