



Context

Private investigations have become an increasingly valuable tool for employers seeking to assess employee behavior and misconduct, detect fraud, or justify disciplinary actions. Given their growing use in the workplace, ensuring compliance with legal requirements is essential. To address gaps in the previous regulatory framework, a new law has been introduced, imposing additional obligations on employers conducting or commissioning investigations.

The **Private Investigation Regulation Act**, enacted on May 18, 2024, and effective as of December 16, 2024, introduces new rules for employers conducting internal (HR-led) investigations or hiring external investigators (e.g., private detectives). This law aims to strike a balance between investigative needs and employee rights, ensuring greater transparency and accountability. Understanding these new rules is crucial to ensuring compliance and avoiding legal risks.

Below, we outline the key aspects of this new regulatory framework and its implications for workplace (HR-led) investigations.



Key Changes

- **Transparency regarding the Investigation Procedure:**
 - Investigations must be explicitly allowed in a clear company policy, such as in internal work rules, a collective bargaining agreement or policy, with prior consultation of the social partners.
 - A two-year transition period (until December 16, 2026) has been granted to allow employers time to implement and communicate these policies. After this deadline, non-compliant employers will lose the legal ability to conduct private investigations, and external investigators must decline assignments from them. And any investigation findings will be null and void.
- **Internal HR Investigations and Limits:**
 - Internal investigation services must possess a valid license (except HR personnel – see below).
 - HR personnel do not need a license or specific identification card but must adhere to ethical standards, avoid conflicts of interest and comply with the law, including:
 - Ensuring interviewees are not pressured to answer.
 - Avoiding deceptive practices or provocation.
 - Prohibition of inciting other persons to obtain information or evidence unlawfully.
 - Maintaining a detailed investigation file, documenting all actions chronologically.
 - Providing a final written report within one month of completing the investigation.
 - Internal investigations must serve a legitimate interest. If the investigation loses its legitimacy, it must be terminated immediately.
 - The law prohibits the collection or dissemination of certain types of sensitive information, such as political opinions and trade union membership.
- **Requirements for External Investigators:** External investigators must meet strict criteria, including:
 - Valid license.
 - No serious criminal record.
 - Minimum age of 21.
 - Relevant professional qualifications.
 - Upholding fundamental rights and avoiding conflicts of interest.
- **Data Processing and Privacy**
 - GDPR applies. The company and investigators (internal or external) are responsible for processing personal data.

- Specific, informed and documented consent of the individual under investigation is required for specific research activities, including:
 - Conducting interviews (whether recorded or not).
 - Background checks and investigating a person's marital, financial or professional situation.
 - Clear information about the purpose and rules of the interview must be provided.
 - All personal data obtained during the investigation must remain confidential and used solely for the investigative purposes.
- **Consequences of Non-Compliance:**
 - Non-compliance can result in:
 - Nullification of evidence and investigative findings.
 - Investigative findings being inadmissible in court.
 - Legal challenges against the employer.
 - Potential fines or penalties.



Entry into Force

The new regulations took effect on December 16, 2024. To facilitate compliance, transitional provisions have been included regarding the authorization process. Companies have until December 16, 2026, to incorporate the required policies and procedures for workplace investigations.

Our Employment & Benefits Practice is closely monitoring these developments. If you have questions or would like to discuss this topic further, please contact our team.



Stefanie Tack



Marnix De Greve



Aylin Ozturk