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**Human Rights Sector Guidance Project Team
Institute of Human Rights and Business & Shift**

Submission concerning Employment and Recruitment Agencies Sector Discussion Paper

Allerhand Institute is grateful for the opportunity to contribute with its comments to development of sectoral guidance for Employment and Recruitment Agencies Sector.

As you may know, Allerhand Institute is a Krakow-based center for advanced legal studies. Institute's interests focus in particular on corporate and commercial law, intellectual property, insolvency law, financial law, corporate governance, human rights and business, and organisation of the judiciary. In its approach to legal research, the Allerhand Institute puts emphasis on interdisciplinary studies, in particular it applies the economic analysis of law. The Institute is divided into three departments: Allerhand Research, Allerhand Training, and Allerhand Advocacy, and additionally embraces units dedicated to particular areas of law such as permanent Committees and ad hoc Working Groups.

Institute engages in promotion of the human rights based approach and raising awareness of human rights in the business context, supports efforts aimed at the implementation of the UN "Respect, Protect and Remedy" Framework and of the Guiding Principles on Business and Human Rights, and has established a Human Rights & Business Programme to coordinate its actions in this area. Further information about the programme can be accessed on the website of the Allerhand Institute (<http://www.allerhand.pl/index.php/pl/dzialalnosc/sekcje-naukowe/prawa-czlowieka-i-biznes.html>)

Institute would like to congratulate the Project Team on the Employment and Recruitment Agencies Sector Discussion Paper, which identifies most of the key issues. However, there are a few points, which, in our opinion, could be further developed.

With this in mind, we respectfully offer the following comments:



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1. Key human rights impacts (p. 3)

It should be noted that in some countries agency workers, incl. those working for the same user enterprises for years, face bigger difficulties in securing bank credit for the purchase of their own accommodation/house compared to non-agency workers, which might affect their right to adequate standard of living. While introduction of legislation setting limits to the length of period for which agency worker could be contracted is the role of states, it should be considered if E&RAs should not be encouraged to consider introduction of 'internal' time limits and encourage user enterprises to employ agency workers directly, once such internally set time limit is over. At the least however, the E&RAs should avoid promoting contracting agency workers for periods longer than a year instead of them being employed directly by enterprises.

We would like to suggest that the Guidance elaborates in more details issues of clarity and validity of assignment contracts entered by the agency workers. There are regular reports of situations when E&RAs agency workers are faced with different demands and conditions at the user enterprises compared to those provided in their contracts (e.g. remuneration being not time but 'work on accord' linked). E&RAs should ensure that assignment's T&C are correct and be ready to engage with the user enterprise on behalf of the agency workers, if notified by him/her of the demands beyond those agreed in the contract.

- Impacts on just and favorable conditions of work (p.3.2)

While issue of equal work for equal pay is of major importance, we believe that at least the same attention should be paid to issues of equal conditions of work and access to training, incl. health and safety training, provided either by E&RA or user enterprise.

- Impacts on potentially vulnerable groups (p. 3.4.)

With some of the user enterprise sectors, such as domestic work, hospitality and social care, being dominated by women, the guidance should pay adequate attention to risks to which women are exposed because of their sex/gender. Therefore we are convinced that sectoral guidance should identify women as another, next to migrants, vulnerable group.

- Discrimination

The Project Team might also want to consider devoting more attention to issues of discrimination of women and national and ethnic minorities. Cases of discrimination of women during the recruitment process (e.g. questions concerning childcare arrangements or family plans), concerning pay inequality or termination of contracts (e.g. due to pregnancy) are not infrequent, although due to the way that data is collected, it is difficult to assess the exact percentage of cases that occur in the context of E&RAs activity compared to situations of direct employment arrangements.

Attention should be also paid to readiness of E&RAs to provide services to members of minorities, e.g. Roma and Sinti, and actively assist them in finding employment. E&RAs should be encouraged to put



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forward the qualified minority candidates, despite the (perceived) reluctance of the user enterprises to employ members of the given minority.

2. Embedding respect for human rights in a company (p. 5.1)

The key pre-condition of respect for human rights in business context is awareness of all stakeholders of their rights, how they relate to them as individuals and how they relate to the company operations. Often it is enough to explain what impact the unintended consequences of one's acts have on others, to change one's behaviour and make him/her more responsible for his/hers acts and come up with solutions.

Having even the best human rights policy will not yield a wider impact, if its introduction is not followed by adequate training of all company staff (where relevant organized in cooperation with CSOs/NGOs that are working with victims of the abuses caused by wrongful acts by business).

Importance of human rights training aimed at E&RAs own staff is hard to overestimate, however one should also encourage E&RAs to undertake steps aimed at raising human rights awareness of agency workers. Knowing their own rights will inadvertently lead to their empowerment and readiness/courage to challenge illegal or irregular practices with which they might be faced during their assignments. It is important, that business should not be left with this task alone, as states have an important role to play in ensuring appropriate human rights and civic education also as part of the school education system.

While establishing role of Human Rights Champions might bring good results, the key is to make workers be their own champions. In any case, creation of the role of Human Rights Champion should not be treated as replacement for comprehensive cross-functional integration of human rights concerns, particularly that entrusting human rights protection efforts to one person, raises risk of commitment vacuum in case such individual leaves for other job.

Therefore E&RAs should ensure that access to information not only on its Human Rights Policy but also relevant legislation concerning rights of the agency workers and relevant redress and remedy mechanisms and procedures is easily accessible both on its website (e.g. 'Know your rights' section) as well as at the premises of the agency (e.g. notice boards, leaflets).

Guidance should also consider encouraging E&RAs to support its agency workers in their legal disputes with user enterprises, where it was involved in establishing the employment relationship, subject to existence of relevant legal procedures.

- Assessing risks to human rights (p.5.2)

It should be noted that there are reports of joint visits by user enterprises and E&RAs to country of origin of agency workers, where the user enterprises participates not for the monitoring purposes and to ensure compliance with human rights standards, but quite opposite, to influence the selection process in the adverse way (e.g. through questioning candidates about their private and family



situation with an aim of selecting individuals least likely to stand up for their rights when placed in situation of forced labour). E&RAs should be advised not to engage in cooperation with user enterprise that resorts to illegal/irregular practices, if necessary, terminate such cooperation and where relevant, undertake further steps (e.g. notification of the labour law enforcement agencies or police).

- Human rights impacts of business relationship in the sector (p.5.4)

While CIETT no doubt has a role in promoting ethical principles throughout sector, it has to be stressed, that practices of some enterprises that signed up to its Code raise doubts as to their genuity. It is easy to declare enterprise adherence to a document that none of the interested stakeholders had access to, because it is either not made available by the company (either on its website or in the printed form), or is made available only in the foreign language.

- Measuring effectiveness of company responses to human rights impacts / Stakeholder engagement / Complaints handling (p.5.5 – 5.7)

While there are many ways to obtain information and seek feedback from internal and external sources, their effectiveness will depend on the level of trust that agency workers have towards the company and thus their readiness to approach agency with information about illegal / irregular actions of either the user enterprise or agency's own agents.

If at the time of their recruitment, agency workers are provided with information about the human rights policy of the agency as well as information (provided in accessible form and language) about their legal rights and available complaints / grievance mechanisms, they will be more likely to inform the agency of any irregularities faced and treat agency as the first point of recourse in case of human rights violations. To encourage most shy and insecure individuals to provide feedback and notify agency of potential violations of human rights, companies could consider providing every agency worker, already at the recruitment stage, with several self-addressed envelopes to encourage even anonymous contact.

This would help agencies to identify rising human rights risks and undertake relevant steps to address them, as well as reduce the reputation, financial and legal risks connected with the legal proceedings.

Such approach would require providing adequate human rights training to all agency agents, in fact making all of them Human Rights Champions. Additionally, E&RAs could consider creation of the Focal point to deal with the signals of human rights violations and complaints coming from the agency workers. The trust of the agency workers will only be sustained if they know that their concerns and problems are treated seriously and with attention. Therefore each notification, unless made in an anonymous way, should be responded to with concrete suggestions of actions that agency worker or the agency itself should/will undertake to prevent the human rights violation from occurring further.

There are a number of opportunities to engage stakeholders to ensure early identification of potential risks. While typically, temporary workers/E&RAs employees rarely get to know each other, there are



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cases when E&RAs organize an annual get together e.g. around Christmas time. Such meetings could be potentially linked to a training on the rights of agency workers and procedures for problem notification as they arise. They could create also good opportunity to discuss issues that could be improved and distribute pre-addressed envelopes to encourage agency workers to share their concerns but also suggestions in a way ensuring confidentiality of the comments.

3. Nature of the guidance (p.6)

We would like to recommend that the final guidance for E&RA sector is assisted by the model check-list/information list aimed at E&RAs agency workers and listing their rights as outlined in the key human rights instruments and EU legislation, incl. listing what elements a good and valid contract should cover and what types of provisions should not be there (e.g. making obtaining the job conditional on expressing consent in writing to being cremated in case of death during the assignment abroad)

Providing employees with such information at the time of entering into contract with the E&RA, and placing it on the notice board, would certainly assist in raising agency workers' awareness of their rights and empower them to question illegal or irregular practices.

The model check-list could be further elaborated in individual countries (e.g. by local stakeholders in cooperation with Member states) by adding information on guarantees under domestic law of the given country that provide protection beyond the common EU standard.

Finally, we would like to stress that when focusing on respecting the rights of agency workers, one should not lose the situation of the E&RAs own employees from sight. Therefore sectoral guidance should cover also those issues.

Allerhand Institute remains available to discuss its comments and would be happy to share its expertise further with the members of the Project Group.

Sincerely Yours,

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Head of Human Rights & Business Programme

Note: Submission drafted by Beata Faracik and Dr Maciej Bernatt.