

Response to the public consultation on the draft guidance for the Employment & Recruitment Agencies Sector on implementing the UN Guiding Principles on Business and Human Rights

Brussels, 01 February 2013

General comments

Ciett/Eurociett welcome the opportunity to contribute to the consultation on the draft Guidance for the employment & recruitment agencies (E&RA) sector on implementing the UN Guiding Principles on Business and Human Rights.

Overall Ciett/Eurociett welcome the general approach of the Guidance, as it offers options and flexibility for companies to choose the most suitable way to implement the Guiding Principles, in accordance to their structure, values and practices.

This general approach of the Guidance should be maintained. Any prescriptive language should be avoided as it could discourage the full implementation of the Guiding Principles and it would exceed the non-binding nature of the Guidance.

Ciett/Eurociett find the Guidance particularly useful when it provides practical examples and scenarios relevant for the implementation of the Guiding Principles in the E&RA sector, e.g. identifying heightened risks of human rights when cross-border activities take place or when appropriate regulation on the industry is not in place.

Ciett/Eurociett also underline the need for the Guidance to be relevant and useful for all types of E&R agencies, for the multinational, small and medium sized companies, as well as for the user enterprises.

Specific remarks

I. Scope and application (pages 4-19)

In addition to recalling its non-binding nature, Ciett/Eurociett stress the importance for the Guidance to clearly state upfront that the human rights covered in the initiative are those recognised in the

International Bill of Human Rights¹ and in the eight core conventions of the International Labour Organization (ILO)².

Although the Guidance makes reference to these fundamental rights, it does so only on page 8. This should be declared at the very beginning of the Guidance in order to clearly define its scope and breadth of application.

Ciett/Eurociett are mindful that these rights represent a minimum core and appreciate that in some specific cases there may be additional rights that could be relevant. These additional rights and their application, however, should be linked to the specific circumstances on an *ad hoc* basis, and should not be considered as generally applicable to every case. In this respect, the Guidance takes the right approach in providing a suggestion of international instruments that may be relevant for certain situations and for specific types of activities, i.e. Annex A.

II. Regulation (pages 5, 7-8, 11 and 20)

Ciett/Eurociett underline that appropriate regulation on the industry is a critical pre-condition for the E&RA sector to be able to meet and fulfil its responsibility to respect human rights.

Notably, national legislation implementing and enforcing the International Bill of Human Rights and the core conventions of the ILO needs to be supplemented by ***appropriate regulation on the E&RA sector***. To this end, governments have a key role to play in creating an enabling environment for E&RAs to respect human rights.

The Guidance correctly points to the existing frameworks that are in place at the regional level, i.e. the Directive on temporary agency work (2008/104/EC) for the European Union (EU), and international level, i.e. the ILO Convention No. 181 on private employment agencies, in the introduction on page 5. Indeed these instruments allow to get rid of rogue actors that tarnish the image of the reputable industry represented by Ciett/Eurociett and its members and should be further promoted.

Therefore, Ciett/Eurociett suggest more positive language about the ratification of UN and ILO instruments, page 7. Instead of mentioning “low ratifications”, which is not entirely appropriate for Convention No. 181 being the second most ratified ILO Convention recently adopted, the Guidance should call on governments to further promote adoption and ratification of these instruments.

The same applies to Box 4 on page 20, where the Guidance refers to heightened risks for lower wages and benefits. The link between lack of appropriate regulation on the E&RA sector and these

¹ The UN Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (1966).

² Freedom of association and the effective recognition of the right to collective bargaining (C87, C98); elimination of all forms of forced or compulsory labour (C29, C105), effective abolition of child labour (C138, C182) and Elimination of discrimination in respect of employment and occupation (C100, C111).

risks should be made more apparent. The Box then correctly refers to Europe where the adoption of the Directive on temporary agency work has proven effective to overcome these potential disparities; here some more positive language should be used to further promote adoption of balanced regulation as an example of best practice.

On the issue of self-regulation, Ciett/Eurociett would like to have a more explicit reference to the commitment of the industry in respecting human rights and fighting abuses. The Memorandum of Understanding between Ciett corporate members and UNI Global, quoted in a footnote on page 8, should be part of the main text alongside the reference to the Ciett Code of Conduct, on page 11. On the same page, where the Guidance mentions the other industry-led initiatives, such as the Athens Ethical Principles, it should be indicated that Ciett has fully endorsed them.

III. Respect for national diversity (pages 7 and 20)

As for the concept of equal treatment for basic employment and working conditions in the EU Directive, Ciett/Eurociett recall that it is the result of over 20 years of social dialogue for the industry both at national and European level, and it builds on the *acquis* of rights specific to the European context.

Ciett/Eurociett would be wary of advocating for the same principle as is in other countries with different traditions and national practices of social dialogue or model of industrial relations. On the contrary, these countries should be allowed to achieve a similar result in their own pace and in line with their own historical background.

In this context, it would be more appropriate to look at other international guidance instruments, such as the ILO MNE Declaration³ and the OECD MNE Guidelines, and refer to the standards of employment and industrial relations not less favourable than those observed by comparable employers in the country concerned, within the framework of applicable law, regulations, and prevailing labour relations and employment practices.

Furthermore, it should be stressed that the principle of “equal pay for equal work”, as enshrined in article 23.2 of the United Nations Universal Declaration of Human Rights, can be applied in different ways and using different comparators for workers employed through E&RAs. “Equal pay for equal work” is NOT ONLY intended as equivalent to the pay of the employees at the user company, but it could be also equal pay *vis à vis* other comparable agency workers, as this is the case in several countries as a result of collective labour agreements.

More importantly, it should be recalled that regardless of the different comparators, the “equal pay for equal work” principle is founded on an objective appraisal of jobs on the basis of the work to be performed, which may entail differential rates of wages between workers. The appraisal is conducted

³ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 2006.

by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the social partners⁴.

Consequently, it is key to respect national diversity and the autonomy of national social partners, there is no “one-size-fits-all” approach that can be devised at the international level and imposed on at the national one.

IV. Freedom of choice of employment (pages 17-25)

Linked to the respect of national diversity, Ciett/Eurociett also stress the importance of respecting the diversity in the labour market and, more widely, in the world of work.

Increasingly a new reality of work is taking shape in particular in developed economies, where the traditional model of work organisation (Taylorism/Fordism) is progressively coexisting with other forms of work (crowdsourcing, multiactivity, self-employment, etc.). This transformation is fostering the emergence of diversity of profiles, needs and preferences in enterprises but more importantly in workers.

Respecting diversity in the labour market means that ***people should be free to choose how they want to work***. Pushing only for one model of work organisation or type of employment relationship would disregard the increasing demand for autonomy to choose how to work. For example, in the EU 37% of Europeans would like to be their own bosses, marking the rise of self-employment⁵.

Therefore, Ciett/Eurociett call for the respect of diversity of preferences and profiles in the labour market and allow people to choose how they want to work, and exercise their right to freedom of choice of employment – as recognised in article 23 of the United Nations Universal Declaration of Human Rights, and in article 6.1 of the International Covenant on Economic, Social and Cultural Rights.

This entails refraining from pushing for one particular type of employment relationship for everyone. All types of employment relationships that uphold the fundamental principles and rights at work and fulfil the fundamental human rights should be available for workers to choose, according to their preference and needs; in other words, a full range of labour contractual arrangements should be allowed to complement the open-ended, full-time contracts.

⁴ Article 3 of ILO Convention No. 100 on equal remuneration.

⁵ European Commission, DG Enterprise and Industry, news item from 9 January 2013, available at: http://ec.europa.eu/enterprise/newsroom/press/items/detail.cfm?item_id=6357&lang=en&tpa_id=0&title=37%25-of-Europeans-would-like-to-be-their-own-boss.

V. Other remarks

In Box 11, page 30, the first bullet point should clarify that E&R agencies may contract out the recruitment of workers to another E&R agency when engaging in international recruitment. This is not specified and it may lead to confusion.

In Box 11, page 30, more concrete examples and good practices from the sector should be represented, for example: the ombudsman or bipartite bodies for grievance mechanisms.

On page 34, the third bullet point reading “Investigate whether any psychological or physical violence has been exerted” is too general. Since this is in the context of recruiting, after the due diligence has been carried out by the E&RA, the main responsibility to check is no longer with the agency but with the enterprise. Better definition of this point should not be seen as to preclude the E&RA from verifying if the recruitment has been conducted in full respect of the worker’s rights, but it should not be worded as to create the expectation that the E&RA should do so for an indefinite period of time after the worker has been placed under the direct employment relationship of the enterprise.

On page 40, with reference to the complaints on breaches of relevant standards, and other potentially related ones. This should be better worded and the example should be better explained, otherwise it seems that E&RA can establish a mechanism for any kind of grievance, including the ones unrelated to the salient human rights.

Conclusions

Ciett/Eurociett welcome the Guidance as a practical tool to assist multinational, small and medium-sized E&R agencies, as well as user enterprises, with the implementation of the Guiding Principles.

In order to fully reflect the perspective of the industry in the final version of the Guidance, for Ciett/Eurociett and the E&RA sector it is critical to:

1. Maintain the open and flexible approach of the Guidance to allow E&R agencies to implement the Guiding Principles in the manner that fits the most their structure, values and practice.
2. Clearly define at the beginning of the Guidance its scope and application, by:
 - Recalling its non-binding nature
 - Stating that the human rights covered are those in the International Bill of Human Rights and the eight core conventions of the ILO;
3. Stress the importance of appropriate regulation on the industry as a necessary precondition to enable the E&RA sector to meet its responsibility to respect human rights. To this end,

ratification of ILO Convention No. 181 should be promoted and encouraged in as many countries as possible.

4. Respect the diversity of national regulation, traditions and practices of social dialogue as well as the autonomy and independence of national social partners. No “one-size-fits-all” principle should be imposed from the international community.
5. Respect the diversity of profiles and preferences in the labour market by promoting and protecting the freedom of people to choose how they want to work. No particular form of employment should be privileged over another; all are equally viable as long as they are by choice and respectful of the fundamental principles and rights at work.