

## **Legal basis of Official Development Assistance**

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### **Introduction**

This briefing paper sets out the definition of official development assistance (ODA), the legal status of ODA targets and countries' current levels of ODA.

### **ODA definition**

The Organisation of Economic Co-operation and Development (OECD)<sup>1</sup> defines ODA as:

*“flows to countries and territories on the [Development Assistance Committee] List of ODA Recipients and to multilateral development institutions which are:*

- i. provided by official agencies, including state and local governments, or by their executives agencies; and*
- ii. each transaction of which:*
  - a. is administered with the promotion of the economic development and welfare of developing countries as its main objective; and*
  - b. is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate discount of 10 per cent)”.*<sup>2</sup>

The list of ODA recipients is established every year by the OECD's development Assistance Committee (DAC). It is the principal body through which the OECD deals with issues related to co-operation with developing countries.

Pursuant to the OECD definition, ODA does not have to be from an OECD country to be defined as ODA (though it must be provided by official agencies, including state and local governments, or by their executive agencies). However, OECD countries are the main donors (around 85%).

### **Legal status of ODA targets and history of targets**

In October 1970 the UN General Assembly adopted a Resolution including the goal that:

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<sup>1</sup> The forerunner of OECD was the Organisation for European Economic Co-operation (OEEC). OEEC was formed in 1947 to administer American and Canadian aid under the Marshall Plan for the reconstruction of Europe after World War II. OECD took over from OEEC in 1961. Since then, its mission has been to help its member countries to achieve sustainable economic growth and employment and to raise the standard of living in member countries while maintaining financial stability.

<sup>2</sup> DAC Statistical reporting Directives, DCD/DAC (2007)34.

*“Each economically advanced country will progressively increase its official development assistance to the developing countries and will exert its best efforts to reach a minimum net amount of 0.7% of its national product at market prices by the middle of the Decade”.<sup>3</sup>*

This was the first time that the ‘0.7% Target’ was formally recognised. However, it should be noted that resolutions of the UN General Assembly not legally-binding on the parties but rather serve as statements of intent. Additionally, various countries, including the USA, made clear that while they supported the general aims of the resolutions, they did not subscribe to specific targets or timetables.

Given this position, even if it could be argued that the granting of ODA (as a concept) by economically advanced countries has become part of international customary law, it is highly unlikely that the 0.7% Target has any legal basis in international law.

Nonetheless, since 1970, increasing ODA flows has been referred to in numerous declarations and resolutions, each time increasing the political significance of the issue. In certain instances, the reference has been simply to increase ODA (such as in the adoption of the Millennium Development Goals) while in other instances, the 0.7% Target has been specifically referenced, for example:

- in the Report of the World Summit on Sustainable Development (2002);
- in the Monterrey Consensus (2002);
- by the Commission for Africa (2005); and
- by Kofi-Annan (2005).

Since the International Conference on Financing for Development held in Monterrey, Mexico in 2002, OECD has also begun to track these commitments and to quantify them on a common basis.

At the Gleneagles G8 and UN Millennium+5 summits in 2005<sup>4</sup>, donors made specific pledges to increase their ODA levels. Many of them had targets for the year 2010 or intermediate targets to achieve by 2010 before achieving a larger target by 2015:

- EU: has pledged to reach 0.7% of GNI for ODA by 2015 with a new interim target of 0.56% by 2010 and has also committed itself to double its ODA between 2004 and 2010 from € 34.5 bn to € 67 bn (this target was reaffirmed by a Joint declaration by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on the development policy of European Union entitled “the European Consensus”<sup>5</sup>;
- Japan: intends to increase its ODA volume by \$ 10 bn in aggregate before 2010;
- US, Canada and Russia: increase of global aid with no ODA specific target; and
- Special commitments to Africa: All the G8 countries at the Gleneagles summit committed themselves to grant to Africa an additional ODA “of \$25 billion a year by 2010”.

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<sup>3</sup> UN General Assembly Resolution 2626, 24 October 1970, paragraph 43.

<sup>4</sup> UN General Assembly Resolution 60/10, 24 October 2005.

<sup>5</sup> OJ – 2006/C 46/01

At the Toronto Summit (26-27 June 2010), the G20 countries recognised the urgency of supporting the poorest countries during the crisis and committed to meeting the Millennium Development Goals by 2015.

Like General Assembly resolutions, G8 and G20 statements are generally non-binding on member states but do carry considerable political weight. However, there are no specific sanctions in case of non-compliance with the ODA targets.

Until such a time that the 0.7% Target is formalised into a legally binding commitment whether under domestic or international law, it remains an aspirational target with no strict legally binding force and no way to legally hold a country to account. That said, political pressure can be placed on national governments to deliver the 0.7% Target through campaigning and further international declarations and resolutions.

### **Countries' compliance with ODA targets**

In 2009, the 0.7% Target had only been reached by five countries (Denmark, Luxembourg, Netherlands, Norway and Sweden). The table in Annex 1 sets out the levels of ODA made by OECD members. Global net ODA reached \$119.6 billion last year, representing 0.31% of donors' combined Gross National Income (GNI)<sup>6</sup>.

Among OECD members who are expected to miss their aid targets for 2010, there are four large donors that are G8 members: France, Germany, Italy and Japan. In addition, other EU Development Assistance Committee (DAC) members that are expected to miss their commitments are Austria, Greece and Portugal.

The projected collective GNI ratio for the DAC-EU members is 0.48% in 2010 (instead of the 0.56% target settled at the Gleneagles G8 summit).

The United Kingdom's ODA for 2009 was £11.5 bn, representing 0.52% of its GNI. Its planned expenditures for 2010/11 put it on track to reach its target of 0.7% of GNI by 2013.

The recent global economic and financial crisis has reduced the real value of commitments by \$2.3 billion since most commitments were expressed as a share of donor GNI.

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<sup>6</sup> Gross national income (GNI) comprises the total value produced within a country (i.e. its gross domestic product), together with its income received from other countries (notably interest and dividends), less similar payments made to other countries.

**Annex 1: Net ODA of OECD donors as a percentage of GNI**

COUNTRY	2000	2005	2009
Australia	0.27	0.25	0.29
Austria	0.23	0.52	0.30
Belgium	0.36	0.53	0.55
Canada	0.25	0.34	0.30
<b>Denmark</b>	<b>1.06</b>	<b>0.81</b>	<b>0.88</b>
Finland	0.31	0.46	0.54
France	0.30	0.47	0.46
Germany	0.27	0.36	0.35
Greece	0.20	0.17	0.19
Ireland	0.29	0.42	0.54
Italy	0.13	0.29	0.16
Japan	0.28	0.28	0.18
Korea, Republic of	0.28	0.28	0.18
<b>Luxembourg</b>	<b>0.70</b>	<b>0.79</b>	<b>1.01</b>
<b>Netherlands</b>	<b>0.84</b>	<b>0.82</b>	<b>0.82</b>
New Zealand	0.25	0.27	0.29
<b>Norway</b>	<b>0.76</b>	<b>0.94</b>	<b>1.06</b>
Portugal	0.26	0.21	0.23
Spain	0.22	0.27	0.46
<b>Sweden</b>	<b>0.80</b>	<b>0.94</b>	<b>1.12</b>
Switzerland	0.34	0.43	0.47
United Kingdom	0.32	0.47	0.52
United States	0.10	0.23	0.20

[Country Name]: DAC countries that met the 0.7% ODA target in 2009.

Source: UNSTATS / Millennium indicators