

JBCE Contribution to The ICT Sector Guidance Document Public Consultation

February 2013

JBCE¹ welcomes the opportunity to provide comments to the European Commission ICT Sector Draft Guidance document. JBCE also welcomes the intention on behalf of the European Commission to make the guidance document useful, practical and globally applicable. As a European organisation of Japanese parentage companies, we feel that we have a stake in responding to the consultation. Our comments are divided into two parts; general comments and detailed comments.

General Comments

1. Reflection on global applicability

Although human rights are universal and should be applied to all people equally, the term “human rights” is understood differently according to national, cultural and company contexts. Large multinationals that operate in different national and cultural contexts may have a different interpretation to the EU, as may their suppliers and customers – and they may not see the relevance of EU guidance. A good and balanced understanding and reflection of different perspectives in the guidance is important for an effective communication of the relevance of human rights to stakeholders and business relationships in different countries. It also raises the question of how reasonable it is to expect this guidance to be followed in contexts outside of the EU where ways of doing business are different. In order to ensure a balanced approach and to give the level playing field for all companies, we encourage European Commission to stress the flexibility of the use of the guidance and at the same time to put effort in sharing the understanding on the topic with other nations outside of the EU.

2. Clarify expectations about the use and key target audiences of the Guidance

The aim of the document is to be useful, practical and globally applicable. However, the first question which was raised in our organisation was “who are the key target audiences”?

Sales employees need ‘ready to use’ information, for which human rights specialists within a company could ‘translate or interpret’ the content of the document.

Therefore the European Commission should give a clear message on its expectation of the usage of the document and the targeted key audiences in order for companies to use the document more effectively.

3. Definition of ICT sector needs to be clearer

With the definition of the ICT sector in the guidance document covering all companies involved including the *manufacture(rs) of electronic components and end-user products that provide access to services, service delivery* as well as *end user operations*, the net is cast extremely wide.

While the majority of operations of companies involved in *service delivery* and *end user operations* fall clearly within the scope of Information and Communication, for *manufacturers of electronic*

components and end user products these very often constitute only one element of an overall much more varied product portfolio.

This then raises the questions of how and where these companies should apply the guidance; to only the elements of the company that fall within the ICT scope, or the whole company, where other human rights issues might be much more relevant?

4. Focus more on ICT sector specific issues

Based on the observation above, we would therefore suggest making the sector guidance more sector and sector issue specific while at the same time offering a separate general guidance that applies to all companies, no matter which sector(s) they operate in.

This reduced but focused sector guidance could deal with more the specific issues of the ICT sector, and also aid companies with only limited exposure to the ICT sector in making them clearly aware of the sector specific issues.

Apart from this specific guidance for the ICT industry, we may also be faced with general industry guidelines. Any relevant general regulatory development should take this specific guidance for the ICT sector into account and prevent duplication and avoid conflicting requirements.

5. Make the structure of the document clearer

- 1) **Glossary with definition and clarification:** We feel that some of the wording is very conceptual or needs subjective judgement. Generic terms such as ‘information’ (see below for details) need to be given their scope. A glossary at the end of the guidance document would be very useful.
- 2) **Use more graphics:** Visual tools are very useful and can be easier to understand than text. For example, the “heat map” to used to prioritise in human rights due diligence can be expressed by a matrix. Please use as many graphics as possible.
- 3) **Better use of the Boxes:** We found the role and the use of the boxes quite confusing. In the draft, it was difficult to find the differentiation between the boxes with numbers or letters.

6. Give more examples

Two big questions for companies are 1) what do we need to pay attention to? and 2) what should be done? In order to respond to these simplistic questions, we feel **an example list of frequent issues (non exhaustive) and best practice cases** are extremely useful. It would be more useful if these issues and best practices are classified within two different categories; service providers and manufacturers.

7. Issue of company’s limited leverage

The UNGP recognises that, for businesses with a large number of entities in their value chain, it may be unreasonably difficult to conduct due diligence on adverse human rights impacts across all of them. The sector guidance document refers to due diligence in managing impacts of a company’s own activities or as a result of its business relationships with third parties. In determining what an appropriate response to the identified risks is, the document refers the leverage of a company in its

supply chain. In practice however contractual relationships are between two parties and individual companies will not be able to effectively identify and influence the impact as a result of business relationships further than two steps from its position in the supply chain. This therefore raises questions on the scope of due diligence i.e. how far can a company realistically and reasonably deliver. Some further guidance as to the EU's expectations on this would be helpful, as would considerations on which issues are best prioritised by companies, industry coalitions, partnerships with NGOs and governments or international organisations.

8. More stress on the shared responsibility is needed

The guidance document appropriately pays attention to the risk of unintended negative impacts that products and services can have on human rights e.g. governmental violations that might put a company in a situation of complicity. In such cases national or EU governments, or other organisations including NGOs, may be in a better position to influence protection and remediation of human rights. In the case of government violations, a joint approach between national and EU governments, NGO and industry may prove to be more effective. Improving the protection and remediation of human rights worldwide therefore is a shared responsibility of all stakeholders: EU and national governments, NGOs and industry. We suggest emphasising this more prominently in the guidance document.

9. Highlight pressure on companies and companies' positive contribution

It does not highlight enough the additional pressure on companies to meet the responsibility to respect in situations where governments may be defaulting on their duty to protect. Taking into account the wider usage of the guidance document, this should be emphasised and some way of rewarding companies that are investing in this area should be implemented. While the guidelines do recognise the positive role of companies in the preamble, this is a very short mentioned compared to the length of the description of expected corporate responsibilities and it may not be enough.

Details

4) Use of the term 'trade unions'

a. Page 12

It may be useful to clarify that trade unions may have elements of both internal and external membership, and that therefore the suggested stakeholder advisory group can include both internal and external stakeholders.

b. Page 21

The fact that trade unions are assimilated to third parties (sentence "these third parties can help reduce barriers") seem to negate the fact that trade union can have internal and external membership.

c. Page 38

The paragraph c) refers to external stakeholder perspectives, but then the text refers to internal worker mechanism and again trade union, which is confusing.

5) Page 13-14

Respecting privacy, providing information to users about cookies etc. is already regulated in the EU and the EU data protection rules will become stricter as a new Data Protection Regulation

will be adopted. We would like to suggest that the text recognise this current situation to avoid misleading information.

6) Page 14

In the paragraph starting "by key departments to involve", we would like to suggest to have a reference note to the recently published UNGC practice note on the role of in house counsel.

http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/HRPolicies_LegalCounsel_GPN.pdf

7) Page 15

The sentence "it will also be important to clarify that the company expects business partners to pass on requirements to comply with human rights standards to their own supply chains and to seek evidence that they do so wherever possible" assumes that all companies have the same leverage power with their tier suppliers, which is not the case. If you are not the main player in the industry you might one day be faced with a dilemma which opposes economic rationale and ethical sourcing for which you have limited option. In that case taking the right decision from an ethical point of view can be very challenging. The text may not recognise this enough.

8) Page 16

(Box B Human Rights Diligence) In general, too many terms used in the guidelines such as "information it needs" in the sentence "a business identifies the information it needs to understand is specific human rights" (part 1) of the box) are quite vague (what kind of information?). A glossary would be necessary to define the scope of these generic terms.

9) Page 32

Box 10, "committing to increased prices or sustained future business in return for good human rights performance". Sometimes we forget that sustainable procurement also mean securing supply to the organisation so that it can continue to make long term profit which will benefit the community as other stakeholders. May be some word could be added on the notion of "right price". For example, add a paragraph suggesting that companies consider a positive in-depth process that could deepen the understanding of procurement teams of the true price of products in terms of value engineering, analysis etc.

10) Page 35

The text refers to quantitative and qualitative indicators without providing examples. Please explain why the illustrative indicator list which was included in the template was not feasible.

11) Page 41, Box 16

The text should touch upon the key negative consequence which current policy has caused in Democratic Republic of Congo and in the Great Lakes region. A de facto trade embargo has been applied against minerals from the DRC and its neighbours and from a human rights perspective, this is not desirable.

ⁱ ABOUT JBCE (www.jbce.org)

Japan Business Council in Europe (JBCE) was established in 1999. It is the European organisation representing companies of Japanese parentage operating in Europe.

The mission of JBCE is to contribute to European Public Policy. JBCE membership currently consists of around 60 multinational companies and covers a wide range of industry sectors, including air-conditioning, automotive, chemicals, consumer electronics, engineering, industrial machinery, information and communication technology, medical equipment, photo and imaging equipment.

JBCE takes an active role in enhancing understanding of Japanese companies and their business in Europe and to put forward the views of its members on legislative issues currently under debate and on the public policies issues which will shape the years to come.