

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

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

Netherlands

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There is, in principle, no role for the works council in an "isolated or single" internal investigation. When it comes to structural forms of employee monitoring to measure behaviour (such as video surveillance), the proposed decision to implement such a monitoring system in principle requires the prior approval of the works council.

In addition, according to the Act on the Protection of Whistleblowers, an employer who is not obliged to set up a works council needs the consent of more than half of the employees when adopting the internal reporting procedure under the Act, unless the substance of the procedure has already been laid down in a collective bargaining agreement.

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Spain

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As explained in question 15, employees are not entitled to representation during an investigation. However, if a disciplinary procedure starts as a result of the investigation, employee representatives may be entitled to be informed of the disciplinary procedure and its outcome.

The degree and timing of when employee representatives must be involved will depend on several factors such as:

- the employee's affiliation to a union;
- if the employee is an employee representative;
- the seriousness of the potential sanction to be imposed; and
- the information rights that the applicable collective bargaining agreement acknowledges regarding

employee representatives.

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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.

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