

Legal Opinion on Video Monitoring on Fishing Vessels with Special Focus on Other Comparable Cases

Requirements, concerns, solutions

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1. Scope

The purpose of this report is a description and legal assessment of examples, in which video monitoring is used (animal related industries and others). The aim is to explore the extent these examples have relevance for video monitoring on fishing vessels. The report concentrates on the European Union and the legislation that applies within its borders, in particular on the General Data Protection Regulation (GDPR).

2. Background

Under the EU's Common Fisheries Policy, article 15 (1) of Regulation (EU) No 1380/2013¹ introduced a landing obligation to prevent the discarding of unwanted (usually no longer viable) catches and to prevent any margin between catch and landing. Enforcement of this measure is the responsibility of the member states. Nevertheless, the indications² are that it is not being effectively implemented. The introduction of Remote Electronic Monitoring (REM) of fishing activities by installing CCTV cameras on fishing vessels has been identified to be the most effective tool to ensure the enforcement of the landing obligation.³

The European Commission has proposed REM should be mandatory for certain vessels in the EU fleet based on the level of discard risk.⁴ Numerous reports have shown that REM is a cost-effective and a successful way of monitoring fishing activities. However, there is considerable opposition to the

¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy < <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1380&from=EN> > accessed 26 February 2019.

² WWF, 'Remote Electronic Monitoring' (September 2017) <https://www.wwf.org.uk/sites/default/files/2017-10/Remote%20Electronic%20Monitoring%20in%20UK%20Fisheries%20Management_WWF.pdf> accessed 26 February 2019.

³ European Commission, 'Towards new SCIPs. Advisory Council Consultation' <<http://www.nwwac.org/fileupload/Correspondence/Year%2013/SCIPs-Stakeholders'%20consultation.pdf>> accessed 26 February 2019.

⁴ Scientific, Technical and Economic Committee for Fisheries (STECF) – Landing Obligation in EU Fisheries - part II (STECF-14-01). 2014. Publications Office of the European Union, Luxembourg, EUR 26551 EN, JRC 88869, p. 10.

proposed measure. There is concern regarding a number of issues including review (the practicalities of watching the collected footage), ownership and sharing of the data, and the privacy of those being filmed.

This study focuses on video monitoring in slaughterhouses as a comparable example while also looking at other examples.

3. General legal requirements under the GDPR

Since May 2018, data protection in the EU is governed by the General Data Protection Regulation (“GDPR”)⁵. The GDPR is only applicable in cases of video monitoring, where personal data (article 4 (1) GDPR) is processed.

In short: When a person (data subject) is filmed in such a way that he can be identified (directly or indirectly) it means that personal data is processed. However, when the individual is not identifiable, pixelated (from the beginning on) or anonymised, the GDPR does not apply and therefore is not relevant.

But, in cases where personal data is present (i.e. person is identifiable) the GDPR only applies if this data is also processed. “Processing” is defined by article 4 (2) GDPR and is basically any handling of personal data including video monitoring. Thus, video monitoring has to comply with the GDPR, if the monitored persons are identifiable.

For any processing of personal data, the GDPR requires (inter alia) a lawful basis. Such lawful bases are stated in article 6 (1) GDPR (or in some cases by member state law). The most relevant ones here are:

- legitimate interest (article 6 (1) (f) GDPR),
- compliance with legal obligations (article 6 (1) (c) GDPR),
- consent (article 6 (1) (a) GDPR).

If none of these legally determined bases applies, processing of personal data is unlawful and therefore forbidden. In detail:

- **Legitimate interest of the controller or a third party, article 6 (1) (f) GDPR**

In the cases of video monitoring, a legitimate interest of the controller or a third party may present the most relevant legitimate basis for the processing of personal data. A wide range of interests may be legitimate interests such as (recitals 47, 49):

- security reasons,
- economic interests,
- fraud prevention (in relation to the data controller),
- direct marketing,
- legitimate interests resulting from the special relationship between data subject and controller (client, contractor/employee).

Here, the fishing operator may have a legitimate interest that activities are carried out in accordance with all legal provisions including the landing obligation. In addition, the operator

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN>> accessed 26 February 2019.

may have a legitimate interest in not being obliged to pay fines for the misdemeanour of its employees (in cases of illegal discards).

But such legitimate interest can only form a legal basis for the data processing if it outweighs the data subject's interests and fundamental rights and freedoms. Thus, after identifying a legitimate interest, in a second step a "balancing test" between the legitimate interests of the controller (or a third party) and the data subject's privacy and data protection rights must be undertaken. This regularly presents a high risk for the data controller because this requires individualised, case-by-case decisions and, e.g., cannot be applied to video monitoring on fishing vessels in general. A legitimate interest is most likely to be an appropriate basis, where data is used in ways that would reasonably be expected (recital 47) and which have a minimal impact on privacy. Where there is an impact on individuals, it may still apply, if it can be shown that there is an even more compelling benefit derived from the processing and the impact is justified. When balancing the interests it has always to be considered:

1. **Purpose test:** is a legitimate interest or aim pursued?
2. **Necessity test:** is the processing necessary for that purpose or are there less intrusive but similarly effective ways?
3. **Balancing test:** do the individual's interests override the legitimate interest?

How the outcome of such a balancing test would look like for video monitoring in fishery can only be predicted when it is known in which way the monitoring will take place.

- **Compliance with legal obligations, article 6 (1) (c) GDPR**

Data processing is also lawful, where it is necessary to ensure compliance with legal obligations, to which the data controller is subject. This would be relevant in the case that the EU (or its member states) issues a legislative act on video monitoring on fishing vessels which obliges the vessel or fleet owners to install and operate video cameras. But such a legislative act must itself be lawful. It is not lawful if it infringes the data subject's rights and freedoms in an undue way (similar balancing test as described above). Especially, such legislative act must comply with article 7 (Respect for private and family life) and article 8 (Protection of personal data) of the Charter of Fundamental Rights of the European Union as well as article 8 (Right to respect for private and family life) of the European Convention on Human Rights.

In particular, article 8 of the Charter of Fundamental Rights provides for a broad protection of personal data. Any limitation of this right must be proportionate in accordance with article 52 (1) of the Charter of Fundamental Rights. Thus, the law that limits this right must *'genuinely meet'* the legally defined objective, which means it must be appropriate for achieving this goal. It is sufficient, if achieving the stipulated objectives is at least facilitated. Furthermore, the relevant data processing must be *'necessary'* to achieve this objective; it must not go beyond what is necessary. There must not be any other, more lenient means available as limitations of personal privacy must be restricted to what is absolutely necessary.

According to Commission statements and expert opinions, video monitoring in general is the most effective way to detect misconduct. But, even if continuous surveillance is considered a necessary method in general, the data subject's interest in privacy protection has to be balanced with the surveillance interest. The longer the surveillance lasts (e.g. whole day) the heavier the expected misconduct and the higher the probability has to be that it really takes place in the respective case. Only if the legal act which stipulates the legal obligation of the controller respects these balancing principles, it is considered a lawful basis for data processing according to article 6 (1) (c) GDPR.

- **Consent, article 6 (1) (a) GDPR**

Finally, article 6 (1) (a) GDPR also names the data subject's consent as a legal basis. In most cases consent is not reliable enough as a legal basis. Even though it is often alleged that the processing of personal data is lawful, if employees are warned by signage that a video recording of their activity will take place and they have agreed hereto in their employment contract⁶ such consent cannot be recommended as a reliable legal basis especially due to the following:

- Consent must be given at or prior to the collection of data.
- Consent is revocable at any time (article 7 (3) GDPR).
- Consent must be freely given, informed and an unambiguous indication of the data subject's will by a clear affirmative action (article 4 (11) GDPR).

Especially in employment relationships there is a power imbalance between the data controller (in most cases the employer or a public authority) and the data subject (employee). According to recital 43 to the GDPR and the 'Article 29 Working Party'⁷, due to this imbalance it is unlikely that the consent was freely given (without compulsion, as a "real choice", without fearing negative effects on the employment relationship). If it is not freely given, the consent is ineffective and does not present a legal basis for data processing.

In conclusion, there could exist considerable legal bases for CCTV surveillance on fishing vessels:

- Article 6 (1) (f) GDPR: When the ship's crew violates the landing obligation the ship owners may be subject to penalty payments or similar measures (depending on national laws which shall enforce the landing obligation). Therefore, they have a legitimate interest to avoid such fines by operating video cameras on the ship and ensuring that their employees fulfil their tasks in accordance with all legal obligations. However, the outcome of the "balancing test" cannot be predicted in general and, in particular, depends strongly on the exact way the video monitoring will be operated.
- Article 6 (1) (c) GDPR: If the legislator adopts a lawful legislative act which balances the different interests in a proportionate way and obliges (certain) ship/vessel owners to install and operate video cameras on their ships, this would present a lawful basis for data processing (article 6 (1) (c) GDPR). However, such a legislative act will need to be highly precise and protect the data subject's rights and freedoms in an appropriate way. It may not be easy to formulate such an act but, however, it is not necessarily impossible.

4. Practical examples

After setting the legal frame for possible data processing in the case of video surveillance on fishing vessels some practical examples will be presented.

a) Slaughterhouses

Video surveillance in slaughterhouses has been the subject of political debate for some time. In recent years, governmental inspections as well as actions by NGOs and undercover investigations have revealed many cases of animal suffering in slaughterhouses worldwide. Many EU member states have considered action in response:

- **United Kingdom**

⁶ Adam Bannister, 'CCTV in slaughterhouses: Security professionals dismiss privacy concerns of meat industry' (*IFSEC Global*, 9 February 2018) <<https://www.ifsecglobal.com/video-surveillance/cctv-slaughterhouses-security-professionals-dismiss-privacy-concerns-meat-industry-association/>> accessed 18 January 2019.

⁷ Article 29 Data Protection Working Party, Opinion 2/2017 on Data Processing at Work, adopted on 8 June 2017.

The United Kingdom (England only) is currently the only EU member state that has implemented legislation on video surveillance in slaughterhouses. Since May 2018 CCTV has been mandatory in all abattoirs in England (with an implementation period of six months).⁸ Before, the government has encouraged the voluntary uptake of CCTV in slaughterhouses without great success.⁹ The current Regulation is largely based on the findings of an assessment on the benefits of CCTV in slaughterhouses by the Farm Animal Welfare Committee (FAWC)¹⁰. However, this assessment does not discuss the data subject's privacy interests nor the requirements under the GDPR (which did not exist yet in 2015). The Association of Independent Meat Suppliers (AIMS) voiced concerns regarding the far-reaching character of video surveillance. However, under the 'Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018' CCTV surveillance is now required in all slaughterhouses in England in all areas where live animals are present (where unloaded, stunned and killed) with unrestricted access to footage for official veterinarians for 90 days.

So far, occasionally it has been pointed out in the UK, also by the Department for Environment, Food and Rural Affairs (Defra)¹¹ that the legal implementation of a video surveillance obligation for slaughterhouse operators would be in conflict with EU law.¹² Also, some see Brexit as an opportunity to strengthen video surveillance in slaughterhouses and thus to create higher animal welfare standards in the UK (England) than in the EU (in the case that the GDPR will no longer apply).

- **France**

By January 1st, 2018, all slaughterhouses should have been equipped with cameras at all points of transport, accommodation, immobilisation, stunning and slaughtering of animals. But the bill is stalled. According to media reports,¹³ the corresponding legislative proposal regarding CCTV has been cancelled. The government has subsequently said they would prefer vets and observers physically present in the slaughterhouses rather than having them in front of monitors.¹⁴ Currently, there is neither a regulation on compulsory video recordings in French slaughterhouses, nor are there intentions to have them.¹⁵ In anticipation of the originally planned legislation, many slaughterhouses are said to have voluntarily installed video

⁸ 'The Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018' <<https://www.legislation.gov.uk/ukxi/2018/556/contents/made>> accessed 18 January 2019.

⁹ Parliamentary Debate on 'The Mandatory Use of Close circuit Television in Slaughterhouses (England) Regulation 2018' (27 March 2018) [https://hansard.parliament.uk/lords/2018-03-27/debates/0500CDF8-4E9D-4FC7-A681-74CF1C89B8D3/MandatoryUseOfClosedCircuitTelevisionInSlaughterhouses\(England\)Regulations2018](https://hansard.parliament.uk/lords/2018-03-27/debates/0500CDF8-4E9D-4FC7-A681-74CF1C89B8D3/MandatoryUseOfClosedCircuitTelevisionInSlaughterhouses(England)Regulations2018) accessed 26 February 2019.

¹⁰ The Farm Animal Welfare Committee, 'Opinion on CCTV in slaughterhouses' (February 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/400796/Opinion_on_CCTV_in_slaughterhouses.pdf> accessed 26 February 2019.

¹¹ RSPCA, 'Improving transparency in slaughter: first signs of a Brexit' <https://www.rspca.org.uk/whatwedo/latest/blogs/details/-/articleName/Blog_Improving_transparency_in_slaughter> accessed 26 February 2019.

¹² Deutscher Bundestag, Wissenschaftliche Dienste 'Videoüberwachung in Schlachthöfen. Zur Rechtslage in ausgewählten Staaten' (27 March 2018) <<https://www.bundestag.de/blob/553892/3a0a6529bc1d1a6b48e519daf26de4b1/wd-5-042-18-pdf-data.pdf>> accessed 18 January 2019.

¹³ Sibylle Laurent, 'Pas de caméras obligatoires dans les abattoirs : "La loi a été expurgée de l'essentiel, c'est dramatique"' (LCI, 21 January 2018) <<https://www.lci.fr/societe/les-cameras-obligatoires-dans-les-abattoirs-c-est-abandonne-la-loi-a-ete-expurpee-de-l-essentiel-c-est-dramatique-2077346.html>> accessed 18 January 2019.

¹⁴ Ibid, n 11.

¹⁵ Response of the German Parliamentary State Secretary Dr. Maria Flachsbarth (1 March 2018) <https://www.wir-sind-tierarzt.de/download/Antwort_BMEL_Maerz_2018_2.pdf> accessed 18 January 2019.

surveillance systems.¹⁶ This may also change as consumers demand more responsible practices.¹⁷

- **The Netherlands**

Video surveillance in slaughterhouses has been under discussion in the Netherlands for a long time. However, a legal requirement does not yet exist. After several misdemeanours in slaughterhouses in neighbouring countries caused controversy, some Dutch slaughterhouse operators have reached agreement with the government to install cameras.¹⁸ Other operators have installed cameras without any such agreement. According to the agreement with the government, video surveillance should concentrate on areas, where live animals are being handled. Although there is no permanent external control, the slaughterhouse operators have granted the food safety authority NVWA the right to access the recordings at any time. The videos are saved for at least four weeks.

- **Belgium**

The Flemish Animal Protection Minister has stated that in Flanders there should be video monitoring in all slaughterhouses. However, he has also acknowledged that this would involve practical implementation problems.¹⁹ There are no statutory requirements planned but agreements with the companies, meaning voluntary commitments. Some have already established video monitoring on a voluntary basis,²⁰ although it is not known what this will involve. Wallonia also intends to adopt a similar approach to Flanders.²¹

- **Germany**

Similar to many other European countries, Germany takes a strict approach to data protection regulations. It has been argued at various times by various actors (including politicians who are in favour hereof) that video monitoring in slaughterhouses should be required. However, according to a statement of the Scientific Service of the German Federal Parliament such video monitoring – in most cases – would violate the provisions of the GDPR.²² The only case, in which video monitoring would not be in breach of the GDPR is, where no personal data is collected because no individual is filmed (or at least is not identifiable). There are currently no legal obligations and no voluntary agreements with slaughterhouse operators regarding video surveillance in Germany.

¹⁶ Pascal Charrier, 'Les caméras dans les abattoirs restent facultatives' (*La Croix*, 28 December 2017) <<https://www.la-croix.com/France/cameras-abattoirs-restent-facultatives-2017-12-28-1200902349>> accessed 18 January 2019.

¹⁷ 'Carrefour to audit abattoirs, demand cameras for animal welfare' (*Global Islamic Economy Gateway*, 17 January 2019) <https://www.salaamgateway.com/en/story/carrefour_to_audit_abattoirs_demand_cameras_for_animal_welfare-SALAAM18012019011408/> accessed 26 February 2019.

¹⁸ Kimberly Bakker, 'Straks cameratoezicht in alle nederlandse' (*Boeren Business*, 12 April 2017) <<https://www.boerenbusiness.nl/varkens/artikel/10874108/straks-cameratoezicht-in-alle-nederlandse->> accessed 17 January 2019.

¹⁹ Zico Saerens, 'Camera's in slachthuizen? "Naast dierenwelzijn is er ook welzijn van werknemers"' (*VRT*, 24 March 2017) <https://www.vrt.be/vrtnws/nl/2017/03/24/camera_s_in_slachthuizen_naastdierenwelzijniserookwelzijnvanwerkn-1-2932015/> accessed 17 January 2019.

²⁰ Alan Hope, 'Tielt slaughterhouse re-opens with camera surveillance' (*Flanders Today*, 7 April 2017) <<http://www.flandertoday.eu/politics/tielt-slaughterhouse-re-opens-camera-surveillance>> accessed 17 January 2019.

²¹ Nathalie De Greve 'Camera's in alle Vlaamse slachthuizen' (*Comeos*) <<https://www.comeos.be/actumessage/82553/Camera-s-in-alle-Vlaamse-slachthuizen>> accessed 17 January 2019.

²² Deutscher Bundestag, Wissenschaftliche Dienste 'Videoüberwachung in Schlachthöfen' (28 March 2018) <<https://www.bundestag.de/blob/556766/d6c2b651e9a1cbdc9a0cf0b3143f8b80/wd-3-073-18-pdf-data.pdf>> accessed 18 January 2019.

b) Legal Opinion on “The Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018” and on voluntary installation of video surveillance systems

As England is currently the only region within the EU where legislation on video monitoring in slaughterhouses exists, it deserves a closer look:

According to section 3 (1) a business operator of a slaughterhouse must ensure that a CCTV system is installed that provides a complete and clear image of killing and related operations in all areas of the slaughterhouse where live animals are present. According to section 4 (1) the operator has to retain the images for 90 days. However, the regulation does not state how the surveillance has to be carried out or whether persons necessarily have to be recorded, although the latter is indicated by the provisions on enforcement notices (section 6). As the Regulation itself is too vague regarding the exact measures of video surveillance, it may not yet constitute a violation of GDPR provisions. However, the guidance for the operators on how to comply with the rules on the mandatory use of CCTV in slaughterhouses²³ states that any recorded individual must be identifiable in the images and that such data must be processed in line with data protection requirements.

If it is now assumed that the regulation requires continuous video surveillance of individuals employed at the slaughterhouse, it is necessary to consider whether a legitimate purpose is pursued and whether the rights of the persons concerned have been sufficiently taken into account.

Here, the slaughterhouse operator as data controller is legally obliged to operate CCTV surveillance in slaughterhouses in England. Such a legal obligation of the data controller can constitute a legitimate basis for data processing under article 6 (1) (c) GDPR. The Regulation pursues an objective of public interest (legitimate aim), which is animal welfare as one of the objectives of EU law according to article 13 TFEU. In addition, the legal basis (thus, the Regulation) must be *'proportionate to the legitimate aim pursued'*, article 6 (3) subsection 2 sentence 3 GDPR. The principle of proportionality requires that the *'means are appropriate for achieving the objective pursued and do not go beyond what is necessary'*. For appropriateness it is sufficient, if the objective is at least encouraged. Taking this into account, permanent video surveillance in slaughterhouses may be an appropriate means for at least promoting the protection of animals' rights at the time of slaughter by, on the one hand, encouraging all parties to act accordingly and, on the other hand, by detecting abuses which must be eliminated in the future. Video surveillance can also be considered necessary, as no equally appropriate and more lenient means of achieving the legitimate objective is apparent. Regular checks of the slaughterhouses by external persons would not be equally appropriate for meeting animal welfare concerns. Ultimately, it will be decisive, whether the legislator has correctly balanced the legitimate objective pursued by the regulation on the one hand and the violation of the right of the data subject to respect for their private life in general or to protect their personal data in particular on the other hand. The Court of Justice of the European Union also demands that exceptions and limitations in relation to the protection of personal data must be restricted to what is absolutely necessary.

Permanent monitoring of the employee's performance is normally not considered proportionate. The video surveillance obligation stated in the above mentioned English legislation is firstly not limited to a certain period of time, but is indefinite. Secondly, a large number of employees are subjected to permanent monitoring without having given a concrete reason for doing so. Thirdly, the risk of particularly serious violation of personal rights is increased by the fact that the regulation does not contain any limitation on the technology to be used.

²³ 'CCTV in slaughterhouses: rules for operators' (4 May 2018) <<https://www.gov.uk/government/publications/cctv-in-slaughterhouses-rules-for-operators>> accessed 18 January 2019.

This all raises considerable doubts regarding the lawfulness of the English regulation. However, an unlawful legislative act cannot serve as a legitimate basis for data processing under article 6 (1) (c) GDPR. This would also explain why the other member states have been reluctant to enact comparable laws.

Also, the voluntary installation of video surveillance systems must not violate the individual's rights and freedoms. In this case, the only suitable legal basis for lawful processing of personal data might be article 6 (1) (f) GDPR. The slaughterhouse operators' legitimate interest is to ensure that the employees carry out their work in compliance with legal requirements. However, such an interest will not justify permanent monitoring of employees, especially if not even an initial suspicion of misconduct is present in the respective slaughterhouse. A permanent monitoring triggers a special control pressure and violates considerably the right to informational self-determination of the employee.

However, if the video surveillance shall be proportionate, the recording has to be limited locally and temporally in any case (no continuous surveillance). If it is necessary, safeguards (such as anonymisation) for the protection of employee's rights and interests must be implemented. Even after that, it remains to be examined whether the balancing test shows that the slaughterhouse operator's legitimate interests prevail. Unfortunately, it is not clear which exact measures of video surveillance were undertaken by those slaughterhouses which have voluntarily implemented video monitoring.

c) Supermarkets

Camera surveillance regularly takes place in supermarkets, department stores and at gas stations. However, in these cases the aim is not to monitor the behaviour of employees but to protect the employer's property against criminal offences committed by customers (for example, theft). In these cases, the legal basis for video surveillance regularly is article 6 (1) (f) GDPR, namely the legitimate interests of the employer. This case differs from video surveillance in slaughterhouses and on fishing vessels in the sense that here video surveillance does not intend to monitor the behaviour of employees but to record possible criminal offences against the employer's property committed by clients. These clients are the actual data subjects of the surveillance. However, clients are only monitored while they are in the supermarket which may last normally for about less than half an hour. Considering that people do not necessarily go to supermarkets daily the infringement of their privacy rights by video monitoring is not as severe as in the case of non-stop daily video monitoring of employees. Statistically, the number of criminal offences such as theft and fraud committed in supermarkets and department stores is high enough for it to justify an initial suspicion of the employers that thefts will also occur in their shops. To secure evidence, video surveillance is the most promising mean they can take (for example, as compared to a detective). Therefore, in such cases the legitimate interest of the employer prevails.

In contrast, when undertaking video monitoring in slaughterhouses or on fishing vessels the employees are in the frame. There must be a sound suspicion (not only an assumption or a general suspicion with regards to the industry) to justify video monitoring which lasts the whole business day for a longer period of time and monitors all the actions. Such monitoring may be possible when it comes to certain identifiable "risk groups" but not regarding all fishing vessels as it would also strongly violate the presumption of innocence and additionally infringing privacy rights.

d) Banks

A similar, possibly even higher risk with regard to the commission of criminal offences exists for banks. If video surveillance takes place there, it is usually based on article 6 (1) (f) GDPR, too. On one hand, it should be noted that here again it is not the employees but the visitors to the bank that are

the focus of surveillance. On the other hand, by monitoring via video surveillance, the employers not only realise their own legitimate interests to prevent harm to their property and business, but also the security interests of their customers and employees, that neither property nor life and limb are in danger, or at least that evidence is secured in cases, in which crimes are committed. A monitoring of "uninvolved" persons (employees) is inevitable here. However, an employee-related evaluation of the recordings is only permissible to show their behaviour in possible disputes with guests and customers.²⁴

e) Forestry

In some forests wildlife cameras (CCTV) are used. These record as soon as they perceive movement, whereby they do not distinguish between human and animal movement. As a result, forest strollers, mushroom pickers, etc. can also be detected and recorded by them. However, if the forests are publicly accessible, in any case the operators must comply with data protection regulations. This means that the legitimate interest of the operators (article 6 (1) (f) GDPR) in observing wildlife must be balanced with the interest of those filmed in protecting their privacy. In most cases, the individual's private interests may prevail. However, when balancing interests, the reasonable expectations of the filmed data subject must also be taken into account (recital 47). Unlike in public transport, for example, no observation (by humans or cameras) is expected in the forest; many also see the forest as a retreat, a place where they want to be on their own. In general, this interest of the individual to be left alone (privacy) outweighs the mere interest of the operator to observe the wildlife. The situation may be different if there are significant circumstances present that make the operator's interest appear more important, such as the observation of a particularly rare species that cannot be performed in a less intrusive way. However, even in such cases, it will be necessary to consider whether video surveillance can be carried out in such a way that it interferes with the individual's privacy only to a minimal extent. This can be done, for example, by positioning the cameras in such a way that they do not record faces (near the ground).²⁵

5. Conclusions for the fishing industry

These examples show that, under current legislation, the data subjects' (especially employees') privacy is of high importance and enjoys special protection. However, if (where possible) the video monitoring complies with these legal requirements and is designed in a restrictive way, it is not categorically forbidden.

Where in certain cases there is a specific reason for surveillance, e.g. sufficient starting suspicion of misdemeanours or in high-risk sectors, video monitoring may be lawful. In any such case, when operating video cameras, all possible measures have to be taken to limit the privacy intrusion to a minimum extent.

In conclusion, to carry out video surveillance on fishing vessels to monitor compliance with the landing obligation under article 15 (1) Regulation (EU) No 1380/2013 the following ways exist:

- Video monitoring of risk groups: Whenever there is a specific suspicion against a particular fishing vessel or fleet that it does not comply with legal requirements for fishing, a temporary surveillance of that crew may be appropriate. In some cases, there may be a high probability of violation of the landing obligation by certain vessels or fleets. This may result from previously documented misconduct or from the use of certain fishing methods which often lead to unwanted bycatch. Due to the high probability of especially such vessels or fleets (but

²⁴ Gola GDPR/*Gola*, Art. 6 GDPR n 168.

²⁵ 'Videoüberwachung im Wald ist rechtswidrig' (22 November 2013) <<https://www.akkurier.de/akkurier/www/artikel/25448-videoueberwachung-im-wald-ist-rechtswidrig>> accessed 26 February 2019.

not of the fishery as a whole) of violating the landing obligation there might be a considerable legitimate interest to monitor these vessels using video cameras. This means such legitimate interest would present a legal basis according to article 6 (1) f GDPR. This legitimate interest in monitoring the risk group vessels would need to be balanced against the staff's interest in data privacy, i.e. not being subject to permanent surveillance. However, such approach would require a sound justification as to which vessels are part of the risk group and for whatever reason.

- Avoiding personal data: Monitoring only the technical process without recording the employees. In this case the GDPR would not apply because no processing of personal data takes place.
- Anonymisation: Monitoring the entire process, if there are technical possibilities to directly pixelate the recorded persons in such a way that identification is not possible. Because of such anonymisation of personal data, a legislative act (law) on mandatory video monitoring would most likely be proportionate.
- Data minimisation: If there is a technical possibility to limit the video surveillance to a minimum time, in certain cases this could be a viable option.