WRITTEN QUESTION E-3395/00

by Freddy Blak (PSE) and Helle Thorning-Schmidt (PSE) to the Commission

(3 November 2000)

Subject: Use of evidence of previous convictions for recruitment purposes

Investigations carried out by the Shop and Office Workers’ Union (HK) in Denmark have revealed that the Danish police have been producing increasing numbers of extracts from criminal records. Between 1997 and 1999 the figure rose from 87,970 to 125,250 a year, an increase of 40%. The reason is that employers are increasingly requiring ‘clean’ criminal records for staff they recruit, regardless of the job to be undertaken and the type of offence involved. The authors of this question see no reason why a drink-driving conviction should prevent somebody working as a shop or canteen assistant.

Does the Commission agree that this practice means that many criminals are not being reintegrated into society after they have completed their sentences, which conflicts with the desire to increase employment in Europe?

Does the Commission agree that extracts from criminal records should be obtainable only when the request is justified by the nature of the job and the nature of the offence?

Answer given by Mr Vitorino on behalf of the Commission

(17 January 2001)

The Commission is of the opinion that the reintegration of prisoners into society, and thus also into the working process is a very worthy goal. It is also in the pursuit of this goal that the Commission has, in its Communication to the Council and the Parliament on ‘Mutual recognition of final decisions in criminal matters’ (1) insisted that the measures to be taken in this field shall also lead to improvements for the convicted person (2).

While Directive 95/46/EC of the Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (3) (‘data protection directive’) excludes from its scope any processing of data that is done in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case processing operations concerning public security, defence, State security (including the economic well-being of the State when the processing operation relates to State security matters) and the activities of the State in areas of criminal law (Article 3, Paragraph 2), data processing by private entities, such as prospective employers, in principle falls under its scope. Article 8, Paragraph 5 stipulates that the processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or subject to derogations which may be granted by the Member State provided that suitable specific safeguards are provided under national law.

However, even when the processing of criminal convictions data is allowed, Member State’s legislation must foresee that such processing must comply with all the requirements laid down by the Directive, in particular the principles of proportionality and purpose limitation (Article 6). In application of this principle, the processed data must be relevant for the purpose for which it is processed.

At international level, the 1996 International labour organisation (ILO) Code of Practice on the protection of worker data (4), which is not a legally binding instrument, but one that makes recommendations in order to provide guidance on the protection of workers’ personal data, does not exclude the collection of personal data concerning a worker’s criminal convictions, but it clearly restricts it. The collection is allowed subject to two conditions: the data is directly relevant to a particular employment, the collection must always be undertaken in strict conformity with national legislation.
The Commission has announced in its Social Policy Agenda(1) that it will consult the social partners on possible future Community action in relation to data protection in the employment context.


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(2) See the Communication's sub-chapters 9.1. on 'Custodial Penalties' and 9.4. on 'Alternative Sanctions'.


(5) Communication from the Commission to the Council, the Parliament, the Economic and Social Committee and the Committee of Regions, COM(2000) 379 final.

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(2001/C 174 E/048)

WRITTEN QUESTION E-3398/00

by Marjo Matikainen-Kallström (PPE-DE) to the Commission

(3 November 2000)

Subject: Overcharging by mobile operators

In the light of recent studies showing European mobile operators overcharging for call termination by at least 40-70%, which resulted in fixed operators subsidising mobile operators by at least € 4.5 billion in 1999, what immediate initiatives and actions is the European Commission considering to:

– assist national regulatory authorities in setting cost-oriented mobile interconnection charges where European law requires this; and

– promote best practice in ceiling rates for termination of calls from fixed to mobile networks — based on existing LRIC models, or on the cost of mobile-to-mobile termination?

Answer given by Mr Liikanen on behalf of the Commission

(7 December 2000)

Community law requires that the charges for terminating calls on a mobile network should be cost-oriented if the mobile operator has significant market power on the national market for interconnection (Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) (5), Article 7(2)).

It is for the national regulatory authority (NRA) in each Member State to decide which mobile operators fall into this category. To date, NRAs have notified the following mobile network operators as having significant market power in the national market for interconnection:

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<thead>
<tr>
<th>Country</th>
<th>Operators</th>
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<tbody>
<tr>
<td>Spain</td>
<td>Telefónica Móviles, Airtel</td>
</tr>
<tr>
<td>France</td>
<td>FT Mobiles, SFR</td>
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<tr>
<td>Ireland</td>
<td>Eircell</td>
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<tr>
<td>Italy</td>
<td>TIM, Omnitel</td>
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<tr>
<td>Austria</td>
<td>Mobilkom</td>
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<td>Finland</td>
<td>Sonera, Radiolinja</td>
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<td>Sweden</td>
<td>Telia</td>
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