

COLLECTIVE LABOUR AGREEMENT NO 68 OF 16 JUNE 1998**CONCERNING THE PROTECTION OF PRIVACY****OF THE EMPLOYEES WITH REGARD TO****VIDEO SURVEILLANCE IN****THE WORKPLACE**

REPORT

In the course of the last few years, a lot of attention was given on the development of regulations for the protection of personal data on an international and European level. A number of instruments have come about within this framework, specifically aimed at the protection of the private life with regard to the processing of personal data in the workplace, amongst others, with regard to the specific objective of this collective labour agreement, namely the application of video surveillance in the context of labour law.

Thus, the following instruments are cited:

- Convention no. 108 of the Council of Europe of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, ratified by Belgium in the law of 17 June 1991;
- Recommendation no. R (89) 2 of the Committee of Ministers of the Council of Europe on the protection of personal data used for employment purposes, extending the principles of the abovementioned convention with the context of labour law.

More recently, the following enactments were adopted:

- Directive 95/46/EC of 24 October 1995 of the European Parliament and the Council concerning the protection of natural persons in relation to the processing of personal data and the free movement of such data;
- The code of conduct concerning the protection of personal data of employees, adopted by the Council of the Board of Directors of the International Labour Organisation (ILO) during its 267th session of November 1996 and to which the National Labour Council already participated during the preparatory phase, which has led to its recommendation no. 1.160 of 23 July 1996.

Taking into account these elements, the National Labour Council have continued their approach from recommendation no. 1.160 and have themselves incorporated the Belgian fundamental right and developed a number of guarantees for the protection of the private life of the employee in the workplace.

In this framework, it can be noted:

- that in the field of fundamental rights of an individual within the constitutional revision of 1993, the right to respect of the private life is expressly stipulated in Article 22 of the Belgian Constitution.
- that in the area of labour law, the principle that places the relation between the employee and employer in an environment of mutual respect between parties exists. This is expressed in article 16 of the law of 3 July 1978 concerning employment contracts, which stipulates that the employer and employee owe each other respect and regard.

In this context, the initiative of the social interlocutors continues: video surveillance in the workplace can in special cases have repercussions on the privacy of the employee, so that they are of the opinion that the permission and conditions for installation of the video surveillance in the workplace have to be determined.

Having regard to the particular character of this surveillance and the specific circumstances in which they take place, they are of the opinion that this matter belongs to the autonomy of the social interlocutors so that it comes under their competence to develop a framework for this.

In that perspective, the employees' and employers' organisations represented in the National Labour Council have decided to conclude on a collective labour agreement to regulate this matter conventionally. This collective labour agreement basically defines what must be understood under video surveillance in the workplace, under which conditions video surveillance is allowed and which regulations must be observed in this matter.

This regulation confirms and establishes the principles of the law of 8 December 1992 on the protection of privacy with regard to the processing of personal data, particularly the finality principle, the proportionality principle and the duty to inform in advance and develop them for all forms of video surveillance in the workplace irrespective of the data being kept or not.

With this development, the employees' and employers' organisations represented in the National Labour Council want the operative legal and conventional provisions concerning information and consultation of the employees' representatives underlined and they have at the same time consolidated this framework by explicitly referring to the procedures which is foreseen in the law of 8 April 1965 on the labour regulations and the collective labour agreements no. 9 of 9 March 1972 and no. 39 of 13 December 1983 of the National Labour Council. This has the objective of increasing transparency with regard to video surveillance and to promote a dialogue.

In this manner, all aspects concerning video surveillance in the workplace are compiled into a coherent set of specific rules that fulfils the characteristics of the social relations.

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COLLECTIVE LABOUR AGREEMENT NO. 68 OF 16 JUNE 1998

CONCERNING THE PROTECTION OF PRIVACY

OF EMPLOYEES WITH REGARD TO

VIDEO SURVEILLANCE IN

THE WORKPLACE

Having regard to the law of 5 December 1968 concerning the collective labour agreements and joint committees;

Having regard to the law of 8 December 1992 on the protection of privacy with regard to the processing of personal data;

Having regard to Directive 95/46/EC of 24 October 1995 on the European Parliament and the Council concerning the protection of natural persons in relation to the processing of personal data and the free movement of such data;

Considering that the law of 8 April 1965 on the establishment of the labour regulations envisaged in a number of specific information and consultation procedures concerning the modification of the labour regulation;

Considering that the collective labour agreement no. 9 of 9 March 1972 containing the ordering of the secured national arrangements and collective labour agreements in the National Labour Council concerning the work councils, regulates in a general manner the role of the work council.

Considering that the collective labour agreement no. 39 of 13 December 1983 concerning the advice and the consultation with regard to the social impact of the introduction of new technologies, a specific task is accorded on the work council with regard to the introduction of new technologies;

Considering that the Council of the Board of Directors of the ILO during their 267th session of November 1996 have adopted a code of conduct with regard to the protection of personal data of the employees;

Considering that the law of 8 December 1992 on the protection of privacy with regard to the processing of personal data by video surveillance, subjects as far as pictures with identifiable personal data are kept, to a number of rules;

Considering that it deserves recommendation to, notwithstanding the application of the provisions, develop a number of specific guarantees for the use of video surveillance in the workplace;

Considering that the undersigned parties are of the opinion that the matter of video surveillance in the workplace belongs to the autonomy of the social interlocutors;

Considering that the matter must then also be regulated by the collective labour agreement;

The following inter-professional organisations of employers and employees have...
agreed upon the next collective labour agreement in the National Labour Council on 16 June 1998:

CHAPTER I: SCOPE

Article 1

This collective labour agreement has as its objective, the respect of the privacy of the employees in the enterprise and the protection of their dignity and the guarantee of the safeguarding of the fundamental right hereupon, taking into account the need of a good functioning of the enterprise, by determining the purposes and the conditions under which video surveillance in the workplace with or without keeping of the pictures can be introduced.

Commentary

The present collective labour agreement inscribes itself in the law of 8 December 1992 on the protection of privacy with regard to the processing of personal data for that part which concerns the video surveillance which is under the scope of the law and guarantees its application.

This law applies to video surveillance as soon as the pictures are not only taken and immediately reproduced, but also kept, such as that clarified by the Commission for the protection of privacy in its advice no. 14/95 of 7 June 1995 concerning the application of the law of 8 December 1992 on the protection of privacy with regard to the processing of personal data on picture recordings and the impact of it.

The principles of the said law of 8 December 1992, particularly the finality principle, the proportionality principle and the duty to inform, are affirmed with regard to the work place in this collective labour agreement.

Since these principles are regarded as guarantees which are essential for the protection of privacy, this agreement also introduces them in relation to video surveillance which does not at this time come under the application of the scope of the law of 8 December 1992. In this way, the agreement places the Directive 95/46/EC of 24 October 1995 of the European Parliament and the Council concerning the protection of natural persons with regard to the processing of personal data and concerning the free movement of such data in connection with the Belgian law for that part which concerns the video surveillance in the workplace.

Moreover, this collective labour agreement seeks to take into account the legal and conventional provisions in relation to information and consultation of the employees' representatives. In this context, where this was esteemed as necessary for the protection of privacy, it was opted for to provide a number of additional guarantees which complete the scopes for the characterised social relationship and generally accepted procedures.

CHAPTER II: DEFINITION

Article 2

For the application of this collective labour agreement video surveillance operation is understood as each surveillance system with one or more cameras that serve to monitor places or activities in the workplace which are located from a geographical point at a distance from the places or activities with or without the view to the preservation of the picture data which it collects and transfers.

CHAPTER III: APPLICABLE MODALITIES

Section I - General applicable modalities

Article 3

Video surveillance in the workplace with or without preservation of the picture data is only allowed for so far as it satisfies the conditions specified in articles 4 to and including 11.

Sub-section 1 – Finality and Proportionality principles

1. Finality

Article 4

§ 1. Video surveillance in the workplace is only allowed for the pursuit of one of the following objectives:

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- 1° the security and health;
- 2° the protection of the commodities of the firm;
- 3° the control of the production process.

The control of the production process can relate to machines as well as employees.

If the control is only related to machines, the intended objective is to examine their proper functioning.

If the control relates to employees, the objective is to evaluate and improve the work organisation;

- 4° the control of the labour of the employee is in accordance with article 9, § 2.

The pursuit of this purpose may not result in having decisions and assessments by the employer made only on the basis of data obtained by means of video surveillance.

§ 2. The employer must define the purposes of the video surveillance clearly and explicitly.

Commentary:

This collective labour agreement leaves the possibility for the use of cameras for training purposes unaffected since this does not concern surveillance.

Moreover, it must be observed that with secret video surveillance, the provisions of the penal code are applicable and this form of surveillance can only be introduced in conformity with the regulations established in the code.

Finally, Article 4, § 1, 4° does not aim to continually monitor the employee.

Article 5

The video surveillance is continuous if the camera or cameras are functioning in a permanent manner.

The video surveillance is temporary if the camera or cameras are either temporarily installed or permanently installed but only function during one or several periods.

Article 6

§ 1. According to the pursued objective, video surveillance is continuous or temporary.

§ 2. Video surveillance may be continuous or temporary if one of the following objectives is pursued:

- the security and health;
- the protection of the commodities of the firm;
- the control of the production process only relating to machines.

§ 3. Video surveillance must only be temporary if one of the following purposes is pursued:

- the control of the production process in relation to employees;
- The control of the labour of the employee.

Commentary:

Continuous video surveillance is only allowed with the view to security and health, with the view to the protection of the commodities of the firm and with a view to the control of the production process in relation to machines.

This means that continuous video surveillance of the employee is not allowed and continuous video surveillance of machines is only allowed to the extent that it is not the objective to spy on the employee.

Under similar conditions, temporary video surveillance with a view to security and health, with a view to protection of the commodities of the firm and with a view to the control of the production process only in relation to machines is allowed.

2. Proportionality

Article 7

The employer may not use the video surveillance in a manner which is incompatible with the explicitly defined purpose.

The video surveillance, as a result of this purpose, needs to be sufficient, relevant and not be excessive.

Article 8

In principle, the video surveillance may not result in interference to the privacy of the employee.

If the video surveillance results in interference to the privacy of the employee, the interference must be restricted to a minimum. To this end, the procedure stipulated in article 10 to and including 11 must be observed.

Sub-section 2 – Procedural Conditions

3. Information

Article 9

§ 1. Prior to and at the introduction of video surveillance, the employer must provide the works council on all aspects of video surveillance information, as stipulated in § 4 and according to the provisions of the collective labour agreement no. 9 of 9 March 1972 containing the ordering of the secured national arrangements and collective labour agreements in the National Labour Council concerning the work councils.

In the absence of a work council, this information will be provided to the committee for the prevention and protection at work or, if such committee does not exist, to the union representatives of the company or, if such representatives do not exist, to the employees.

§ 2. When the video surveillance is to control the labour performances, and more specifically the measuring and the control with a view to assessing wages or implications with regard to the rights and duties of the supervisory staff, the employer must provide this information within the framework of the procedure stipulated in article 11 and further of the law of 8 April 1965 concerning labour regulations.

§ 3. At the introduction of the video surveillance, the employer must provide the concerned employees information about all aspects of the video surveillance, as stipulated in § 4.

§ 4. The information which must be provided under this article, concerns at least the following aspects of video surveillance:

- the pursued purpose;
- the fact whether the picture data is or is not kept;
- the number of and the location of the camera(s);
- the concerned period or periods during which the camera(s) functions (function).

Commentary:

The informing, as intended by this article, is to increase the transparency with regard to the video surveillance and to enable the possibility of a dialogue and thereby have the introduction of video surveillance take place in an atmosphere of trust.

In the specific case as described in § 2 of measuring and control with a view to assessing wages or implications with regard to the rights and duties of the supervisory staff, specific rules apply under the law of 8 April 1965 concerning the labour regulations. The employee can more specifically at each moment and without an agent – without prejudice to the right of assistance of his trade union representative – inspect the labour regulation and the modifications. The employer moreover, gives him a duplicate of this.

4. Consultation

Article 10

§ 1. If as a result of the information intended in article 9, it appears that the video surveillance may have implications on the privacy of one or more employees, the works council or, in the absence of it, the committee for prevention and protection at work, dedicates an investigation to limit the interference on privacy to a minimum as prescribed in article 8.

§ 2. If the video surveillance is introduced with a view to one of the objectives mentioned in article 6 § 3 and in the absence of a works council or a committee for prevention and protection at work, the research as intended in the previous paragraph is carried out in a dialogue between the employer and the union representatives.

Article 11

The works council or, in the absence of it, the committee for prevention and protection at work moreover, must regularly evaluate the used surveillance systems in function of the technological developments and make proposals with a view to revising it.

Section II – Specific applicable modalities

Article 12

Notwithstanding the provisions of section I, video surveillance with preservation of the picture data moreover must satisfy articles 13 and 14.

Article 13

§ 1. The employer must obtain the processed pictures honestly and in conformity with the given objectives.

§ 2. If the obtained pictures are used for other objectives than those for which the video surveillance was introduced, then the employer must ensure that this use is compatible with the original objective and that all measures taken, having regard to the context, to avoid interpretation errors.

Article 14

The employees can appeal at each moment on the provisions of articles 10, 12 and 13 of the law of 8 December 1992.

They have with the exercise of these rights, the right to assistance from their union representative.

CHAPTER IV: FINAL PROVISIONS

Article 15

This agreement is concluded for an indefinite period.

It can be reconsidered or cancelled at the request of any of the undersigned party, taking into account of the notice period of six months.

The organisation which takes the initiative to revise or cancel, must indicate the reasons for it and submit proposals for amendments; the other organisations commit themselves within one month after reception to discuss these in the National Labour Council.

Done in Brussels, on sixteen June nineteen hundred ninety eight.

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Having regard to article 28 of the law of 5 December 1968 concerning the collective labour agreements and joint committees, the employees' and employers' organisations represented in the National Labour Council request that this agreement be declared binding by royal decree.
