

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
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05. Can the employee under investigation bring legal action to stop the investigation?

Germany

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at Hengeler Mueller

There is no general legal remedy against the conduct of the investigation itself. However, if individual measures are carried out in violation of the law (eg, data protection rules), the employee can take legal action against the specific measure through an interim injunction. In addition, the employee has the right to complain to the works council and ask for the works council's support if he feels that the employer has discriminated against him, has treated him unfairly, or that he has been adversely affected in any other way (section 84 paragraph 1 s 2, German Works Constitution Act (BetrVG)).

Additionally, the works council has the right to take legal action against investigative measures that were carried out in violation of its co-determination rights (see question 16).

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Ireland

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Arguably yes, but it is the exception rather than the rule and it will depend upon the circumstances of the case. Generally, courts would be slow to intervene in ongoing workplace investigations. However, an employee may seek injunctive relief to prevent an investigation if they can show that the investigation is being conducted in breach of a policy or breach of fair procedures to such an extent that there is no reasonable prospect that the investigation's outcome(s) could be sustainable.

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Switzerland

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The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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