



## **Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives**

### **1. Introduction**

On 25 June 2012 the Council adopted a *Strategic Framework on Human Rights and Democracy* accompanied by an Action Plan<sup>1</sup>. The Action Plan called on the Commission to “incorporate human rights in all impact assessments on an on-going basis” (point 1) and to develop by 2014 “a methodology to aid consideration of the human rights situation in third countries in connection with the launch or conclusion of trade and/or investment agreements” (point 11a).

In response to these commitments DG Trade has developed in-house guidelines in order to help with examination of the potential impacts of a trade-related initiative on human rights in both the EU and the partner country/ies.

These guidelines focus in particular on the methodology to be followed when carrying out impact assessments (IAs), which are conducted before the European Commission proposes a new policy initiative, such as the opening of a trade negotiation; and sustainability impact assessments (SIAs), which are carried out in parallel with major bilateral and plurilateral trade negotiations.

However, the principles and approach described are applicable throughout the entire policy cycle of an initiative. They could therefore be used for *ex post* evaluations, which are carried out after (eg.) a trade agreement has entered into force and after sufficient time has passed to gather a robust body of data and evidence; or when evaluating the impact of other types of trade policy initiative, such as a regulation.

Impact assessments and evaluations are policy tools which provide a structured approach to gathering and analysing evidence that will be used to support policy making.

The Commission has an integrated approach to the assessment of impacts which is designed to ensure that all the likely economic, social, environmental, and human rights impacts are analysed and presented together in a single document. Integrated impact assessments thus provide the most effective way of making a balanced assessment of the potential impacts of any proposed legislative or non-legislative initiative. The analysis of the impact of trade-related policy initiatives (including trade or investment agreements) on human rights should preserve that approach.

There is, as yet, no universally agreed view about how human rights impact assessments should be conducted. Nevertheless, the last few years have witnessed a significant convergence of views about what good or best practice should include. The present

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<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

guidelines, build on the recent academic literature on human rights impact assessments<sup>2</sup>. They form part of the third tier of regulatory guidance in the hierarchy of *Better Regulation* guidance<sup>3</sup>.

Analysis of the human rights impacts of a trade-related initiative sets out to assess – against the normative framework of human rights obligations as set out in the Charter of Fundamental Rights of the European Union<sup>4</sup> (CFR) and a number of international sources<sup>5</sup> – how trade measures which might be included in a proposed trade-related policy initiative are likely to impact: either on the human rights of individuals in the countries or territories concerned; or on the ability of the EU and partner country/ies to fulfil or progressively realise their human rights obligations.

An impact assessment is meant to bring to the attention of policy-makers the potential impacts of the different options under consideration and thus, to support sound policy-making. An impact assessment should verify the existence of a problem, identify its underlying causes, assesses whether EU action is needed, and analyse the advantages and disadvantages of available solutions. It is not intended to pass a judgement on the actual human rights situation in a country, nor to decide whether a country is eligible for a trade agreement. This is an important distinction to keep in mind when writing the impact assessment<sup>6</sup>.

## 2. Context

The Lisbon Treaty, in Art 21 (1) TEU and Art 207 (1) TFEU establishes human rights considerations as one of the principles guiding the Union's external activities.

The Charter of Fundamental Rights of the European Union, originally proclaimed on 7 December 2000, was given binding legal effect equal to that of the Treaties following the entry into force of the Lisbon Treaty on 1 December 2009, thus strengthening the EU's commitment to human rights.<sup>7</sup>

In addition, and in line with the EU Strategic Framework on Human Rights and Democracy<sup>8</sup>, the EU is committed to promoting respect for human rights, democracy and the rule of law worldwide.

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<sup>2</sup> See §6.2

<sup>3</sup> [See §3 below for further details](#)

<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

<sup>5</sup> For further detail, please refer to §5, *Scope and depth of the analysis*.

<sup>6</sup> This approach is supported by the growing literature devoted to HRIA of trade agreements. James Harrison, for example, writes that “a *Human Rights Impact Assessment (HRIA)* is...an empirical study of the actual or potential human rights impacts of the trade agreement itself, based on the normative framework of human rights. It is not suited to ideological discussion about the purposes of, or overall justifications of the neo-liberal trade agenda. Nor is it an appropriate tool for passing judgment on whether a country should be eligible for a trade agreement. HRIAs can help focus debate around concrete issues and solutions rather than ideological battles, and narrow the gap between entrenched interests”. In J. Harrison, *Human Rights Impact Assessments of Trade Agreements: what is the state of the art?* University of Warwick 2013.

<sup>7</sup> Since 2011, the EU is a party to the UN *Convention on the Rights of Persons with Disabilities*, which is an integral part of EU law.

<sup>8</sup> Council doc. 11855/12

As highlighted in several Communications<sup>9</sup>, the Commission is committed to reinforcing the assessment of impacts on human rights<sup>10</sup> as well as to developing relevant guidance.

#### *Fundamental rights or human rights?*

The term 'fundamental rights' is used in the European Union (EU) to express the concept of human rights within a specific EU internal context including EU citizens' rights. Traditionally, the term 'fundamental rights' is used in a constitutional setting, whereas the term 'human rights' is used in international law. The two terms refer to similar substance, as can be seen when comparing the content of the CFR and the core UN conventions on human rights.

To cover the external dimension of trade IAs and SIAs, the present guidelines will generally refer to the term 'human rights'. Nevertheless, the term should be understood as also encompassing the fundamental rights enshrined in the CFR.

### **3. The *Better Regulation* agenda**

A central element of the *Better Regulation* agenda adopted by the Commission on 19 May 2015 is a set of new guidance material covering the entire policy cycle. The *Better Regulation Guidelines*<sup>11</sup> (classified as 'first level' guidance) set out the mandatory requirements and obligations for each step in the policy cycle, such as the conduct of impact assessments and evaluations<sup>12</sup>. They are supplemented by a *Better Regulation Toolbox* consisting of 59 tools covering different themes and topics, classified as 'second level' guidance.

Commission services have also developed 'third level' guidance covering specific topics relevant to their particular policy domain. The present guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives form part of that third level guidance.

Among the second level tools is Tool #24: *Fundamental Rights & Human Rights*, which gives an overview of the most salient points to consider when assessing fundamental rights in impact assessments. It complements the *Operational guidance on taking account of Fundamental Rights in Commission Impact Assessments*, which explores these issues in greater depth and provides relevant examples.

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<sup>9</sup> Communication of 8 October 2010 on *Smart Regulation in the European Union*; Communication of 19 October 2010 on a *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union*; Communication of 27 January 2012 on *Trade, Growth and Development*; Communication of 19 May 2015 on *Better regulation for better results – An EU agenda*.

<sup>10</sup> As mentioned in the introduction, the *EU Action Plan on Human Rights and Democracy* (Council doc. 11855/12) provides for the incorporation of human rights in all impact assessments carried out by the Commission.

<sup>11</sup> See [http://ec.europa.eu/smart-regulation/guidelines/docs/swd\\_br\\_guidelines\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf)

<sup>12</sup> For instance, in compliance with the *Better Regulation Guidelines*, the prospects for analysing the potential impact of a policy initiative on human rights should – as far as possible – be explained in the inception impact assessment; the approach to analysis of the human rights impacts of trade-related policy initiatives set out in these guidelines should comply with the requirements for public consultation expounded in the *Better Regulation* package; and assessments resulting from application of the present guidelines to the preparation of impact assessments will be liable to quality control by the Regulatory Scrutiny Board.

However, when assessing the impacts of initiatives with effect outside of the EU, additional consideration must be given to international human rights instruments. The present guidelines have been developed specifically to address this additional dimension in the context of trade-related policy initiatives.

Other elements of the *Better Regulation Toolbox* may be useful to consider when analysing human rights impacts of trade-related policy initiatives, in particular: Tool #25 on *Employment, working conditions, income distribution and inequality*; Tool #22 on *External trade and investment*; and Tool #30 on *Developing countries*.

#### **4. Human rights considerations in trade and investment policy**

The EU's trade policy is geared towards promoting free and fair openness to trade in the global market place. In combination with other instruments, it can contribute to the improvement of human rights in various countries.

As highlighted in the communication *Trade, Growth and Development*<sup>13</sup>, openness to trade has been a key element of successful growth and development strategies; and sustainable development over a longer period supports the emergence of favourable conditions for human rights: e.g. rising levels of employment, better living standards, and increasing government resources that can be applied to human rights related goals.

Yet *Trade, Growth and Development* also underlines that while trade is a necessary condition for development, it is not sufficient. International trade can foster growth and poverty reduction, depending on the structure of the economy, appropriate sequencing of trade liberalisation measures and complementary policies such as domestic reforms and fair income distribution. International trade policy should be seen as one component in a jigsaw of policies and actions to address poverty and promote development: including, amongst others, cooperation at multilateral and bilateral levels, development aid and support, and political dialogues; paired with domestic policies in areas such as employment, social affairs, health, good governance, the rule of law and education, as well as corporate social responsibility (CSR) practices by the private sector, etc.

In consequence, when considering the impact of trade policies on human rights issues, the EU's overall relations with the country/ies concerned should be taken into account. This may include, for example, the existence of a political framework agreement (eg, a Partnership and Cooperation Agreement), or of human rights dialogue mechanisms. These instruments provide the main platforms for the EU to discuss human rights issues with its trade partners.

#### **5. How to analyse the potential human rights impacts in impact assessments of trade-related policy initiatives**

##### *General approach and Commission guidance*

As already mentioned, the Commission has an integrated approach to impact assessment and evaluation of initiatives at different stages of the policy cycle. It is designed to ensure that all relevant impacts are analysed in terms of benefits and costs, and presented together in a single document.

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<sup>13</sup> [http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc\\_148992.EN.pdf](http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf)

The present guidelines should be read together with relevant sections of the *Better Regulation Guidelines* and *Better Regulation Toolbox*, which provide further advice on how to analyse the likely impacts of policy initiatives in relation to specific issues.

Analysis of the potential impacts of a trade-related initiative on human rights – both in the EU and in the partner country/ies – should be undertaken in compliance with the Commission *Better Regulation Guidelines*<sup>14</sup>. The present guidelines form part of a set of notes offering additional guidance, which have been developed in parallel on a range of specific themes and topics.

The analysis of the potential impacts of a trade-related initiative on human rights should also be conducted in line with the guidance on assessment of impact on fundamental rights provided in the new *Better Regulation* package (Chapter 3, Tool #24 on *Fundamental Rights & Human Rights*).

Respect for the Charter of Fundamental Rights in Commission acts and initiatives is a **binding legal requirement** in relation to both internal policies and external action. Checking compliance with the CFR is therefore an essential element of the analysis of human rights impacts in impact assessments of trade-related initiatives. The Better Regulation tool<sup>15</sup> devoted to fundamental rights includes a “Fundamental Rights Check List” that sets out a structured approach to testing compliance with the CFR, which should be followed by all Commission services.

However, when considering the impact of a trade-related initiative on human rights, CFR compliance will not be sufficient. The assessment must also examine the impact of the measures proposed on human rights obligations under international law.

For trade-related initiatives, the test for compliance with the CFR must therefore be complemented by the various steps set out below.

### Scope and depth of the analysis

Analysis of the possible human rights impact of a trade-related initiative should look at the potential impact of the proposed initiative on human rights in both the EU and the partner country/ies, and should include consideration of civil, political, economic, social, cultural and core labour rights.

The analysis should be based on the normative framework of human rights<sup>16</sup> as defined in a number of instruments in these areas: the core UN human rights conventions<sup>17</sup>, the

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<sup>14</sup> [http://ec.europa.eu/smart-regulation/guidelines/docs/swd\\_br\\_guidelines\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf)

<sup>15</sup> That tool helpfully summarizes the general approach and main elements introduced in the 2011 Staff Working Document *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*. Importantly however, where the 2011 guidance had focused narrowly on the impact assessment of **legislative** proposals, the new guidance included in the Better Regulation Toolbox emphasizes the fact that the need to ensure compliance and promotion of fundamental rights must be considered in **all** Commission acts and initiatives.

<sup>16</sup> Please refer to Annex I & II which provide for a list of key human rights instruments and a brief summary of some main human rights conventions.

<sup>17</sup> Core UN human rights treaties: *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD); *International Covenant on Economic, Social, and Cultural Rights* (ICESCR); *International Covenant on Civil and Political Rights* (ICCPR); *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT); *Convention on*

fundamental ILO conventions on core labour standards, the CFR, the European Convention on Human Rights (which applies to members of the Council of Europe) and other regional human rights conventions, as well as, where appropriate, customary international law.

The depth and scope of the assessment should be calibrated to the type of trade measures included in the initiative, as well as to the magnitude of the expected human rights impacts. It is, however, always important to keep in mind that human rights are interdependent and interrelated; and therefore to consider the likely multiple impacts that a particular trade measure might have.

The analysis of human rights impacts undertaken in IAs (which are carried out in support of Commission initiatives that are likely to have significant and clearly identifiable impacts) should be comprehensive, participative, balanced and transparent<sup>18</sup>. In the case of negotiations of major trade and investment agreements, SIAs – which are undertaken in parallel with the negotiations – allow the Commission to conduct extended analysis of the potential impact of the measures proposed on human rights.

SIAs are carried out during the course of negotiations of major trade and investment agreements by independent consultants with proven and diverse expertise in (*inter alia*) the assessment of human rights impacts. They present an opportunity to analyse the potential human rights impacts of a proposed agreement in greater depth; take into account an extensive consultation of stakeholders (including those in the partner country/ies)<sup>19</sup>; and make it possible to elaborate recommendations in order to maximize the benefits of the proposed agreement, and prevent or minimize potential negative impacts<sup>20</sup>.

## 5.1. Screening

The analysis of human rights impacts performed in impact assessments for trade-related policy initiatives will start with a screening of the trade measures under consideration.

Screening is a means to narrow down the measures which need to be assessed, identifying the key human rights issues as well as the related individual elements of the policy initiative which should be focused on for further analysis.

In particular, the screening of the proposed initiative aims at identifying:

- (a) which particular trade measures under consideration have the potential for significant human rights impacts;
- (b) which specific human rights would be likely to be affected (and with respect to which population groups);

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*the Rights of the Child (CRC); International Convention on the Rights of Persons with Disabilities (ICRPD); and International Convention for the Protection of All Persons from Enforced Disappearance (ICPED).*

<sup>18</sup> As indicated in the *Better Regulation Guidelines*, ‘an impact assessment should be comprehensive, proportionate, evidence-based, open to stakeholders’ views, unbiased, ... transparent and of high quality’.

<sup>19</sup> See *Better Regulation Toolbox*, Tool #50: *stakeholder consultation tools*; and *stakeholder consultation* under §4.3.

<sup>20</sup> The present guidelines set the methodology to be followed when analysing human rights impacts of trade-related policy initiatives in an impact assessments, ex-post evaluations or sustainability impact assessments. For further detail on the overall SIA methodology, please refer to the SIA Handbook, 2<sup>nd</sup> edition (currently under revision).

(c) whether the rights in question are absolute rights<sup>21</sup>, which cannot be limited or restricted under any circumstances.

Annex 1 provides a list of the core human rights conventions which constitute the basis for the screening exercise. It also indicates the monitoring bodies for each of them. If a deeper understanding of a particular human rights convention is necessary, it may be useful to consult the guidance from such bodies.<sup>22</sup>

In practice, some rights (mostly economic, social and core labour rights) are more likely to be positively or negatively affected by trade-related initiatives (such as trade or investment agreements) than others. In this context, gender equality and non-discrimination should be considered as cross-cutting issues.

To identify the list of rights on which the impact of trade measures will require additional analysis, the following criteria should in particular be considered:

1. "**Direct vs indirect**": it is important to focus on those areas which are more directly trade related and likely to be directly affected by the proposed options.
2. "**Major vs minor**": the analysis should focus on major impacts; a direct, but really minor impact, might not be relevant for the assessment.

Other criteria may include characteristics and specificities of the policy initiative; the magnitude<sup>23</sup> of the expected impacts; or the relevance of the issue for specific stakeholders. Of particular importance is the nature of the rights concerned: for example – as highlighted under (c) above – an absolute right cannot be limited or restricted in any way.

Attention should also be given to the current situation in the EU and partner country/ies, in particular to the existing regulatory framework; as well as to high profile or politically sensitive human rights issues that are associated with the countries concerned – even if these issues are unconnected to trade and unlikely to be affected by any specific trade measures (in which case the expected lack of impact of the trade measures should be clearly spelled out).

Reliable information should be used in this regard; including that available from the EU's human rights dialogues, the EU Reports on Human Rights and Democracy in the World (country reports), the EU Human Rights Country Strategies (HRCSSs) and their annual implementing reports, the Civil Society Roadmaps<sup>24</sup>, the European Neighbourhood Policy

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<sup>21</sup> 'The vast majority of human rights are not absolute in the sense that they can never be limited' Frédéric Mégret, *Nature of Obligations*; in Moeckli, Shah & Sivakumaran, *International Human Rights Law*, 2<sup>nd</sup> ed., OUP (2014). While the CFR itself does not explicitly list which rights are absolute, case law of the European Courts indicates that the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter) and the prohibition of slavery or servitude (Article 5 of the Charter) are protected in absolute terms.

<sup>22</sup> <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

<sup>23</sup> In this respect, their nature, geographical scope, duration as well as potential cumulative effects of likely human rights impacts should be taken into account.

<sup>24</sup> Civil Society Roadmaps can be found on the website:  
<http://capacity4dev.ec.europa.eu/public-governance-civilsociety/minisite/roadmaps>

(ENP) annual reports<sup>25</sup>, the EU Risk Management Framework for budget support, and UN reports from Treaty-based or Charter-based procedures<sup>26</sup>.

Both long-term and short-term possible human rights impacts should be considered in the screening exercise.

*For example, during the screening exercise of a proposed trade agreement, a desk officer may look into the following questions:*

- *Will the agreement cover goods or services (e.g. books, films etc) that could have an impact on freedom of opinion or expression as enshrined in the CFR or the Universal Declaration of Human Rights? If so, is the impact likely to be direct and major? Is this likely impact linked to a high profile or politically sensitive human rights issue in the EU or the partner country?*
- *Will the agreement cover the regulation of plant varieties and patents related to traditional knowledge that could affect the cultural heritage and traditional knowledge of indigenous peoples and local communities as enshrined in the International Covenant on Economic, Social and Cultural Rights?*
- *Will the agreement have impacts on human rights linked to social aspects? Will the agreement have impacts on the quantity of employment or on working conditions of men and women (e.g. health and safety at work)? Will this encompass distributional impacts (e.g. income inequalities)?*

The output of the screening process will form the basis for subsequent impact assessment work, which will seek to analyse whether, how and to what extent rights may be affected (either positively or negatively).

## **5.2. Scoping**

After having narrowed down the list of issues for detailed assessment by means of screening, it is necessary to clarify their scope and content.

The trade measures identified in the screening process should be described in detail, explaining how they would actually operate and which particular elements or aspects might give rise to human rights impacts.

For each measure identified, the likely impact on human rights should be described, indicating whether the impact is expected to be beneficial (promotion of human rights) or negative (limitation of human rights). For trade measures which could have both a beneficial and a negative impact on human rights, both impacts should be described.

In the case of *ex ante* impact assessments of proposed trade agreements based on a range of different liberalisation scenarios, it may be necessary to estimate upper and lower bounds for changes in those trade measures that are expected to have a significant impact on human rights; and then to work out the human rights implications associated with each. Wherever

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<sup>25</sup> For partners in the neighbourhood

<sup>26</sup> For more detail on useful sources, please refer to section 4.3.

relevant, the analysis should also take account of provisions built into the proposed agreement; or other ways of avoiding possible negative impacts on human rights, or of enhancing possible positive impacts.

In order to analyse whether the trade measures under consideration could have a positive or negative impact, the legal situation in the EU and the country/ies concerned should be taken into account (e.g. in terms of the human rights arising either from the HR treaties by which the parties have consented to be bound – taking into account any reservations expressed – or from constitutional or other domestic law). Pre-existing conditions of insecurity, stress or vulnerability, including of women or of particular groups (e.g. low-income, children, people with disabilities, ethnic minorities, indigenous peoples, those living in a particular territory) should be highlighted. Consultation of stakeholders<sup>27</sup> and information gathered in the framework of the EU's human rights dialogues, as well as from sources such as the EU Reports on Human Rights and Democracy in the World (country reports)<sup>28</sup>, can be instrumental in this regard.

*For example, during the scoping exercise a desk officer may consider the following questions:*

- *Will trade measures on goods and services have a beneficial or negative impact on freedom of expression? How would the measures operate? What are the particular elements or aspects that will give rise to potentially positive or negative impacts on freedom of expression? (...)*
- *Could provisions on patents promote or limit the cultural heritage and traditional knowledge of indigenous people and local communities?*
- *Could provisions on market opening have positive or negative impacts on employment-intensive industries. or on small producers?*

### **5.3. Detailed assessment**

A detailed assessment should then provide evidence-based information about the extent to which the particular measures foreseen in the policy initiative may enhance or impair the enjoyment of the relevant rights of individuals; and/or may strengthen or weaken the ability of the EU and partner country/ies to fulfil or progressively realise their human rights obligations.

#### Baseline scenario

The assessment should analyse the likely impact on human rights of the trade-related policy initiative envisaged/under negotiation against a baseline scenario that should explain (together with economic, social and environmental aspects) what would be the likely human rights developments if the proposed policy initiative were not implemented (ie, the option of changing nothing). The expected significance of impacts should be assessed in terms of changes relative to the baseline.

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<sup>27</sup> See *Better Regulation Toolbox*, Tool #50: *stakeholder consultation tools*; and *stakeholder consultation* under §4.3.

<sup>28</sup> For further detail on useful sources, please refer to §4.3.

The analysis of the baseline scenario (not pursuing a new EU trade agreement with a country) should also take into account potential opportunity costs: for example, would the failure of the EU to conclude an agreement with the partner country leave space for the expansion of activities by other economic partners whose companies abide by less stringent codes of conduct than European companies?

### Quantitative and qualitative approaches

The analytical exercise should combine both quantitative and qualitative approaches.

For example, in the case of quantitative analysis performed in support of the IA of a planned trade agreement, use should be made of the figures generated by the economic analysis which will have been conducted using available state of the art modelling techniques. It will have assessed aggregate effects, as well as providing a general overview by sector of the likely consequences of the policy changes on variables such as output, trade flows, prices, fiscal revenues, income or welfare. Use should also be made of sectoral studies that may have been conducted: for example, those examining issues such as price or wage fluctuations, or shifts in working patterns across sectors and the population(s) that will be affected, including analysis of potentially discriminatory gender-based gaps. To the extent feasible, these analyses should provide quantitative information on individuals or groups likely to be affected by particular identified impacts, especially in the framework of the in-depth analysis conducted during an SIA.

The quantitative analysis should be complemented by a detailed qualitative analysis on the potential impacts on human rights, including on women and on particular vulnerable groups likely to be affected.

Information for the qualitative part of the assessment should be rigorous, thorough and rely on available evidence as well as illustrative examples. Information may come from, *inter alia*, existing studies, web-based research, and evidence from similar initiatives already in force. Information and reports from EU institutions and other international bodies (such as the EU Reports on Human Rights and Democracy in the World (country reports), the EU Human Rights Country Strategies (HCRSs), the Civil Society Roadmaps, the ENP annual reports, the ILO Committee reports, UN treaty bodies' reports and the latest UN reports from special procedures or Universal Periodic Review) can be particularly useful in this respect.

### Stakeholder consultation

The general obligation to consult widely on EU actions derives directly from the Treaties<sup>29</sup>; but stakeholder consultation is a particularly crucial element of the assessment of possible human rights impacts. It serves a dual role.

On one hand the consultation should provide information on the likely impacts, and on the individuals or groups that are likely to be affected. Stakeholders, and in particular social partners and other civil society organisations including in the partner country/ies, often have a good understanding of how a policy proposal might affect the groups which they represent. They can provide very useful insights for the analysis of human rights impacts.

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<sup>29</sup> The consultation requirement is laid down in Article 11 of the TEU and in Protocol no. 2 on the application of the principles of subsidiarity and proportionality.

On the other hand, the process of consultation improves the transparency of the trade initiative. Consultations bolster the right to participate in the conduct of public affairs, a human right enshrined in the Covenant on Civil and Political Rights.

Stakeholder consultations should be conducted in line with relevant Commission guidelines<sup>30</sup>. The minimum standards for consultation indicate that all relevant parties (ie, those affected by the policy, those who will be involved in implementation of the policy, or those that have a stated interest in the policy) must have an opportunity to express their opinion. Specific efforts should be made to ensure that the consultation is as broad as possible, both inside and outside the EU; and to ensure inclusive and balanced participation.

IAs must include a public consultation of a minimum 12 weeks' duration; and specific questions on the potential impact of the agreement on human rights should be included in the consultation document/questionnaire. Specific meetings with selected stakeholders can also be held.

SIAs offer a prime opportunity for an extensive consultation of stakeholders. The consultants carrying out the SIA are responsible for ensuring a dynamic, far-reaching and open consultation of **all** relevant stakeholders in the EU and in partner country/ies; including social partners (workers' and employers' organisations), businesses, experts, NGOs, and other civil society organisations. To this end, a dedicated SIA website is set up where all the SIA reports produced are published, and where stakeholders are invited to provide feedback at any time during the entire process.

A wide range of consultation activities are foreseen throughout the SIA process, including surveys, public meetings in the framework of DG Trade's civil society dialogue, interviews, and workshops which may take place either in the EU or in the partner country/ies<sup>31</sup>.

To the extent possible, particular attention should be given in SIAs to the impact on gender equality<sup>32</sup> and on vulnerable and disadvantaged persons and groups (including children and minorities) which may have been previously identified in the IA.

#### *Additional analytical elements/considerations*

The assessment needs to identify potential interferences with human rights. In particular, the analysis should consider whether possible negative impacts on human rights are justified in terms of necessity and proportionality (limitations on rights must be: provided by law, and respect the essence of the rights concerned; necessary to achieve an objective of genuine public interest or social need, or to protect the rights and freedoms of others; and proportionate to the aim pursued)<sup>33</sup>.

The analysis should also consider dynamic trends, and draw attention to situations where human rights impacts in the short term might differ from those in the long term (eg, a trade

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<sup>30</sup> For further detail on stakeholder consultation, please refer to the Commission *Guidelines on Stakeholder Consultation* included in the Better Regulation Guidelines; and to the SIA Handbook (2<sup>nd</sup> edition).

<sup>31</sup> For further detail on SIA stakeholders' consultation activities, please refer to the SIA Handbook (2<sup>nd</sup> edition).

<sup>32</sup> [http://ec.europa.eu/justice/gender-equality/files/strategy\\_equality\\_women\\_men\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/strategy_equality_women_men_en.pdf)

<sup>33</sup> For further information, please refer to the *Better Regulation* tool on assessing the impact on fundamental rights in impact assessments: [http://ec.europa.eu/smart-regulation/guidelines/tool\\_24\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_24_en.htm)

agreement may generate growth and therefore contribute to improved human rights conditions over the long term, but have negligible impacts in the short term).

#### 5.4. Presenting the results

The IA should wherever relevant compare the different options on the basis of their impacts on human rights. It should then warn decision makers of any identifiable risks of a significant negative impact on human rights; and also of the type of response which is warranted by those risks. For example, as indicated earlier in §4.1, an absolute right cannot be limited or restricted in any way.

Wherever relevant, SIAs should also present recommendations for measures to be addressed in the trade policy initiative in order to maximise positive impacts, and prevent or minimise potential negative impacts, on human rights<sup>34</sup>.

Where appropriate, the SIA should also explain how the EU may try to address these recommendations via mechanisms and fora outside the trade agreement (eg, the political dialogue with the country concerned, development co-operation projects in the country, etc.); as well as which issues will need to be addressed either by domestic action by the government concerned, and/or by actions of other actors. As highlighted in §4.2, the analysis should take account of the existing legal frameworks and domestic policies in the EU and in the partner country/ies; as well as their capacity to mitigate/enhance the impact of the trade policy initiative under consideration.

It is recommended to accompany the presentation of the results of the analysis with a grid summarising the impact on human rights of the different options<sup>35</sup>. This should include a brief description of which human rights are affected; and where possible and relevant, which specific groups are likely to be affected.

The table below provides an example of how the summary of the information and analysis can be structured. Impacts can be summarised as +, -, **0**, or with further specifications for instance to take into account the possibility that dedicated provisions are included in the text). Furthermore, the summary may also highlight differences (or convergences) between direct and indirect impacts.

Types of rights	Option 0	Option 1	Option 2
Human right x	Direct impact: <b>0</b> Indirect impact: -	Direct impact: 0 (in the absence of explicit language) Indirect impact: +	Direct impact: + (In case of explicit language) Indirect impact: +
Human right y	Direct impact: <b>0</b> Indirect impact: <b>0</b>	Direct impact: ... Indirect impact: ...	Direct impact: ... Indirect impact: ...

<sup>34</sup> For more detailed information on SIA methodology, please refer to the SIA Handbook (2<sup>nd</sup> edition).

<sup>35</sup> In particular in impact assessments, which are meant to analyse the advantages and disadvantages of various options considered to address the problem identified (see §1 *Introduction*).

For instance, the table above provides an example of a case where, for the human right considered in the first row, the analysis carried out shows that there would be no **direct** impact of the proposed initiative if no dedicated provisions are included in the initiative (option 1), while, if they are included, there would be a positive impact (option 2).

This might be the case of an impact assessment on a proposed trade agreement, where: (1) the screening has identified healthcare rights as a human right to be looked at; (2) the scoping has taken into account the possibility of including in the proposed agreement provisions on essential public interest services; (3) the detailed assessment has shown that there would be no direct impact if no provisions on access to health services are included in the agreement, while if explicit language on essential public interest services is included the direct impact would be positive<sup>36</sup>.

At the same time, a trade agreement which delivers increased growth in the future may also produce positive **indirect** impacts on the rights to health and to healthcare, if the increased growth generates higher government revenues that are allocated to human rights related policy objectives such as improved primary healthcare.

## 5.5. Evaluation and monitoring

After the trade policy initiative has entered into force, and after sufficient time has passed to gather a robust body of data and evidence, an *ex post* evaluation will assess whether it achieved its objectives, how it worked in practice, and why. IAs and SIAs should serve as a reference for this *ex post* evaluation. Ex post evaluations should include considerations on whether the findings and recommendations of IAs and SIAs were appropriately and effectively taken into account; including with regard to possible measures identified by the SIA in order to further improve the positive impacts of the trade agreement on human rights, or to mitigate possible negative impacts.

Evaluations also look for unintended effects (ie, those which were not anticipated at the time of the IA/SIA). As in the case of IAs and SIAs, the economic, social, environmental, and human rights impacts are analysed and presented together in a single document. The *ex post* evaluation final report should contain recommendations as to possible follow-up actions to be taken, including in relation to human rights issues.

As *ex post* evaluation becomes more frequent in the years to come, the data collected and lessons learnt will be fed back into improving the human rights impact assessment methodology.

## 6. Contacts

**TRADE A5** 'Evaluation' can assist on impact assessment/evaluation methodology.

**TRADE D1** 'Trade and Sustainable Development, GSP' can be contacted for advice on the human rights analysis:

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<sup>36</sup> This is an illustrative example intended to clarify the use of the summary table; it is not intended to pre-define the outcome of the screening, scoping, and assessment process, which will be carried out for each impact assessment.

NB. If an early screening suggests that any policy options may raise substantial questions about fundamental rights requiring further guidance, colleagues from SJ and DG JUSTICE (Fundamental Rights unit) should be consulted.

For EU country-specific human rights documents (e.g. EU Human rights country strategy), and for questions about human rights in the partner country requiring further guidance, colleagues from the EEAS Human Rights and Democracy directorate should be consulted.

All Commission services (including DG JUSTICE and DG EMPL, as well as the EEAS) are invited to participate in the steering groups for IAs, SIAs and ex post evaluations, which ensure coordination within the Commission and mobilization of relevant expertise.

## **7. Additional background documents**

### 7.1 Commission documents

- Secretariat General, *Better Regulation* 2015  
[http://ec.europa.eu/smart-regulation/index\\_en.htm](http://ec.europa.eu/smart-regulation/index_en.htm)
- Commission staff working document, *Operation guidance on taking account of Fundamental Rights in Commission impact assessments*, SEC (2011) 567 final  
[http://ec.europa.eu/governance/impact/key\\_docs/docs/sec\\_2011\\_0567\\_en.pdf](http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_0567_en.pdf)

### 7.2 Academic literature

- Simon Walker, *The Future of Human Rights Impact Assessments of Trade Agreements*, Intersentia, 2009  
<http://dspace.library.uu.nl/bitstream/handle/1874/36620/walker.pdf?sequence=2>
- James Harrison, *Human Rights Impact Assessments of Trade Agreements: what is the state of the art?* University of Warwick, 2013  
<http://www2.warwick.ac.uk/fac/soc/law/chrp/projects/humanrightsimpactassessments/trade/>
- *Human rights Impact Assessments for Trade and Investment Agreements*, Report of the Expert Seminar, June 2010  
[http://www2.ohchr.org/english/issues/food/docs/report\\_hria-seminar\\_2010.pdf](http://www2.ohchr.org/english/issues/food/docs/report_hria-seminar_2010.pdf)
- Olivier de Schutter, *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, 2011  
[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf)

## **Annexes**

Annex 1 - List of key human rights instruments.

Annex 2 – Brief summary of some main human rights conventions

## ANNEX 1

### List of key human rights instruments

**The Charter of Fundamental Rights of the European Union** represents a key set of rules on human rights and the European Convention on Human Rights provides a human rights framework applying to all member countries of the Council of Europe.

[http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm)

<http://www.echr.coe.int/Pages/home.aspx?p=home>

In addition to the Universal Declaration of Human Right (1948) and the Declarations on the Right to Development (1986) and on the Rights of Indigenous Peoples (2007), there are ten core international human rights instruments. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

	<i>Date</i>	<i>Monitoring Body</i>
<b><u>ICERD</u></b> <b><u>International Convention on the Elimination of All Forms of Racial Discrimination</u></b>	21 Dec 1965	<b><u>Committee on the Elimination of All Forms of Racial Discrimination</u></b>
<b><u>ICCPR</u></b> <b><u>International Covenant on Civil and Political Rights</u></b>	16 Dec 1966	<b><u>Human Rights Committee</u></b>
<b><u>ICESCR</u></b> <b><u>International Covenant on Economic, Social and Cultural Rights</u></b>	16 Dec 1966	<b><u>Committee on Economic, Social and Cultural Rights</u></b>
<b><u>CEDAW</u></b> <b><u>Convention on the Elimination of All Forms of Discrimination against Women</u></b>	18 Dec 1979	<b><u>Committee on the Elimination of Discrimination against Women</u></b>
<b><u>CAT</u></b> <b><u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u></b>	10 Dec 1984	<b><u>Committee against Torture</u></b>
<b><u>CRC</u></b> <b><u>Convention on the Rights of the Child</u></b>	20 Nov 1989	<b><u>Committee on the Rights of the Child</u></b>

<a href="#"><u>ICRMW</u></a>	<a href="#"><u>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</u></a>	18 Dec 1990	<a href="#"><u>Committee on Migrant Workers</u></a>
<a href="#"><u>OP-CAT</u></a>	<a href="#"><u>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</u></a>	18 Dec 2002	<a href="#"><u>Subcommittee on Prevention of Torture</u></a>
<a href="#"><u>CRPD</u></a>	<a href="#"><u>Convention on the Rights of Persons with Disabilities</u></a>	13 Dec 2006	<a href="#"><u>Committee on the Rights of Persons with Disabilities</u></a>
<a href="#"><u>CPED</u></a>	<a href="#"><u>International Convention for the Protection of All Persons from Enforced Disappearance</u></a>	20 Dec 2006	<a href="#"><u>Committee on Enforced Disappearance</u></a>

Core labour standards, as embodied in the 8 fundamental ILO Conventions, are also considered to be core human rights:

- Freedom of association and right to collective bargaining (ILO Conventions 87 and 98);
- The elimination of all forms of forced or compulsory labour (ILO Conventions 29 and 105);
- The elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111);
- The effective abolition of child labour (ILO Conventions 138 and 182).

## ANNEX 2: Brief summary of some of the main human rights conventions

### **Universal Declaration of Human rights**

The Universal Declaration of Human Rights (1948) was given form in two covenants—The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and two protocols— the Optional Protocol to the International Covenant on Civil and Political Rights, and the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty Together they make up the "International Bill of Human Rights".

### **International Covenant on civil and political rights**<sup>37</sup>

#### *Objectives*

The International Covenant on Civil and Political Rights defends the fundamental right to life, and says that no one can be tortured, enslaved, arbitrarily imprisoned, made to do forced labour, or be restricted from such basic freedoms as movement, expression and association.

#### *Key Provisions*

The Covenant is divided into six parts as follows:

- I. reaffirms the right of self-determination
- II. formulates countries' general obligations, mainly to put the Covenant into effect as law, to give victims effective remedies and to guarantee gender equality; it also restricts the possibility of verbal or written abuse
- III. spells out the classical civil and political rights, including
  - the right to life
  - the prohibition of torture
  - the right to liberty and security of person
  - the right to freedom of movement
  - the right to a fair hearing
  - the right to privacy
  - the right to freedom of religion, expression, and peaceful assembly
  - the right to family life
  - the rights of children to special protection
  - the right to participate in the conduct of public affairs
  - the over-arching right to equal treatment, and
  - the special rights of members of ethnic, religious and linguistic minorities
- IV. regulates the election of members of the Human Rights Committee, the State reporting procedure and the inter-State complaints mechanism
- V. says that nothing in the Covenant should be understood as infringing on the inherent right of all peoples to enjoy and fully use their natural resources
- VI. provides that the Covenant shall extend to all parts of federal States and sets out the amendment procedure.

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<sup>37</sup> <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

## **International Covenant on economic, social and cultural rights**<sup>38</sup>

### *Objectives*

The aim of economic, social, and cultural rights is to guarantee people their rights as whole people. These rights are founded on a belief that we can enjoy our rights, our freedoms, *and* economic justice all at the same time. The emphasis the UN places on these rights is easy to understand when you consider that

- a fifth of the developing world's population goes hungry every night
- a quarter lacks access to even a basic necessity like safe drinking water, and
- a third lives in a state of abject poverty at such a margin of human existence that words simply fail to describe it
- well over a billion people suffer from extreme poverty, homelessness, hunger/malnutrition, and chronic ill-health
- more than a billion and a half people don't have clean water to drink, or basic sanitation facilities
- more than a billion adults cannot read or write
- more than 500 million children cannot get even a primary education

The International Covenant on Economic, Social and Cultural Rights seeks to achieve and protect the most basic human rights for all people.

### *Key Provisions*

Chief among the rights the Covenant seeks to establish are:

- the right to work
- the right to form and join trade unions
- the right to just and favourable working conditions
- the right to an adequate standard of living
- the right to the best standards of physical and mental health
- the right to education
- the right of self-determination
- equal rights for men and women
- the right to social security and social insurance
- the right to take part in cultural life
- the right to enjoy the benefits of scientific progress

The Committee on Economic, Social and Cultural Rights monitors how well countries establish or maintain these rights; and reports its findings to the Economic and Social Council each year.

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<sup>38</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>