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**IOE Comments on the Corporate Responsibility to Respect Human Rights  
EU Sector Guidance Project**

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The International Organisation of Employers (IOE) is the global voice of business, representing 151 national employers' federations in 144 countries. The IOE was constructively involved in the development of the UN Guiding Principles on Business and Human Rights from the very beginning of the process. Against this background, the IOE would like to make the following comments on the discussion papers for the three sectors:

General Comments

The IOE welcomes the fact that the discussion papers now clarify the interconnected nature of the three pillars of the UN Framework. However, by just focusing on the second pillar, the papers very much contradict this statement. Indeed, a necessary precondition for fulfilling the corporate responsibility to respect is the full implementation of pillar 1 (the state duty to protect). The project could have real added value by also focusing on the first pillar.

The IOE appreciates the recognition stressed in the papers that businesses can play a significant role in supporting human rights. However, because the papers do not identify and explore the specific potentials of the individual sectors, but focus only on the risks, the tone of the papers is much too negative. Indeed, the papers still come across as one long list of complaints about/accusations against corporate practices whereas businesses' expertise and input, including that collected through this consultation, can help to produce a more balanced, nuanced and reality-proof guidance document.

The risks and issues identified in the papers are to some extent not sector-specific. This is especially obvious regarding the issue of employment agencies, on which a dedicated paper is provided, but which is also dealt with by the other two discussion papers. This is even more striking since the ICT paper, as well as the Oil and Gas papers, use the same wording regarding the issue of employment agencies.

The discussion papers are not exclusively focusing on human rights, but address all kinds of issues that are not human rights-related, as, for instance, the issue of "repetitive work" in the ICT discussion paper, or the question of the replacement of permanent staff by temporary agency workers in the employment agency paper. This confusion of human rights with matters of general employment policy is not in line with the UN framework, creates uncertainty for business, as well as for stakeholders, and will make the discussions on these issues more difficult and therefore less productive. The sector guidance papers must go back to the content of the human rights instruments, otherwise the erroneous idea is reinforced that every person's own view of their rights becomes a human right under the guidelines.

Despite the statement that the project will take into account the experiences of EU businesses, EU specificities are not yet sufficiently reflected in the papers. Since this

is a project of the EU Commission, based mainly on the input of EU stakeholders, and the outcome will ultimately be mostly distributed to EU business, this creates confusion and uncertainty. The discussion papers should be repositioned to first focus on issues for companies in the EU, and then extend to issues which EU companies may face outside the EU and which may result in special challenges. Moreover, the question is still not answered as to how and why the EU should develop 'authoritative' guidance with application outside the EU and specifically to ventures that are not EU incorporated.

It has to be made clearer that there is not a "one-size-fits-all" approach with regard to the implementation of the UN Guiding Principles. Moreover, it should, for all three sectors, be concretely shown how the guidance will be based on existing standards, practices, initiatives and systems in order to create convergence, and avoid duplication.

The papers continuously refer to stakeholders, while it is unclear who they are and who they legitimately represent.

The IOE, as the global voice of business, is committed to improve the content of these papers through serious and constructive discussions within the European Commission's Expert Advisory Committee, along the lines set out in these general remarks as well as the sector-specific comments below.

### Specific comments

#### ICT Sector Discussion Paper

Section 3.3: Existing comprehensive European law and practice that apply to all types of business, not just ICT, recognize the importance of data privacy with respect to both commercial and government access to information. It is not necessary, and indeed it is counterproductive to the application of existing law and practice, to articulate vague new concepts (e.g. concern about the volumes of data that may be managed via clouds, or about insufficient notice and choice as described in section 3.3.1) and to expect that a new EU policy instrument would do more to address data privacy than the existing Directive and eventually the proposed Regulation.

Section 3.3.2: Anonymity – knowing someone's real identity is useful for ascertaining whether that person is authorized to access a certain system or service, and also for enabling the attribution of responsibility in the event of an ill-intentioned act. Identities do not always need to be completely disclosed however, and there are technologies that enable privacy-enabling identity management (Identity Mixer and similar others, as supported by the EU Programme Framework).

Section 3.4: The paper states that working conditions in the supply chain often imply "involuntary overtime, working excessive number of days in a row without adequate rest period, repetitive work or excessive time in one position leading to adverse health impacts, inhuman disciplinary measures, exposure to toxic and hazardous materials".

- It is unfounded to assume that violations of working conditions are the typical situation in the sector (including the supply chain). Many companies have policies or codes of conduct in place with respect to health & safety, working time etc and actively monitor compliance. Audits take place to investigate suppliers' compliance and, where shortcomings occur, these are typically addressed. In addition, company codes of conduct can be complemented by industry-wide codes of conduct such as those developed by the EICC. Moreover, the issue of "repetitive work" is not a human rights issue. The paper should focus on human rights and should not fall into the trap of attempting to address all kinds of workplace challenges.

With respect to freedom of association, "stakeholders" reflected that trade unions were not much in evidence within the ICT manufacturing sector, call centres and shops. The paper then goes on to imply that this originates from various factors and policies that might increase the risk to freedom of association, which will adversely affect workers in various ways.

- Generally, ICT workers tend to be younger, better educated and better paid than the average worker, making it harder for unions to make inroads into the IT sector. Moreover, just as workers have the right to choose to join trade unions, they also have the right not to join a union. Many companies also have codes of conduct which contain provisions regarding freedom of association (also applicable to suppliers). Lower-than-average union presence and membership rates should therefore not be considered the result of deliberate attempts by companies to restrict freedom of association or, by hiring fixed-term or agency workers, to make it harder for companies employees to organize.
- According to "some stakeholders", the insecurity of tenure for agency workers and/or frequent changes in worksites might pose increased risks to the right to freedom of association and collective bargaining. This point is also made in the paper specifically dealing with the agency work sector. If anything, the statement shows a lack of understanding of how the sector works, as agency workers typically have their employment contract with the temporary work agency, irrespective of changes in worksites and tenure. In many cases, these forms of employment will have been freely entered into by the worker because of the flexibility such contract provides; Moreover, in several countries, temporary agency workers are well represented: for instance, in Belgium, 60% are unionised; In Germany, France, Italy, Spain, Netherlands, Nordic Countries, more than 80% of temporary agency workers are covered by collective agreements.
- Finally, states that the lack of trade union representation may lead to a circumvention of workers' ability to lodge grievances and seek redress for adverse impacts. However, grievance mechanism does not necessarily depend on trade union representation. The different kind of very effective grievance mechanism companies have in place is proof of that.

Section 4.4 and 5.4: As already stated with regard to the draft discussion paper, the Dodd-Frank Act has essentially led, by its lopsided implementation, to a *de facto* embargo on the entire mining industry in the Congo. Because the institutional framework needed to sufficiently carry out due diligence does not exist, many companies have chosen to play it safe and simply get their minerals elsewhere. This

possible trading boycott, without addressing the root cause of the conflict, only brings further misery to the region. Thus, the Dodd-Frank Act is surely not a positive example of “new thinking”.

#### Employment and Recruitment Agencies Sector Discussion Paper

The key emerging issues listed under paragraph 3.1. are unlawful practices, forbidden within the EU and most other states. As already stated in the comments on the draft discussion paper: respecting the law is a given duty of all companies. The aim of the guide cannot be to concentrate on the criminal behavior of a minority.

The paper still ignores the fact that temporary agency work is a well established, respectable and legally recognized form of employment. This omission is especially incongruous since it is stated in the introduction that the “final guidance will take particular account of the situation and experiences of EU business”. However, by focusing only on unlawful practice mainly outside the EU, the paper gives an unrepresentative and misleading picture of temporary agency work, which does not reflect at all the situation of EU employment agencies.

Overall, the paper still fails to show to what extent the European temporary work agency has a special human rights challenge. In the absence of this, the whole exercise becomes meaningless.

As already stated in the comments on the draft discussion paper, the IOE does not support the statement that there are risks to the rights to freedom of association and collective bargaining through the use of temporary agency work, since employers’ organisations and trade unions negotiate together within the temporary agency sector at all levels.

Moreover, and as already stated in the general comments above, the paper addresses several issues - as for instance the matter of equal treatment of temporary agency workers, the issue of replacing permanent staff by temporary agency workers, the question of paid holidays – which are not human rights related. These might well be important social questions and matters for employment policy decisions, but they do not constitute human rights and should therefore not be considered in this project.

#### Oil & Gas Sector Discussion Paper

The IOE reaffirms its statement already made in the comments on the draft sector discussion paper, that downstream activities in the sector should be not included within the scope of the guidance, particularly as, even now, none of the comments in the rest of the paper relate to these activities. The scope should therefore be limited to companies operating in the upstream.

Contrary to the statement in the introduction, the paper is entirely focused on issues outside the EU. As stated before, the paper should reflect the situation companies are facing within the EU.

With regard to the paragraph on the issue of the use of employment agencies, the same comments are valid as for the ICT paper.

Moreover, most of the issues identified are still not unique to the oil and gas sector, but are also relevant to mining, and many to general construction activities, forestry or plantation industries.

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