

**Employment and Recruitment Agencies Sector Discussion Paper for Public Comment**

Produced by The Institute for Human Rights and Business (IHRB) & Shift, 23 May 2012

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**NOTICE: Public Posting of all Written Comments**

Unless expressly requested otherwise, submission of written feedback will be posted on the Project's web portal (<http://www.ihrb.org/project/eu-sector-guidance/index.html>) with each commentator's submitted name and organisational affiliation.

**Key Questions for Written Comments**

The [Project Team](#) welcomes written comments by all interested stakeholders on the following questions in particular. Please send comments to [sectorguidance@ihrb.org](mailto:sectorguidance@ihrb.org) by **30 June 2012**. □

- Does the discussion paper identify the most serious and the most likely impacts that companies in this sector may have on human rights?
- Does the discussion paper identify the major challenges that companies in this sector are facing in respecting human rights?
- Are there good practices in addressing these human rights challenges that could be built on in developing the forthcoming guidance on the corporate responsibility to respect in this sector?
- What form should the forthcoming guidance take in order to add greatest value in advancing respect for human rights in this sector?

**1. INTRODUCTION**

This discussion paper is intended to help frame and stimulate discussion around key issues, challenges and opportunities regarding the implementation of the corporate responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights (the UN Guiding Principles) in the Employment & Recruitment Agencies (E&RA) Sector.

Three important points concerning the scope of the project should be noted. First, in line with the UN Guiding Principles, the focus is on ensuring that businesses respect human rights – that they take action to avoid infringing on human rights and address any adverse impacts with which they are involved. This discussion paper therefore starts by identifying the most likely and/or most severe negative impacts that businesses in E&RA sector may have on human rights. This in no way implies that all businesses have or will have these negative impacts, nor does it imply that businesses can have only negative impacts on human rights – it is well 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 is the focus of this paper and sector guidance project.

Second, the corporate responsibility to respect is only one of the three pillars in the UN “Protect, Respect and Remedy” Framework and the Guiding Principles that implement it. The Guiding Principles recognise states’ existing obligations to respect, protect and fulfill human rights and fundamental freedoms and seek to elaborate on the policy implications of these obligations for states (referred to as the state duty to protect or first pillar of the Framework). This includes regulating corporate actions where appropriate. The UN Guiding Principles also recognise the need for appropriate and effective remedies for victims when their rights are violated (the third pillar on access to effective remedy). While this project is focused on the corporate responsibility to respect human rights (the second pillar), the guidance will seek to take into account the various implications of the state’s role in business’ efforts to meet their corporate responsibility to respect, as well as businesses’ responsibilities in access to remedies (third pillar). Nothing in this paper is intended to detract from the interconnected nature of the three pillars of the UN Framework.

Third, while the final guidance will take particular account of the situation and experiences of EU business, it aims to be as globally relevant as possible – informed by research and the views of a wide range of stakeholders, including representatives from business, civil society, trade union, and government, and experts – in order to contribute to a harmonised approach to the implementation of the UN Guiding Principles.

Please see [Annex A](#) for more background on the project, its timeline, and the UN Guiding Principles.

### **1.1 The Research and Consultation Process**

This paper outlines the emerging issues arising from early-stage interviews with stakeholders representing business, industry association, trade union, civil society and expert perspectives, as well as input from individual members of the E&RA Sector Advisory Group and European Commission Expert Advisory Committee. However, this input does not constitute an endorsement of the views summarised in this paper by any individual member of these advisory groups, or their organisations. Nor does this paper represent fixed conclusions on the part of the Shift and IHRB Project Team, but instead highlights a number of key emerging issues for further exploration and enquiry as part of the ongoing research and analysis process. Further stakeholder interviews will be conducted after the E&RA Sector Roundtable in Brussels on 30 May 2012. In addition, the discussion paper will be posted for public comments on the project web portal and accepted up until June 30.

## **2. DEFINING THE SECTOR**

The business of Employment and Recruitment Agencies (E&RAs) is the recruitment and supply of workers to ‘user enterprises’ (businesses or public sector employers) for a fee. The project definition of E&RAs includes the following types of organisations:

- **Private sector employment agencies** which recruit and supply agency workers to user enterprises. Agencies may supply workers for as little as a day or the contract may last months, or even years, leading to one commentator making reference to ‘perma-temps’<sup>i</sup>. The defining feature of agency work is the intermediary role played by the agency between the user enterprise and the worker. This is known as the ‘triangular’ employment relationship. The contractual relationship is between the worker and the agency which pays the worker’s salary from the fee paid to the agency by the user enterprise. Globally, multiple names for this type of business arrangement are used, including ‘labour brokers’, ‘labour providers’, ‘employment agencies’, ‘placement agencies’, ‘labour dispatch firms’ and ‘labour hire firms’.
- **Recruitment agencies and agents** which engage in the international supply and employment of migrant workers. The ILO defines a migrant worker as a person who migrates from one country to another with a view to being employed otherwise than on his or her own account.<sup>ii</sup> The activities of these agencies may end with the identification and engagement of workers in the country of origin of the worker; they are likely to play no role in job matching or in the employment of these workers in the country of destination.
  - There is not necessarily a clear demarcation between the above roles. Some private sector employment agencies may also recruit migrant and other workers and play no role in employing them. Some recruitment agencies whose main business is the supply of migrant workers overseas may also engage in the placement of agency workers nationally.
- **‘Illegal’ or ‘irregular’ E&RAs:** Whether an E&RA or a migrant worker is ‘legal’ or ‘illegal’, or ‘regular’ or ‘irregular’ is defined by national labour laws, national regulation of immigration and of the industry; it is often not a clear-cut issue. Terms for E&RAs such as ‘rogue’ or ‘unscrupulous’ have no basis in international law, but are used to indicate the extent of unregulated and criminal operations in existence.
- **Other types of intermediary structures:** Several other related intermediary structures also exist alongside the private sector E&RAs. Firstly, a variety of intermediary organisations such as umbrella companies which operate tax relief schemes either to the financial benefit of workers or their detriment, which in some cases may have corresponding adverse human rights impacts

(discussed further below). Secondly, some governments operate public employment services, many of which work in partnership with private sector E&RAs. Some governments also manage migrant guest-worker programmes in partnership with E&RAs.

Globally, the E&RA industry has undergone exponential growth in recent decades. The numbers of agencies and of agency workers, as well as industry revenues have all experienced sharp rises. In 2010, member organisations of the International Confederation of Private Employment Agencies (Ciett), which promotes the common interests of the agency work sector internationally, earned €256bn globally – a trebling of business over the past 30 years.<sup>iii</sup> Almost 90% of these revenues come from the recruitment and placement of agency workers. The numbers and revenues of agencies which recruit migrant workers to supply to Australia, North America, the EU, the Gulf States and East Asia are also widely acknowledged to have increased.<sup>iv</sup> Simultaneously, the proportion of agency workers relative to permanent workers in many labour markets has shifted, at times significantly, suggesting that user enterprises are hiring agency workers on a more regular, structural and longer term basis than before.<sup>v</sup>

### **3. KEY HUMAN RIGHTS IMPACTS**

This section sets out a range of adverse human rights impacts that may result from the activities or relationships of companies in the E&RA sector, as identified through multistakeholder interviews and research and to date. The term “adverse human rights impact”, in line with the definition used in the UN Guiding Principles, is used to mean an action that removes or reduces the ability of an individual to enjoy his or her human rights. Under the UN Guiding Principles, the responsibility of business enterprises to respect human rights encompasses all internationally recognised human rights – understood, at a minimum, as those expressed in the [International Bill of Human Rights](#) (the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the principles concerning fundamental rights set out in the [International Labour Organization’s Declaration on Fundamental Principles and Rights at Work](#). The commentary to Guiding Principle 12 also makes clear that, depending on circumstances, businesses may need to consider additional international standards, for example, where they may impact upon individuals belonging to groups or populations at heightened risk of vulnerability or marginalisation.

#### **3.1 Impacts resulting from trafficking, slavery and forced or bonded labour**

The most grave human rights impacts identified by stakeholders are described in this section (3.1), though stakeholders were not necessarily in agreement about the extent to which these impacts occur within the formal E&RA sector. The most severe impacts were seen by a number of stakeholders as occurring less frequently within the EU than in other regions. Regions in which these human rights impacts were seen as being severe and/or frequent included: the Gulf States, East Asia, and Central America, Africa, and Russia.

##### **3.1.1 Trafficking**

Trafficking occurs where an E&RA uses physical or psychological violence or other forms of coercion to recruit or transport an individual for the purpose of exploitation.<sup>vi</sup> Stakeholders reflected that it is impossible to quantify the extent of trafficking in persons but evidence suggests that the problem is global, significant and growing.<sup>vii</sup> Trafficking can occur within countries as well as between countries.

##### **3.1.2 Slavery and forced labour**

Situations of slavery and forced labour occur where an E&RA uses physical or psychological violence or other forms of coercion to force an individual to work for it or supplies an individual into a situation of forced labour.<sup>viii</sup> The key indicator of this situation is where an individual is unable to leave their employment of his or her free will. Stakeholders noted that psychological violence could be used in the place of physical violence in order to threaten someone into remaining in a position of forced labour. Again, stakeholders reflected that the extent of these practices is impossible to quantify, although indicators are that slavery or forced labour is on the rise.<sup>ix</sup>

If an E&RA intends to restrict the mobility of an individual to prevent him or her leaving the employment, they may withhold their passports, work permits or other identity documents. This can also be a means of perpetrating other forms of exploitation or abuse on an individual.

### **3.1.3 Bonded labour**

Debt bondage occurs where an individual is deliberately led into a situation of being indebted to the company and their labour is demanded as a means of repayment for the loan. The person is then trapped into working for very little or no pay, often for seven days a week. The value of their work is invariably greater than the original sum of money borrowed. Bonded labour may also occur where an E&RA requires an individual to live in accommodation which is 'tied' to the employment, which means that the individual is unable to leave that employment without also losing his or her accommodation. The employment and accommodation contracts are often 'tied' together so that the individual is not able to leave one or the other, impacting the individual's right to freedom of movement.

Irregular or illegal deductions for charges associated with accommodation, transport or food may be made from the pay packets of workers. This can impact especially on migrant workers who are often particularly vulnerable (see below under 3.4). The charging of fees to workers to secure employment, including but not limited to migrant workers, rather than to the user enterprise is contrary to most labour laws in destination countries as well as contrary to many company codes of conduct. The charging of fees may also mean that minimum levels of wages (as defined by user enterprises or national labour laws) are not paid because the worker must pay the fees out of wages earned. The charging of high fees may thus lead to situations of bonded labour as workers' debts accumulate.

Bonded labour may itself lead to a situation of forced labour. Workers may be subject to harassment and bullying, or other tactics of intimidation and control, which may impact on their right to security of the person.

### **3.2 Impacts on just and favourable conditions of work**

Some stakeholders highlighted that denying equal work for equal pay, or denying periodic holidays with pay, to agency or migrant workers can impact on their right to enjoy just and favourable conditions of work.<sup>x</sup> This may involve a denial of payments to the worker directly by the agency, or it may involve the user enterprise denying such payment to the agency, where it impacts on the latter's ability to pay the worker. Where there are no requirements for equal treatment of private sector employment agency workers and permanent workers, there may be significant resulting disparities.<sup>xi</sup> In the EU context, the EU Agency Worker Directive includes the principle of equal pay between agency and permanent workers undertaking comparable jobs. Some stakeholders also noted that agency workers may be at greater risk of health and safety violations.

### **3.3 Impacts on freedom of association and rights to collective bargaining**

Some stakeholders noted that where there is insecurity of tenure for the agency worker and/or frequent changes in worksite, risks to the rights to freedom of association and collective bargaining may be heightened. This may also occur if a user enterprise hires agency workers in order to avoid unionisation of the permanent workforce or hires agency staff on a quasi-permanent basis in order to replace a core workforce, or where there is no union present for user enterprise employees. Some stakeholders noted that there may also be impacts on the ability of user enterprise employees to organise. Other stakeholders emphasised that there should be no assumption that it is more difficult for agency workers to exercise these rights, in particular in the EU where many agency workers are members of a union or are covered by collective bargaining agreements.

[ILO Convention 181 on Private Employment Agencies](#) refers to the role of member states in determining and allocating, in accordance with national law and practice, the respective

responsibilities of private employment agencies providing agency worker services and of user enterprises in relation to collective bargaining.

### **3.4 Impacts on potentially vulnerable groups**

As noted above, the UN Guiding Principles recognise that additional human rights standards will be relevant in relation to potential impacts on groups at heightened risk of vulnerability or marginalisation.

Globally, migrant workers were seen as being particularly vulnerable to adverse human rights impacts for a range of reasons, including because immigration status can tie workers to one employer (see 4.2 below), they may not speak the host country language(s), are often unfamiliar with the host country labour laws and avenues of redress, and may face practical obstacles to seeking formal redress for abuses due to the transient nature of migration. If migrant workers fall into undocumented status, which may occur through no fault of their own, then formal avenues of redress are usually barred. Migrant workers recruited in their home country may also be deceived by the recruiting E&RA and this may only be evident upon arrival at the final worksite. E&RAs may deceive workers about the level of payment, the type of employment, the working conditions, or even the existence of the employment. Once in the destination country it is often extremely difficult for a worker to prove which organisation was responsible for the deceit.

The UN [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) entered into force in 2003 and, building on the fundamental rights recognised in the UDHR, comprehensively defines all migrant workers' rights, independently of their status in their country of transit and employment, with the aim of addressing the specific vulnerabilities of migrant workers and their families.<sup>xii</sup>

## **4. CONTEXTUAL FACTORS**

Stakeholders emphasised that the activities of E&RAs must be understood within the wider contexts in which they operate, and which may increase the risk of some of the above human rights impacts occurring. The following contextual factors were highlighted by different stakeholders:

### **4.1 Gaps in regulation of the international recruitment of workers by E&RAs**

Although a number of state-to-state bilateral agreements exist, many states do not have such agreements. Even with such framework agreements in place individuals often still experience difficulties in being able to enforce their rights or to seek redress when abused or exploited by E&RAs. This occurs especially in relation to situations where workers in sending countries are subject to deceit or (illegal) high fees by E&RAs. At the international level, the ILO and UN conventions that address the activities of E&RAs and the rights of migrant workers, which could provide some further legal protection and a common framework for the operation of responsible E&RAs, are not widely ratified by states.<sup>xiii</sup>

### **4.2 Immigration regulation in the destination countries that ties status to a particular employment relationship**

Many countries link immigration status to one particular job offer. Upon arrival, individuals are in effect 'tied' to one employer in order to maintain their presence in that country. If an individual experiences abuse or exploitation whilst in that employment, seeking redress is likely to lead to the loss of that immigration status. This can either mean falling into irregular (undocumented) status where individuals have no rights in the destination country, or even deportation from that country. Consequently, workers subject to such tied immigration status are unlikely to complain or to seek redress because of the fear of losing that status, making them particularly vulnerable to exploitative working conditions.

#### **4.3 Regulation of agencies supplying migrant workers overseas**

The lack of regulation of E&RAs in sending countries or a lack of enforcement where regulation does exist can lead to potential abuse and exploitation. So too can inappropriate regulation. For instance, in some countries the charging of fees by E&RAs to workers is allowed under national law, which can lead to debt bondage. In other countries, the entrenched interests of senior political figures involved in the industry mean there is little enforcement, including of laws prohibiting the charging of fees. In other countries, there is a complete lack of regulation of E&RAs.

#### **4.4 Lack of unionisation in many of the sectors in which these human rights impacts occur**

Sectors of the economy in which the human rights impacts above are generally reported to occur are often noted for their lack of trade union presence, either because of hostility of the industries involved, because of a historical lack of worker organisation, or because of the difficulties involved in organising agency and migrant workers, although the latter point is contested amongst stakeholders (see 3.3 above).

#### **4.5 Particular challenges in certain user enterprise sectors**

Adverse impacts were seen by a number of stakeholders to be associated in particular with user enterprises in sectors that are characterised by low profit margins and labour-intensive work such as agriculture and horticulture, hospitality and social care, domestic work, construction, mining and quarrying, and manufacturing, processing and packaging.

### **5. KEY PROCESS CHALLENGES**

The UN Guiding Principles set out a number of process steps companies are expected to take as part of their responsibility to respect human rights. Stakeholders were asked to identify challenges, barriers and opportunities in relation to each of these steps, taking account of adverse human rights impacts that may arise through companies' own activities or through their business relationships. A range of issues were identified in stakeholder interviews, which are summarised below.

#### **5.1 Embedding respect for human rights in a company**

*The UN Guiding Principles observe that a business's policy commitment to respect human rights should be embedded from the top of the enterprise through all its functions, which otherwise may act without regard for human rights. This requires coherence between the human rights policy and other policies and procedures that govern its wider business activities and relationships.*

Issues identified by different stakeholders included the following:

- One stakeholder likened the embedding of respect for human rights within his company to any other new process that the company needed to embed. In other words, the new values should be established throughout the company by means of training employees and disseminating information about the new policy. The company board should be involved in systematically planning how respect should be embedded.
- Training and disseminating information to supervisors and staff who would not otherwise be party to management discussions and decisions about human rights was emphasised as being especially important. The importance of disseminating information about the new policy throughout the company, perhaps through the use of posters where appropriate, was stressed.
- Some stakeholders suggested it may be necessary to identify human rights 'champions' within the company and to use these 'champions' to promote the human rights policy.
- Discussions of external reputational risks and cost-benefit analyses were seen to potentially help persuade board members of the merits of addressing and embedding human rights.
- Some stakeholders stated that arguments made by agency champions of ethical recruitment and employment policies (in both user enterprises as well as in E&RAs) to their Boards could be bolstered within the company by showing links to better retention rates of agency workers, a content workforce with decent terms and conditions of employment, and better job matching processes. Better retention rates lower the transaction costs associated with recruitment and training of new workers while more content and better skilled workforces can lead to higher

productivity levels. These argument could be deployed within agencies in order to persuade others to adopt ethical recruitment policies.

## **5.2 Assessing risks to human rights**

*The UN Guiding Principles state that businesses should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. Importantly, human rights risks to people impacted as a result of the business's activities or its relationships should be considered separately from any risks to the business that may flow from its involvement with human rights impacts. However, the two are increasingly related.*

Issues identified by different stakeholders included the following:

- Some stakeholders noted that certain guidance on risk assessment for this sector already exists.<sup>xiv</sup>
- International recruitment (and internal recruitment of migrant workers) most commonly takes place through subcontracting between E&RAs, or through agreements that do not have a contractual basis. The potential resulting lack of transparency and lack of documentation was seen to make assessing risk difficult for E&RAs in both migrant-sending and destination countries, as well as for user enterprises contracting with E&RAs. Better documentation within supply chains could help overcome the problems of transparency.
- Joint country visits by both user enterprises and E&RAs to monitor the recruitment process was seen as one way of improving risk assessment in cases of international recruitment. The user enterprise can use the visit to disseminate information about the terms and conditions of employment as well as to mitigate the risk of the (illegal) charging of fees by E&RAs to workers.
- The growing involvement of criminal gangs in the E&RA industry is a major issue in risk assessment in working with E&RAs in sending countries.
- Auditing and monitoring of supply chains by user enterprises, by E&RAs or in partnership between the two was seen by stakeholders as one means of improving risk assessment and management. This could contribute to accountability by making visible those who have recruited or employed workers and therefore those who are responsible for arrangements made with the workers. With very opaque business relationships, workers have little chance of identifying which entity or entities are responsible for violations and of claiming remedies.
- When recruiting migrant labour from a different country, some stakeholders suggested that user enterprise due diligence should include assessing not just the recruitment practices of the E&RAs used to hire workers, but also their financial systems, their interactions with other stakeholders including government bodies, as well as the broader governance and geopolitical contexts in that country. However the lack of available country level data about the hiring and conditions of work of migrant or agency workers or about the regulation of E&RAs can make it difficult for user enterprises to assess risk when working with E&RAs.
- National or international certification of recruiters' reputability was seen as one approach to facilitating risk assessment, helping both E&RAs looking for reputable business partners and user enterprises looking for reputable E&RAs.
- Checking the prices charged by E&RAs was seen as one way for user enterprises to undertake risk assessment since low rates are often only possible through worker exploitation, tax exploitation, or both.

## **5.3 Integrated, cross-functional decision-making to address human rights impacts**

*The UN Guiding Principles state that in order to prevent and mitigate adverse human rights impacts, businesses should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action in order to prevent and mitigate the impacts identified. Integration requires internal decision-making, budget allocations and oversight processes*

that enable effective responses to such impacts.

Issues identified by different stakeholders included the following:

- Human rights impact assessments can be usefully integrated into a company's broader risk auditing process for the business.

#### **5.4 Human rights impacts of business relationships in the sector**

*The responsibility to respect human rights under the UN Guiding Principles encompasses adverse human rights impacts that may occur as a result of a company's business relationships with third parties. This includes adverse impacts that are directly linked to its operations, products or services by a business relationship, even where it has neither caused nor contributed to the impact itself. When identifying how best to address impacts that result from its business relationships, the company's leverage will be a significant factor. Leverage refers to the ability of the company to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact. Using leverage may involve working with the entity most directly responsible for the impact and/or with others who can help.*

Issues identified by different stakeholders included the following:

- The frequent subcontracting across national borders by E&RAs, often with loose business relationships, was flagged by virtually all stakeholders as heightening the risk of adverse human rights impacts.
- It was suggested that user enterprises have contractual leverage as well as less direct methods of developing leverage, such as including E&RAs in training, which can be used to promote human rights standards with E&RAs. The incentive to use this leverage was connected to some extent with the user enterprise's reputational exposure, particularly in the case of brand name E&RAs and user enterprises.
- User enterprises' codes of conduct can draw attention to the human rights implications of contracts with E&RAs.
- The global E&RAs and the industry association CIETT were seen as having a role in driving ethical principles through the E&RA industry.
- The low margins within the sectors in which the major human rights impacts occur were seen as a major challenge to user enterprises and to E&RAs because of competitive pressures that often resulted in trying to minimise fees paid for and to workers.
- The role of national governments in regulating E&RAs and enforcing regulation was seen as a clear point of leverage, which might be engaged both by user enterprises and responsible E&RAs to address and reduce the risks to human rights within the sector.
- Capacity building of partners and suppliers was another avenue raised by stakeholders, including through training and education, or through sharing assessments of the human rights or reputational risks of recruiting and employing workers improperly.

#### **5.5 Measuring effectiveness of company responses to human rights impacts**

*The UN Guiding Principles underline the need for companies to track the effectiveness of their responses to adverse human rights impacts (whether actual or potential impacts) in order to verify whether the impacts are being addressed effectively. Tracking should be based on appropriate qualitative and quantitative indicators and draw on feedback from both internal and external sources, including affected stakeholders.*

- No stakeholder feedback received to date.

#### **5.6 Stakeholder engagement in addressing human rights impacts**

*Stakeholder engagement is a cross-cutting theme within the UN Guiding Principles, particularly in the context of assessing impacts, tracking responses, providing for adequate communication about how impacts are addressed, as well as in the remediation of impacts. The UN Guiding Principles recognise*

*that not all companies will be able to consult directly with those groups who may be impacted (for instance due to legitimate resource limitations), but that where this is not possible, other avenues should be sought to understand their likely perspectives and human rights concerns.*

- No stakeholder feedback received to date.

### **5.7 Complaints handling / grievance mechanisms (by a company)**

*The UN Guiding Principles state that where businesses identify that they have caused or contributed to adverse human rights impacts, they should provide for or cooperate in their remediation through legitimate processes. They also provide that business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted, in order that grievances may be addressed early and remediated directly.*

- No stakeholder feedback received to date.

## **6. NATURE OF THE GUIDANCE**

Initial research and interviews with stakeholders have identified the following views on the potential focus and form for the forthcoming guidance. At this early stage there is no consensus about the exact content or form that the guidance should take.

- The guidance should be clear, readable and not too academic, with a focus on implementation.
- Although the guidance is intended for E&RAs, user enterprises – even if only human resource managers – should also somehow be included in the scope of the guidance.
- The development of the guidance should be ‘company-led’ and not imposed by the European Commission. Corporate social responsibility (CSR) and human rights policies have to come from the ‘inside-out’.
- The guidance should not only focus on the gross human rights violations of trafficking, forced and bonded labour that arise out of recruitment activities, but should also focus on other human rights impacts arising out of the employment function of E&RAs.
- The guidance should spell out concrete steps to be taken by both the E&RA sector and the user enterprises to ensure that the right to freedom of association and collective bargaining are respected.
- The guidance should set out due diligence steps for E&RAs with regard to user enterprises to ensure that they are not using agency workers to replace core, permanent members of staff and that they respect freedom of association of workers.
- The guidance should take account of other attempts to address human rights impacts of E&RAs, in particular with regard to gross human rights violations such as trafficking, forced and bonded labour; it should review these for good practice and elements which have worked, or not worked.

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## **ANNEX A**

### **Project Background**

In October 2011, the [European Commission](#) adopted a new [Communication on Corporate Social Responsibility](#) that defined corporate social responsibility as “the responsibility of enterprises for their impacts on society”. As one of the priority actions in the business and human rights field, the European Commission committed to developing guidance for three industry sectors on the corporate responsibility to respect human rights under the [UN Guiding Principles on Business and Human Rights](#). After a brief public consultation requesting input on the sector selection according to a set of [publicly available and objective criteria](#), the Commission selected the Employment & Recruitment Agencies, Information & Communication Technology, and Oil & Gas sectors as the focus of the guidance.

While the guidance will take particular account of the situation and experiences of EU business, they aim to be as globally relevant as possible in order to contribute to a harmonised approach to the implementation of the Guiding Principles. The development of the guidance will mirror, on a smaller scale, the approach taken in developing the Guiding Principles: being global in approach and informed by relevant evidence and the views of a wide range of stakeholders, including representatives from business, civil society, trade unions, government, and other experts. The guidance will be based on research, extensive interviews with diverse stakeholders (75+ per sector), and inputs from two multistakeholder roundtables per sector. The European Commission's [Expert Advisory Committee](#) and three multistakeholder [Sector Advisory Groups](#), convened specifically for the project, are providing strategic advice and feedback.

### **Project Timeframe**

- January – March 2012: Consultation on and finalisation of sector selection, formalisation of EC Expert Advisory Committee and Sector Advisory Groups; appointment of sector-specific researchers.
- April – August 2012: Ongoing consultation with broad range of stakeholders through in-depth confidential interviews (including select country visits) and first set of multistakeholder sector Roundtables hosted by the EC, as well as additional desk-based research.
- September – November 2012: Guidance drafting phase, further specific research as needed, and second set of multistakeholder sector Roundtables hosted by the EC to discuss the draft guidance.
- December 2012: Submission of the three guides to the EC and finalisation for publication.

### **The UN “Protect, Respect and Remedy” Framework and the UN Guiding Principles on Business and Human Rights**

In June 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles, establishing the first authoritative global standard on the respective roles of business and governments in helping ensure that companies respect human rights in their own operations and through their business relationships. They spell out the implications of the three pillars of the [UN 'Protect, Respect, Remedy Framework'](#) on business and human rights. Namely, the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedy, both judicial and non-judicial. The UN Guiding Principles were developed by the Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie, over the six years of his UN mandate.

Based on extensive research and consultations with representatives from government, business, civil society, trade unions and legal and academic experts across all continents, the UN Framework and UN Guiding Principles gained broad acceptance and support. The corporate responsibility to respect is now reflected in the updated [OECD Guidelines for Multinational Enterprises](#), the new [ISO 26000 Guidance Standard on Corporate Social Responsibility](#), and the International Finance Corporation's revised [Sustainability Framework](#) and [Performance Standards on Environmental and Social Sustainability](#). It is of course also adopted in the 2011 [EC Communication on Corporate Social Responsibility](#) noted above.

## END NOTES

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<sup>i</sup> See generally Lewis and Molloy (1991) 'How to choose and use temporary services', New York, American Management Association.

<sup>ii</sup> ILO Convention 97: Migration for Employment (Revised) 1949.

<sup>iii</sup> See CIETT Economic Report (2011) at: [www.ciett.org](http://www.ciett.org)

<sup>iv</sup> E.g. see Migration Policy Institute for UNDP (2009) 'Guiding the Invisible Hand: Making Migration Intermediaries Work for Development' at: [http://www.migrationpolicy.org/pubs/agunias\\_HDRP\\_2009.pdf](http://www.migrationpolicy.org/pubs/agunias_HDRP_2009.pdf)

<sup>v</sup> E.g. see N. Coe, K. Jones, K. Ward (2010) 'The Business of Temporary Staffing: A Developing Research Agenda' (Geography Compass 4/8 1055-1068) for a review.

<sup>vi</sup> *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, which supplements the *UN Convention against Transnational Organised Crime* (2003), the 'Palermo Protocol'.

<sup>vii</sup> See for example United Nations Office on Drugs and Crime (2009) 'The Global Report on Trafficking in Persons' at: [http://www.unodc.org/documents/human-trafficking/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf)

<sup>viii</sup> ILO Convention 29: Forced Labour 1930; ILO Convention 105: Abolition of Forced Labour 1957.

<sup>ix</sup> For research on forced labour see for example Anti-Slavery International at: <http://www.antislavery.org/> or Joseph Rowntree Foundation at: <http://www.jrf.org.uk/work/workarea/forced-labour>. See also, ILO 'Details of indicators for labour exploitation' at:

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105035.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105035.pdf).

<sup>x</sup> See Article 7 (d) of the International Covenant on Economic, Social and Cultural Rights which states: "The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays." This provision is interpreted in light of relevant ILO standards.

<sup>xi</sup> In the EU, the Directive on Temporary Agency Work (2008/104/EC) was intended to rectify this by requiring equal treatment between agency workers and permanent workers.

<sup>xii</sup> See 'Migrant Workers Rights in Europe' at:

[http://www.europe.ohchr.org/Documents/Publications/Migrant\\_Workers.pdf](http://www.europe.ohchr.org/Documents/Publications/Migrant_Workers.pdf)

<sup>xiii</sup> Notably ILO Convention 181: Private Employment Agencies 1997; ILO Convention 97: Migrant Workers and Employment 1948; and ILO Convention 143: Migrant Workers (Supplementary Provisions) 1975

<sup>xiv</sup> For example, guidance from the Association of Labour Providers (ALP) in the UK assesses risk for user enterprises as well as E&RAs. This guidance proposes steps to confirm where workers originated and which E&RAs have been involved. Also in the UK, the Revenue and Customs service (HMRC) has developed an E&RA due diligence check list, including undertaking checks on E&RA director's identities, obtaining copies of relevant certification and verifying these with HMRC, insisting on personal visits with the director of the E&RA, obtaining trade references, obtaining credit checks from a third party, entering into a written contract with the E&RA, checking the charge rates allow for compliance with National Minimum Wage legislation and tax liabilities, and undertaking regular checks on workers' statuses, timesheets, and payslips.