

13 June 2012

Dear Sirs,

On behalf of Eurociett, the European Confederation of private employment agencies, I would like to contribute to the public consultation regarding the ICT Sector Discussion paper (dated May 23, 2012) as produced by Shift & Institute for Human Rights and Business (IHRB) in the framework of DG Enterprise's Corporate Responsibility to Respect Human Rights Sector Guidance Project.

Eurociett is very much surprised by the focus put on agency labour in paragraph 3.4.1 and is very concerned by the fact that this paragraph includes several misleading allegations not based on facts and figures:

- First of all, the title of this paragraph should be amended to reflect the diversity of the non traditional forms of labour mentioned in the text: it actually makes also reference to independent contractors or outsourced workers who are usually not provided by recruitment agencies (companies like Accenture, Cap Gemini or similar SSII cannot be associated with recruitment agencies). As a result, it is not evidence-based to state that workers "typically recruited, supplied and employed by private sector employment agency constitute a significant proportion of the global ICT manufacturing workforce". This sentence should be significantly amended.
- The next sentence about the triangular relationship is also incorrect: in the TAW relationship, the legal responsibilities are clearly defined (cf. ILO C181 on private employment agencies or the EU Directive on TAW): the recruitment agency is the employer of the agency worker who is assigned in a user company. So there is no doubt about who is the legal employer.
- It is also incorrect to state that young women and migrant workers are prominent in the ICT workforce. ICT workers are usually highly skilled and are mainly domestic workers. In their vast majority, ICT staff cannot be seen as vulnerable workers ; on the contrary, as the ICT sector is facing shortages of labour, workers are usually in a good position to negotiate their employment and working conditions.
- Eurociett is also surprised that in this section on impacts on labour rights, informal and undeclared work is not addressed. This is a much more important and globally spread issue to be dealt with regarding potential adverse impact on human rights.
- Abuses mentioned in the last sentence cannot be all related to private employment agencies: most of the rogue traders are purely criminal organisations or intermediaries not linked in any way with recruitment agencies. This should be explained. And again, it is very surprising that no reference at all is made to informal work as a worst case of adverse human rights impacts.

As for paragraph 3.4.2, Eurociett put into question the statement being made that "insecurity of tenure for the agency workers risks to the rights of freedom of association and collective bargaining may be heightened". As explained in the framework of the Recruitment and Employment Agencies sector SAG, facts show that it is possible to organise agency workers:

- In Belgium, 60% of the agency workers are unionized, in the Nordic countries or in Germany & Netherlands, more than 80% of temporary agency workers are being covered by collective labour agreements. In Italy, France or Spain, unions have created specific organisations to represent agency workers. The difficulty of unions to organize temporary agency workers is very much related to the way they are organized themselves (per sectors and representing mainly permanent workers).
- The fact that “trade unions were not much in evidence within the ICT manufacturing sector” is an issue to be dealt with the unions. Freedom of association means that no one can force workers to join a union, so no direct correlation should be made between the unionisation rate of workers and the respect of human rights. In addition, unions are not the only bodies to fight for the protection of human rights, social NGOs also play a key role in this field. So, for instance, another criteria could include the number of NGOs in a country and their influence on businesses.

I thank you in advance for taking these comments into consideration.

Regards,

Denis Pennel
Managing Director

European Confederation
of Private Employment Agencies (Eurociett)