

## Impact Assessments prepared by the European Commission still disregard Developing Countries

When considered necessary, the European Commission conducts an “impact assessment” (IA) before it proposes new initiatives. The aim is to assess the potential economic, social and environmental consequences of a policy initiative. In this regard, the Commission is obliged to assess the consequences for developing countries, if the proposal is pertinent<sup>1</sup>.

Since 2009, Global Focus<sup>2</sup> has carried out screenings of IAs prepared by the Commission. In general, these screenings have demonstrated a continuous lack of sufficient assessments of impacts on developing countries. Since the initiation of these screenings in 2009, the European Commission has conducted a total of 530 IAs. Among these, 217 have been assessed relevant for developing countries. However, our screenings show that only 41 of them sufficiently assessed the impacts on developing countries. This only corresponds to 19 per cent of the IAs considered relevant for developing countries. In addition, the screening from last year revealed that only 8 per cent of the IAs sufficiently acknowledged a potential impact on developing countries, thus suggesting that the Commission largely ignored its obligations towards developing countries.

The present screening from 2015<sup>3</sup> does not show any significant improvement from the unsatisfactory record in 2014. 25 per cent of the IAs judged relevant for developing countries sufficiently acknowledge the impact on developing countries. One must consider this in the light of the very limited number of IAs conducted by the Commission in 2015 (only 16). Of these, four are judged relevant for developing countries, which means that only one IA sufficiently acknowledges the impact on developing countries.

The following screening is systematically conducted according to a fixed set of guidelines<sup>4</sup>, but the assessment of the different IAs naturally contains an element of discretion. This suggests that the actual number of relevant or sufficient IAs could be either slightly higher or lower. Nevertheless, it is striking that the proportion of relevant IAs sufficiently analyzing the impact on developing countries continues to be so low. It is crucial that the Commission improves on this matter in order to fulfill its obligations towards developing countries.

### Background: Political commitments

Before the Commission proposes new initiatives, it assesses the potential economic, social and environmental consequences that they may have. An Impact Assessment prepares evidence for political decision-makers on

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<sup>1</sup> IA guidelines: [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf) and Annex III: [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/ia\\_guidelines\\_annexes\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/ia_guidelines_annexes_en.pdf)

<sup>2</sup> Global Focus is a rather new Danish membership body for Civil Society Organisations (CSO) working in the field of international development. The organization was established in 2014 in a fusion of the two organizations NGO FORUM and Concord Danmark. The first two screenings were conducted by the latter.

<sup>3</sup> For a complete list of IAs in 2015 see: [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/cia\\_2015\\_en.htm](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2015_en.htm)

<sup>4</sup> The screening guidelines can be found in Annex.

the advantages and disadvantages of possible policy options by assessing their potential impact. IAs also help to explain, why a particular action is necessary at EU level, and why the proposed response is an appropriate choice. These actions can also affect developing countries, and the Commission is obliged to assess the possible impacts on the developing countries, if the proposal is relevant.

Impact Assessment guidelines have been established in order to give a general guidance to the different Commission departments in their decisions on whether and how to make an IA. With regard to international impacts affecting third and developing countries, the guidelines state:

*“Every IA should establish whether proposed policy options have an impact on relations with third countries. In particular they should look at: [...] impacts on developing countries – initiatives that may affect developing countries should be analyzed for their coherence with the objectives of the EU development policy. This includes an analysis of consequences (or spill-overs) in the longer run in areas such as economic, environmental, social or security policy”.*<sup>5</sup>

Further, specifically on developing countries, the guidelines state:

*“From an economic point of view, impacts on different sectors (agriculture, extractive industries, manufacturing, and services) should be distinguished where relevant. [...] In the social and environmental areas, the MDG indicators (health, education, food security, environment...) should be used. EU policies can also have unintended economic, social and environmental impacts. Often, the fact that an EU policy is changed may present a challenge for a developing country when it needs to align its policy to comply with new standards. Many developing countries have weak administrations and find it difficult to adapt to changing regulations”.*

As is clearly stated above, every IA should consider the potential impacts on developing countries of proposed policy options. The lack of sufficient assessment of the consequences for developing countries is even more disturbing when considering Article 208 of the Lisbon Treaty. The Article unmistakably underlines the importance of Policy Coherence for Development (PCD) by stating that: *“The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries”*.<sup>6</sup>

It is important that the obligation to assess possible impacts of new policy proposals on developing countries is respected. The lack of sufficient IAs on developing countries must be considered when reviewing and evaluating the IAs guidelines. Further, the Impact Assessment Board must ensure that the IA guidelines are respected and resubmit any IA that fails to consider the potential impact on developing countries to the Impact Assessment Steering Group for further analysis.

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<sup>5</sup> IA guidelines: [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf)

<sup>6</sup>Lisbon Treaty, Article 208: <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-5-external-action-by-the-union/title-3-cooperation-with-third-countries-and-humanitarian-aid/chapter-1-development-cooperation/496-article-208.html>

## 2015 screening

To ensure a consistent and uniform categorization and analysis across analysts and time, the screening is conducted according to fixed screening guidelines. The guidelines are developed by Global Focus and can be found in the Annex. The guidelines are applied as strictly as possible, but the assessments of the individual IAs still contain an element of discretion. The guidelines are however formulated to capture only the most severe cases of negligence regarding the obligation to assess the possible impacts on developing countries of the proposed policies.

The table below displays the number of IAs conducted by the European Commission every year since 2009. It also shows the annual proportion determined relevant for developing countries and the proportion of relevant IAs sufficiently assessing the consequences for developing countries. Percentages are listed in parentheses.

Year	Total amount of IAs	Amount of IAs judged relevant for developing countries	Amount of IAs with sufficient analysis of impacts on developing countries
2009	83	47 (57)	5 (11)
2010	59	26 (44)	2 (8)
2011	138	66 (48)	18 (27)
2012	72	20 (28)	6 (30)
2013	104	30 (29)	7 (23)
2014	58	24 (41)	2 (8)
2015	16	4 (25)	1 (25)
<b>In total</b>	<b>530</b>	<b>217 (41)</b>	<b>41 (19)</b>

The IA screenings that Global Focus has carried out since 2009 are characterized by consistent insufficient assessment of the consequences for developing countries. The proportion of IAs with sufficient analysis of impacts on developing countries never once surpassed 30 per cent and in last year's screening it declined to only 8 per cent. This is the lowest since 2010 and far lower than the period average of 19 per cent.

In 2015, the European Commission only conducted 16 IAs. The present screening considers four of these relevant for developing countries. Among these four, only one sufficiently assesses the impacts on developing countries. This corresponds to 25 per cent and subsequently no significant improvement in the practice of the commission compared to earlier years.

To illustrate the assessment practice of IAs according to Global Focus' screening guidelines, two different cases are highlighted in the next section.

## Case Examples

### Case 1. Example: Relevant Impact Assessment, but no assessment of impact on developing countries

An IA, which does not live up to the principle of assessing the impacts on developing countries when relevant is the “*Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and lowcarbon investments*” from the 7<sup>th</sup> of July 2015 within the policy area of Climate Action / Energy. The initiative aims to address the risk of carbon leakage in economies outside the EU without comparable climate policy measures by allocating free allowances to industries within the EU. The policy, thus, induce carbon intensive industries to produce within the EU instead of outsourcing to countries with less strict climate policies.



If the policy is implemented, it has significant economic and environmental influence on those developing countries to which industries of the European Union are currently outsourced. In economic terms, developing countries are to lose on domestic jobs and revenues, if European businesses refrain from outsourcing to these countries because of the proposed policy. On the other hand, developing countries will experience environmental benefits, if the most carbon intensive industries remain within the EU. The IA does not account for

any of these two impacts and developing countries are not mentioned a single time in the paper. Third countries – including China and India – are mentioned occasionally, but never in relation to the impacts of the proposed policy on these countries. In fact, it is highlighted that “*the specific rules for the distribution of free allowances will not impact the policy choices of third countries*”.

## Case 2. Example: Sufficient Impact Assessment



An IA, which fulfills the obligation of assessing impacts on developing countries, is the “*Proposal for regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets*” from the 10<sup>th</sup> of December 2015<sup>1</sup> within the policy area of “*Maritime affairs and fisheries*”. The initiative aims to fight illegal fishing of European fishing fleets outside the European Union in order to secure transparent and sustainable exploitation of fishing resources. The IA considers both economic, environmental and institutional impacts on developing countries and uses the framework of the three dimensions of sustainable development to assess the proposed policy actions.

The IA mentions positive economic impacts on local public administrations in the form of increased legal certainty and less corruption: “*The only other significant impact would be on third countries granting fishing licences to EU vessels. This impact shall be positive as an improved framework for the management of the EU external fleet may result in additional benefits for them (better management of fisheries resources, increased transparency, and fight against corruption)*”.

Concerning environmental impact, the IA highlights positive impacts on fishing resources: “*Environmental benefits linked to the protection of living marine would be optimal as stricter monitoring of the EU fleet outside EU waters will contribute to improve fisheries governance and to ensure enhanced sustainability of fishing resources.*”.

Furthermore, the IA also refers to positive institutional impacts: “*By improving control on Union vessels, the proposed Regulation will also contribute to creating a benchmark at international level regarding management and control of external fleets, and therefore participate to better global fisheries governance*”. Most likely, this could also benefit developing countries.

## Annex: Screening guidelines

### 1. Determination of the relevance of an impact assessment

The impact assessment (IA) can be determined relevant if:

- a. the policy options assessed directly and to a significant extent influence the conditions for the development of developing countries, and
- b. there is no doubt about this influence – matters of doubts are determined as irrelevant, and
- c. the policy options include a large variation and thus imply a choice of scale, and
- d. the policy options include policies of standardization or harmonization of relevant goods or services. Standards of goods and services are considered technical trade barriers.

### 2. Determination of the sufficiency of the impact assessment's analysis of the consequences for developing countries

The IA analysis on the impacts on developing countries is considered sufficient if:

- a. the IA mentions possible impacts, positive or negative, of the policy on developing countries
- b. all obvious impacts are assessed.