



SUSTAINABLE DEVELOPMENT

THE STAKES COULD NOT BE HIGHER

**THE IMPACT OF EU
POLICIES IN THE WORLD**

SEEING THE BIGGER PICTURE

ABOUT CONCORD

CONCORD is the European NGO Confederation for Relief and Development.

Our members are:

28

National Platforms

21

Networks

03

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which represent over 2,600 NGOs, supported by millions of citizens all around Europe.

Our confederation brings development NGOs together to strengthen their political impact at the European and global levels. United, we advocate for Europe-wide policies to promote sustainable economic, environmental and social development based on human rights, justice and gender equality. We also work with regional and global civil-society allies to ensure that EU policies are coherent in promoting sustainable development in partner countries.

ABOUT THIS PAPER

2015 saw the adoption of the 2030 Agenda for Sustainable Development and CONCORD's 2016-2020 Strategy. These prompted the setting up of a Hub on Sustainable Development and Policy Coherence for Sustainable Development, drawing together CONCORD's work on the 2030 Agenda, on policy coherence for development and on a range of thematic policies. Thanks to the collective effort and widespread expertise of the members of this hub – building on the expertise of previous Spotlight Reports, Beyond 2015 and other more thematic papers – CONCORD produced the 2016 report entitled "Sustainable Development: The Stakes Could Not Be Higher." The report put forward clear recommendations for how the EU and its member states could put the 2030 Agenda into practice, by designing the necessary strategies, setting up a monitoring, accountability and review framework, strengthening mechanisms for policy coherence for sustainable development, adjusting the food system, changing migration policies and measuring progress for people and planet in a more genuine way. In this paper, we set out to shed more light on the EU's impact assessments, seeing in them one of the mechanisms that could make its policies more coherent with sustainable development.

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EXECUTIVE SUMMARY

The Better Regulation Package, adopted in 2015 by the European Commission, introduced a series of new and revised tools and procedures for decision making. This paper looks at the ways in which the package has resulted in better compliance with policy coherence for development (PCD). It examines the impact assessments that accompanied the proposals issued by the European Commission in 2016, singling out four cases in which there was an adequate, an inadequate or no impact assessment, exploring them in greater depth in an attempt to learn from the strengths and weaknesses of the Commission's current approach to impact assessments and propose recommendations for the future.

This briefing paper contains (1) a brief description of the place of PCD in EU policies and an introduction to policy coherence for sustainable development (PCSD), to which it is linked; (2) a presentation of the role played by the Better Regulation Package in achieving PCD; (3) a prima facie analysis of the impact assessments conducted in 2016; (4) reflections of the role of the Regulatory Scrutiny Board; (5) four case studies illustrating different scenarios, from PCD-compliant approaches to PCD-blind policies; and (6) conclusions and recommendations.

In 2016, 24% of the proposals relevant to developing countries were accompanied by an impact assessment that looked in sufficient depth into the impacts on those countries. This score is better than in previous years, but is still far too low for the Better Regulation Package to be considered an effective tool for ensuring PCD in the EU's decision-making processes. The Regulatory Scrutiny Board should systematically examine whether or not impact assessments have adequately taken impacts on developing countries into account. In 2016, the board considered this aspect in only 10% of the cases in which it could have done so.

Overall, the paper concludes that impact assessments should be significantly improved. This can be done by taking into account the impacts on developing countries right from the start, by ensuring that the research underpinning the assessments is of a high standard, by weighing up the different policy options carefully and by balancing the different interests at play. Furthermore, it is important to draw a distinction between impacts on third countries and impacts on developing countries, in impact assessments where these might be different.

POLICY COHERENCE FOR SUSTAINABLE DEVELOPMENT

The principle of policy coherence for development (PCD) requires the EU and its member states to take into account the objectives of development cooperation in all their external and internal policies that are likely to affect developing countries (Article 208 of the Lisbon Treaty). This was reiterated in the New Consensus for Development (May 2017).¹ The European Commission has identified five major areas² requiring particular attention from a PCD perspective, and has been issuing PCD progress reports on them every two years.

The 2030 Agenda has broadened the objective of policy coherence for development to include the concept of sustainability. The scope of policy coherence for sustainable development (PCSD) is broader in two ways: it is now universal (it covers all countries), and it explicitly covers all dimensions of development (social, environmental, economic and governance). Efforts to achieve PCSD, therefore, should aim at fundamentally changing the economic, social and political system, so that future generations will be able to live in a world free from poverty, in which human rights and planetary boundaries are respected and no one is left behind.

The EU has acknowledged that it has an exemplary role to play in fulfilling the obligations stemming from the 2030 Agenda. Furthermore, the EU³ and its member states⁴ have recently firmly reaffirmed their commitment to policy coherence for development as a crucial element of the strategy to achieve the SDGs and an important contribution to the broader objective of policy coherence for sustainable development.

¹ Council of the European Union, "The Council adopts a new European consensus on development", Press release (May 19, 2017), <http://www.consilium.europa.eu/en/press/press-releases/2017/05/19-european-consensus-on-development/>

² The five areas where PCD is particularly challenging are trade and finance, addressing climate change, ensuring global food security, making migration work for development and, lastly, strengthening the links and synergies between security and development in the context of a global peace-building agenda. European Commission, "Policy Coherence for Development: Establishing the policy framework for a whole-of-the-Union approach", COM(2009) 458 (15 September 2009), 8, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0458&rid=1>

³ European Commission Communication, "Next steps for a sustainable European future. European action for sustainability" (22 November 2016), http://ec.europa.eu/europeaid/sites/devco/files/communication-next-steps-sustainable-europe-20161122_en.pdf

⁴ General Affairs Council conclusions "EU response to the 2030 Agenda for Sustainable Development – a sustainable European future" (20 June 2017), <http://www.consilium.europa.eu/en/press/press-releases/2017/06/20-2030-agenda-sustainable-development/>

THE CONTROVERSIAL BETTER REGULATION PACKAGE

The Better Regulation Package (BRP) was presented by the European Commission in 2015, under the responsibility of First Vice-President Frans Timmermans. It covered reforms of the policy process that were intended to stimulate openness and transparency and to improve the quality of new laws through better impact assessments. It provided for the constant review of existing laws, and their simplification (REFIT), and it set up a new, more independent board (now also including experts from outside the Commission) to scrutinise impact assessments.⁵

The package, however, raised a number of concerns: from the risk that technical approaches might prevail over democratic decision-making processes to the lack of safeguards for preventing the corporate capture of decision making and the sidelining of public interests.^{6 7 8}

Amid the uncertainties arising with the launch of the Better Regulation Package, CONCORD and the International Federation for Human Rights (FIDH) made the case for better regulation serving the eradication of poverty and the protection of human rights. They stressed that regulating better should mean giving priority in decision making to human rights and the fight against poverty and inequality. Impact assessments should become effective tools for ensuring that PCD is implemented in practice (see Box 1).⁹

BOX 1 CONCORD'S 2015 SPOTLIGHT PAPER ON BETTER REGULATION

In the 2015 Spotlight Paper, "The European Commission's "Better Regulation Package": Will It Serve Poverty Eradication and Human Rights?", CONCORD and FIDH looked at the Better Regulation Package and made recommendations to the Commission. Among these was a call for an ambitious regulatory agenda for securing PCD, taking into account the economic and social impact on developing countries and upholding human rights. In addition, they called for better consultation of civil society organisations (CSOs) and for the point of view of affected local communities to be taken into account. Ultimately, this should result in a more balanced portrayal of the different interests at play – one in which private interests do not prevail. Furthermore, the Regulatory Scrutiny Board should look specifically at impacts on developing countries, a task it could perform more effectively if it secured in-house knowledge on the matter.

5 European Commission, "Better Regulation Agenda: Enhancing transparency and scrutiny for better EU law-making", European Commission Press Release (19 May 2015), http://europa.eu/rapid/press-release_IP-15-4988_en.pdf

6 James Crisp, "New Circular Economy Package 'less ambitious' than axed predecessor", Euroactiv.com, 26 November 2015, <http://www.euractiv.com/section/science-policy/news/new-circular-economy-package-less-ambitious-than-axed-predecessor/>

7 Samuel White, "NGOs fear 'better regulation' could hurt environment", Euroactiv.com, 13 May 2015, <http://www.euractiv.com/section/science-policy/news/ngos-fear-better-regulation-could-hurt-environment/>

8 Magda Stoczkiewicz, "Commission fails 'Better Regulation' test on Circular Economy Package", 18 May 2016, <https://www.euractiv.com/section/climate-environment/opinion/commission-fails-better-regulation-test-on-circular-economy-package/>

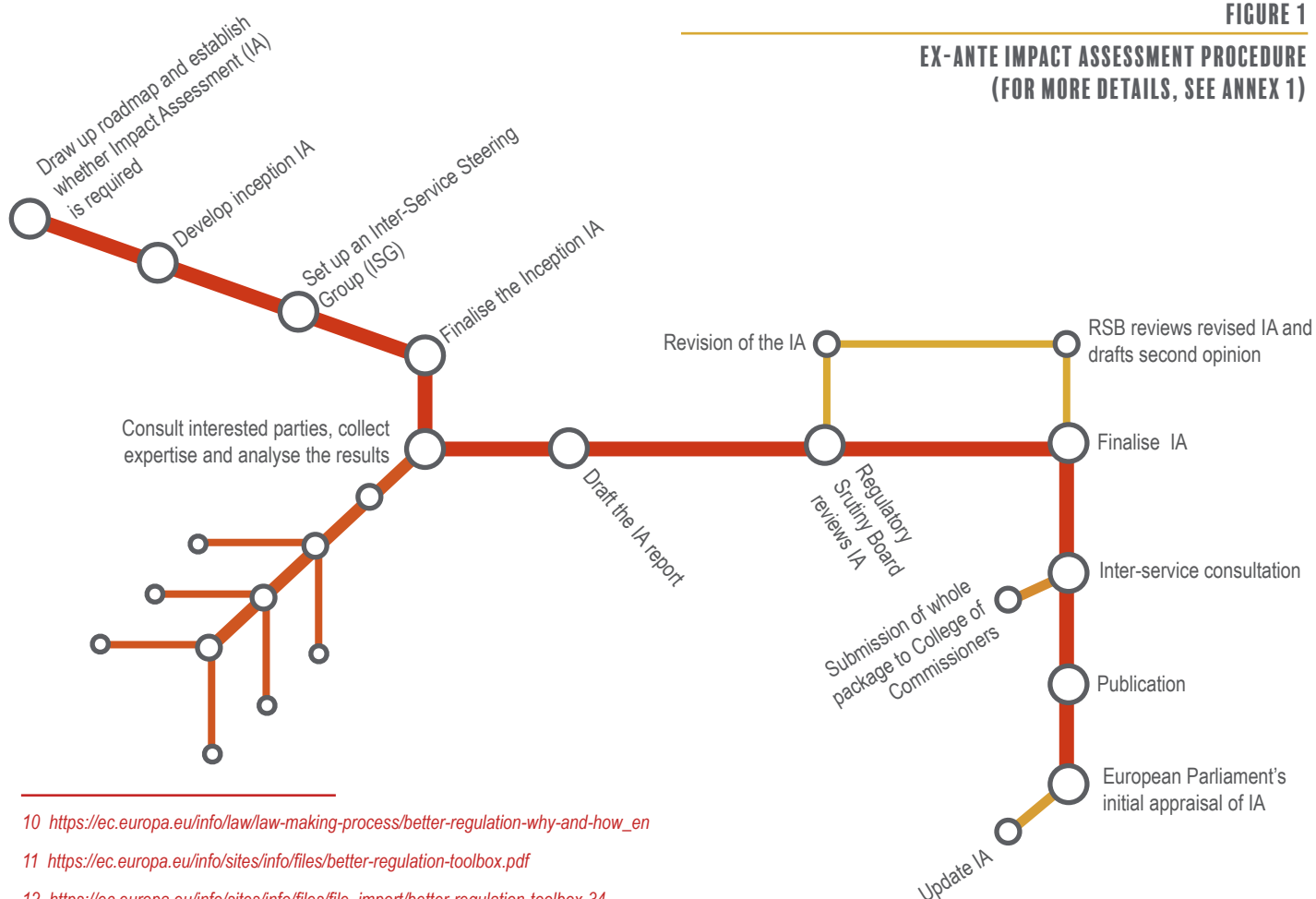
9 CONCORD's Paper on the Better Regulation Package.

IMPACT ASSESSMENTS

In the BRP, the key instrument for producing well-informed, evidence-based decisions is the impact assessment, whose aim is to inform decision makers about the likely consequences of projects, plans, policies and regulations.¹⁰ Its underlying rationale is that opening up regulation to input by stakeholders and citizens – as well as taking into account a wide range of policy options in the impact assessment system, and weighting all alternative policy options before making the final policy decision – would improve the quality of the regulatory decision-making process and would, thereby, produce better regulation.

The Impact Assessment Guidelines were revised in the BRP. New ones included Tool #34, specifically for taking the impacts on developing countries into account, and Tool #28, for ensuring that policies respect fundamental rights and human rights.¹¹ The package specifies that, in the preparation of an initiative, economic, social and environmental impacts on developing countries must be taken into account at a very early stage.¹¹ In its communication in November 2016, “Next steps for a sustainable European future”, the European Commission also clearly linked the Better Regulation Package with securing PCD and meeting the targets of the 2030 Agenda (PCSD).

This CONCORD briefing paper looks specifically at the Better Regulation Package (BRP) from the perspective of PCD. Did the revised impact assessment policy improve how impacts on developing countries were incorporated into the assessments carried out by the European Commission in 2016? And has this led to more PCD-compliant policies and legislative proposals? To answer these questions, the report builds upon the methodology developed by CONCORD’s Danish member, Globalt Fokus. From 2009 to 2015, Globalt Fokus carried out annual screenings of the EC’s impact assessments (IAs), checking whether the impacts on developing countries had been adequately taken into account. The briefing paper continues this examination, but also looks at the opinions issued by the Regulatory Scrutiny Board (RSB), analysing whether the latter is fulfilling its role as the guardian of robust PCD analysis in IAs. The paper also examines four policy or legislative proposals in depth, going beyond a statistical approach to include a qualitative analysis and recommendations.



10 https://ec.europa.eu/info/law/law-making-process/better-regulation-why-and-how_en

11 <https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox.pdf>

12 https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-34_en_0.pdf

13 <https://concordeurope.org/2016/11/16/sustainable-development-report-2016/>

IMPACT ASSESSMENTS IN 2016: SOME SIGNS OF IMPROVEMENT

The impact assessments carried out on policy and legislative proposals issued by the Commission in 2016 show a lack of consideration of the impacts of these proposals on developing countries. First, CONCORD looked at all these IAs to see whether or not their respective proposals were likely to affect developing countries. In such cases, the Commission should have assessed the impacts on these countries. Secondly, we looked in more detail at those IAs considered relevant from a PCD perspective, in an attempt to determine whether these impacts had been adequately assessed. A more elaborate description of the methodology can be found in the Annex.

This screening shows that, in 2016, 28% of the policy or legislative proposals accompanied by an IA were likely to have a clear, significant impact on developing countries.

The impact assessments of approximately 24% of these proposals judged relevant to developing countries can be said to have looked sufficiently at such impacts. One such example is the proposal on the partnership with the countries of Africa, the Caribbean and the Pacific, which should have automatically considered the impact on developing countries, since the partnership itself is about development. Unfortunately, the impact assessment for the new instrument contributing to stability and peace – a proposal that is also focused on developing countries – seems to have inadequately assessed the impacts on those countries. You can find the more detailed overview of the 2016 impact assessments judged relevant for developing countries in annex 3.

BOX 2 CONCORD'S 2016 RECOMMENDATIONS ON IMPACT ASSESSMENTS¹²

In its 2016 report "Sustainable Development: The Stakes Could Not be Higher," CONCORD urged the Commission (1) to assess the probable impact of new policies in a genuinely participatory manner – especially their likely impact on sustainable development and human rights in developing countries – and then to take this impact into account when developing the policies; (2) to ensure that, when impact assessments and public consultations are being conducted, the arguments of less powerful actors in society, including women and girls, are attentively taken into account, in order to prevent industries and large companies from dominating these processes; and (3) to ensure that the Regulatory Scrutiny Board pays special attention to the reasoning put forward and underlying evidence provided when an impact assessment states that there are no negative impacts on poverty eradication or human rights in developing countries.

TABLE 1

2009-2016 IMPACT ASSESSMENTS AND THEIR ANALYSIS OF IMPACTS ON DEVELOPING COUNTRIES

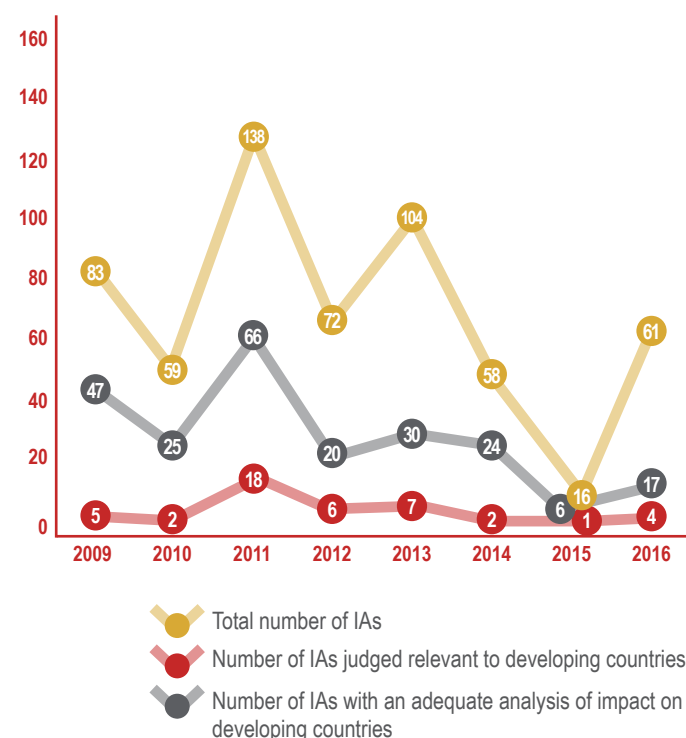
Year	Total number of IAs	Number of IAs relevant to developing countries (%)	Number of IAs with an adequate analysis of impact on developing countries (%)
2009	83	47 (57)	5 (11)
2010	59	26 (44)	2 (8)
2011	138	66 (48)	18 (27)
2012	72	20 (28)	6 (30)
2013	104	30 (29)	7 (23)
2014	58	24 (41)	2 (8)
2015	16	6 (38)	1 (17)
2016	61	17 (28)	4 (24)

Source: *Globalt Fokus* reports, 2016 data added by CONCORD. The 2015 information comes from CONCORD's report "The Stakes Could Not Be Higher."

From a statistical point of view, where PCD is concerned we can consider the Commission to have delivered better IAs than in the previous years (see Figure 2). From the absolute low in 2014, when only 8% of the proposals relevant to developing countries were accompanied by a satisfactorily thorough impact assessment, by 2016 this proportion had risen to 24%. This is a welcome trend, but it still means that in the vast majority of cases no attention whatsoever is paid to impacts in developing countries.

FIGURE 2

2009-2016 IMPACT ASSESSMENTS



REGULATORY SCRUTINY BOARD: A CHAMPION OF PCD?

The Better Regulation Package contained a decision to replace the Impact Assessment Board with a Regulatory Scrutiny Board (RSB), which would be given greater independence. The RSB now issues an opinion on the draft IAs carried out by the European Commission, and can make recommendations to improve them, or to supplement certain aspects, before they are approved and considered final. Because of this role, the RSB certainly could act as a champion of PCD, ensuring that all policy and legislative proposals likely to affect developing countries adequately assess their probable impacts and take them into account.

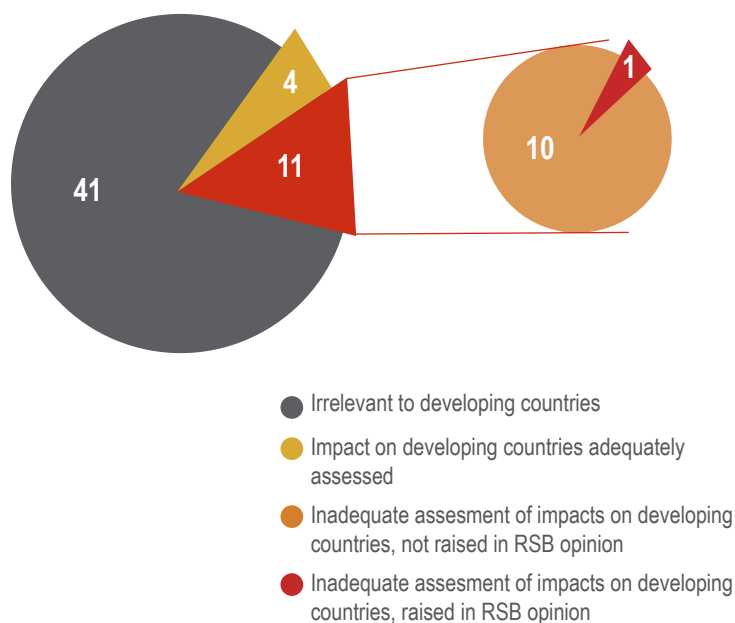
Of the 61 impact assessments carried out on proposals in 2016, the Regulatory Scrutiny Board issued an opinion on 56 and its predecessor, the Impact Assessment Board, on 5. From these opinions we cannot conclude that the RSB has had a positive influence on PCD so far. Only in the case of the “Proposal establishing an instrument contributing to stability and peace”¹⁴ is there an explicit reference to PCD and the impacts on developing countries anticipated by the RSB. The opinion states that “the impact analysis should demonstrate how ‘small’ investments in security actions may prevent large risks or ineffective expenditure for development policy.”

Only in two other cases has the RSB mentioned – indirectly – that the impact assessment did not sufficiently take into account the impacts on third countries. One of these is relevant to our focus on developing countries. In the case of the Proposal for a Regulation on Mercury,¹⁵ the RSB stated that the Commission should “assess the evolution of the competitive position of EU companies, both under the baseline and under the policy options”, and should assess whether “a displacement of production to non-signatory third countries is likely or not”.¹⁶ In this case, however, the RSB is referring to third countries in general, not to developing countries in particular. Moreover, it is not clear whether the RSB is highlighting this point with PCD in mind or for other reasons.

The RSB did not act as the guardian of PCD in 2016. Of its 15 opinions on impact assessments for proposals that CONCORD identified as having significant, direct impacts on sustainable development in developing countries, we observe that only four sufficiently incorporated an analysis of the impacts on developing countries. Of the remaining 11 opinions, only one – on the IA for the proposal to amend the instrument contributing to stability and peace – concludes that the IA should demonstrate more clearly both the anticipated positive impacts of the policy option for developing countries and how funding the proposed activities would add value, as compared to expenditure on traditional development aid areas. Another opinion – on the impact assessment for the Proposal for a Regulation on Mercury – stated that the impact on third countries should be taken into account more. In other words, of the cases in which the Regulatory Scrutiny Board could have pointed to the lack of assessment of impacts on developing countries, in only 9% did it actually do so, and in only 18% did it refer to the lack of assessment of impacts on developing or third countries more broadly.

We may therefore conclude that, so far, the Regulatory Scrutiny Board has so far defaulted in its role as PCD champion and must do more to assess the coherence and impact of policy proposals likely to affect developing countries if it is to fulfil its legal obligations established in the Lisbon treaty.

FIGURE 3
RSB OPINIONS AND HOW MUCH THEY CORRECT AN INADEQUATE ANALYSIS OF IMPACT ON DEVELOPING COUNTRIES



¹⁴ <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-447-EN-F2-1.PDF>

¹⁵ <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-39-EN-F1-1.PDF>

¹⁶ http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2016/sec_2016_0076_en.pdf

EUROPEAN PARLIAMENT OVERSIGHT

The Ex-Ante Impact Assessment Unit (IMPA) of the Directorate for Impact Assessment and European Added Value, in the Directorate-General for Parliamentary Research Services (DG EPRS), is to be proactive in providing initial appraisals that give an overview, and analyse the quality, of European Commission IAs accompanying legislative proposals. Additionally, at the request of individual parliamentary committees, the unit can provide more detailed appraisals of the quality and independence of Commission IAs, and/or complementary or substitute impact assessments on aspects of a legislative proposal not dealt with adequately (or at all) by the Commission in its IA.

In 2016, the unit produced 36 initial appraisals of IAs. We considered 6 of the appraised policy proposals to have had a direct impact on developing countries. Most of these appraisals include a subchapter focusing on relations with third countries, and another looking at the consultation of stakeholders. Three of these six appraisals specifically mention the impact on partner, developing or least-developed countries.

Yet even when such an appraisal clearly points out the limitations of the assessment of the impacts on developing countries, and the shortcomings of the stakeholder consultation process (such as in the case of the IA on the proposed amendment of the instrument contributing to stability and peace), it seems that this does not influence either the debate or decisions.



CASE STUDIES

This section contains four case studies. Three have been selected on the basis of the relevance of the policy proposal for developing countries, and the fact that CONCORD members and/or other civil society organisations have been taking part in the public consultations or helping in other ways to raise concerns about impacts on developing countries. The first case is an example of a PCD-compliant impact assessment. The second one highlights the flaws in an impact assessment that appears at first sight to be PCD-compliant, but that in many ways could have been conducted better. The third case concerns an IA that did not take the social or human rights impacts on developing countries into account, when it should have done so. And finally, the fourth

case study looks at the Communication on the Partnership Framework in the area of migration management, which was not preceded by an IA. It should have been, however, because it has consequences for sustainable development in developing countries.

The first three cases below will look not only at the impact assessment itself but at the whole process, from the “inception impact assessment” to the legislative proposal, including the public consultation, how the different policy options were weighed against each other, and the opinion of the Regulatory Scrutiny Board.



CASE #1

EXAMPLE OF A PCD-COMPLIANT IMPACT ASSESSMENT: ATTRACTING THIRD-COUNTRY NATIONALS TO OFFSET LABOUR AND SKILLS SHORTAGES IN THE EU LABOUR MARKET

The impact assessment on the “Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment”¹⁷ can be considered PCD-compliant. The proposal amends the EU Blue Card directive of 2009, which was intended to facilitate the admission and mobility of highly qualified workers from third countries, and their families, in order to make the EU more competitive and attractive. The directive was a response to the labour and skills shortages within the EU labour market. As its aim was to attract third-country nationals to work in the EU, the proposal has a clear impact on developing countries: if many of their highly skilled workers leave, their development will be hampered through what is often called “the brain drain”.

In the inception impact assessment,¹⁸ this impact was already recognised, including the positive effects the directive might have, such as a brain gain through circular migration and increased remittance payments. Furthermore, the Expert Group on Economic Migration (EGEM), which was set up to give input on migration-related proposals, includes people with expertise on the impacts of labour migration on the domestic workforce and economy, and knowledge of circular migration and ethical

¹⁷ <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-378-EN-F1-1.PDF>

¹⁸ http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_home_025_review_eu_blue_card_directive_en.pdf

recruitment policies. This shows the early awareness of PCD in the policy-making process here. After the Inception IA, the impact on developing countries remained central in the impact assessment itself.

Civil society organisations' input into the public consultation¹⁹ highlighted very specific impacts of the proposal on developing countries. For example, the European Public Health Alliance pointed out that a small loss of highly skilled workers can have major impacts on middle-income countries, which are often recipients of development aid, and that the impact is even greater when it is health workers they lose.

In the final impact assessment, when considering the different policy options the Commission systematically studied the impact on developing countries in terms of remittances, brain gain, circular migration and brain drain. The IA acknowledges, however, that the brain drain impact has hardly been measured so far:

"Policies specifically focused on circular migration are in their infancy and conclusions cannot be drawn concerning their impact or effects on source countries, destination countries [or] the migrants themselves. Even though it is hard to estimate the real benefits or damages of 'brain drain' it can be assumed that small LDCs close to powerful economic regions are more likely to suffer from 'brain drain' than larger countries. This type of emigration may put the state's economy at risk, and more directly, may affect the education system as well as the healthcare and engineering sectors." (IA part 6, page 31)

These impacts are seriously taken into account, as is apparent from the fact that the IA looks at the number of 'blue cards' that have been issued to nationals of all states and concludes, from the low number given to nationals from LDCs, that the impact of the directive on these countries will remain low.²⁰ In addition, the IA looks at possibilities for minimising the negative effects of the proposal. It stresses that the safeguard mechanisms that were built into the old 2009 Blue Card Directive are important for securing ethical recruitment and circular migration:

"As regards impact on international relations, in particular with developing third countries, all options would be neutral to positive. POP1 and POP3 [POP stands for 'policy option packages', the

different options the Commission considers] would have the highest positive impact in terms of remittances and brain gain through increased possibilities for entry and access for new categories. For all options, the risk of brain drain is expected to remain modest owing to the limited numbers and existing safeguard mechanisms in the Blue Card. However, if the safeguards are not respected, POP1 in particular could have a negative effect owing to the extension to (some) medium-skilled and higher numbers." (IA Part 1, page 51, text in italics added)

For every policy option, the Commission has looked at the balance between negative and positive effects for developing countries. Although the positive impacts cannot always be measured precisely, the proposal does aim at mitigating the negative impacts. Overall, this makes this impact assessment PCD-compliant.

That said, the option preferred by the Commission, and which it claimed would have the best overall effect, was not in fact the best one for developing countries. In weighing up the different policy options and explaining why one particular one was chosen, the final legislative proposal pays special attention to LDCs, laying down special rules to limit negative impacts on them:

"A provision is also included to safeguard international agreements concluded by the Union and/or its Member States to ensure ethical recruitment, i.e. to protect those sectors suffering from lack of personnel in developing countries." (Final proposal, page 14)

STRENGTHS

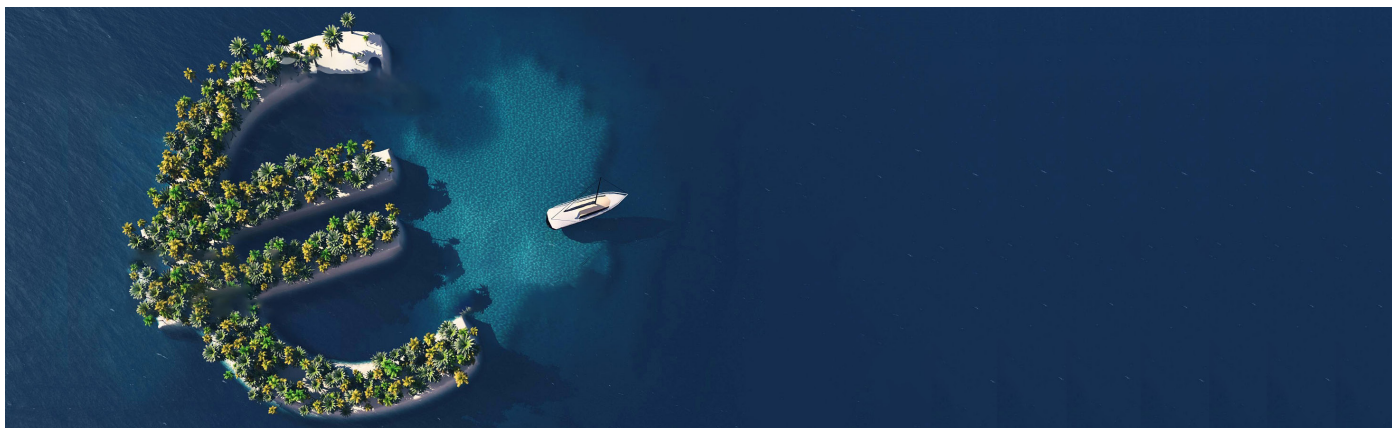
- Impacts on developing countries have been taken into account from the start and, thus, throughout the entire policy-making process.
- A distinction has been explicitly drawn between impacts on third countries and impacts on LDCs.
- There is a detailed account of the effects on these developing countries.
- The lack of information on/proof of positive effects is countered by mitigating the negative effects.
- EUROSTAT data on the Blue Card is used extensively.
- DEVCO's Migration and Employment Unit (B3) was invited to join the IA Inter-Service Steering Group.

WEAKNESSES

- Ultimately, in weighing up the impacts of the different policy options and explaining why one particular policy option was chosen, the IA did not explicitly name the impacts on developing countries.

¹⁹ <http://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-193-F1-EN-MAIN-PART-4.PDF>

²⁰ "Given the low number of EU Blue Cards currently granted to highly qualified migrants from LDCs, the potential negative impacts of brain drain are likely limited for these countries. Middle-income developing countries (DCs) may, however, be exposed to a somewhat higher risk. In 2013, 9,978 Blue Cards (76.97 %) were granted to citizens of DCs. In 2014, this number increased to 10,455 (76.19 %). Nevertheless, in absolute terms the number of Blue Cards granted to citizens of DCs remains relatively low." (IA part 6, page 31).



CASE #2

EXAMPLE OF AN IMPACT ASSESSMENT THAT DID NOT SUFFICIENTLY INCORPORATE PCD: OBLIGING MULTINATIONALS TO DISCLOSE KEY FINANCIAL INFORMATION

The “Proposal for a Directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches”²¹ is an example of an impact assessment that at first sight may look PCD-compliant, but which a more detailed qualitative analysis shows is actually not. If adopted, the proposal would introduce an obligation on large multinational companies operating in the EU to disclose publicly their key accounting information, including tax paid, on a country-by-country basis. It is a measure that has long been demanded by the European Parliament and civil society, to increase transparency in corporate taxation and support the fight against corporate tax avoidance.

This proposal is relevant to developing countries because information about the tax transactions of companies that operate there is crucial to their fight against corporate profit shifting. Because access to information about the tax affairs of multinational companies is limited, developing countries cannot track tax avoidance. Making such information public could result in both stronger public pressure and better-informed policies and interventions by tax authorities, designed to curb corporate tax avoidance and also to increase corporate tax revenue, which is essential for funding key public services. For this to happen, however, the information reported by the companies would have to be disaggregated on a country-by-country basis in all the countries in which they operate.

However, this policy option, which would be ideal for developing countries, was not selected.²² That in itself could be acceptable

21 <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-198-EN-F1-1.PDF>

22 “#Country-by-country-reporting: Increased tax transparency without jeopardizing competitiveness”, <https://www.eureporter.co/frontpage/2017/07/04/country-by-country-reporting-increased-tax-transparency-without-jeopardizing-competitiveness/>

provided the impacts on developing countries were adequately assessed and the different consequences properly weighed. In this case, however, first of all, the way in which the input from the public consultation was processed, and secondly, the extent to which it was taken into account when the options were considered, can be questioned.

INFORMATION ABOUT THE IMPACTS ON DEVELOPING COUNTRIES

Unlike many other IAs, this impact assessment²³ has a detailed section on the impacts of the proposal on developing countries. It looks at the consequences for third countries in general, and developing countries in particular. The elements mentioned in the impact assessment that relate to the effects on developing countries stem mainly from the input into the public consultation given by CSOs. It seems, however, that the Commission has not done any further research on the issue. Two things clearly indicate this. First, the IA refers to a report by the IMF indirectly, rather than directly, which gives the impression that the Commission itself did not look at these IMF reports. Secondly, the impact assessment contains inaccurate information. For example, it is stated that:

“There are in principle no barriers to those tax administrations getting full access to the same complete country-by-country information as that which is available to any other country. (...) Barriers, if any, would be found on other accounts, such as lack of resources.” (IA, page 43)

The claim that tax administrations in developing countries have full access to country-by-country information is, however, inaccurate. A report by the Tax Justice Network demonstrates the opposite. That report makes it clear that the current OECD procedure allows the exchange of information under several conditions: there must be an official information exchange agreement in place between the countries, together with an explicit promise by the country requesting the information that it will not use it as a direct basis for decisions on tax policy.²⁴ This makes it impossible for developing countries to have an effective tax policy. The possibility of easy and full access to country-by-country information, therefore, cannot yet be said to exist.

23 <http://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-117-F1-EN-MAIN-PART-1.PDF>

24 Andres Knobel and Alex Cobham, “Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights”, Tax Justice Network (December 2016), 2, https://financialtransparency.org/wp-content/uploads/2016/12/TNJ_AccesstoCBCRreport.pdf

The section on developing countries appears to be a summary of the public consultation, without further research or scrutiny by the Commission.

IMPORTANCE OF THE IMPACTS ON DEVELOPING COUNTRIES WHEN POLICY OPTIONS ARE BEING WEIGHED UP

In the section on the impacts on developing countries, the Commission concludes that:

“... any further public transparency initiated by the EU could represent an additional assistance to developing countries.” (IA, page 44)

Saying that all policy options would have positive effects for developing countries might be seen as the Commission’s justification for not taking the impacts on them into account when weighing the different options. And this does seem to be the case. Despite the information provided on the impacts on developing countries, the IA does not show that the Commission explicitly took policy coherence for development into account when weighing up the different options. On the contrary, the Commission seems to be biased, paying attention only to the impacts that the policy options could have for businesses. When comparing impacts, the Commission looks only at those affecting growth and jobs, tax conflicts and double taxation, competitiveness, administrative burdens and social conditions in Europe.

Third countries do feature in the table showing the consequences for stakeholders, but they seem to play little role (if any) in the ultimate weighing of the different policy options. Notwithstanding the fact that the stance of NGOs and trade unions – favouring the full public disclosure of tax information – is mentioned briefly, economic arguments seem to clinch the matter in the end. In the summary of the public consultation, one sentence from a submission is quoted as reflecting the general sentiment of firms and industry associations:

“There is no need for the EU to introduce additional transparency requirements that go beyond BEPS as this would not combat aggressive tax planning, harmful tax regimes or tax fraud but will indeed harm the competitiveness of the EU as a region.” (IA, page 75)

This statement seems to guide the weighing of the different impacts, whereas the impact on developing countries plays no role at all.

The focus on businesses might be explained by the fact that only nine replies to the public consultation came from intergovernmental organisations, NGOs, trade unions or think tanks, compared to fifteen from more business-oriented bodies. Moreover the Platform for Tax Good Governance, which contributed to the proposal, consists of the tax authorities of the 28 member states and fifteen organisations. Of these fifteen, only three organisations might be said to have a strong, clear focus on developing countries rather than business: namely, Oxfam International, ActionAid and Christian Aid. This imbalance in the consultations between business and development actors should not result in a focus on business in the IA, however: because business actors will naturally have more time and money to invest in lobbying the Commission, the latter should bear this in mind when processing the consultations.

Interestingly, DG DEVCO was not invited to join the Inter-Service Steering Group for the impact assessment. The inception impact assessment²⁵ only very briefly mentions the impacts on developing countries, despite the clear impacts the legislative proposal has on them. Ultimately, the impact assessment can be said not to meet the requirements of PCD. This example shows that, while the CSOs’ input into the public consultation is necessary, it is often no guarantee that the impacts on local communities and the environment in the Global South will be taken into account.

STRENGTHS

- The IA deals explicitly with the impacts on developing countries.

WEAKNESSES

- Apart from the information gathered during the public consultation, the Commission seems to have carried out no further research in order to assess the impacts on developing countries.
- The choice of a policy option that was not the most favourable one for developing countries appears to have been based on an inadequate analysis of the information available.
- In balancing the different policy options, ultimately, the impacts on developing countries were not taken into account.
- Despite the serious impacts on developing countries, DG DEVCO was not involved in the IA Steering Group or the inter-service consultation.

²⁵ http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_fisma_107_cwpfollowup_inception_ia_corporate_tax_transparency_en.pdf

SNAKES & LADDERS SPECIAL EDITION 2017

THE EU IMPACT ASSESSMENT PATH

HOW TO PLAY

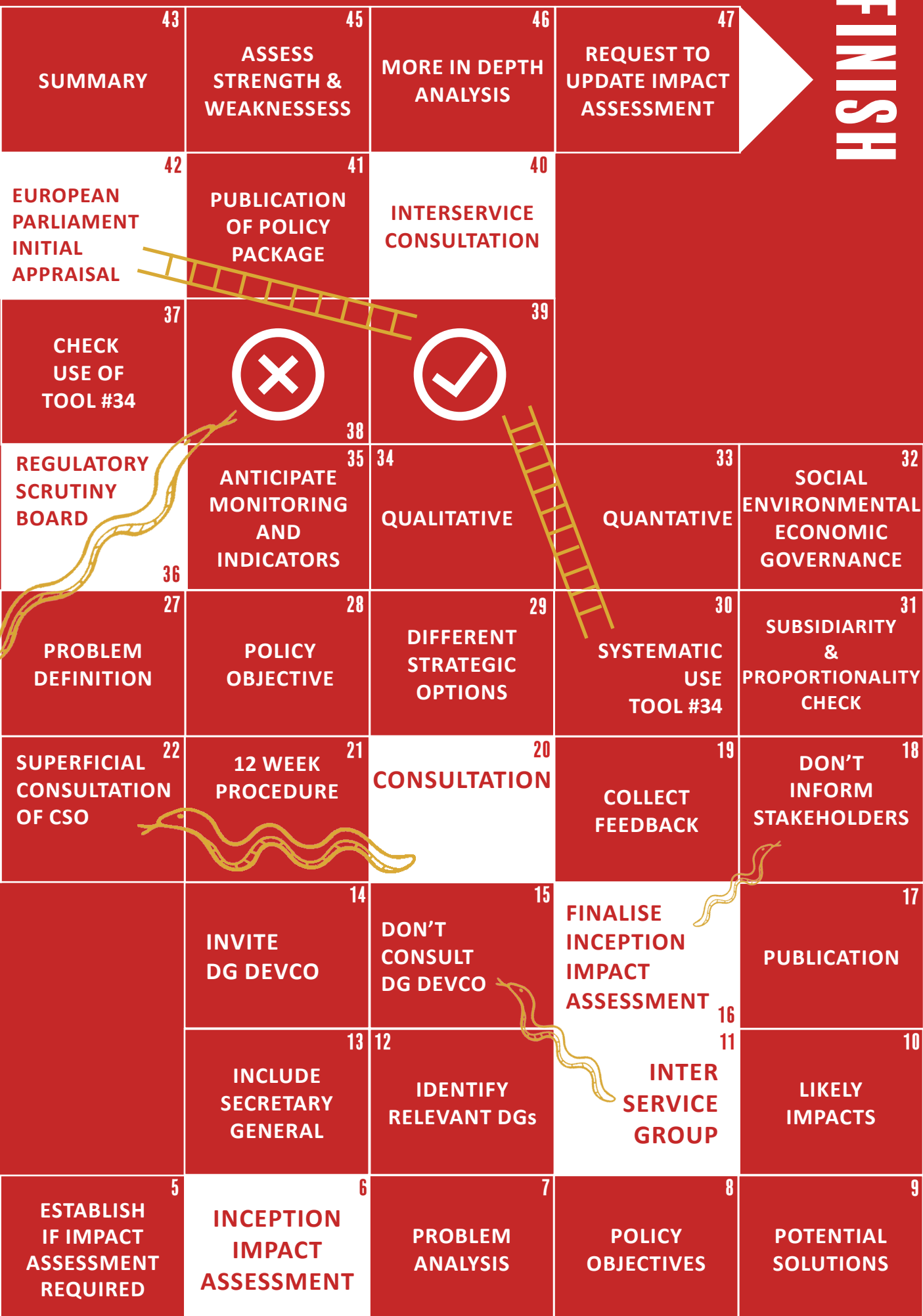
- You need 1 dice and an unlimited number of players
- Each player puts their counter on the "Start" space
- Take it in turns to roll the dice
- Move your counter forward the number of spaces shown on the dice
- If your counter lands at the bottom of a ladder, you can move up to the top of the ladder
- If your counter lands on the head of a snake, you must slide down to the bottom of the snake
- The first player to get to reach "Finish" is the winner

25	26
ANALYSIS	DRAFT IMPACT ASSESSMENT
24	23
DATA COLLECTION	EVIDENCE GATHERING

START



FINISH





CASE #3

EXAMPLE OF AN IMPACT ASSESSMENT THAT IGNORED SOCIAL AND HUMAN RIGHTS IMPACTS IN DEVELOPING COUNTRIES: RENEWABLE ENERGY

In 2016 the Commission proposed a new Renewable Energy Directive for the period 2020-2030, setting the framework for the promotion of renewable energies in Europe.²⁶ Two public consultations fed into the impact assessment: one on renewable energy in general, and the second specifically on the sustainability of bioenergy. Promoting and incentivising the use of renewable energies is of course crucial, but it should not be done at the expense of local communities in developing countries, nor should it translate into deforestation or environmental degradation.

The impact assessment does not adequately represent the various views expressed; in particular, it ignored the social impacts in developing countries pointed out by development NGOs such as Oxfam and ActionAid. In reality, the increased demand for agricultural commodities to produce biofuels drives agriculture onto new land, causing deforestation and the conversion of carbon-rich soils such as peatlands. Oxfam estimated that if the 70,000 sq km of land used to produce biofuels for the EU in 2008 had been used instead to produce wheat and maize, it could have fed 127 million people for the entire year. Policies that subsidise or mandate food-based biofuel production or consumption are driving up food prices, multiplying price shocks in agricultural markets and driving contentious large-scale land acquisitions.²⁷

²⁶ <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-767-F2-EN-MAIN-PART-1.PDF>

²⁷ ULYSSES reports, <http://www.fp7-ulysses.eu/publications.html>; H. De Gorter, D. Drabik and D. Just (2015), *The Economics of Biofuel Policies: Impacts on Price Volatility in Grain and Oilseeds Markets*, New York NY: Palgrave MacMillan; K. Nolte, M. Ostermeier and K. Schultze (2014), «Food or Fuel: The Role of Agrofuels in the Rush for Land», <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-396661>.

THE PREPARATORY PHASE LEADING TO THE IMPACT ASSESSMENT

The different stages of the policy-making process, from the inception impact assessment to the intervention of the Regulatory Scrutiny Board, all suffer from a lack of focus on PCD. The inception impact assessment does not deal with the impact on developing countries. The impact on third countries is framed in terms of the expected benefit for these countries if new technologies are developed in the EU. Despite requests from several CSOs to include DG DEVCO in the policy-making process from the inception impact assessment,²⁸ this was not done. Not until afterwards did DEVCO's Sustainable Energy and Climate Change Unit (C6) take part in the inter-service consultation.

The two public consultations did not allocate enough room to take impacts in the Global South into account. This applies particularly to the multiple-choice questions, on which the Commission draws heavily in its summary of replies received. The public consultation on renewable energy in general involved 13% replies from NGOs. The Commission's summary, however, reflects exclusively the views of other stakeholders – more than 71% of responses came from the bioenergy industry. Local communities in the Global South are not listed among the categories of stakeholders that could be affected by the EU's renewable energy policy.

THE IMPACT ASSESSMENT

In the assessment itself, the section on the impact on third countries is very marginal. Only three paragraphs in the 130-page IA relate to the impact on people living in third countries. The statement that the pressure on forests may have negative impacts on local communities is downplayed in the next sentence, which says that it may also create jobs. In the next paragraph, the positive effects of voluntary sustainability schemes on social/labour rights are alluded to without any evidence to buttress such assertions – and in fact this claim contradicts the evidence, which shows the ineffectiveness of these schemes.²⁹

²⁸ ActionAid, BirdLife Europe, Climate Action Network Europe, European Environmental Bureau, Fern, Greenpeace EU, Transport & Environment, Wetlands International, letter dated 11 December 2015

²⁹ ActionAid report, http://www.actionaid.org/sites/files/actionaid/expose_progressreportec_final_inclus_0.pdf

The four potential risks identified by the Commission in the IA include no impacts on people living in poverty in the Global South. Only the environmental dimension is addressed, the social dimension (access to and control of natural resources, such as land and water, by local communities; the risk of exacerbating food insecurity, and even the risks associated with poor labour conditions) being ignored when risks are described.³⁰ This is remarkable, given the wealth of research and publications available that report on the negative impacts of biofuels on developing countries,³¹ including an independent study commissioned by DEVCO itself in 2013.³²

BIAS TOWARDS THE INTERESTS OF THE EUROPEAN BIOFUEL INDUSTRY AND ITS ALLIES

The IA proposed options to increase low-carbon and renewable energy in the transport sector. The option preferred was the one giving certainty to investors while allowing for a gradual reduction of food-based biofuels because of their negative environmental impact. It seems that the environmental and economic dimensions have been carefully weighed in this case. The justification for choosing that option highlights its benefit for greenhouse gas (GHG) reduction, but shows that social concerns have actually not been considered:

“A progressive reduction of food-based biofuels and their replacement by more advanced biofuels will realise the potential for decarbonising the transport sector. However, in determining the progression of the reduction of conventional biofuels, it is important not to retrospectively undermine the business models incentivised by the existing directive. Therefore the proposed trajectory progressively reducing the share of conventional biofuels aims at avoiding stranded assets and unintended job losses, whilst taking into account the important past investments realised so far, and is also in line with a realistic rollout of advanced biofuels in the market.”³³

The IA also examined the need – and options – for a policy on the sustainability of bioenergy. A public consultation was carried out specifically on that aspect (see above). The option preferred was considered the most cost-effective approach to ensuring that bioenergy use in the EU post-2020 continues to deliver optimal GHG savings while minimising the risk of the adverse environmental impacts associated with increased deforestation. Here again, social and human rights impacts are ignored. The RSB issued an opinion on the impact assessment three times, but did not once mention the lack of focus on developing countries.

The Renewable Energy Directive (RED II) is still being discussed at the moment and it is too early to determine what the final result will be. It seems that some environmental concerns will be reflected – at least in part – in the final legislation; and the reduction in the use of food crops to produce biofuels, because of their poor GHG performance, is a good thing, and will also prevent negative impacts on local communities in the Global South. Overall, however, the fact that the Commission deliberately ignores impacts on people living in poverty outside European borders is a cause of serious concern for CONCORD.

STRENGTHS

- A certain amount of attention to environmental impacts, and an attempt to weigh options by trying to balance the economic and environmental dimensions.

WEAKNESSES

- No adequate or serious consideration of social or human rights impacts in developing countries.
- The impact assessment deals only very marginally with the impacts on “third countries”, despite the wealth of evidence available.
- The public consultation focused on the technical aspect of the sustainability of bioenergy, leaving out the social dimension. Furthermore, the multiple-choice questions left little space for raising human rights concerns.
- The impact assessment seems to prioritise economic impact in Europe over the social, economic, environmental and governance impacts in partner countries.

³⁰ <http://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-418-F1-EN-MAIN-PART-4.PDF>

³¹ http://www.actionaid.org/sites/files/actionaid/expose_progressreportec_final_inclus_0.pdf; <https://www.oxfam.org/en/research/burning-land-burning-climate>; *Business & Human Rights Resource Centre, Investor Briefing: Renewable Energy Impacts on Communities*, <https://business-humanrights.org/sites/default/files/Investor%20briefing%20-%20Renewable%20energy%20-%20Apr%202017.pdf>

³² https://ec.europa.eu/europeaid/sites/devco/files/study-impact-assesment-biofuels-production-on-development-pcd-201302_en_2.pdf

³³ European Commission, “Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast)”, COM(2016) 767 (July 30, 2016), http://eur-lex.europa.eu/resource.html?uri=cellar:151772eb-b7e9-11e6-9e3c-01aa75ed71a1.0001.02/DOC_1&format=PDF



CASE #4

NO IMPACT ASSESSMENT: THE PARTNERSHIP FRAMEWORK ON MIGRATION

The first three case studies show that impact assessments for policy or legislative proposals affecting developing countries do not always automatically, or adequately, assess the proposals' impact on developing countries. Not all the Commission's initiatives are accompanied by an impact assessment, however. Often, the Commission introduces new policies by means of communications, statements or other publications for which impact assessments are not mandatory. This case study looks at a communication on migration that was not accompanied by an impact assessment, despite its obvious impacts on the various dimensions of sustainable development in partner countries.

The partnership framework with third countries under the European Agenda on Migration was established by a communication to respond to the so-called migration crisis, which we regard as a solidarity crisis.³⁴ It sets out to use "all means available" in a coordinated way to address all aspects of the "migration crisis": under the framework, member states, EU institutions and third countries have to work together to reinforce local capacity building for asylum, border control, counter-smuggling and reintegration efforts.

To this end, the partnership proposes the signing of "migration compacts" with third countries, in which all the EU's external policies towards these countries would converge to "manage migration better" – i.e. to curb irregular migration to Europe by ensuring that people return to their countries of origin or transit, or any "safe third country", or that they "stay close to home" in the first place. Development cooperation is one of the instruments used to secure countries' support in stopping the migratory flows. A mix of positive and negative incentives will be integrated

34 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf

35 CONCORD Spotlight Paper 2015 Migration and Development <http://library.concordeurope.org/record/1635/files/DEEEP-REPORT-2016-009.pdf>

36 CONCORD report Sustainable Development: The Stakes Could Not Be Higher, <https://concordeurope.org/2016/11/16/sustainable-development-report-2016/>

into the EU's development and trade policies, to reward those countries willing to cooperate effectively with the EU on migration management and to ensure that there are consequences for those who do not cooperate. In 2015 and 2016, CONCORD already mentioned this debatable shift to using development and ODA as an instrument to support the EU's migration policies.^{35 36} This paper will not reiterate the many arguments against such a shift, but will point out that an assessment of the impact of the partnership framework proposals should have been carried out. Quick responses by policy makers are sometimes necessary, but they should never be given at the expense of the quality or evidence base of an initiative, as this can undermine PCD – as we will demonstrate below.

NEED FOR AN IMPACT ASSESSMENT

Two things indicate that, in the case of the partnership framework, an impact assessment would have improved the quality and extent of PCD compliance. First, the assumptions underlying the long-term goal named in the partnership framework can be questioned. The framework is based on the assumption that development can help tackle the root causes of irregular migration, thereby reducing the number of migrants coming to the EU.³⁷ Research shows, however, that in the short and medium term the socio-economic development of low-income countries tends to result instead in higher levels of international migration.³⁸ This is because it is not the poorest of the poor who migrate internationally – they do not have the means to do so.³⁹ With job security and higher incomes, on the other hand, people begin to wish for a better life elsewhere, and now they have the means to seek one actively. Policy approaches therefore need to concentrate on removing the root causes of involuntary migration and displacement and, at the same time, opening up legal pathways – otherwise, the cost of migrating will only increase and people will be pushed into even more dangerous situations, making exploitation by smugglers even easier. An

37 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf

38 Michael A. Clemens, "Does Development Reduce Migration?", in *International Handbook on Migration and Economic Development*, edited by Robert E.B. Lucas: 152-185, (Cheltenham: Edward Elgar, 2015)

39 Hein de Haas, "Migration and Development: A Theoretical Perspective," *International Migration Review*, Volume 44, Issue 1 (Spring 2010), DOI: 10.1111/j.1747-7379.2009.00804.x

adequate prior analysis of the policy's likely impacts would have revealed this, and would have prevented incoherence between policies resulting from inaccurate assumptions underlying the EU's decision making.

Secondly, the partnership's short-term goals are said to be: saving lives in the Mediterranean Sea, increasing the returns to countries of origin and transit, and enabling migrants and refugees to stay close to home and avoid setting out on dangerous journeys.⁴⁰ Regardless of whether or not one considers these goals appropriate, failing to assess the impacts they will have is problematic. The situation in Libya shows this. Libya is one of the countries with which the EU works, under the umbrella of the partnership framework, to prevent irregular migration. The declared aim of the partnership with Libya is to save lives at sea, step up the fight against human traffickers, protect migrants, increase resettlement, promote assisted voluntary returns and manage migrant flows through Libya's southern border.

To attain these objectives, the EU collaborates with organisations such as the UN Refugee Agency (UNHCR) and the International Organisation for Migration (IOM), and provides training for Libyan coastguards and navy personnel under Operation Sophia.⁴¹

The situation in Libya, however, raises the question of the extent to which the EU's policies there can be justified. A report by the UN's support mission in Libya (UNSMIL), which visited detention centres run by the Libyan Department for Combating Illegal Migration four times in 2016, speaks about serious human rights abuses. These outcomes are not new: earlier reports on the situation in Libya in 2014 and 2015 made similar observations.⁴² So, while the EU's policies may stop people crossing the Mediterranean Sea, another of their consequences is that, on their reception in Libya, migrants end up living in wretched conditions, in contravention of international human rights law.

In setting itself the goal of ensuring "adequate reception capacities and conditions in Libya for migrants, together with UNHCR and IOM", the EU was promising to deal with any negative consequences of its policies.⁴³ A statement by UNHCR and the IOM ahead of the informal summit in Malta in February 2017, however, mentioned that the situation in Libya was not secure enough for them to work there effectively.⁴⁴ This raises the question of how well-considered the EU's policy was – whether it was based on evidence, and whether it was the best possible option – because the Commission should have known

40 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf

41 http://europa.eu/rapid/press-release_IP-17-402_en.htm and http://europa.eu/rapid/press-release_IP-17-2187_en.htm

42 United Nations Support Mission in Libya, "Detained and Dehumanised," Report on Human Rights Abuses Against Migrants in Libya (13 December 2016), 4, http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf

43 http://www.consilium.europa.eu/press-releases-pdf/2017/2/47244654402_en.pdf

44 <http://www.unhcr.org/afr/news/press/2017/2/58931ffb4/joint-unhcr-iom-statement-addressing-migration-refugee-movements-along.html>

the complexities of the situation in Libya.

In the case of this partnership framework, an impact assessment – or at least policy making on the basis of clear evidence – could have made a big difference. A thorough analysis of the evidence available, and an assessment of the potential impacts of the various policies, taking their consequences and efficiency into account, could have led to a more informed choice of policy. It seems, however, that in this case no alternative options were analysed, and policies appear to have been drawn up on the basis of superficial and inaccurate assumptions about the security, conflict and resilience situation in the country, with the result that human rights violations were not prevented. An ex-ante impact assessment should, for example, have properly assessed the options open to migrants who are returned to transit countries, such as Libya, after being rescued in their territorial waters.

This clearly contradicts the Commission's treaty obligations to take policy coherence for development and human rights into account. Sometimes quick responses are needed, of course – here, however, the quick response seems to have come at the expense of qualitative, well-informed policy making. Once a policy is in place, an interim or ex-post impact assessment or evaluation should verify whether it actually delivers its intended results. How many migrants have been saved? How many are protected and assisted in reception centres? How many are in the process of obtaining refugee status or humanitarian visas? How many are not recognised, and are being returned? How many are resettled in donor countries? How many are locally integrated into their host societies? Are human rights and migrant rights respected throughout the process? On the basis of such an assessment, decision makers need to improve Europe's asylum system as well as its long-term approach to migration.

STRENGTHS

- The Partnership Framework differentiates between short-term and long-term objectives, thus recognising that the policy response (and ultimate solution) extends beyond the current "crisis".

WEAKNESSES

- Long-term development cooperation is subordinated to the EU's short-term migration policy, potentially undermining long-term development.
- There is no evidence that there has been any assessment of how the EU's migration policy impacts a variety of other policies, such as the EU's development cooperation and trade policy. These other policies risk being instrumentalised to serve the migration agenda when migration compacts are being negotiated.
- Does not concentrate on addressing the root causes of involuntary migration and displacement.
- It aims at reducing "irregular" migration routes without opening safe and orderly legal pathways.

CONCLUSION AND RECOMMENDATIONS

Impact assessments are in principle a powerful tool for ensuring that the negative impacts of EU policies on developing countries are minimised, and their positive impacts maximised. Over the past few years, however, the European Commission's track record in using that tool to ensure policy coherence for development (PCD) has been poor. In 2015, the Commission revised its Impact Assessment Guidelines to incorporate clear guidance on how to take into account the impacts of its policies on human rights and sustainable development in developing countries. This has resulted in a higher number of PCD-compliant IAs: in 2016, 24% of the proposals relevant to developing countries were accompanied by an impact assessment that adequately examined the impacts on those countries. The year before, the proportion had only been 17%. This is to be welcomed. At the same time, however, it also means that in the vast majority of cases, still no attention is paid to impacts in developing countries. This is true for economic and environmental impacts, but seems to apply even more where human rights and social impacts are concerned, as shown by the case study on bioenergy. The Regulatory Scrutiny Board, an independent body that checks the quality of draft impact assessments, has not played its role as a guardian of PCD: only in 10% of the cases in which it should have highlighted the lack of attention to impacts in developing countries did it actually do so.

Policy coherence for development is of paramount importance if we are to achieve the SDGs, and it makes an important contribution to the broader objective of policy coherence for sustainable development (PCSD). Impact assessments and public consultations often seem to prioritise a policy's economic impact in Europe over its social, economic, environmental and governance impacts in partner countries. Impact assessments can be improved by taking into account the impacts on developing countries from the outset, by ensuring that they are underpinned by high-quality research, by weighing the different policy options carefully and by looking at power imbalances when considering the different interests at play.

RECOMMENDATIONS



1. The European Commission should:

a. Put PCD into practice by **using the new Impact Assessment Guidelines and its tool for developing countries of the Better Regulation Package systematically and carefully**. It should ensure that staff throughout the Commission have the **expertise and capacity** to raise PCD concerns and to formulate PCD-compliant proposals.

b. **Integrate the four dimensions of sustainable development** (social, environmental, economic and governance) **into its impact assessments and policy considerations**. This would promote policy coherence for sustainable development, and would ensure that EU policies help to achieve the sustainable development goals, both in Europe and globally.

c. **Make sure that, where an impact on developing countries is likely, it is taken into account from the very start** of the policy-making process. It can do so by engaging DG DEVCO early on. Civil society and affected communities should be consulted when proposals and impact assessments are being prepared.

d. **Safeguard the balance between business' interests on the one hand and the interests of impacted communities in developing countries on the other**. If, after the different interests have been weighed up, it appears that the chosen policy option affects developing countries negatively, the Commission should see how those negative effects could be mitigated.

e. **Ensure its policies are based on evidence**, and to this end, carry out impact assessments of different policy options, even what rapid responses are required.

⁴⁵ Formerly Tool #30, since September 2017 Tool #34.

- ✓ **2. Civil society** should **give more systematically feedback on the inception impact assessments** published by the Commission.

- ✓ **3. The Regulatory Scrutiny Board** should **take policy coherence for development into account systematically. In-house expertise** on development and human rights is a precondition for doing this satisfactorily.

- ✓ **4. Relevant Parliamentary Committees** should, in the case of shortcomings flagged in the initial appraisals conducted by the Ex-Ante Impact Assessment Unit of the European Parliament, **request the European Commission to produce an additional analysis of the specific impacts of legislative or policy proposals on (communities in) developing countries.**

ANNEX 1

THE DIFFERENT STEPS IN THE EC'S EX-ANTE IMPACT ASSESSMENT PROCESS (SEE VISUAL DOUBLE PAGE 10-11)

Steps	Explanation
Draw up a roadmap and establish whether an impact assessment is required	When a DG wants to develop a (major) new law or policy, evaluate an existing law or policy, or conduct a "fitness check" of a bundle of existing, related laws and/or policies, it needs to draw up a roadmap. Roadmaps describe the problem to be tackled and the objectives to be met, explain why EU action is needed, outline policy options, and describe the main features of the consultation strategy. On the basis of the relevant roadmap, the lead DGs should – as early as possible in the policy planning/political validation process – establish whether an IA is required and seek confirmation through the political validation process.
Develop an inception impact assessment	If it is decided that an IA is to be carried out, the roadmap should be transformed into an inception impact assessment, which will go into greater detail. In the inception IA the lead DG (in close collaboration with the IA support/evaluation unit in the DG) sets out an initial analysis of the problem, the policy objectives and the different potential solutions, together with their likely impacts.
Set up an Inter-Service Group (ISG)	The inter-service group (ISG) – made up of representatives from all the services affected, and always including the Secretariat-General – will collectively steer the IA process and prepare the IA report. For initiatives that are on the Commission's work programme (or other important/sensitive initiatives), the ISG will be established and chaired by the Secretariat-General. It is recommended that a member of the lead DG's impact assessment support service participate in the ISG.
Finalise the Inception IA	The inception IA is finalised by the ISG, agreed by the Secretariat-General and is published on the Commission's website, allowing stakeholders to be informed and to provide feedback and evidence in relation to the problem, possible policy options and their likely impacts, and subsidiarity considerations. This feedback needs to be considered and integrated into the work of the ISG as appropriate.
Consult interested parties, collect expertise and analyse the results	The ISG prepares a consultation strategy, which will include a mandatory 12-week, internet-based, public consultation. The consultation strategy should ensure that stakeholders' views are sought on all key impact assessment questions. All relevant evidence – including data, scientific advice, other expert views, stakeholder input, etc. – is collected and analysed. Input into this process on substantive issues may be outsourced, on a case-by-case basis, to external contractors, selected by public tender.
Draft the impact assessment report	A Commission IA should follow a standard format. It should start by defining the problem in need of possible action, backing this up with evidence. Then it should set the policy objective, elaborating different strategic options for achieving it, and also analysing whether EU action is justified (subsidiarity) and whether it goes beyond what is necessary (proportionality). The IA should then analyse and weigh up, in a balanced and neutral way, the likely economic, social and environmental impacts of each option. Both quantitative and qualitative methodology may be used for this purpose. Specific guidance is provided for certain aspects, for instance the potential impact of legislation on small and medium-sized enterprises (the so-called "SME test"), territorial issues and fundamental rights. In the light of the findings, a preferred course of action is usually identified, although this is not, strictly speaking, a requirement. Finally, the IA should consider future monitoring arrangements and the use of indicators to assess whether the action taken corresponds to what was intended.
The Regulatory Scrutiny Board reviews the IA	The draft IA report is submitted to the Regulatory Scrutiny Board for quality review. The RSB is to review the IA and draft a positive or negative opinion.
(Revision of the IA)	If the RSB gives a negative opinion, the lead DG revises the IA in accordance with the different concerns raised in that opinion, and resubmits it to the RSB.
(RSB reviews the revised IA and drafts a second opinion)	The RSB reviews whether the concerns raised in its first opinion have been adequately addressed in the revised IA, and gives a positive or negative opinion in response.

Steps	Explanation
Finalise the impact assessment	The lead DG finalises the impact assessment on the basis of the RSB's opinion.
Inter-service consultation	Subject to a positive opinion by the RSB, the proposal, the final IA and the RSB's opinion(s) are shared within the Commission, where a formal opinion from other DGs is requested.
[Submission of the whole package to the College of Commissioners]	The proposal is approved by the College of Commissioners.
Publish the policy package on website and transmit it to the legislator	The policy package is published on the Commission's website and transmitted to the legislator.
EP's initial appraisal of the IA	The Parliament's Ex-Ante Impact Assessment Unit summarises and appraises the strengths and weaknesses of Commission IAs accompanying legislative proposals, and, at the request of the relevant EP committee, is available to provide more in-depth IA-related services (such as complementary or substitute impact assessments) in cases where certain aspects have been dealt with inadequately, or not at all, in the original Commission IA. It can also provide impact assessments of substantive amendments.
(Update the IA)	In the light of new information, or at the request of the Council or the EP, the EC may decide to update the IA.

Sources: <https://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-350-F1-EN-MAIN-PART-1.PDF>;
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/528809/EPRS_BRI\(2015\)528809_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/528809/EPRS_BRI(2015)528809_EN.pdf)

ANNEX 2

SCREENING GUIDELINES

For screening the impact assessments conducted by the European Commission in 2016, we have made use of – and in some points clarified – the screening guidelines drawn up by Globalt Fokus Denmark.

1. Determining the relevance of an impact assessment

An impact assessment (IA) may be deemed relevant if:

- a. The policy options assessed clearly, and to a significant extent, influence the conditions for the development of developing countries, and
- b. There is no doubt about this influence (matters about which doubts have been raised are deemed to be irrelevant), and
- c. The policy options include a wide variety, and thus offer a wide choice, and
- d. In cases where the policy options include standardisation policies, or policies to harmonise the standardisation of goods or services relevant to developing countries, the standards of goods and services are considered technical trade barriers.

2. Determining the adequacy of the impact assessment's analysis of the consequences for developing countries

An IA's analysis of a policy's impacts on developing countries is considered adequate if:

- a. The IA mentions the policy's possible impacts, whether positive or negative, on developing countries;
- b. The IA mentions developing countries explicitly in cases in which the policy's influence on them might differ from its influence on third countries in general;
- c. All obvious impacts are assessed and weighed against other impacts and consequences, based on clear justifications.

"Developing country" refers to the countries listed in the OECD DAC List of ODA Recipients. In cases where a proposal deals with specific impacts on one or several countries, for example in the case of fewer EU gas imports, the case has been labelled non-relevant, because it is so specific.

The template was built up with questions covering the different stages

TEMPLATE FOR CASE STUDIES 1-3

of the policy-making process. From the answers, the case studies were formulated.

Summary of the proposal

- What is the exact content and scope of the proposal?
- Why is this proposal relevant from a development perspective?
- What direct, significant impacts is it expected to have on developing countries?

Policy-making process

Roadmap/Inception IA stage:

- What is said about developing countries in the roadmap/inception IA?
- To what extent have CONCORD members (and other actors relevant to the work on developing countries) been consulted and given feedback in the preparatory phase?
- What data on developing countries has been used by the Commission in deciding whether or not there may be an impact on developing countries?
- What role has DG DEVCO played in this proposal?

Consultation:

- What role and input have CONCORD members contributed during the consultation phase? In what ways have they attempted to influence the proposal?
- What was the content of this attempt? What kind of data did they use to try and influence the Commission's decision?
- Did they appeal to any of the Commission's responsibilities in particular? (For example on the grounds of Agenda 2030 and the EU's responsibility to take into account the influences on sustainable development, in order to attain the goals set in Agenda 2030 or in human rights declarations.)

Final Impact Assessment:

- What exactly was said in the final IA about the impact on developing countries?
- Is this sufficient?
- If not, what impacts should the IA have dealt with (or dealt with more extensively)?
- To what extent can the input of CONCORD members on the impact on developing countries be traced in the final IA?

Regulatory Scrutiny Board:

- What does the RSB say about any research on the impacts on developing countries?
- Were the comments by the RSB taken into account when the final IA was being drafted?

Final proposal

- According to CONCORD, was the policy option chosen the right one? If so, why? If not, why not?

ANNEX 3

LIST OF 2016 IMPACT ASSESSMENTS JUDGED RELEVANT TO DEVELOPING COUNTRIES⁴⁵

	Commission proposal	IA with an adequate analysis of impacts on developing countries	Regulatory Scrutiny Board opinion	RSB opinion pointing at inadequate assessment of impacts on developing countries	EP initial appraisal of IAs	EP initial appraisal of IA inadequate assessment of impacts on developing countries
1	Proposal for a Regulation on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change	-	1	-	1	-
2	Joint Communication to the European Parliament and the Council: A renewed partnership with the countries of Africa, the Caribbean and the Pacific	1	1	N.A.	-	N.A.
3	Proposal for a Regulation on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013	-	1	-	-	N.A.
4	Proposal for a Directive on the promotion of the use of energy from renewable sources (recast)	-	1	-	-	N.A.
5	Proposal for a Regulation on mercury, and repealing Regulation (EC) No 1102/2008	-	1	-	1	-
6	Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012	1	1	N.A.	-	N.A.
7	Proposal for a Regulation amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds	-	1	-	1	-

⁴⁶ http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm#home

	Commission proposal	IA with an adequate analysis of impacts on developing countries	Regulatory Scrutiny Board opinion	RSB opinion pointing at inadequate assessment of impacts on developing countries	EP initial appraisal of IAs	EP initial appraisal of IA inadequate assessment of impacts on developing countries
8	Commission Delegated Regulation supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions	-	-	N.A.	-	N.A.
9	Commission Delegated Regulation supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive	-	-	N.A.	-	N.A.
10	Proposal for a Directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches	-	1	-	1	-
11	Communication on endocrine disruptors and the draft Commission acts setting out scientific criteria for their determination in the context of the EU legislation on plant protection products and biocidal products	-	1	-	-	N.A.
12	Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment	1	1	N.A.	1	N.A.
13	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 230/2014 establishing an instrument contributing to stability and peace	-	1	1	1	1
14	Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods	1	1	N.A.	-	N.A.
15	Proposal for a Directive on a common consolidated corporate tax base (CCCTB)	-	1	-	-	N.A.
16	Recommendation for a Council Decision authorising the opening of negotiations with Turkey on an Agreement on the extension of the scope of the bilateral preferential trade relationship and on the modernisation of the Customs Union	-	1	-	-	N.A.
17	Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)	-	1	-	-	N.A.
	Total amount	4	15	1	6	1

ABBREVIATIONS

BRP	Better Regulation Package
CSO	Civil society organisation
DC	Developing country
DG DEVCO	Directorate-General for International Cooperation and Development
DG EPRS	Directorate-General for Parliamentary Research Services
EC	European Commission
EGEM	Expert Group on Economic Migration
EPHA	European Public Health Alliance
EU	European Union
EUROSTAT	The statistical office of the European Union
FIDH	International Federation for Human Rights
GHG	Greenhouse gas
IA	Impact assessment
IMF	International Monetary Fund
IMPA	Ex-Ante Impact Assessment unit in the European Parliament
LDC	Least-developed country
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
PCD	Policy Coherence for Development
PCSD	Policy Coherence for Sustainable Development
POP	Policy Option Package
RED	Renewable Energy Directive
REFIT	Regulatory Fitness and Performance
RSB	Regulatory Scrutiny Board
SDGs	Sustainable Development Goals
UN	United Nations
UNHCR	UN Refugee Agency (Office of the United Nations High Commissioner for Refugees)

CONCORD PERIODIC PUBLICATIONS

AIDWATCH

Since 2005, Aidwatch has monitored and made recommendations on the quality and quantity of aid provided by EU member states and the European Commission. With these publications, we want to hold EU leaders accountable for their commitments to dedicate 0.7% of their Gross National Income to development assistance and to use this aid in a genuine and effective way.

www.concordeurope.org/aidwatch-reports

EU DELEGATIONS

The EU Delegations reports look at political and policy dialogue and programming processes, including the CSO roadmap process. The objectives of these publications are to contribute on improving the working relationship between the EU delegations and CSOs, gather examples of good practice and lessons learned, and make recommendations to the EU, member states and CSOs.

www.concordeurope.org/eu-relationships-publications

SPOTLIGHT REPORTS

Every two years since 2009, the Spotlight reports look into the policy coherence of the EU institutions and their impact on the vulnerable communities in countries outside Europe. These reports aim to raise awareness among EU political leaders and citizens on the need to change some domestic and external EU policies to ensure a fairer and more sustainable world.

www.concordeurope.org/spotlight-publications-policy-coherence-development

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