New Legal Framework in Denmark

Focus on fighting tax evasion

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Overview

- In 2013, Denmark remained well above the UN 0.7% ODA target by delivering a total of €2.24 billion (US$2.9 billion) or 0.85% of gross national income (GNI). The government plans to stabilise ODA at 0.83% from 2014.
- Despite promising to bring Denmark's ODA back to 1% of GNI, the current government shows little progress.
- In 2012 Denmark enacted a new law on development cooperation, which explicitly focuses on cooperation and partnerships.
- The 2012 Strategy on Development Cooperation sets out four priority areas: human rights and democracy, green growth, social progress, and stability and protection.
- In October 2013, the Danish government launched a new strategic framework for Denmark's participation in EU development cooperation, which focuses on three priority areas: human rights; fragile states and stability; and green growth and employment.
- In June 2013, the Danish Ministry of Foreign Affairs published an implementation plan for Danish engagement in taxation and development in June 2013, with the aim of pushing issues of taxation and development, as well as illicit capital flows, higher on international agendas, as well as to strengthen the capacity of the world's poorest countries to collect taxes, ensuring fair taxation and closing tax loopholes.
- In June 2014, Denmark presented its Action Plan on Policy Coherence for Development (PCD), which concentrates Denmark's PCD efforts on EU policies, focusing on three strategic priority areas: trade and finance; food security and climate change; and peace and security.

Danish ODA Performance

By delivering 0.83% of GNI in ODA in 2014, Denmark remains well above the UN 0.7% target. There is broad political consensus that Denmark should stay above this target, but the current Danish government's promise to return to 1% of GNI in ODA is still far off.

The current government is led by the Social Democrats and came into power in late 2011. In its election platform it promised to increase development assistance to 1%. However, it has since refused to provide a timeframe for how and when to reach this goal. The 2014 aid level of 0.83% represented a decrease from 0.85% in 2013, putting Denmark further from the government's 1% target. Recent statements from the Minister for Trade and Development Cooperation show little commitment to reach this target.

Though continuously showing small nominal increases, Danish aid has stagnated in relation to the overall economy. In 2013, Denmark spent about €2.24 billion (US$2.9 billion) on aid, of which almost three-quarters was bilateral aid and one-quarter multilateral.

Slightly less than 20% of the total aid in 2013 (about €400 million or US$520 million), under OECD DAC rules, was allocated through funds other than the actual aid budget (such as the budgets for refugees and climate change, etc.). ODA disbursements include aid given through the EU budget (excluding the European Development Fund or EDF); deposits in investment funds with development objectives; and administration and first-year expenditures for housing and receiving asylum seekers from developing countries.

Notably, expenditures related to receiving asylum seekers have increased rapidly over the past years, rising from about 1.7% of ODA in 2008 to almost 5.5% in 2013. This rise is very problematic as aid is almost the same today as it was in 2008, as a proportion of GNI. Thus the share of GNI that is genuinely directed towards poverty eradication has been scaled down when the amount spent on refugees in Denmark is taken into account.

In order to enhance transparency, the government has for the last few years reported its ODA spending under two budget frameworks – one focusing on poverty reduction, and a second "global frame" focusing on efforts that are not directly linked to alleviating poverty, but include other forms of international assistance. The latter cover issues such as the fight against climate change, refugee costs in Denmark (see above), debt relief, initiatives through the Danish private sector, including aid tied to business, and spending in certain non-Least Developed Countries (LDCs). This reporting makes it easier for civil society to monitor changes in the policy focus and objectives of Danish ODA.

During recent years, spending under the poverty framework has increased slightly, to about 82% of total spending (excluding administration). But according to the most recent budget figures proposed for 2015, these expenditures will decline to below 78% — the lowest level since the introduction of the two budget frameworks in 2012. There is a risk that this shift in the Danish aid budget will undermine the poverty reduction focus and legitimacy of Danish aid.

A significant amount of aid targeting the private sector remains tied to Danish business interests. While these budget lines remain fairly stable, there is growing political interest in engaging the Danish private sector in development cooperation. Also, security interests continue to play a major role in bilateral aid spending. Denmark has been including its climate finance in ODA, despite having committed in international climate negotiations to provide new and additional funds. When excluding funding for climate and environment, the remainder of ODA constitutes 0.80 % of GNI.

Public perception of aid

In late 2013, Danish development aid spending and administration found itself unwittingly at the centre of national and international media attention. Danish support to the Global Green Growth Institute (GGGI) in South Korea was heavily questioned by the media, CSOs and politicians alike. The GGGI was criticised for its lack of focus on poverty reduction and for overspending on administration costs (such as travels, offices, etc.). The case not only spurred a public debate about the use and administration of development funds, but it also resulted in a more professional discussion about what are appropriate initiatives for support by Danish ODA.

The case and media attention reached its climax when the Minister of Development Cooperation, Christian Friis Bach, chose to step down as a result of his role on the GGGI board. A subsequent opinion poll has showed a significant decrease in public trust in the management of aid funds.

New legal framework

A New law

In 2012 Denmark enacted a new law on development cooperation, replacing a law from 1971.[1] The new law is explicitly focused on development cooperation, while the old law it replaced simply referred to 'aid to developing countries'. This change in wording is important as it underlines the fact that Danish development aid is not just charity, but rather a partnership between Denmark and developing countries.

In the new law, the objective of Danish development cooperation is to fight poverty and promote human rights, democracy, sustainable development, peace, and stability. It is also recognized that conditions in developing countries are not only affected by donor development policies. Other policy areas play an important role as well.

The new law reflects an important new shift, in that a human rights based approach (HRBA) is to be mainstreamed into all Danish foreign policy and Denmark aims to advance HRBA in all international forums, including the EU. Danish civil society was particularly pleased to see this approach reflected in the law, although some scholars have debated the effectiveness of HRBA in terms of promoting economic development.

A New development strategy

In working towards the objectives of fighting poverty and ensuring human rights, Denmark's 2012 development strategy, 'The Right to a Better Life,'[2] sets out four priority areas: human rights and democracy, green growth, social progress, and stability and protection. These priority areas are interlinked, and a starting point for working on them will be human rights principles of participation, non-discrimination, accountability, and transparency.

Under the heading of human rights and democracy, Denmark will seek to promote good governance, civil society, democratic institutions, equality, and international cooperation on human rights, democracy and good governance. At the same time Denmark will combat tax avoidance and tax evasion (see below) and promote fair taxation of natural resources.

As for green growth, the strategy sets out objectives for ensuring the sustainable management of natural resources, resource efficient food production, and the access of developing countries to sustainable energy sources.

Social progress means supporting civil society and the social sectors through budget allocation, multilateral efforts, and in political dialogue with developing countries.

As part of the fourth priority area, stability and protection, Denmark will work on conflict prevention, dialogue and mediation as well as state building and peace building in fragile states.

A Human rights based approach in the new law and development strategy

Both the new law on development cooperation and the new development strategy reflect a major new commitment to a human rights based approach. Obtaining full human rights requires a state with the will and ability to respect and protect the rights of its citizens, but also demands an informed and active citizenry and civil society. Denmark will thus support the development of a strong and independent civil society empowering the weakest and most marginalized in society. This may involve changing power relations within countries, and between countries, and thus might not be a process free of conflict.

Partnerships in the new development strategy

Denmark's international cooperation is based on partnerships, which must be flexible and context specific. As part of the new development strategy, Denmark is aiming to focus its partnerships with a limited number of priority developing countries. In each of these countries, Denmark will use different instruments and competencies.

At the same time, Denmark will look to new partners, particularly the private sector, in working for development and poverty reduction.

A New Strategic framework for Denmark's participation in EU development cooperation

In October 2013, the Danish government launched a new strategic framework for Denmark's participation in EU development cooperation: 'Together for a better world'.[3] The strategy focuses on three areas of priority for Denmark's engagement: human rights; fragile states and stability; and green growth and employment, through which Denmark will focus its engagement and take the lead in relevant processes in EU development cooperation. Under each priority area, various tracks of action are laid out in line with the new overall strategy of Danish development cooperation. Shared results through coherent policies, joint analysis and programming, and budget support, ownership and accountability are the main approaches within each priority area.

Part of rolling out the first of the above-mentioned approaches, i.e. working towards coherent policies, involves the development of a Danish action plan for policy coherence for development (PCD).

An Action plan on Policy Coherence for Development

In June 2014, Denmark presented its Action Plan on Policy Coherence for Development (PCD) 'A Shared Agenda'.[4]

PCD is an approach and a policy tool for integrating the multiple dimensions of development at all stages of policy making. It is a legal obligation in the EU, as stipulated in Article 208 of the Lisbon treaty: *"The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries"*.

The Danish Action Plan concentrates Denmark's PCD efforts on EU policies, focusing on three strategic priority areas: trade and finance; food security and climate change; and, peace and security. Within each strategic priority area, a limited number of political objectives have been established for the next few years. The Action Plan not only clarifies the objectives, but also sets out clear policy tracks to reach those objectives. All relevant ministries are involved, as is civil society. The process is to be monitored by the Committee on European Affairs in the Danish Parliament.

The Action Plan is the first of its kind in Europe, and if implemented well and fully, it could be an example of good practice on how to work on PCD. The actual implementation is yet to begin and it will be monitored closely by civil society.

Private sector involvement

Alongside other donors, Denmark is also showing a growing interest in engaging the private sector in development cooperation. This priority has recently been highlighted by the appointment of Mogens Jensen as Minister for both Development Cooperation and Trade.

The development of private-public partnerships holds interesting potential both in terms of the operational impact and the broader support for aid spending. However, there is also reason to be cautious in the design and implementation of new and existing aid modalities — especially the risk of a shift of objectives away from poverty reduction towards an approach driven more by Danish commercial and economic interests.

A Case Study: Taxation and development

Domestic revenue mobilization is key to development. However, every year developing countries lose millions in tax revenue foregone. In fact, each year developing countries are estimated to lose up to US$160 billion in revenue due to money hidden in tax havens[5] – more money than they receive in aid.[6] Moreover, it is estimated that developing countries also lose up to US$138 billion in tax revenue foregone, as a result of favourable corporate tax incentives.[7] Consequently, public sectors in developing countries find it even harder to meet their obligations and deliver the required public services.

It follows from this context that fighting tax dodging and investing in fair taxation, improving the capacity of tax authorities to collect taxes, and other similar measures could provide a big opportunity as a means to increase public revenues. Moreover, fairer taxation would also help minimize growing inequalities, particularly in middle-income countries. But if positive development impacts are to be attained, progressive taxes must be coupled with progressive spending. Mobilisation of domestic revenues will not be able to cover public expenditures anytime soon in developing countries, hence it must be supported with development aid. This agenda has caught the attention of many countries, including Denmark, and has led to an increase in the interest in the relationship between taxation and development.

As mentioned above, in Denmark development and trade have been linked in the 2012 Danish strategy for development cooperation: "*Development cooperation is increasingly serving as a catalyst for trade, investments, higher tax revenues and new sources of financing.*"

This orientation has naturally led to an increased interest in fighting tax avoidance. And the Danish strategy for development cooperation includes strong commitment to working on this agenda and goes on to promise that Denmark will "*strengthen efforts in the fight against tax loopholes, address illicit financial flows and promote a fair taxation of natural resources in the world's poorest countries.*"

Proving itself sincere about this commitment to work on taxation and development, the Danish Ministry of Foreign Affairs published an implementation plan for Danish engagement in taxation and development in June 2013, known as: "Udmøntningsplan: Styrket dansk engagement inden for skat og udvikling."[8] The aim of the implementation plan is to push issues of taxation and development, as well as illicit capital flows, higher on international agendas. It also aims to strengthen the capacity of the world's poorest countries to collect taxes, ensuring fair taxation and closing tax loopholes.

More specifically, the implementation plan concentrates on four areas; namely,

1. Increased efforts to strengthen tax systems and close tax loopholes in Danish priority countries;
2. Fighting illicit financial flows and increasing financial transparency;
3. Encouraging more efficient and fair taxation of extractives and natural resources, including in fragile states; and
4. Coherent policies that work toward development.

The funding for Danish engagement in taxation and development is an integral part of development cooperation, which will facilitate longer-term planning and follow-up and ensure greater sustainability of initiatives. An additional 10 million DKK (US$1.7 million) was allocated in 2013 in support of new initiatives with international organizations working to increase transparency and anti-corruption and fighting illicit financial flows. A fundamental aspect of the plan is the fact that Danish embassies will strive to ensure issues of taxation, development and financial transparency are reflected in country programming.

The initiatives in the implementation plan are good and sound. However, it will be essential for Denmark to follow-up with a coherent approach, one in which Denmark plays a more active role in the EU and other international forums to support progressive taxation and activities that are advantageous to the poorest countries. Therefore, our recommendations would be the following:

- The implementation plan stresses the importance of policy coherence, which means that it is critical that ministries that deal with the subjects of development, tax and trade engage properly with each other and commit to ensuring policy coherence.
- Denmark should push for comprehensive Country-by-Country reporting to become a requirement for all sectors, not only the bank sector as the currently the case. This means all companies should disclose information regarding budgets, turnover, staff costs and numbers as well as assets etc. for each of the countries in which they have a presence and do business, and not only at a cumulative/global level – which is the case at the moment.
- Denmark should push for public lists of beneficial ownership, which means that information about who actually owns businesses should be collected and made publicly available.
- In general, Denmark should promote greater transparency, thus making the use of tax havens and tax dodging unacceptable behaviour, ultimately leading to an increase in tax revenues and thus to better provision of public services.
- Therefore, it would obviously be preferable for the African Guarantee Fund to be moved out of the tax haven in which it has been established.

Conclusion

The new Danish legal framework sets out impressive, progressive and participatory targets and objectives. The Danish civil society will closely monitor implementation, as there are little or no guarantees in the political sphere.

The new legal framework makes it clear that Denmark only gives aid in partnership with developing countries. While the old law from 1971 simply referred to 'aid to developing countries,' the new law is focused on cooperation and partnerships.

The Danish government is increasingly focused on structural causes of poverty, human rights, private sector development, and the improvement of EU legislation for the betterment of developing countries.

Endnotes

1 https://www.retsinformation.dk/forms/R0710.aspx?id=142451

2 http://um.dk/da/~/media/UM/Danish-site/Documents/Danida/Det-vil-vi/right_to_a_better_life_pixi.pdf

3 http://amg.um.dk/en/~/media/amg/Documents/Policies%20and%20Strategies/Horisontal%20strategic%20frameworks/EU-samarbejde_UK_web.pdf

4 http://fnnewyork.um.dk/da/~/media/UM/Danish-site/Documents/Danida/Nyheder_Danida/2013/2%20Handlingsplan%20PCD.PDF

5 http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf

6 ibid; http://www.oecd.org/dac/stats/

7 Give us a break: How big companies are getting tax-free deals (ActionAid 2013)

8 http://um.dk/da/~/media/UM/Danish-site/Documents/Politik-og-diplomati/Nyheder_udenrigspolitik/2013/Udmoentningsplan%20skat%20og%20udvikling_juni%202013.pdf