

13 June 2012

Dear Sirs,

We appreciate that we can contribute to the public consultation regarding the Employment and Recruitment Agencies Sector Roundtable 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.

Generally speaking, the Employment and Recruitment Agency Industry makes an important contribution to Human Rights by providing people access to jobs and giving them options to develop themselves. They play a crucial role in managing transitions on the labour market by, amongst others, bringing people from unemployment to employment as well as by investing substantially in training programs for skilling agency workers. The discussion Paper starts with a negative approach, assuming that by essence the (cross border) Employment and Recruitment Agency Industry has an adverse impact on Human Rights. If the purpose of the guidance is to support the Employment and Recruitment Agency Industry "to respect Human Rights" it is essential to start with a positive approach confirming that the industry makes an important contribution to "the right to favourable work". This will encourage leading, multinational staffing companies to move forward with implementing the UN principles and by doing so, acting as a best practice to SME's. What might be useful, is to add in the document a section of what are the pre-requisite legal conditions (pillar 1) for the Employment and Recruitment Agencies Sector to respect human rights and to limit adverse human rights impacts. As such, ILO Convention 181 on Private Employment Agencies and the supporting Recommendation 188 could be useful tools for ensuring an appropriate regulatory environment for the bonafide industry to operate in. A guidance will be of no use to the Employment and Recruitment Agencies Sector if it is too negative and will discourage bonafide agencies from implementing it.

Furthermore we would like to submit the following remarks.

1. The UN Guiding Principles on Human Rights are organised under 3 pillars ("Protect, Respect and Remedy") that form a consistent document. The Discussion paper is for the time being too much focused on Pillar 2 while the first pillar of the UN framework is completely neglected in the paper. This is even more grave since much of the identified issues are related to national immigration law and practice. The call for governments, in particular outside the EU, to protect human rights by establishing appropriate regulatory framework compliant with ILO Convention 181 and Recommendation 188 should be strengthened, as the obligation for them to ensure adequate enforcement of and compliance with existing regulation. Within the EU the Agency Work Directive ensures a proper legal framework in which agencies are allowed to establish and operate on the one hand and agency workers are protected on the other hand.
2. The employment and working conditions of temporary agency workers should not be part of the project (see Paragraph 3.2). Indeed, the concept of equal treatment is not part of human rights, but a topic related to social dialogue and national regulation (pillar 1). When there are no legal requirements for equal pay (or equal treatment) in a country, it is the free choice of employers and employees concerned to decide about pay and working conditions (in some cases ruled by collective labour agreements and/or by statutory minimum wage legislation) and by no means this can be seen as a violation of human rights.

3. The alleged replacement of permanent workers by temporary agency workers (see Paragraph 3.3) is not a human rights issue and should not be covered under the scope of this project. Furthermore official macroeconomics statistics do not demonstrate such a replacement and temporary agency work complements other forms of labour contractual arrangement therefore increasing labour market participation. Indeed, as numerous studies prove substantial numbers of agency workers which were previously unemployed (re)turned to work because of the services of private employment agencies. At current – in the framework of the European Sectoral Social Dialogue on Temporary Agency Work (facilitated by DG Employment) – social partners, Eurociett and UNI Europe, jointly conduct a study called: “Temporary Agency Work and transitions in the Labour Market”. The results of this study will be available at the end of 2012.
4. The assumption that it is more difficult for agency workers to exercise their rights due to the insecurity of tenure is not correct (see Paragraph 3.3). It is not fact based. In Belgium, 60% of the agency workers are unionized, in the Nordic countries or in Germany, France, Belgium & 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 organised themselves (per sectors and representing mainly permanent workers).
5. The guidance should focus on the worst cases of human rights abuses (human trafficking, confiscation of ID documents, forced labour...) as a way to get rid of rogue providers.

We sincerely hope that the final Guidance will be of such quality and depth that it will contribute to our standing Human Rights policies.

Kind regards,

Sieto de Leeuw Managing Director Group Social & Public affairs



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