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Institutional Section

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FOURTEENTH ITEM ON THE AGENDA

Report of the Director-General

Second Supplementary Report: Report of the Meeting of Experts on Defining Recruitment Fees and Related Costs

(Geneva, 14–16 November 2018)

Purpose of the document

The document provides information on the Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs that took place in Geneva from 14 to 16 November 2018. In its appendix, the document contains the outcome of the meeting, entitled “Definition of recruitment fees and related costs”.

The Governing Body is invited to approve the publication and dissemination of the definition of recruitment fees and related costs, and to request the Director-General to promote the application of the definition, including through the modalities identified in paragraph 7 of this document (see the draft decision in paragraph 9).

Relevant strategic objective: All.

Main relevant outcome/cross-cutting policy driver: Outcome 9: Fair and effective international labour migration and mobility.

Policy implications: The definition of recruitment fees and related costs will be read together with the *General principles and operational guidelines for fair recruitment*. It will influence the work of the Office concerning labour migration under its action plan for the period 2018–22. It will also contribute to the Organization’s wider role at the global level, including its role in the implementation of the Global Compact for Safe, Orderly and Regular Migration and the 2030 Agenda for Sustainable Development.

Legal implications: None.

Financial implications: None.

Follow-up action required: See the draft decision in paragraph 9.

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Related documents: GB.329/INS/INF/2; GB.331/INS/4/1(Rev.).

1. At its 331st Session (October–November 2017), the Governing Body agreed to convene a three-day Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs, which would have as its objectives to:
 - (a) review, amend and adopt draft definitions on recruitment fees and related costs developed by the Office based on a global comparative study and thorough analysis by the Office of definitions of recruitment fees and costs; and
 - (b) recommend ways to disseminate and use the adopted definitions at the international and national levels by constituents.
2. The need to develop a definition on recruitment fees and related costs resulted from the Tripartite Meeting of Experts on Fair Recruitment held in Geneva from 5 to 7 September 2016, during which the experts held lengthy debates on a possible definition of recruitment fees and related costs before concluding that the subject was something that in the future the ILO might wish to make more precise.¹ It also responded to the concerns raised by the ILO and other United Nations agencies in recent years over recruitment-related abuses, in particular the collection of recruitment fees and related costs from workers, and the risks of debt bondage and human trafficking linked to repayment of such recruitment fees and related costs.
3. The meeting is a key contribution to the implementation of the ILO's Fair Recruitment Initiative, which was launched in 2014, and part of the plan of action approved by the Governing Body in follow-up to the International Labour Conference resolution concerning fair and effective labour migration governance, which recognized “the need to develop a global definition of recruitment fees and costs, in particular with the view to contribute to measuring recruitment costs in line with Indicator 10.7.1 of the 2030 Agenda [for Sustainable Development] and processes of adoption and implementation of the Global Compact for Safe, Orderly and Regular Migration”.²
4. The Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs was held in Geneva from 14 to 16 November 2018. It was attended by eight experts nominated after consultations with the Government group, eight experts nominated after consultations with the Employers' group and eight experts nominated after consultations with the Workers' group. The meeting was chaired by an independent Chairperson, Mr Pietro Mona (Switzerland). The Vice-Chairpersons were Ms Annemarie Muntz (Employer, Netherlands), Ms Shannon Lederer (Worker, United States), and Mr Iskandar Zalami (Government, United Arab Emirates). There were Government observers from seven countries (Belgium, Brazil, Chile, Indonesia, Panama, the Philippines and the Republic of Korea), as well as representatives from the International Organisation of Employers and the International Trade Union Confederation and from the following intergovernmental organizations and international non-governmental organizations: the European Union, the International Organization for Migration, the World Bank, the Alliance of Asian Associations of Overseas Employment Service Providers, the Migrant Forum in Asia, the New York University Stern Center for Business and Human rights, and Verité.
5. The meeting focused on the negotiation of the draft definition of recruitment fees and related costs. This definition was included in the background paper prepared by the Office on the basis of a global comparative research, which analysed different member States' national laws and policies, bilateral labour agreements, and international voluntary codes and

¹ GB.329/INS/INF/2, para. 44 of the appendix.

² GB.331/INS/4/1(Rev.), para. 12(a).

guidance on recruitment fees and related costs.³ The experts clarified that the definition should be read and disseminated together with the *General principles and operational guidelines for fair recruitment*, which clearly recognize the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment. Furthermore, the definition should support the implementation and enforcement of laws, policies and measures aimed at the protection of workers' rights, and also support delivery of effective regulation of recruitment to combat non-compliance, provide transparency of recruitment practices and enhance the functioning of labour markets.

6. The agreed definition of recruitment fees covers all types of recruitment, in all sectors and for all workers, regardless of whether they were recruited nationally or internationally. Experts determined that related costs were expenses integral to the recruitment and placement process within and across borders, taking into account that the widest set of related recruitment costs were incurred for international recruitment. Identified recruitment-related costs were consequently listed in the definition. The experts found it important to include the possibility of further definition of cost categories at national level, and allowed flexibility to determine exceptions to their applicability, consistent with international labour standards and the conditions identified in the definition. The experts also agreed to include a specific subsection that identified the illegitimate, unreasonable and undisclosed costs that should never be charged to any actor in the recruitment process.
7. The experts also discussed the possible modalities of dissemination and implementation of the agreed definition, within the broader umbrella of the ILO Fair Recruitment Initiative. They recommended that the definition should be translated into the official ILO languages, published online, and always distributed together with the *General principles and operational guidelines for fair recruitment*. The experts also suggested that the dissemination of the definition should be pursued through partnerships. These could include multi-stakeholder initiatives and partnerships within the United Nations Network on Migration, which was established to support implementation of the Global Compact for Safe, Orderly and Regular Migration. Other avenues include the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour (Alliance 8.7), the International Organization for Migration's International Recruitment Integrity System and the World Bank's Global Knowledge Partnership on Migration and Development. The experts requested the ILO to collaborate with the social partners to identify priority regions and countries for the promotion of fair recruitment and practical implementation of the *General principles and operational guidelines for fair recruitment*, thereby disseminating and utilizing the adopted definition. The development and updating of practical tools and provision of capacity-building to constituents in this area was also discussed as a means to disseminate and promote the effective application of the definition.
8. The outcome of the meeting, the document entitled "Definition of recruitment fees and related costs", is presented in the appendix. A detailed report of the meeting will be made available on the ILO website.

³ ILO: *Background paper for discussion at the Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs (Geneva, 14–16 November 2018)*, Geneva, 2018.

Draft decision

9. *The Governing Body:*

- (a) approved the publication and dissemination of the definition of recruitment fees and related costs, adopted by the Meeting of Experts on Defining Recruitment Fees and Related Costs on 16 November 2018, which should be read together with the General principles and operational guidelines for fair recruitment;*
- (b) requested the Director-General to promote the application of the definition of recruitment fees and related costs, including through the modalities identified in paragraph 7 of document GB.335/INS/14/2.*

Appendix

Definition of recruitment fees and related costs

I. Scope

1. The definition of recruitment fees and related costs is guided by international labour standards and should be read together with the ILO *General principles and operational guidelines for fair recruitment*. As such, it recognizes the principle that workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment.
2. The definition is based on the findings of the ILO's global comparative research which analysed different member States' national laws and policies and international voluntary codes and guidance on recruitment fees and related costs. It takes into account the practical realities and context-specific conditions that workers, labour recruiters, enterprises and employers face.
3. The definition identifies fees and related costs in recruitment practices. It is intended to support the development, monitoring, implementation and enforcement of laws, policies and measures aimed at the protection of workers' rights, including that workers should not be required to pay for access to employment. It is also intended to support the delivery of effective regulation of recruitment practices, notably of public and private employment agencies, to combat non-compliance,¹ provide transparency of recruitment practices and enhance the functioning of labour markets.
4. It is also recognized that costs for workers recruited internationally can be significantly higher than those for workers recruited nationally due to a range of factors, including a lack of consistency and transparency on what these costs constitute in different national contexts. Furthermore, workers who are recruited across borders may find themselves in situations of particular vulnerability.
5. For the purpose of this definition of recruitment fees and related costs, the definitions of the *General principals and operational guidelines for fair recruitment* apply. The term "workers" includes jobseekers.²

II. Definition of recruitment fees and related costs

6. The terms "recruitment fees" or "related costs" refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.
7. Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits.
8. The recruitment fees and related costs considered under this definition should not lead to direct or indirect discrimination between workers who have the right to freedom of

¹ Reference: A.6.1 of the Guidelines.

² This is in line with the ILO Private Employment Agencies Convention, 1997 (No. 181), Art. 1, and the ILO *General principles and operational guidelines for fair recruitment* which define the term "recruitment" as applicable "to both jobseekers and those in an employment relationship".

movement for the purpose of employment, within the framework of regional economic integration areas.

A. Recruitment fees

9. Recruitment fees include:

- (a) payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;
- (b) payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
- (c) payments made in the case of direct recruitment by the employer; or
- (d) payments required to recover recruitment fees from workers.

10. These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment.

B. Related costs

11. Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment. These costs are listed below and may apply to both national and international recruitment. Depending on the recruitment process and the context, these cost categories could be further developed by the governments and the social partners at the national level. It is recognized that the competent authority has flexibility to determine exceptions to their applicability, consistent with relevant international labour standards, through national regulations, and after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject, but not limited, to the following conditions:

- (i) they are in the interest of the workers concerned;
- (ii) they are limited to certain categories of workers and specified types of services; and
- (iii) the corresponding related costs are disclosed to the worker before the job is accepted.

12. When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process:

- (i) **Medical costs:** payments for medical examinations, tests or vaccinations;
- (ii) **Insurance costs:** costs to insure the lives, health and safety of workers, including enrolment in migrant welfare funds;
- (iii) **Costs for skills and qualification tests:** costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licencing;
- (iv) **Costs for training and orientation:** expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
- (v) **Equipment costs:** costs for tools, uniforms, safety gear; and other equipment needed to perform assigned work safely and effectively;
- (vi) **Travel and lodging costs:** expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation;

(vii) **Administrative costs:** application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

13. Enumeration of related costs in this definition is generalized and not exhaustive. Other related costs required as a condition of recruitment could also be prohibited.

14. These costs should be regulated in ways to respect the principle of equality of treatment for both national and migrant workers.

C. **Illegitimate, unreasonable and undisclosed costs**

15. Extra-contractual, undisclosed, inflated or illicit costs are never legitimate. Anti-bribery and anti-corruption regulations should be complied with at all times and at any stage of the recruitment process. Examples of such illegitimate costs include: bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain.