

## **Initial appraisal of a European Commission Impact Assessment**

# **Association of Overseas Countries and Territories (OCTs) with the European Union**

Impact Assessment (SWD (2012) 194, SWD (2012) 193 (summary)) for a Commission proposal for a Council Decision on the association of the overseas countries and territories with the European Union (COM (2012) 362).

- **Background**

This note seeks to provide an initial appraisal of the strengths and weaknesses of the European Commission's Impact Assessment accompanying its proposal for a Council Decision on the association of the Overseas Countries and Territories (OCTs) with the European Union.

- **Objective of the legislative proposal**

The objective of the European Commission's proposal is to renew and revise the association of the OCTs with the EU. The 21 OCTs, comprising islands having special relations with Denmark (Greenland), France, the Netherlands and the United Kingdom are associated with the EU under Part Four of the Treaty on the Functioning of the European Union (TFEU). Since 1958, the detailed rules and the procedures for this association have been laid down by the Council of the EU through successive Overseas Association Decisions (OADs), most recently in 2001. On a proposal from the Commission and after consulting the European Parliament, the Council adopts an OAD by unanimity. The present OAD will expire on 31 December 2013.

- **Identification of the issue at stake / problem drivers**

The proposed OAD aims at establishing a more reciprocal relationship, based on mutual interests, focused around updated priorities and sensitive to the current challenges faced by the OCTs. Since 2001, when the current decision was adopted, the context in which the OCTs operate has evolved considerably (climate change, management of natural resources and shifting trade patterns). Changes in the legislative situation should make it possible for the terms of association to address the new realities of the OCTs, their specificities, diversities and vulnerabilities, and their importance related to biodiversity. These changes could also reflect the new view that the OCTs' main problem is not poverty as such, shifting the current focus of the association from poverty reduction and development cooperation to a more reciprocal relationship, based on sustainable development of the OCTs.

In response to criticism made by the European Commission's Impact Assessment Board to an earlier draft IA, DG DEVCO has elaborated a clearer analysis of the main issues to be addressed in the revised OAD. However, the IA could have highlighted more clearly what the current OAD has concretely achieved (and what it has not achieved), explicitly relating this to underlying problems.

The general objectives set out by the IA are still rather broad and vague, whilst the specific objectives set out do not always seem to follow from of the general analysis.

### • **Range of the policy options considered**

In its IA, the Commission examines the potential impacts of three main options for addressing the problem:

1. Status quo: renewal of the current OAD without any changes;
2. Modernization of the OAD and alignment with the evolving EU policy framework;
3. Inclusion of OCTs in EU bilateral trade arrangements with other countries or groups of countries (for example, Economic Partnership Agreements or Foreign Trade Agreements), or special arrangements in other cases (mirroring Option One or Two) , as appropriate.

Option One would maintain the existing donor-beneficiary rationale between the EU and the OCTs, without introducing a more reciprocal partnership where mutual interests might be better addressed.

Option Two is the one chosen by the Commission, arguing that the proposed EU-OCT association would contribute to the promotion of the EU values and interests, OCTs behaving as outposts of the EU in their regions. Concerning trade in goods, the OCTs would continue to receive duty-free and quota-free access to the EU market. Trade in services would be addressed, by establishing and granting to the OCTs 'Most Favoured Nation' treatment, whereas currently they receive only basic third-country treatment (i.e. General Agreement on Trade in Services-GATS).

Option Three is discarded as it may not fully suit the needs and realities of the OCTs. In addition, by integrating OCTs in other trade agreements, they 'would legally and effectively cease to be OCTs'. Moreover, the legal process required by this option 'would be very complicated and would need to be reiterated for every OCT'. Furthermore, it would increase confusion about OCTs status and that of their inhabitants (IA executive summary, p. 12).

The IA does not concretely relate the policy options to either the identified problems or the policy objectives.

### • **Subsidiarity**

The subsidiarity dimension of the proposal is addressed not in the IA, but in the executive summary (p. 4): 'The EU's right to act in the area of EU-OCT relations derives primarily from Part Four of the TFEU. The purpose of the EU-OCT association, the social and economic development and close economic ties between the OCTs and the EU as a whole, cannot be achieved via actions at Member State level. Moreover, with regard to the OCT trade regime, Member State actions would not be possible as the common commercial policy falls within the domain of the EU's exclusive competence (Part Five, Title II of the TFEU)'.

### • **Scope of the Impact Assessment**

The Commission assesses the economic, social and environmental impacts, as well as the administrative impact, for each of the three main options presented above. The IA does not

provide any quantification of the costs or the benefits for the EU of adopting any of the presented options as policy. The evaluation seems to be more focussed on the socio-economic, environmental and administrative impacts on the OCTs, rather than on the EU. It would be reasonable to expect that in the case of Option Three, certain EU economic sectors might be negatively affected by stronger competition from the OCTs, but the IA does not attempt to quantify these potential effects.

Cost-benefit analyses have not been presented explicitly in the IA, but qualitative cost-benefit considerations are mentioned in the discussion of the above-mentioned impacts.

- **Relations with third countries**

The IA does not address the impact which the current OAD has had on the EU's and OCTs' relations with third countries. Nor does it go into detail on the expected impacts of the proposed OAD on relations with third countries. It seems reasonable to expect that certain policy options, especially policy Option Three, would have a certain impact on the EU's or OCTs' relations with third countries.

- **Budgetary or public finance implications**

EU financial assistance to the OCTs has been mainly provided through the European Development Fund (EDF). Total EU financial support for the OCTs under the 10th EDF (2007-2013) is EUR 286 million. In the Commission Communication on Preparation of the Multiannual Financial Framework regarding the financing of Union cooperation for African, Caribbean and Pacific States and Overseas Countries and Territories for the 2014-2020 period (11th European Development Fund), an amount of EUR 343.4 million is foreseen for cooperation with the OCTs. As OCT inhabitants are EU citizens, OCTs are eligible for participation in EU programmes (research framework programmes, education and training, the competitiveness and innovation framework programme and cultural and audiovisual programmes).

Part 4 of the IA, entitled Policy Options, looks at the cooperation, trade, financial assistance and implementation issues of each of the three policy options. The financial assistance part deals with the budgetary implications of each of the three policy options, but no quantitative data are provided.

- **SME test**

The IA does not include a detailed or explicit appraisal of the impact of the proposal on small and medium sized enterprises.

- **Stakeholder consultation**

The consultation of stakeholders in order to revise the OAD took place between 2008 and 2011. It included public consultation, meetings between the OCTs, the Member States to which they are constitutionally linked, and the Commission, and dialogues in the form of annual forums, regular trilateral meetings and partnership working parties dedicated to environmental and trade issues, regional integration of the OCTs, financial services and the future of the EU-OCT relations. The public consultation strongly supported the change of focus (recognized by the Commission Communication of 6 November 2009) from poverty reduction in development cooperation to a more reciprocal relationship based on sustainable development of the OCTs. A better recognition of the OCTs as partners of the EU and solidarity based on the fact that OCT inhabitants are (as citizens of their respective Member States) automatically EU citizens was underlined, as was the need for closer cooperation between the OCTs and neighbours.

- **Quality of data, research and analysis**

The Commission produced a mostly *qualitative* assessment of the socio-economic, environmental and administrative impacts of the proposed policy options. It justifies this emphasis on qualitative assessment, by referring to deficiencies in the available data. These deficiencies in *quantitative* data come from the fact that statistical data produced by the OCTs are not always publicly available. When they are available, their publication is not timely and the reference periods were not up to date or did not always conform to internationally-agreed nomenclatures. If this is the case, it means that the Commission's IA in relation to OCTs stands in marked contrast to some other recent IAs dealing with trade and development issues.

The detailed analysis in two important areas (environment and climate change and trade and trade-related issues) was conducted by specific working groups, which delivered specialized reports that were attached to the IA, as Annexes 11 and 12.

- **Commission Impact Assessment Board**

The Commission's Impact Assessment Board (IAB) delivered a first, very critical, opinion on 17 February 2012. The draft IA was resubmitted and a second IAB opinion was issued on 7 May 2012. The IAB still criticised the IA for not considering trade-offs between a more tailored approach for certain OCTs versus one pursuing general EU objectives. The IAB also asked for a more disaggregated analysis of problems and impacts. In response, DG DEVCO has integrated into the IA specific reports on environmental aspects and trade issues. The IAB suggests that the IA should differentiate more clearly between issues to be addressed in the Framework Decision and those to be addressed at a later stage, for example in programming. In addition, the Board recommended that certain issues of relevance to the relationship with the OCTs (notably international financial services and taxation) receive particular attention. DG DEVCO followed up on these recommendations, but has not fully addressed all of the issues. For example, the IA is still unclear on how the options relate concretely to the identified problem drivers, and it does not include a definition of progress indicators.

- **Coherence between the Commission's legislative proposal and IA**

The legislative proposal and IA submitted by the Commission appear to correspond.

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This note, prepared by the Impact Assessment Unit for the European Parliament's Committee on Development (DEVE), analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work. This document is also available on the internet at: <http://www.europarl.europa.eu/activities/committees/studies.html>

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