

European Commission Guidance on the Implementation of the UN Guiding Principles
Report of the First Employment & Recruitment Agencies Sector Multistakeholder Roundtable
30th May 2012 – Brussels

Background to the Project

The [European Commission](#) identified the development of guidance for three industry sectors on the corporate responsibility to respect human rights under the [UN Guiding Principles on Business and Human Rights](#) as one of its priority actions in its recent [Communication on Corporate Social Responsibility](#). The Institute for Human Rights and Business (IHRB) and Shift (the Project Team) [were selected](#) to carry out the project of developing the three sector guides over the course of 2012.

In February 2012, the Commission announced that guidance would be developed for the Employment & Recruitment Agencies, ICT, and Oil & Gas sectors. The selection of the three sectors was informed by analysis carried out by Shift and IHRB against a set of [publicly available objective criteria](#) and consideration of submissions from business, NGOs and other stakeholders. Together, the sectors face a wide range of significant human rights challenges that could benefit from guidance focused on the corporate responsibility to respect human rights. Guidance to be developed under the project will also have added value to businesses from other sectors facing similar human rights-related issues. The guides should serve as a reference for businesses from the sector in question for the development of their own human rights policies and processes and should also serve as a basis for further constructive engagement with other stakeholders.

While the guides will take account of the experiences of EU business, they aim to be as globally relevant as possible, and their development will be informed by the views of a wide range of stakeholders, including representatives from business, civil society, trade union, and government, as well as other experts. The project team will conduct baseline research, extensive interviews with diverse stakeholders (75+ per sector), and facilitate two multistakeholder roundtables per sector. The team will also seek to draw on the guidance of the European Commission's [Expert Advisory Committee](#) and three multistakeholder [Sector Advisory Groups](#), convened specifically for the project.

The Project Team welcomes comments or questions regarding the project from organisations or individuals at any time via sectorguidance@ihrb.org. Key documents and updates will be posted to the project's portal at <http://www.ihrb.org/project/eu-sector-guidance/index.html>.

First Multistakeholder Roundtable on the Employment and Recruitment Agencies Sector

This report summarises the discussion at the first multistakeholder roundtable for the Employment and Recruitment Agencies (E&RA) Sector held in Brussels on 30 May 2012. The purpose of the roundtable was to elicit a broad range of perspectives on the leading issues, challenges and opportunities faced by the Employment and Recruitment Agencies sector in meeting the responsibility to respect human rights in line with the UN Guiding Principles on Business and Human Rights.

Participants in the roundtable were provided with a short [Discussion Paper](#) outlining a range of stakeholder perspectives on the key human rights impacts, contextual factors and process challenges in implementing the corporate responsibility to respect human rights, as

identified through interviews and research conducted under the project to date. The Discussion Paper was intended to stimulate, not constrain, focused discussion.

The roundtable began with a welcome from the European Commission Directorate-General for Enterprise & Industry and from the Project Team. There were four substantive sessions, starting with a discussion of the range of potential impacts on rights holders and then moving on to explore some of the key elements of implementing the responsibility to respect: embedding respect for human rights within the company, meeting the responsibility to respect in business relationships including through the exercise of leverage, and the importance of engagement with stakeholders and the role that can be played by operational-level grievance mechanisms.

The roundtable was held under the Chatham House Rule. A list of participants is attached as [Appendix A](#).

Session 1: The Nature and Assessment of Human Rights Impacts in the E&RA Sector

The first session explored the nature of human rights impacts within the sector, including those most frequently identified by stakeholders in the research to date (see Section 3 of the Discussion Paper). These included impacts related to: trafficking, slavery, and forced and bonded labour; just and favourable conditions of work; freedom of association and rights to collective bargaining; and impacts on vulnerable groups such as migrant workers.

It was underlined that this in no way implies that all businesses have or will have these negative impacts, nor that businesses can have only negative impacts on human rights – it was recognised that businesses can play a significant role in supporting human rights. However, respecting rights is the baseline expectation of all companies under the corporate responsibility to respect and accordingly that was the focus of the discussion. The session was framed around three areas: the prevalence and severity of impacts; contextual issues exacerbating the risks of adverse impacts to human rights; and the assessment of impacts.

A number of participants emphasised the distinction between agencies that employ workers and those that engage solely in the recruitment of workers (which, in the view of a number of participants, often have a greater risk of adverse impacts), and highlighted the importance of maintaining this distinction in drafting the guidance. Industry participants stressed that while the guidance should be capable of global application, it should take into account EU specificities in terms of the regulatory context (such as protection of domestic workers); it should also include examples of good practices and leadership within the industry and recognise the essential role that E&RAs play in providing employment. Several participants focused on the need to address the “laggards” and the most serious potential adverse impacts. Other participants stressed that the guidance should speak to all agencies, rather than attempting to draw distinctions between “bad” and “good” actors, and should recognise the full range of impacts that companies in the sector may potentially have.

Participants generally agreed that slavery, trafficking and forced labour were the most serious adverse impacts that can occur within the E&RA sector, and that they largely occur outside the EU. However, more than one participant observed that these impacts were not unknown within the EU. Some industry participants strongly questioned whether all of the impacts identified in Section 3 of the Discussion Paper (particularly around just and favourable conditions of work) were “human rights impacts”. Others pointed to their inclusion in Article 7 of the International Covenant on Social, Economic and Cultural Rights.

Participants disagreed on the extent to which agency work has the potential to heighten the risk of adverse impacts, including on freedom of association and rights to collective

bargaining. Industry participants stressed that relevant international human rights instruments (including ILO Convention 181) do not require that representation of workers occur at the level of the user enterprise, and that it was not necessarily more difficult to unionise agency workers. A number of civil society participants disputed the second point and countered that, in their experience, this had led to agency workers being at heightened risk of adverse impacts. An industry participant shared their experience, in a non-EU context, of agency workers being afraid to exercise their right to freedom of association as a result of threats by the relevant agency. Participants generally saw the EU as having relatively high levels of unionisation of agency workers, or at least levels that were not at odds with the levels of unionisation of permanent workers.

Civil society participants saw agency workers as subject to a heightened risk of adverse impacts in other ways, for example, by being denied access to bank loans and other forms of credit on a discriminatory basis. This was countered by some industry participants who noted that some agencies had agreements in place with banks specifically to allow agency workers to access credit. It was stressed that identifying the existence of heightened risk was not equivalent to making a judgment about a particular company and that certain contexts may raise the risk of adverse impacts without a “human rights issue” necessarily materialising in practice.

Some participants noted that where migrant workers are recruited either in-country or from a second country, this can heighten the risks of adverse impacts. They underlined the particular challenges of attributing responsibility for adverse impacts in scenarios involving the movement of workers across borders. Groups identified as potentially vulnerable by various participants included not only migrant workers but also older workers, young women and ethnic minority workers.

In terms of assessing impacts, one participant stressed that it was important to understand the relevant risk as being the risk to the rights-holder rather than financial or reputational risks to companies. The need to assess the kind of environment workers would be being placed in (for example, whether the health and safety standards of the user enterprise are adequate) was also flagged. However, while agencies can conduct simple checks on, for example, credit risk and safety measures, such processes did not enable assessment of the actual conditions of employment.

Session 2: Embedding and Integrating Human Rights in Companies in the E&RA Sector

The second session focused on the key steps companies can take internally to embed respect for human rights throughout the organisation and to integrate and take action on the specific findings from impact assessments. Discussion was framed around three concepts: developing and implementing human rights policies; integrating human rights due diligence processes into existing systems as compared to developing new/stand-alone approaches; and communicating about human rights effectively within the company.

The discussion confirmed the importance of having robust human rights policies in place, while noting the challenges in effectively embedding those policies in company systems. It was observed that many company codes of conduct do not address human rights issues in detail. One industry participant emphasised that company policies should address key issues such as health and safety, data protection and the right to privacy, and non-discrimination (for example, when user enterprises ask agencies to supply a particular nationality or ethnicity of worker, or only young workers). The Memorandum of Understanding between CIETT (the International Confederation of Private Employment Agencies) and UNI Global Union for service sector workers on the content and implementation of codes of conduct

was noted as a helpful reference point. Training staff within E&RAs was seen as critical to successfully embedding respect for human rights.

Participants highlighted the importance of cascading respect for human rights throughout the supply chain. The Verité Fair Hiring Toolkit (supported by e-learning modules) was cited as an example of a useful resource for companies in this regard. One industry participant gave the example of a brand company that is working with factories, brokers and suppliers on implementing migrant labor guidelines that they developed jointly with an international union federation. This involves, for example, their attending recruitment drives and monitoring recruitment processes, working with local NGOs, looking at factory management systems in more depth, and engaging internal regional teams on audits.

National, regional and global E&RA federations were seen as having an important role to play including by: promoting good industry standards of behaviour and generally showing leadership; helping build the capacity of individual E&RAs to develop their own policies and processes; and lobbying governments for effective regulation. Examples of the kind of measures that federations could usefully promote included: prohibitions on requiring fees from workers; providing workers with appointment letters clearly detailing the terms of their employment; providing regular wage slips; developing detailed manuals explaining workers' rights and responsibilities; and providing other forms of support to workers, for example skills development. Federations themselves can directly encourage workers to report on member agencies' compliance with the federation's code and other standards (including through dedicated grievance hotlines).

Participants discussed the importance of other forms of rating systems or "de facto white lists", particularly where official licensing does not exist. Industry federations that promote the kinds of standards identified above may be seen as providing a "quality label", effectively signalling to user enterprises that their member companies are committed to certain standards, and contributing to a situation where "voluntary" efforts have real consequences for business. One participant suggested exploring the idea of "preferred broker lists", while another suggested the need for a body akin to an "EU rating agency" for E&RAs.

Session 3: Business Relationships and Leverage within the E&RA Sector

The third session focused on the steps companies within the E&RA sector can take in their business relationships to ensure they are meeting their responsibility to respect, including the issue of exercising leverage.¹ Discussion was framed around three types of business relationship: E&RA's relationships with user enterprises; E&RA's relationships with other agencies and brokers; and specific implications of and for E&RA's relationships with governments.

The importance of the business relationship between user enterprises and agencies was a constant theme throughout the discussions. Participants discussed the leverage that agencies may exercise over user enterprises when deploying agency workers and the exercise of leverage over agencies by user enterprises. Industry participants, particularly those from small and medium-size enterprises, said that they had limited leverage over user

¹ The commentary to Guiding Principle 19 states that "leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm." It observes that a business should use its leverage where (a) it contributes to an adverse impact in order to mitigate any remaining impact (after it has ceased or prevented its own contribution) to the greatest extent possible or (b) an adverse impact is directly linked to its operations, products or services by a business relationship and the business has leverage to prevent or mitigate the impact or can increase its leverage to do so.

enterprises, which ultimately hold the balance of power in contract negotiations. Specific examples were cited of user enterprises (within the EU) demanding that agency workers be hired on particular contracts which may be illegal or at least unethical, or preventing agencies from undertaking checks on, or visiting, work-sites where agency workers were deployed, or imposing such a tight deadline for identifying workers that it incentivised and rewarded agencies who skipped essential steps and safeguards. The agency participants offering these examples thus felt they had a stark (and lonely) choice between accepting the wrongful behavior or losing the contract, and little power to make demands of their own. Where agencies had chosen to walk away from such contracts, although hard for business in the short term, this was seen as having an important educative effect on users in the longer term and as an example of agencies playing a leadership role. Industry participants felt that E&RAs were too often seen as “tools” rather than potentially valuable advisors by user enterprises.

User enterprises’ leverage over agencies was seen as varying depending on the percentage of business that they constituted for an agency. The ability of brand companies to increase their leverage was discussed, including through multi-stakeholder efforts to address root causes and systemic abuses. User enterprises were seen by a number of participants as having an important educative role to play with their peers, as well as in lobbying for improved regulation and enforcement by governments. However, participants noted the challenges of ensuring cross-functional coordination between the commercial decisions and ethical commitments of user enterprises in this regard.

The role of governments was seen as critical to either hindering (for example, by allowing lesser pay for equal work by agency workers) or supporting business respect for human rights (for example, through regulation making it illegal for E&RAs to take fees from workers or to withhold workers’ passports or other identification documents). Licensing and labour inspection systems (combined with effective enforcement) were seen as important tools in advancing better practices. While inspections were viewed as positive in principle, they were also seen as typically tending to focus on the “easy targets” – those companies that generally complied rather than the more difficult-to-reach companies that may be noncompliant or even criminal. The UK Gangmasters’ Licensing Authority was cited as a positive example, targeting its enforcement efforts at the most serious forms of abuse and seeking to minimise the burden of registration for those who want to operate ethically.

The need to incentivise good behavior was noted and the broader role of the state in ensuring access to education and other fundamental rights was also emphasised. One participant commented that where there is nothing to prevent a company acting in line with international human rights standards that go beyond domestic law, then the company should do so.

Session 4: Stakeholder Engagement and Grievance Mechanisms

The fourth session focused on stakeholder engagement as an essential component of human rights due diligence processes and on the role that operational-level grievance mechanisms can play, as both an early warning and response system. Discussion was framed around three areas: modes and purposes of stakeholder engagement; developing grievance mechanisms and processes; and relationships with existing company grievance mechanisms.

The importance of building trust between employers and employees was a recurring theme in the discussion, echoed by participants from all stakeholder groups. Civil society participants noted that freedom of association was a crucial right in the context of stakeholder engagement, enabling workers to engage in dialogue with employers and

resolve issues at an early stage before they escalate. The critical role played by trade unions and other legitimate employee associations was highlighted in this regard. While trade unions and NGOs were seen as having a potentially important role to play in identifying and addressing grievances it was noted that such actors can face threats and intimidation when engaging on these issues.

Industry participants shared examples of current practice in relation to grievance mechanisms. One participant had a misconduct reporting procedure in place that encouraged local management to deal with complaints where possible, but supported this approach with integrity officers in many of the countries in which they operate and with a 24-hour anonymous complaints hotline. Toll-free reporting hotlines for workers were a common feature of participants' grievance handling systems, though they varied in operating hours and language availability. Anonymous post-boxes were also commonly used. Communicating about the existence and operation of such grievance mechanisms was seen as crucial to their success, for example during inductions as well as in employee handbooks.

Another industry participant described their own role as that of "mediating" between the agency's employees and user enterprises to help solve daily problems, though noted that this was not possible where the agency representative was not allowed on the work-site by the user enterprise. The company also holds monthly meetings with employees, conducts regular satisfaction surveys among both employees and user enterprises, and holds employee exit interviews – all of which feed back into the company's risk assessment processes. Industry participants felt that they gained legitimacy and the trust of their employees when they were seen to follow through on employees' complaints concerning user enterprises, whether that entailed canceling a contract or taking a user enterprise to court. Agencies were seen as having a responsibility to report criminal practices to the appropriate authorities and avoid complicity, and civil society participants stressed that company-level grievance mechanisms can be an important complement to, but must not undermine, other remedial mechanisms.

Industry participants noted a number of relevant engagement and grievance mechanisms beyond those at the level of individual companies, including national level bipartite structures supported by industry federations, and national employment complaints bureaus (such as in the UK) and Ombudsman offices (such as in Portugal and Belgium). However, one participant observed that barriers to accessing effective remedy can arise from poor design of government grievance systems, such as requiring workers to physically meet with the responsible line agency during normal working hours, which may be financially or physically impossible for many workers. Another participant observed that the success of any remedial system depends on a strong underlying legal framework with effective licensing and enforcement. Participants noted the progress made through dialogue processes such as the Colombo and Abu Dhabi Dialogue processes², which could be further built upon.

In closing, the Project Team and European Commission expressed thanks to all the participants for their constructive contributions and noted that a short public report would be produced summarising the day's discussions. In terms of process going forwards, the

² The Colombo Process is a Regional Consultative Process on the management of overseas employment and contractual labour for countries of origin in Asia. The Abu Dhabi Dialogue is the name commonly used for the Ministerial Consultation of the Colombo Process, which was hosted by the UAE in 2008 and brought together the Colombo Process countries with the Gulf Co-operation Gulf Cooperation Council (GCC), plus Yemen, Malaysia and Singapore. The Abu Dhabi Declaration launched a collaborative approach to the issue of short-term labour mobility in Asia. See www.colomboprocess.org.

Project Team confirmed that the research and interview process would be continuing to gather stakeholder inputs in preparation for the drafting phase, and that a second multi-stakeholder roundtable would be held to consult on a first draft of the guidance.

Appendix A

Participants List:

- Dr Chowdhury Abrar – Migrant Forum in Asia
- Dr Michael Addo – UN Working Group on Business and Human Rights
- Libby Annat – Primark
- Jim Baker – Council of Global Trade Unions
- Stephanie Barrientos – Capturing the Gains/Brookes World Poverty Centre
- Kerstin Born – Bernard Brunhes International
- Rituparna Chakroborty – Team Lease Solutions
- Albin Dearing – EU Fundamental Rights Agency
- Rudi Delarue – International Labour Organisation (ILO)
- Lidia Estevez-Picon – COM
- Frances House – Institute for Human Rights and Business (IHRB)
- Philip Hunter – Verité
- Marek Jurkiewics – Start People
- John Kellock – EU Fundamental Rights Agency
- Giedre Lelyte – Union Network International
- Ian Livesey – Gangmasters’ Licensing Authority
- Viraf Mehta – Centre for Responsible Business
- Rade Nenadic – National Federation of Temporary Employment Agencies of Macedonia
- Geneviève Paul – International Federation for Human Rights (FIDH)
- Denis Pennel – Eurociett
- Dr Dorota Pudzianowska – Helsinki Foundation for Human Rights
- Adil Rehman – Next
- Joanna Trzaska – Interimax PL
- Yolande van Houte – Randstad
- Paul Whitehouse – Antislavery International
- Neill Wilkins – IHRB
- Irene Wintermayr – ILO EU Office

European Commission:

- Ajnacska B.Nagy – DG Enterprise & Industry
- Geert Bogers – DG Home
- Tom Dodd – DG Enterprise & Industry
- Ellen Durst – DG Employment
- Phyllis Kong – DG Enterprise & Industry

Observer:

- Eleni Kyrou – European Investment Bank

Project Team:

- Rachel Davis – Shift
- Katharine Jones – IHRB
- John Morrison – IHRB
- Caroline Rees – Shift
- Haley St. Dennis – IHRB
- Margaret Wachenfeld – IHRB

Apologies:

- Nodira Abdulloeva – NGO Human Rights Centre, Dushanbe
- Jadwiga Naduk – Hays (Poland)