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PRIVACY, DATA
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The use of geolocation in the workplace setting

The Portuguese Data Protection Authority (*Comissão Nacional de Proteção de Dados* - "CNPD") has recently published an Opinion setting out the conditions applicable to dealing with personal data in what regards the use of geolocation technology in the workplace setting ("*Deliberação n.º 7680/2014*").

This Opinion imposes certain obligations to all companies and public entities dealing with geolocation data and sets out important rules for car manufacturers, car rental, leasing and fleet management companies, electronic communications operators, and all suppliers of platforms providing the necessary monitoring technology for geolocation devices.

Among all of the devices allowing to locate a person or an object (indoors or outdoors), the Opinion focuses on the GPS, the GSM and the Wi-Fi. As referred by the CNPD, this type of technology gathers a certain amount of data regarding the user which allow to identify routes taken, places attended, to keep a record of the user's movements and length of permanence at each place, thus allowing to draw behaviour profiles of the users.

In the workplace setting these geolocation devices are mainly used in motor vehicles and smart mobile devices such as mobile phones, tablets and laptops, which are made available by the employer to the employees.

According to the CNPD it is indispensable to ensure the right balance between the freedom to manage and organize a company/public entity's production means and the employees' fundamental rights as this type of device – or any type of long distance surveillance system – may be used to monitor an employee's productivity and efficiency.

Therefore, through this Opinion, the CNPD sets out the framework and the conditions regarding the use of geolocation devices in the workplace setting:

- > The use of geolocation data is allowed in the terms set out by the Labour Law (which allows employers to use technological devices for long distance surveillance in order to assure the protection and safety of people and goods or whenever justifiable by the specific nature of the activity). The employee's agreement on such data gathering and use does not legitimize such use, therefore making void any kind of signed agreement;
- > It is forbidden to use geolocation technology to monitor an employee's professional performance or to perform any kind of monitoring of an employee's location during his/her free time. Therefore the employer should provide for the implementation of a mechanism of any kind that will allow the employee not to be monitored outside his/her working time (allowing to turn off the GPS device, for example);

The prohibition of collecting and processing data on employees' movements and actions outside working time obliges companies and public entities to adopt Privacy by Design mechanisms.

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Companies and public entities must review their internal contracts and regulations regarding the conditions of use of equipment with a GPS system.

- > It is forbidden to monitor an employee's geolocation through smart mobile devices (namely mobile phones, *tablets* and laptops) as, according to the CNPD, these allow for a detailed view of an employee's movements, intruding in a person's privacy. However the CNPD allows the installation of a Mobile Device Management (MDM) in a mobile device as long as the GPS sensor is not activated;
- > It is allowed to install geolocation systems in motor vehicles for the following purposes:
 - a) **External services fleet management** (due to the relevant use of data for service distribution, for scheduling delivery times or for the improvement of the performance capacity). However this applies solely to the following activities: (i) external or home technical assistance, (ii) distribution of goods, (iii) passenger transport, (iv) transport of goods and (v) private security;
 - b) **Protection of goods**, only in the following cases: (i) when transporting hazardous materials (namely, toxic or inflammable materials, hazardous waste, guns, explosives or medication) or (ii) materials amounting to a value higher than € 10 000. Apart from the above mentioned cases the installation of geolocation devices is only allowed in exceptional cases for the protection of the vehicle or of the transported goods and only these are to be monitored for geolocation, and as long as this data is sealed by any kind of technical solution and is only accessible in case of criminal offence in case of theft of the vehicle or of the goods.

The possibility to use geolocation data for the purposes of proof of compliance with contractual obligations or proof of compliance with road legislation is excluded from the above mentioned cases;

- > The company or public entity shall inform the employees of the existence of geolocation devices in the equipment available to them; the company or public entity shall further establish in writing the conditions of use of the equipment having for that purpose consulted the workers' council, whenever there is one.

The Opinion further states the type of personal data that may be collected and processed, as well as the time limits for the storage of such data (as a general rule, not more than one week).

According to the information made available, the CNPD will soon be providing an online application form at www.cnpd.pt, for companies and public entities to request for data collection and processing authorization. According to the CNPD, this online form aims to accelerate the proceedings and to allow a faster response to requests, providing certain requisites are met and compliance with the imposed limitations is ensured.

Further to this Opinion it is advisable that companies and public entities check their policies and activities regarding personal data collection and processing involving geolocation in order to ensure they comply with the conditions established thereof.

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