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Localization systems are legal for vehicles used for employment activities – but on what conditions?

December 01, 2011

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Background

Under Italian law, all forms of distance monitoring are prohibited by Article 4 of the Statute of Employees (Law 300/1970), as well as by Article 114 of the Privacy Code (Legislative Decree 196/2003), which expressly refers to the provision of the Statute of Employees.

In particular, the law prohibits the use of distance monitoring systems that are aimed solely at monitoring employees during their professional activity, unless this is justified for security reasons or on the grounds of organisation or productivity. In order correctly to implement such a system and show evidence to justify it, Article 4(2) of the statute requires the employer to carry out a co-determination procedure involving the company's trade union representatives (often referred to by their Italian acronym, RSA) or, if there are no RSAs, the competent labour office (the Direzione Provinciale del Lavoro). In contrast, the consent of the employees is not required.

Failure to follow the consultation procedure for the implementation of monitoring systems prevents an employer from using distance monitoring systems and would be considered a breach of duty in respect of its relationship with the trade unions pursuant to Article 28 of the statute, as well as being a breach of the Privacy Code.

However, localization devices are increasingly being installed on vehicles that are used by employees for the performance of their employment activity. Such devices can be used in compliance with the legal framework.

Privacy Authority ruling

On October 4 2011 the Privacy Authority issued Provision 370. Among other things, it states that localization systems on such vehicles are generally permitted, provided that the co-determination procedure is carried out and other requirements are met.

The processing of data that relates to the geographical position of vehicles and allows the operator to track the movements and behaviour of its employees, whether directly or indirectly, unquestionably constitutes a distance monitoring system, whether or not it is anonymous.

Such an activity must comply with data protection safeguards and be conducted according to the following binding principles:

- a. **Necessity and data minimisation:** Localization systems must be configured so as to minimise the use of personal or identifying data in view of the purposes to be achieved. The authority has specified that in addition to the vehicle's position, the distance, travel time, fuel consumption and average speed are all appropriate data that an employer may need to know.
- b. **Fairness:** The fundamental features of the processing must be disclosed to employees pursuant to Article 13 of the Privacy Code. In this respect, the employer must always provide clear-cut, detailed information on the localization mechanisms, explaining whether, how and to what extent monitoring is performed. Furthermore, the employers must place a clear indication in the vehicle to alert the employee to the fact that it is subject to localization monitoring – Provision 370 provides a model.
- c. **Processing:** The authority must be notified of any processing, which must be carried out for the specific, explicit and legitimate purposes of organisation, productivity or security, and in compliance with the principles of relevance and proportionality. The monitoring may be performed only by the authorised entity and may not be performed continuously.

The authority has described the provision as identifying a legitimate processing of employee data in order to achieve a balanced settlement of the employer's interests.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.