

---

**Public online consultation on the Sustainability Impact Assessment (SIA) Handbook of EU trade negotiations**  
**FIDH CONTRIBUTION – 14 AUGUST 2015**

---

**QUESTIONS FOR ALL STAKEHOLDERS**

**1. SIAs have two complementary components:**

- **A quantitative and qualitative analysis of the potential economic, social, human rights, and environmental impacts that a trade agreement could have, in the EU, in the partner country(ies) and other relevant countries;**
- **A wide consultation of stakeholders inside and outside the EU**

**1.a. Do you agree that this is the right approach? Yes**

**1.b. Are the components of an SIA adequately balanced? Yes**

**1.c. Please let us know if you have any comments or suggestions (2000 characters max)**

FIDH welcomes the specific guidance on human rights (HR) impact assessments including the reference made to the Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments SEC(2011)567, and to the new DG Trade “Guidelines on the analysis of human rights impacts in impact assessment for trade-related policy initiatives” (the guidelines). FIDH recommends annexing these documents to the handbook.

When dealing with the screening exercise, the guidelines recommend to focus on more direct impacts. This distinction is completely irrelevant in HR law and to ensuring respect by the EU of its obligations. While trade agreements may have some direct impacts on the enjoyment of human rights, most impacts are indirect. However, even indirect, if negative, impacts on HR should be avoided, and the relevant HR safeguards should be set up. The fact that a negative impact is indirect does not justify the omission of available mitigation and preventive measures in the trade policy. HR obligations and objectives require that any impacts that elements of a trade agreement may have on access to food and adequate housing, or the right to education and health are adequately addressed since they are part of the causal chain (even indirect) of trade measures (lowering tariffs, strengthening intellectual property rights, offering excessive protection to foreign investors etc). The SIA Handbook should insist on the need the cumulative impacts and on the fact that it is not because a potential impact is indirect that it does not require additional analysis, and that any decision in that sense should be duly justified.

On quantitative analysis and Data sources: while these can provide elements of a HR impact assessment, they are not sufficiently developed to be fully relevant. The handbook should insist that pending improvements to the data and a sound quantitative analysis, the qualitative analysis and the case studies methodology should be considered as decisive.

**2.a. Do you consider the themes outlined in the revised SIA Handbook relevant for assessing the impacts of a trade agreement? If No, please explain: (2000 characters max)**

As issues likely to be impacted by trade agreements, the themes should be maintained. However, the categorization creates confusion. Themes in the social, economic, environmental and institutional categories may actually be relevant for HR, but by not categorizing them as human rights, it creates ambiguities regarding the methodology to be used and the necessity to refer to the normative content of those rights. FIDH suggests to eliminate the categorization, or to add in the chapeau, when saying that some themes may pertain to more than one category, “ex: housing, land, government resources, governance for human rights. Institutional aspects (incl the Rule of Law) are essential and must be envisaged as cross cutting issues

When considering HR, attention should be given to absolute rights (like slavery and servitude, forced labour, torture and other cruel inhuman or degrading treatment, prohibition of prolonged arbitrary detention, right to freedom from systematic racial discrimination). It is necessary to mention the right to life, liberty & security and to mention the right to equality before the law and non-discrimination. It is needed to complement the others: Adequate standards of living by the right to food; Property by rights of indigenous people; Fair trial by the right to adequate and effective remedies; Freedom of expression and opinion by right to information, participation and freedom of association; Cultural life by right to enjoy the benefit of scientific progress

References to the rights of indigenous peoples and effective remedies are essential as those rights are largely disregarded and risk irreparable impacts. When the guidelines and the handbook mention absolute rights, they should be

better illustrated and reference should be made to sources like the explanatory paper of the human rights law center, 2011 : [http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/supplementary\\_info/263 -  
\\_Addendum.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/supplementary_info/263_-_Addendum.pdf)

**b. Are there other issues SIAs should examine? If Yes, please specify which issues: (2000 characters max)**

The SIA should insist on the fact that : No HR can be considered as prima facie irrelevant, and evaluations should be based on reliable sources at all stages of the SIA even when assessing the causal chain between a trade measure and a direct or indirect impact on HR. The assessment of HR in conflict zones and remote areas should be encouraged. The snowball effect of specific vulnerabilities (discriminations, gender, analphabetism, etc) should be taken into account. A gender-based approach should be adopted.

Stating that human rights dialogue and political framework agreements “provide the main platform to discuss human rights issue with its trade partners” (guidelines p. 4) hides that those tools aim to address the overall situation, have shown their limits and fall short of being appropriate to measure and respond to the potential negative impacts of the trade policy itself. The DG trade guidelines underlines that the potential impacts should be assessed against a baseline scenario adding that the consultant should take the “potential opportunity cost into account 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?” This example introduces a bias and is irrelevant: The SIA is not to decide whether a country is eligible for a trade agreement. Nor is the SIA to serve to overcome the difficulties the Commission may encounter during the trade negotiations to convince its partner that both have human rights constraints. The SIA allows to bring to the attention of negotiators the potential impacts of the trade measures and the way to address them. Potential violations by other parties does not authorise the EU to avoid implementing its own safeguards and addressing the consequences of its own policies. Any ambiguity in that regard should be corrected.

**3. a. Do you agree with the approach on how to involve stakeholders in the analysis?**

**3. b. Please let us know if you have comments and suggestions (2000 characters max)**

By omitting to fix timelines and by stating that reports should be written in English, consultations lose efficiency and inclusiveness. Credible solutions (dedicated interpreters, EUD support) must ensure that the complete reports and full information are disclosed, in the appropriate languages, at least 6 weeks before the meetings (+ 2 weeks for written inputs after the meetings).

HR defenders and affected populations, both in the EU and in the partner countries, should be enabled to participate in each phase of the SIA (inception, interim and final reports). Additional consultation should be held when the final report and the Commission’s position paper are being published (to avoid the cases where recommendations were not taken into account in the final SIA report or in the Commission’s position paper & no explanations or justifications given).

The SIA website does not create awareness and constructive dialogue and cannot be seen as the main tool of communication. At the EU level, stakeholders in the EU member states should also be consulted. A database of national HR NGOs can be drawn up to this end. In partners countries, workshops must be maintained. HR country strategies should stipulate that when the Commission is mandated to carry out trade negotiations, the EU delegation must draft a consultation plan and send out a questionnaire to assess the human rights defenders’ (HRD) capacity to assess the impacts of the trade on human rights for the SIA. At the latest when the mandate of the negotiation is given, support for capacity building and network should be provided and the EU delegations should implement the consultation and information plan. This plan could be completed during the first phase of the SIA based on the consultant’s methodology and the stakeholders’ inputs.

Add obligation to consult human rights defenders (as stakeholders with expertise & affected people), and UN human rights experts such as from UNDP, UNHRC, UN special rapporteurs or WHO.

**4. SIAs are carried out by external consultants concurrently with trade negotiations. Following the conclusion of the study, the Commission publishes a position paper explaining how the SIA findings have or will contribute to decisions on the negotiations.**

**4. a. Is this the right approach?**

**4. b. Please let us know if you have comments and suggestions (2000 characters max)**

The IA and its conclusions regarding human rights are supposed to influence the opening and the content of the trade negotiations. The information provided by the Commission about the outcomes of the negotiations can serve to enhance

the relevance of the SIA and its recommendations. In consequence, it can make sense to carry out *the SIA alongside* the negotiating process. However, in that case, specify that adequate time should be scheduled for the negotiation process so the SIA can effectively inform the different rounds knowing that (1) the SIA has to be finalized prior to entering into the final phase of formal negotiations – to allow room for substantive changes – and (2) Sufficient time has to be given for the inputs from the stakeholders and the experts consulted (at least 6-8 weeks for each report).

It is needed but insufficient that the position papers explain how the SIA findings have or will contribute to decisions on the negotiations. The Commission paper should explain how it will prevent the negative impacts and enhance the positive ones, indicate the recommendations accepted and how and when they are implemented, and formulate credible proposals and alternatives when it does not take up all proposed recommendations. The Commission should discuss with the consultant to be sure that its proposals do not annihilate the results of the SIA or the consistency of his/her recommendations and the consultant's opinion on the position paper should be published. In addition, it is important to insist on the quality of the position paper. The Commission cannot point out positive impacts that were not fully documented in the SIA or without taking into account the SIA's nuances. The commission cannot point out positive impact without considering their dependence to specific recommendations. So, the final SIA report and Commission's position paper have to be discussed with the stakeholders and meetings have to be organised.

##### **5. Do you have any other suggestion on how to improve the guidance provided to consultants in carrying out SIAs?**

**If Yes, please specify (4000 characters max)**

Online consultations must allow for real and argued inputs. This require more than 2,000 or 4,000 characters per questions.

Clarify that options and recommendations should be framed to prevent negative impacts on human rights, enhance positive ones and to remove any incompatibility, so, to not engage in an agreement or in specific commitments can be considered as a viable option, and positive human rights impacts cannot compensate adverse ones, serving by there a conclusion that the impacts are globally positive.

The role of the Commission needs to be clarified. The Handbook states that the Commission services should provide information and guidance for the conduct of the SIA. FIDH considers that dialogue is essential for the quality of the SIA since it can help shape better-informed EU and consultants' positions and recommendations. In the past however, the Commission has interfered with the SIA analysis (for the DCFTA with Egypt and Jordan, as a result of the information provided by the Commission the impacts of an ISDS on human rights were not assessed, the argument being that no ISDS component was negotiated). FIDH considers that if an ISDS remains an option in the negotiations, it still needs to be assessed. In consequence, to ensure the independence and the quality of the SIAs, the *Handbook should require that consultants' reports flag measures that have not been assessed because of information provided by the EU, and recommend that a complementary study be undertaken if the negotiation process leads to new development.*

FIDH welcomes the improvement regarding the transparency of the Steering Committee but recommends adding the names and e-mail addresses of the persons in charge in each department. FIDH recommends that this list appear on the website of the EU Commission and published at the time of the tendering process, not after the first phase of the SIA. For stakeholders to identify the elements of negotiation that are likely to have a significant impact, transparency and the possibility to request meetings with the relevant EU representatives should be ensured at an early stage. As SIAs generally make recommendations related to human rights dialogue or development cooperation aid, it must be stated that the Steering Committee should involve the persons in charge of those instruments, for them to inform the SIA about the results achieved in the past and to discuss the credibility of SIA recommendations. The draft of final report and the Commission's position paper need to be discussed with those departments and the relevance of the choices made duly motivated and published. Those documents should justify and explain the recommendations proposed based their capacity and expected efficiency to effectively avoid negative impacts and enhance the positive ones, this also taking in considerations the different cycles of implementation.

*The Handbook should specify that the Steering Committee is responsible for ensuring the quality of the study and respect of the guidelines.* There have been cases where, following the completion of an SIA, the Commission has decried the inadequate assessment of impacts on some sectors, revealing thereby serious deficiencies in the monitoring and support offered by the Steering Committee during the evaluation process. Other examples exist about the unjustified absence of a detailed analysis of the human rights issue, e.g. the DFTAs. The quality of the SIA should be better ensured and the steering committee should ensure the implementation of the guidelines, obliging the consultant to motivate its choices. In addition, given that the improved regulation package has reformed the monitoring mechanism on IA quality (insisting also on its independence and expertise), FIDH regrets that such a mechanism has not been set up for the SIA, and considers that an *independent human rights scrutiny board* should be envisaged to contribute *inter alia* to the improvement of the methodology.

---

.

---