FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

BETTER LEGISLATION

HUMAN RIGHTS IMPACT ASSESSMENTS IN LAWMAKING

REPORT

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Foreword

When lawmakers overlook human rights, there are consequences: laws or their implementation may interfere with people's rights, eroding trust in public institutions, or be struck down by courts for violating rights that should never have been ignored in the first place.

Human rights impact assessments are not merely advisable; they are indispensable. They help us look ahead and understand how new laws might affect people before those laws are passed. They make governments more accountable and ensure decisions are fair and trustworthy. Alongside this, civil society and national human rights institutions play a key role in flagging potential human rights violations early in the legislative process.

Our report finds that, while some EU countries have good guidelines, in many countries, human rights remain an afterthought in impact assessment. Rarely do countries assess how laws have been implemented through a fundamental rights lens. Overlooking or ignoring the EU Charter of Fundamental Rights at the national level is counterintuitive as EU rules shape so much national law and practice. When EU law applies, so does the Charter. Therefore, ensuring laws comply with the Charter is not just good practice – it is efficient lawmaking.

Currently there are many calls for simplifying legislation and cutting 'red tape', but this should never come at the expense of rights. Taking a rights-based approach from the outset ensures people's real experiences shape the rules. It also strengthens the rule of law, tying legislation to international treaties and the Charter.

Impact assessments are far more than a purely technical exercise. For FRA, they are a critical point in better lawmaking. It is about reinforcing trusted legal systems in the EU with people's rights at the centre. At a time when trust in democratic institutions is under pressure, it is crucial that lawmakers and policymakers prove their laws are fair and inclusive.

Better lawmaking is not just about better process – it is about better lives. This is a principle that national legislators and the EU legislator alike must always remember.

Sirpa Rautio
Director

Key findings

The European Union Charter of Fundamental Rights in lawmaking: often overlooked

While some European Union (EU) Member States have developed comprehensive guidelines for lawmakers on impact assessments that take into account the impact on human rights – with some of these procedural tools even referring to EU fundamental rights and the European Union Charter of Fundamental Rights (the Charter) – in many Member States human rights do not necessarily play a prominent role in impact assessments. Only rarely do impact assessments at the national level explicitly and systematically address human rights concerns. When human rights considerations come into play, impact assessments are often focused on specific areas such as equality, gender, data protection or the environment, and they do not consider the whole spectrum of possible human rights impacts. There is a considerable diversity of approaches and procedures even within the respective Member States depending on the ministry responsible and the policy area concerned.

Only a third of Member States have issued guidelines to assess impacts on human rights when transposing or implementing EU law, and only six Member States have guidelines in place that explicitly refer to the Charter (Cyprus, Denmark, Germany, Greece, Finland and Netherlands). Legal scrutiny procedures, which are separate or part of the impact assessment, check the legal compliance of a legislative proposal with human rights law. However, only in a very few Member States do the procedures explicitly remind the legislator of the need to check the legislative proposals against EU fundamental rights law as well, including the Charter. Moreover, expert interviews in some Member States and North Macedonia indicated that government officials drafting laws lack human rights knowledge, especially of the Charter.

This lack of reference to the Charter in national lawmaking is surprising given the fact that much of national law and policymaking is directly or indirectly influenced by EU legislation and therefore is likely to fall within the scope of EU law. The lack of consideration of the Charter is problematic as it may lead to overlooking compliance with EU fundamental rights law in the lawmaking process at the national level. This may lead to gaps in the protection offered by legislation in cases where the Charter offers added value in terms of the substantial scope of its provisions compared to other human rights sources, such as the European Convention on Human Rights (ECHR) or the national constitutional rights catalogues.

In contrast to national practice, at the EU level, the better regulation system of the European Commission (the Commission) requires that every EU legislative initiative be checked against the Charter. Moreover, the Charter is considered in impact assessments. The 2010 Strategy to strengthen the application of the Charter introduced a fundamental rights checklist designed to make it easier for staff working on legislative proposals to understand the methodology for addressing questions on EU fundamental rights, which should be used by all Commission

departments. However, fundamental rights impact assessments are not carried out for all legislative files where they are needed. Moreover, fundamental rights impact assessments are often superficial. Just as at the national level, fundamental rights impact assessments require specialised fundamental rights expertise which is not sufficiently available across all directorates of the Commission. Furthermore, the Regulatory Scrutiny Board, which provides quality control and support for the Commission's impact assessments and evaluations at early stages of the legislative process, does not include fundamental rights experts.

Consultation of external experts: room for improvement

Independent expert advice improves the evidence base for assessing the human rights impacts of legislation. Of special relevance in this regard are specialised bodies such as national human rights institutions, equality bodies or ombuds institutions. Additionally, civil society organisations (CSOs) active in the field of human rights can bring first-hand experience on the practical implementation and potential impacts on the ground. To ensure that external expert advice reaches the lawmaking process at the right moment, consultation procedures are key.

Inclusive and accessible public consultations should be systematically integrated into the human rights impact assessment process, ensuring meaningful opportunities for all relevant stakeholders – including those directly affected – to contribute at this stage of the policy- and lawmaking process. While at the national level there are procedures in place for consulting CSOs and human rights expert bodies to improve the quality of the laws and the assessment of human rights implications, expert interviews also revealed that in practice, consultations are often considered untimely, inaccessible, not sufficiently meaningful and ineffective.

The Commission makes efforts to consistently carry out public consultations in the context of law and policymaking at the EU level. In addition to public consultation, it also carries out targeted stakeholder consultation focused on specific groups of stakeholders and experts. The experiences, data and views shared with legislator through exercises like these can contribute much needed evidence to the impact assessment. However, the internal legal assessment within the EU institutions is not open to the public.

Ex post evaluations: insufficient use at the national level

Ex post evaluations of laws are very rarely carried out at the national level and, when done, human rights indicators are not used. Just as is the case for *ex ante* impact assessments, the decision to conduct an evaluation is often seen as a political consideration, rather than a requirement. This constitutes a missed opportunity to evaluate human rights impacts of the laws as they are implemented in practice.

At the EU level, *ex post* evaluations are far more frequently carried out. Moreover, these evaluations at the EU level are considered transparent and accessible. However, the back-to-back

procedures (where the impact assessments and evaluations are conducted simultaneously) is problematic if they reveal that the impact assessments of the European Commission do not sufficiently take into account the findings of the evaluation.

Against the background of these findings, this report provides some ‘ways forward’ to the Member States, the European Union Agency for Fundamental Rights (FRA) observer countries and the EU institutions to ensure effective human rights impact assessments and evaluations.

Introduction

Hundreds of laws are adopted every year across the European Union (EU): in 2024, the EU alone adopted 146 regulations and directives [1] in the ordinary legislative procedure. By nature, every legislative project carries its risks. Whereas low-quality laws risk weakening high-quality laws [2], laws that negatively impact human rights come with an even more serious risk, namely, to further reduce trust in public institutions and weaken society and the state at large. This is why legislators need to assess the possible impact of laws before adopting them. But, as this report shows, ambition and practice diverge. The report examines the impact assessment of legislation from a human and fundamental rights perspective (on the terminology used, see Box Legal corner: Terminology below). It shows why and how legislators both at the EU and the national level must systematically ensure that legislation complies with human and fundamental rights standards and avoid negative impacts on these rights. Human and fundamental rights impact assessments (HRIAs), *ex ante* and *ex post,* are a very useful tool to minimise the risk of adopting legislation that violates human and fundamental rights law.

Legal corner: Terminology

The report takes a broad view of human rights, covering national, international and EU fundamental rights. The terms 'fundamental rights' and 'human rights' are one and the same, according to the Regional Office for Europe of the UN High Commissioner for Human Rights (OHCHR), in The European Union and International Human Rights Law (p. 9).

The EU speaks of fundamental rights in its internal relations and of human rights in its external relations. Reference to 'fundamental rights' in this report is only made in the specific context of EU legislation. The term 'lawmaker' in this report refers both to the government and the parliament acting as a legislator.

The report takes a broad view of human rights impact assessment (HRIA). It covers:

1. *ex ante* impact assessments (the narrow definition of HRIA as the assessment of possible impacts of legislation);
2. legal scrutiny (assessment of specific legislative proposals against fundamental rights standards); and
3. *ex post* evaluations (retrospective evaluations of how legislation has affected fundamental rights after it has been implemented).

The report deals with three different areas, namely *ex ante* impact assessments, legal scrutiny and *ex post* evaluations. Regulatory impact assessments (RIAs) accompany legislative initiatives which typically analyse the economic, social or environmental impacts of the proposed solutions. RIAs can contribute to lowering the frequency of the modifications of the law and may to some

extent bring stability in a volatile political environment [3] . Whereas RIAs examine the costs and benefits as well as the risks and likely consequences of legislative proposals, legal scrutiny is a process more legal in nature, focused on legal compliance. *Ex post* evaluation of adopted legislation includes information about the human rights risks and the impacts that have materialised, the affected rights holders and the measures taken to mitigate the negative effect on human rights. *Ex post* evaluation should feed back into the legislative cycle, triggering amendments where needed and contributing to the ongoing HRIA process [4] .

At the EU level, the current trend aims to simplify existing legislation across different policy areas, which can have benefits such as reducing burdens on economic operators and may also stimulate growth, innovation and competitiveness. However, as the European Ombudsman also underlined, such political priorities and other urgencies should not compromise the 'essential elements of the Union's rule making process, that is carrying out public consultations and impact assessments' [5] .

HRIAs require time, knowledge and resources and can be particularly challenging in cases of political urgency, especially in cases of emergency. However, lawmakers are under a legal obligation to ensure that the adopted legislation respects, protects and fulfils human and fundamental rights, including national constitutions and international or European human rights treaties and, when transposing EU legislation, the Charter. A well-developed and evidence-based HRIA is very likely to identify any piece of draft legislation that unduly interferes with human and fundamental rights or has other adverse consequences on those rights. The legislator must balance various human rights and justify a limitation thereto. Where the legislator overlooks potential human rights impacts or does not justify interferences with those rights, there is a risk that the legislation may be annulled by the courts for violating human rights. In the landmark cases of *Tele2 Sverige* and *Watson and Others* [6] , *SpaceNet and Telekom Deutschland* [7] and *Ligue des droits humains* [8] , the Court of Justice of the European Union (CJEU) held that German, Swedish and Belgian legislation that imposed general and indiscriminate data retention in national law were incompatible with EU law, entailing serious interferences in the right to privacy and data protection under the Charter.

Not only national law but also EU legislation itself has been increasingly challenged before the CJEU for violating EU fundamental rights. The Family Reunification Directive, the Framework Decision on a European Arrest Warrant, the Audiovisual Media Services Directive, the Directive on Driving Licenses or the Biometric Passports Regulation are some examples in that regard [9] . In some cases, the CJEU declared EU legislation null and void as it had been in violation of the Charter. High-quality legislation that withstands political and legal scrutiny from the perspective of human rights must therefore comply with EU law. This is especially relevant in the context of the EU's upcoming accession to the European Convention on Human Rights (ECHR), which will submit the EU and its legislation to further external judicial scrutiny by the European Court of Human Rights (ECtHR).

Systematically conducted legal scrutiny and HRIAs are thus a tool to avoid the political consequences, major financial costs and any other knock-on effects that may arise if European or

national courts find legislation to be in violation of human rights. Rather than delegating in practice their responsibility for checking the human rights compatibility of legislative proposals to independent courts, lawmakers must abide by their fundamental rights obligations in all their activities.

HRIA should begin at the earliest policy development stage, not just once a draft exists. Starting HRIA during policy formation allows decision-makers to integrate rights considerations before key choices are locked in, ensuring more effective prevention of violations and higher quality laws [10].

The Commission has put the assessment of fundamental rights impacts of legislative proposals on its agenda for more than a decade. When adopting the first strategy on the application of the Charter in 2010 [11], the Commission presented its 'clear objective' as 'the Union must set an example to ensure that the fundamental rights provided for in the Charter become reality' also 'by strengthening the assessment of the impact of its proposals on fundamental rights'. In the 2020 revision of the Charter strategy [12] the Commission reaffirmed that 'Charter compliance will remain a central concern for the Commission throughout the decision-making process'. One of the key strands of the 2020 strategy focuses on fostering the use of the Charter as a 'compass for EU institutions'. In this context, the European Commission has been providing training to its staff; it has been developing a guide on fundamental rights impact assessment and online training for EU and national civil servants. Moreover, the European Commission will make additional training tools and guidance available at the beginning of 2026 [13].

In addition, the Commission calls on the Member States to equally carry out fundamental rights impact assessments and legal scrutiny procedures to ensure that initiatives implementing EU law comply with the Charter. From its side, the Council of the European Union encouraged the Member States to 'reflect on the obligation to ensure consistency with the Charter in their national rules on legal scrutiny and impact assessments of legislation that fall within the scope of Union law' [14]. The European Parliament has also recently encouraged national governments and parliaments to publish (publicly accessible) impact assessments and consultation findings for every major legislative proposal and to refrain from excessively using accelerated procedures that bypass stakeholder and civil society consultation [15].

This report deals with Member States and the agency's three observer countries (Albania, North Macedonia and Serbia) which must under the accession process align their national legislation with EU law, including the Charter. The report addresses policymakers, civil servants, government officials, parliaments, national human rights institutions, equality bodies, ombuds institutions and other national authorities potentially involved in impact assessments or legal scrutiny of legislative proposals that may unduly impact the exercise of human rights, both prior and after adoption.

While the report does not seek to provide a comparative overview of the overall situation in the EU, it covers both the EU and the national level, and is based on a multiplicity of sources, including desk research, consultations with the European Parliamentary Research Service (EPRS), the Commission, the Venice Commission, the Office for Democratic Institutions and Human Rights of

the Organization for Security and Co-operation in Europe (ODIHR), the agency's national liaison officers, national human rights institutions, equality bodies and ombuds institutions. The agency further organised an expert meeting and conducted fieldwork research in 10 Member States (Croatia, Cyprus, Denmark, Germany, Greece, Estonia, Finland, France, Netherlands and Slovenia) and one candidate country participating as an observer in FRA's work (North Macedonia). These countries were selected based on the information received from the national liaison officers on the promising practices of impact assessments and evaluation procedures in their countries.

The report is a first step towards examining the issues connected to human and fundamental rights considerations in the impacts of upcoming and adopted legislation and presents relevant promising practices. The aim of this report is to open the discussion with the competent national authorities, EU institutions and other stakeholders involved in the legislative process to exchange experiences and identify the best drivers and safeguards for more human-rights-compliant laws. It starts by presenting the relevance of assessing legislation in terms of its impact on human rights, before highlighting the relevance of expert input to ensure better lawmaking, and then outlining promising practices and issues related to *ex ante* and *ex post* human rights impact assessments and the legal scrutiny of legislation at the EU and national levels. Finally, the report proposes ways forward both for the EU and the Member States to better respect and protect human rights in the legislative process.

1. Relevant law and policy

1.1. Human rights standards in lawmaking

Lawmaking and human rights are linked to each other in different ways. Firstly, Member States have a positive obligation under the ECHR to adopt legislative measures to ensure effective protection of human rights [16] . Secondly, the legislator must follow a particular approach in lawmaking. For instance, the European Court of Human Rights (ECtHR) requires the law to be formulated with sufficient precision to enable the addressees to envisage its effects [17] . The ECtHR further requires entire sets of laws to be coherent [18] . Moreover, the principle of proportionality, which is also a general principle of EU law, must be respected when implementing measures through EU law. The CJEU maintained that these measures, 'should be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it' [19] . Furthermore, the proportionality assessment must try to reconcile and strike a fair balance between different fundamental rights [20] . Both the ECtHR and the CJEU require national legislators to lay down procedures to enable judicial control [21] . Both courts also require lawmakers to show on which evidence base they have balanced rights and interests [22] . Against this background, scholars argued that there is a right to rational and evidence-based lawmaking [23] .

Lawmakers must ensure that adopted legislation does not unduly restrict any human right. This requires assessing potential impacts that a legislative proposal might have on human rights and to check any legislative proposal against human rights standards (legal scrutiny), as highlighted by several international organisations, such as the United Nations (UN) [24] , the Council of Europe Venice Commission [25] , the Organisation for Security and Co-operation in Europe (OSCE) [26] and others [27] .

A HRIA focuses on human rights standards, which offer a specific basis for assessing actions in light of a State's international obligations [28] . HRIAs go beyond what traditional social impact assessments require. In HRIAs, there is a strong legal and consequential accountability element arising from States' obligation to respect, protect and fulfil human rights [29] . There is a focus on prevention, mitigation and redress measures [30] .

Legal corner: ODIHR guidelines on democratic lawmaking for better laws

Based on more than 20 years of legislative assessment work and collection of good practices in the OSCE participating states, ODIHR developed guidelines containing 17 guiding principles on democratic lawmaking. The guidelines emphasise lawmaking as a continuous cycle beginning with policy conception and problem analysis, progressing through drafting, consultation and adoption and extending to implementation, monitoring and *ex post* evaluation, the findings of which inform future legislative planning.

Source: OSCE/ODIHR, 'Guidelines on Democratic Lawmaking for Better Laws', 16 January 2024.

Member States and candidate countries participating as observers in the agency's work are parties to several international human rights treaties. The EU is also a party to the Convention on the Rights of Persons with Disabilities (CRPD) [31], and the Council of Europe's Istanbul Convention [32]. Under those international human rights treaties, the parties have the obligation to protect, respect and fulfil human rights. The EU and its Member States are also parties to the Aarhus Convention [33] which links environmental rights to human rights.

FRA activity: EU fundamental rights information system

The EU fundamental rights information system (EFRIS) brings together information on the human rights commitments and compliance of the 27 Member States and Albania, North Macedonia and Serbia. The system provides information on which human rights treaties and mechanisms are applicable in each country.

Source: FRA, EFRIS.

The EU and its Member States must comply with the Charter, which contains 50 rights and principles. The Charter is part of EU primary law (Article 6(1) of the Treaty on European Union (TEU)) which puts it above regulations, directives and national law. Certain Charter provisions have direct effect and so they can be invoked directly by individuals against the state [34] or against other private parties [35].

The Charter is always binding upon EU institutions, bodies and agencies and upon the Member States when they are implementing EU law (Article 51(1) of the Charter). Member States implement EU law when they act within its scope [36]. Figures concerning the proportion of national laws based on EU laws vary widely throughout the Member States (ranging from less than 10 % to over 80 %, depending on a variety of factors, including federal structure, legal culture, length of EU membership and so forth) [37]. There is however a common understanding that a considerable share of national lawmaking does fall within the scope of EU law and therefore must

fully respect the Charter.

FRA activity: Charter checklists on applicability and compliance

How can a legislator identify whether the Charter is applicable to a draft law under Article 51(1)? When can interference with the Charter be justified under Article 52(1)? FRA's guidance provides checklists for assessing these questions. The guidance is based on the CJEU case law and is available in all EU languages, except Irish and Maltese. Furthermore, the European Commission checklist 'Does the Charter apply to my case' helps individuals establish whether the Charter applies to their case.

Source: FRA, 'Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level – Guidance', 23 October 2018; European Commission, 'Does the Charter apply to my case', Commission website.

Failing to fulfil an obligation under EU law may lead the Commission to initiate infringement proceedings against a Member State before the CJEU (Article 258 of the Treaty on the Functioning of the EU (TFEU)). Furthermore, Member States may be liable for damages before national courts following a breach of EU law [38]. It is therefore key that national lawmakers not only check proposals falling within the scope of EU law against international human rights law and their constitutional rights catalogues, but also against the Charter, as to a certain degree the Charter goes beyond national and international human rights law, including the ECHR. In their national level impact assessments, national legislators should reassess the fundamental rights impacts identified by EU legislators.

The UN Human Rights Council has stressed the importance for States Parties to conduct HRIAs, avoid negative consequences for rights holders and ensure consistency and coherence between different laws [39].

Legal corner: Ensuring compliance with the Convention on the Rights of Persons with Disabilities

As the EU is a party to the CRPD, the rights enshrined in the convention are an integral part of EU law that must be respected by EU legislators. However, the CRPD Committee has noted with concern that EU legislation, policies and practices have not been systematically reviewed in light of the convention, as recommended in the previous committee's concluding observations. In its new concluding observations adopted in 2025, the CRPD Committee therefore calls on the EU to conduct a comprehensive review of its legislation, policies and practices to ensure their compatibility with the convention, and to 'establish mechanisms to ensure that new legislation, policies and practices adhere to the convention, including by revising its impact assessment guidelines'.

Source: *Committee on the Rights of Persons with Disabilities, 'Concluding observations on the combined second and third periodic reports of the European Union',* CRPD/C/EU/CO/2-3*,* 21 March 2025*.*

Evaluation of legislation is key to measuring the real-life impact of legislation. *Ex post* assessment should guide the amendments of laws, which should not be made based on assumptions but on evidence. The European Commission's better regulation toolbox [40] presents information on how to collect, use and analyse evidence which will inform policymaking (Tool no 4), for example. Furthermore, the human rights indicator model of the Office of the High Commissioner for Human Rights [41] includes structure, process and outcome indicators that could also be used in policymaking. These indicators correspond to a country's commitments, efforts and results, measuring the acceptance, intent or commitment of a country to meet the human rights obligations derived from an international treaty to which it is a party.

Legal corner: HRIA process core elements

- HRIAs should be carried out at all levels of government, including at the national and sub-national levels.
- HRIAs should be carried out by an 'institution best qualified to produce independent, credible HRIAs that conform to the applicable standards in that country and that are responsive to gender considerations'.
- An evidence-based process including both quantitative and qualitative analysis should be in place. Reliable and disaggregated data are especially needed to measure the impacts on different groups at risk of discrimination.
- The transparency and consultation of relevant stakeholders should be ensured. The meaningful participation of civil society is of utmost importance. Groups at risk of discrimination should be represented in the process.
- A follow-up mechanism must be envisaged allowing for the adopted measures to be reconsidered if they produce adverse effects on human rights that cannot be prevented or mitigated.

Source: Human Rights Council, 'Guiding principles on human rights impact assessments ofeconomic reforms – Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights', A/HRC/40/57, 19 December 2018. For an introduction to the principles, see Bradlow, D., How to make economic reforms consistent with human rights obligations – Guiding Principles on Human Rights Impact Assessment of Economic Reforms, University of Pretoria, South Africa, 2020.

HRIA is especially important when passing legislation related to crises, when countries are inclined to restrict human rights more and use urgent or accelerated legislative procedures to do so [42]. It is also critical when passing wide-range reforms, such as constitutional reforms, and legislation introducing major changes to the functioning of the democratic institutions. In such cases, impact assessment and public consultation, critical elements of the legislative process, are often bypassed. For example, the agency found evidence of Member States' legislation or measures which represented disproportionate or unjustified restrictions of fundamental rights during the COVID-19 pandemic [43].

Promising practice: Development of toolkits

Following the COVID-19 pandemic and at the request of its Member States, the Council of Europe developed a toolkit for human rights impact assessment of measures taken by states in situations of crisis. The toolkit aims to provide guidance on how to assess the impact of restrictive measures on human rights in situations of crisis.

Source: Council of Europe, 'Toolkit for human rights impact assessment of measures taken by states in situations of crisis', May 2024.

Lawmaking procedures must not only respect human rights but must also comply with democratic principles and the rule of law. The lawmaking process as an extension of the democratic process must include public participation, which is inclusive, informed and transparent [44]. This requires effective and meaningful consultation with a wide range of stakeholders, including human rights experts, national human rights institutions, civil society and stakeholders who might be impacted by the legislation, especially groups at risk of discrimination [45].

The right to participate in public affairs is guaranteed by several international human rights instruments. Article 25 of the International Covenant on Civil and Political Rights [46] is phrased in rather general terms: 'take part in the conduct of public affairs, directly or through freely chosen representatives', and it does not mention the policy/legislative process. Other conventions refer more specifically to the right to 'participate in the formulation of government policy and the implementation thereof' (e.g. Article 7(b) of the Convention on the Elimination of All Forms of Discrimination Against Women [47], Article 5 of the International Convention on Elimination of All Forms of Racial Discrimination [48], Article 12 of the Convention on the Rights of the Child [49], Article 29 of the CRPD and Article 8 of the Aarhus Convention). The term 'public affairs' used in Article 25 of the International Covenant on Civil and Political Rights is a broad concept, covering 'all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels' [50]. However, the exercise of the right under Article 25 should be expressed by the States Parties in their national law [51]. In this context, the Parliamentary Assembly of the Council of Europe has been calling on the Member States of the Council of Europe to adopt measures on participatory and deliberative democracy processes [52]. In Finland and Latvia, the constitution has been interpreted to include a right to participate in public affairs [53].

Transparency, public participation and consultation are also key at the EU level. Article 10(3) of the TEU states that 'every citizen shall have the right to participate in the democratic life of the Union' and that 'decisions shall be taken as openly and as closely as possible to the citizen'. Furthermore, Article 11 of the TEU requires EU institutions to listen to citizens and their representative organisations in all areas of EU action, and to keep an open, transparent and regular dialogue with representative associations and civil society.

Legal corner: Commission's better regulation system

The Commission prepared guidelines and a toolbox for its services on how to carry out impact assessments of EU legislative initiatives and evaluations of adopted EU legislation. Under the better regulation system, the Commission's services are required to consult stakeholders in the preparation of impact assessments and to consider and assess the fundamental rights impacts of proposals. Tool no 29 includes a step-by-step assessment of policy options against fundamental rights. The better regulation guidelines are being updated at the time of writing of this report to include the most recent CJEU case-law and the accession of the EU to European human rights treaties. National legislators can use the better regulation system as a source of inspiration to conduct fundamental rights impacts assessments of national law implementing EU law.

Source: Commission staff working document – Better regulation guidelines, SWD(2021) 305 final of 3 November 2021; European Commission, 'Better Regulation Toolbox', July 2023.

1.2. Ensuring better lawmaking via independent expertise

Consultation of the relevant stakeholders allows public authorities to grasp the situation on the ground, identify gaps and provide sustainable legislative solutions after balancing the different interests at stake.

National human rights institutions (NHRIs), ombuds institutions and equality bodies provide independent human rights expertise to national authorities [54], for example, on specific issues related to equality, gender and disability [55]. Under the Paris Principles, these bodies should be mandated to 'promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation' [56]. For this purpose, NHRIs may submit to the legislator either at request or on their own initiative, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.

Under EU law, the involvement of equality bodies is legally prescribed for legislation and policy related to the rights and obligations derived from EU equality law [57]. Article 15 of the two directives on standards for equality bodies (Directive (EU) 2024/1499 [58] and Directive (EU) 2024/1500 [59] obliges the Member States to 'put in place procedures to ensure that the government and relevant public authorities consult equality bodies' on the relevant EU equality legislation and policy. Article 15(2) further states that 'Member States shall ensure that equality bodies have the right to make recommendations on those matters, to publish the recommendations and to request follow-up regarding such recommendations'.

Along with independent expert institutions such as NHRIs, civil society also plays a vital role in

voicing issues connected to human rights [60] . An open and inclusive approach to lawmaking allowing citizens/residents to express their concerns and wishes and experts to provide evidence and know-how is not just an expression of good governance, but is also a tool to avoid legislation that results in any violation of human rights [61] . Including all segments of society in the decision-making process creates a more inclusive, equitable society and has an 'empowering effect' on marginalised groups [62] .

To guarantee legitimacy, consultations should not be a mere formality but be meaningful, focused and used to come up with the best proposal that fits societal needs. The consultation should be driven by the risks identified in the impact assessment, and consultation should also contribute to the identification of significant impacts [63] . The results of the consultations should be reflected in the documents related to the specific draft law, such as the explanatory memorandum, and be reported in a transparent and detailed manner, including dissenting views [64] . Not considering the opinions of people and civil society may result in opaque and ineffective legislative action which is not connected to the realities of society [65] .

The OSCE/ODIHR *Guidelines on Democratic Lawmaking for Better Laws* encourage legislators to 'diversify the structures, methods, mechanisms, tools and types of public participation, ensuring that they are accessible, user-friendly and include new technologies, but are not limited to the sole use of online tools' [66] (p. 12). In fact, participation plays a key role in many stages of HRIAs such as evidence-gathering, analysis, the preparation of conclusions or recommendations, monitoring and evaluation [67] .

2. Assessment and evaluation of human rights impacts in practice

This section presents how the Member States, observer countries and the EU conduct the impact assessment of legislative proposals on human rights, including legal scrutiny, before and after adoption of legislation. The report identifies drivers and hurdles for efficiently considering human and fundamental rights in the HRIA. Moreover, this section presents a set of promising practices.

2.1. The EU level

All EU legislative proposals can have an impact on fundamental rights. This requires the inclusion of HRIA into the EU legislative process with transparent legal scrutiny and strong participatory elements. The overall picture of the EU system is generally positive with some negative aspects due to insufficient implementation of existing procedures.

At the EU level, both the European Parliament and the Council of the European Union (the Council) hold legislative powers. While they are co-legislators, the right of legislative initiative belongs exclusively to the Commission. The European Parliament may request the Commission to submit legislative proposals. Moreover, citizens have a limited option to influence EU policies through the 'citizens' initiative [68] . However, the thresholds for successfully registering and carrying out such initiatives are high, and once the initiative has been successfully carried out it is up to the Commission to decide on whether to act on it and table a legislative proposal or not.

The governments articulate their positions regarding the legislative proposals of the Commission at the ministerial Council of the European Union. National parliaments in most Member States scrutinise the acts and positions of their governments in the EU decision-making process. When the EU legislator identifies fundamental rights impacts for some proposals, the impacts are not automatically assessed at the national level when implementing EU law. For instance, in Croatia, the national parliament may request the government to prepare a regulatory impact assessment concerning the EU legislative proposal [69] . In Estonia, the government must submit an impact assessment to the national parliament in this regard [70] .

The Council, the Commission and the European Parliament concluded an Interinstitutional Agreement on Better Law-Making [71] in which the three institutions agree to observe general principles of EU law, such as democratic legitimacy, subsidiarity and proportionality and legal certainty. [72] While the agreement does not put fundamental rights at the centre of its attention, it does mention that 'the principles of subsidiarity and proportionality should be fully respected, as should fundamental rights' (paragraph 12). The agreement stresses that European Parliament and the Council will take full account of the impact assessments carried out by the Commission. Moreover, they will, when they consider it to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments of the Commission's proposal (paragraphs 13 and 14). The aim is to improve the quality of EU

legislation towards evidence-based policy choices which enjoy democratic legitimacy. Public and stakeholder consultation (paragraph 19) and feedback are important elements of the process, as is the *ex post* evaluation of existing legislation (paragraphs 20–24).

FRA activity: Sociolegal analysis of fundamental rights

The agency consistently contributes to law and policy developments through data collection and sociolegal analysis, listed below. For example, the violence against women survey contributed relevant evidence in the context of the adoption Directive on combatting violence against women, FRA's work on civic space was used as evidence for the adoption of SLAPP Directive and its work on artificial intelligence provided analysis in the context of the adoption of the Artificial Intelligence Act. Most recent data concerns LGBTIQ equality, racism in policing, immigrants and descendants of immigrants and the experiences of Jews and Muslims in the EU. Such FRA studies could be helpful for conducting HRIAs of upcoming EU legislative proposals.

- *FRA, 'EU gender-based violence survey - Key results', 25 November 2024;*
- Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence*, SWD/2022/62 final;*
- *FRA 'Civic space', FRA website;*
- *Commission Staff Working Document analytical supporting document accompanying a Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") and a Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), SWD/2022/117 final, 27 April 2022;*
- *FRA 'Artificial intelligence and big data', FRA website; Commission Staff Working Document Impact Assessment Accompanying the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act) and amending certain union legislative acts, SWD/2021/84 final, 21 April 2021;*
- *FRA, 'LGBTIQ equality at a crossroads: progress and challenges', 14 May 2024;*
- *FRA, 'Addressing Racism in Policing', 10 April 2024;*
- *FRA, 'Technical and quality report - EU Survey on Immigrants and Descendants of Immigrants', 2 February 2024;*
- *FRA, 'Jewish People's Experiences and Perceptions of Antisemitism', 11 July 2024;*
- *FRA, 'Being Muslim in the EU - Experiences of Muslims', 25 October 2024.*

Following the Interinstitutional Agreement on Better Law-Making, each of the three institutions adopted guidelines in this respect. The European Commission developed the better regulation guidelines and toolbox [73], setting up the principles it follows when preparing new legislative initiatives and proposals and evaluating existing legislation. Tool No 29 of the toolbox specifically gives guidance on how to assess impacts on fundamental rights as contained in the Charter. The tool requires screening against two checklists: a fundamental rights checklist and a non-discrimination and equality checklist for every impact assessment report [74]. Fundamental rights impacts are dealt with at the same level as economic, social and environmental impacts, digital by default, sustainable development goals, small and medium-sized enterprises and competitiveness. All these impacts are to be reported systematically. Furthermore, the Commission previously adopted operational guidance on taking account of fundamental rights in Commission impact assessments [75]. The guidance, addressed to its departments, presents how to assess impacts of the Commission's legislative proposals on fundamental rights in practice.

While the Council does not appear to engage in complementing the regulatory impact assessments (RIAs) of the European Commission or in providing impact assessments concerning the amendments it proposes to the original legislative proposal as tabled by the European Commission, it adopted the guidelines *Fundamental Rights Compatibility – Guidelines for Council preparatory bodies* [76] which include a 'fundamental rights checklist' (Annex V) to identify and address fundamental rights issues connected to proposals at the Council preparatory bodies.

The European Parliament adopted an Impact Assessment Handbook [77] in 2013 (revised in 2017), with guidelines for the Parliament's committees on conducting impact assessments based on the Commission's standard format for its own impact assessments. The Annex to the guidelines mentions that the impact assessment report must include an assessment on whether the objectives pursued by legislative proposals are consistent with the Charter (pp. 10 and 11).

While the EU certainly 'leads by example' in terms of awareness of the key importance of the Charter for the legislative process and the availability of respective procedures, the overall picture also shows weaknesses. The most concerning element is that it appears that impact assessments are not carried out on all initiatives that have significant impacts. Sometimes the assessments are very superficial and at times, even in cases where fundamental rights are very important to the legislative file, fundamental rights assessments are not carried out at all.

The European Parliamentary Research Service (EPRS) assessed the quality of the Commissions' impact assessments accompanying legislative proposals between December 2019 and November 2024. It found that out of the 143 impact assessment reports analysed, 62 assessed impacts on fundamental rights, and 31 of those only partially assessed these impacts. The report stressed that 'all impact assessment reports should systematically consider and report potential impacts on fundamental rights' [78].

At the time of writing, various procedures are pending before the European Ombudsman over the allegation of breaching the 'better regulation guidelines' by not carrying out an impact assessment when preparing legislative proposals. The complaints relate to the proposals for a directive on

enhancing police cooperation on the prevention, detection and investigation of migrant smuggling [79], the Regulation to prevent and counter the facilitation of unauthorised entry, transit, and stay in the Union [80], a proposal to amend legislation related to the Common Agricultural Policy [81] and a legislative proposal on corporate sustainability reporting and due diligence [82].

The European Parliament [83] and the expert community [84] have been calling to strengthen the fundamental rights review of EU legislative proposals. National parliaments and academia have also criticised the EU lawmaking process as 'complex and unintelligible', which poses risks for the implementation and enforcement of laws within the EU [85].

FRA's research confirmed this. FRA examined 116 legislative proposals which were adopted at the EU level in the years 2019–2025, all of which, in the agency's view, could have had potential impacts on fundamental rights [86]. Although an impact assessment was conducted in 103 examples, in approximately one third of these the fundamental rights impact assessment was either very brief – half a page or less (23) [87] – or very general (11) [88]. In 4 legislative proposals that clearly impact fundamental rights, no publicly documented fundamental rights check was carried out by the competent Commission's service: Directive (EU) 2024/2841 on the European disability and parking cards [89], the proposals for a regulation [90] and a directive [91] on migrant smuggling and a directive on certain corporate sustainability reporting and due diligence requirements [92].

The shortcomings in the Commission's impact assessments were sometimes remedied by the European Parliament through complementary or substitute impact assessment reports [93], with a view to integrating more fundamental rights considerations and safeguards into the legislative file. A substitute impact assessment report (prepared when no impact assessment is presented by the European Commission) can sometimes be conducted, for example for the New Pact on Migration and Asylum [94]. Therein, the EPRS noted that the proposed pact would have significant negative consequences for many stakeholders and for many areas, including for fundamental rights. Similar concerns were included in the Parliament's impact assessments concerning the proposed Return Directive [95], the proposal for a Regulation on police cooperation to counter migrant smuggling and human trafficking [96], the proposal for a revised Facilitation Directive [97], the proposal for a regulation addressing situations of instrumentalisation in the area of migration and asylum [98] and the European Commission package of ETIAS consequential amendments [99].

The European Parliament considered the Commission's impact assessment on the proposal for a Regulation laying down rules to prevent and combat child sexual abuse [100] as insufficient and requested a complementary impact assessment report. The European Parliament considered that the potential interferences with the right to privacy and data protection of the proposed EU legislation had been excessive. The EPRS analysis highlighted the need to better protect fundamental rights on the internet (concerns that were also echoed by civil society organisations (CSOs) and Member States) [101]. Similar examples of complementary impact assessments or initial appraisals include the proposed revision of the Victims' Rights Directive [102], the proposal

for a directive on adapting non-contractual civil liability rules to artificial intelligence [103], the recast of the Child Sexual Abuse Directive [104] and the proposal establishing an EU talent pool [105].

The Commission's Regulatory Scrutiny Board (RSB) is mandated to independently assess the quality of all draft impact assessments of the Commission [106]. However, this assessment appears to primarily be focused on economic impacts [107]. The European Ombudsman noted that the RSB should ensure the sufficient knowledgebase of its members to evaluate the correctness of other impacts, not just economic [108]. In 2023, 35 % of its impact assessments and/or opinions and 38 % of its evaluations and/or opinions assessed fundamental rights impacts [109].

After the entry into force of the Lisbon Treaty [110], the European Parliament amended its rules of procedure to allow the European Parliament's Committee on Civil Liberties, Justice and Home Affairs to check the fundamental rights' compliance of a legislative proposal, if consulted [111]. Although this procedure is hardly used in practice, the committee in the past years has requested many impact assessments from the EPRS, showing its concerns about the compliance of Commission proposals with fundamental rights.

Promising practice: preparation of guidelines

The European Data Protection Supervisor (EDPS) prepared guidance for EU co-legislators with key points to consider when drafting legislative proposals which entail the processing of personal data.

Source: EDPS, 'Upholding the fundamental right to data protection: a guide for EU co-legislators', EDPS/2025/05, 13 May 2025.

2.1.1. Legal scrutiny

Legal scrutiny of possible fundamental rights interferences at the law drafting stage is done by the Commission's Legal Service and Directorate General for Justice and Consumers in the interservice group [112]. There is no obligation to involve external and independent fundamental rights exert bodies with the exception of the area of data protection where the European Commission has to consult the European Data Protection Supervisor when adopting proposals for legislative acts and when preparing delegated acts or implementing acts [113]. FRA can only issue opinions on pending legislative proposals when explicitly requested to do so by the Commission, the European Parliament or the Council of the European Union [114]. Against this background, in 2019 the European Parliament suggested that the EU institutions 'should provide for enhanced forms of consultation, impact assessment and legal scrutiny, including by requesting advice from appropriate independent expert bodies such as the FRA, whenever a legislative file potentially promotes or negatively affects fundamental rights' and furthermore suggested 'in this regard that

more regular consultation of the FRA could be provided for in a revised version of the Interinstitutional Agreement on Better Law-Making' [115]. Besides the lack of systematically involving independent external fundamental rights expertise, the internal legal assessment within the EU institutions is not open to the public. The CJEU noted that greater transparency of this process would contribute to the lawfulness and legitimacy of the EU decision-making process in the eyes of EU citizens [116]. The European Ombudsman recently noted that the Commission and the Council had been 'failing to give full effect to the principle of legislative transparency, as set out in the EU Treaties, Regulation 1049/2001 [117], and related case-law' when handling requests for public access to legislative documents [118].

> *… it is precisely openness in this regard that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated.*
>
> Judgment of the CJEU of 1 July 2008, Turco, Joined Cases C-39/05 P and C-52/05 P, paragraph 59.

The most efficient review of the legality of legislative acts remains the one done by the CJEU through actions for annulment. However, the procedure before the CJEU can only be initiated after the publication of the relevant EU legislative act and therefore has no pre-emptive *ex ante* dimension [119].

2.1.2. Evaluations

The EPRS concluded that the vast majority of Commission's impact assessments included monitoring and evaluation provisions during the 2019–2024 term [120]. The EPRS noted that the Commission has ensured high transparency and accessibility of the evaluation process [121]. However, the EPRS also noted issues with the traceability of the evaluations carried out 'back-to-back', of the RSB's opinions and of the supporting evidence used in the evaluations [122].

Back-to-back procedures are provided for in the better regulation guidelines allowing the Commission to exceptionally conduct impact assessments and evaluations at the same time where necessary [123]. A back-to-back approach like this means the Commission conducts evaluations and impact assessments in parallel rather than consecutively which saves time but carries the risk that the impact assessments do not (sufficiently) take the findings of the evaluations into account. In the sample the EPRS examined, 29 out of the 143 impact assessments were carried out back-to-back, representing 20 % (or 30 % if only initiatives for revision are considered) of legislative initiatives between 2019 and 2024 [124]. The European Court of Auditors highlighted the risk that the independence of the two processes is not sufficiently guaranteed [125].

The European Parliament plays an increasingly important role in *ex post* evaluation. Evaluation at the committee level takes the form of an implementation report. The EPRS assists parliamentary

committees with studies (European implementation assessments) providing evidence to feed into the implementation report. The political function of the implementation report is two-fold: first, to hold the Commission to account, and second, to give impetus to the review (or revision) process of the EU policy or legislation at stake [126]. A notable example is the EPRS' implementation assessment on the Return Directive 2008/115/EC [127], prepared in support of the Parliament's implementation report on the Return Directive [128], which identified 'protection gaps and shortcomings' in the issuance and enforcement of return decisions, entry bans and detentions.

2.2. The national level

This section explores the extent to which the EU Member States and FRA's three observer countries, Albania, North Macedonia and Serbia, assess the impacts of legislative proposals on human rights, including legal scrutiny, before the adoption of legislation, and in evaluations of existing legislation.

2.2.1. *Ex ante* human rights impact assessment

The Organisation for Economic Co-operation and Development (OECD) *Better Regulation Practices across the European Union 2025* report notes that all Member States have better regulation strategies in place and impact assessments form a prominent part of these. However, the report criticises the fact that this is an area that has experienced slow progress recently and that regulatory impact assessments often come too late so that they justify, rather than inform, legislative decisions [129]. With regard to the assessment of social impacts, the OECD report notes that since 2017, the number of states that systematically assess impacts on specific social groups and gender inequality has continued to grow. Nevertheless, the role of social impacts in RIAs appears limited, as only around half of the Member States systematically look into the impacts on human health, age groups (e.g. young or elderly people) or regional areas [130]. It appears that references to human rights in RIAs is far from frequent and prominent across the EU.

The agency looked specifically at human rights impact assessments and confirmed this impression: the research shows that human rights impact assessments are not conducted systematically. The lack of legally binding rules, time, resources, expertise and interministerial cooperation, and the lack of political will, play a significant role in whether impacts on human rights are identified and addressed in the legislative process (both *ex ante* and *ex post*).

Impact assessments in most countries have a specific human rights focus provided in binding law (e.g. rules of procedure) or soft law (guidelines, checklists etc.) [131]. However, the extent of the analysis of impacts on human rights varies across the countries and policy areas. Reference to human rights in impact assessments tends to be centred on specific areas and does not encompass the whole spectrum of human rights, for example, gender equality and rights of the child in Germany [132], data protection in Germany and Slovenia [133], ECtHR case-law in Romania [134], equality, non-discrimination and accessibility for people with disabilities in

Spain [135] and gender equality in North Macedonia [136].

We are lacking human rights and disability mainstreaming within the ministries and more generally within society.

Expert from the NHRI in Germany.

Economic and social rights are still a neglected topic.

Expert from the Netherlands Institute for Human Rights.

HRIAs and processes of legal scrutiny primarily consider national constitutional rights, the ECHR and other international human rights standards, whereas EU fundamental rights, including the Charter are less extensively addressed [137]. This lack of engagement with the Charter is already visible in the relevant rules. Explicit reference to the Charter is present in the procedural rules (of the government or parliament) of only six Member States (Cyprus, Denmark, Finland, Germany, Greece and Netherlands [138]. This appears to have repercussions on the practical relevance of the Charter in HRIAs. Experts from the majority of the countries covered by field research noted the limited use of the Charter in the procedures of HRIAs [139].

The importance and impact of the EU Charter was not widely understood. I feel more pressured when I must comply with ECtHR judgments or our obligations under the ECHR than with the EU Charter.

Expert from the Government of Cyprus.

Between 2019 and 2023 the agency collected more than 200 examples of HRIAs and legal scrutiny documents referring to the Charter, from all Member States (except Hungary, Malta and Spain where no relevant examples were identified). Most of these examples pertain to the policy areas of data protection, health, criminal matters, non-discrimination, migration and asylum, competition, rights of the child, social affairs and employment, along with access to information. The most frequently cited Charter articles were Article 7 (respect for private and family life), Article 8 (protection of personal data), Article 21 (non-discrimination) and Article 47 (right to an effective remedy and to a fair trial). Only one example [140] derives from the regional level which might indicate that HRIAs are rarely carried out at the sub-national level.

In a quarter of the 200 examples, the references to the Charter are brief and superficial, and in more than half of the 200 HRIA cases analysed by FRA, the Charter did not have major relevance.

Around a third of the countries use impact assessment guidelines for legislative drafting, including questionnaires or templates that accompany reports on legislative proposals (Austria, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Netherlands, North Macedonia and Slovenia) [141]. In many of these documents fundamental or human rights are not even explicitly mentioned. In Denmark, Estonia, Finland, Germany, Greece and Netherlands these documents specifically refer to the Charter.

Promising practice: preparation of guidelines that acknowledge the relevance of EU fundamental rights

In Finland, there is separate guide on human rights impact assessment in law drafting, which makes reference to the Charter and which includes a checklist. Denmark, Germany, Estonia, Greece and Netherlands also developed guidelines that explicitly mention the EU Charter.

Source: Finnish Government, 'Perus- ja ihmisoikeusvaikutusten arviointi lainvalmistelussa' [Assessment of fundamental and human rights impacts in drafting legislation]; information provided by the national liaison officers.

When interviewing experts in selected countries, in seven countries (Cyprus, Denmark, France, Germany, Greece, North Macedonia and Slovenia) interviewees criticised the questionnaires or the HRIA in general, seeing it as a box-ticking exercise that does not systematically deal with or deeply analyse possible interferences with human rights [142] . Similarly, according to the European Network of National Human Rights Institutions (ENNHRI), NHRIs in three Member States (France, Latvia, Sweden) stressed the lack of proper human rights impact assessments [143] .

> *Every official who drafts a proposal is required to perform this assessment ... you cannot simply tick a box to say that it has no impact on human rights.*
>
> Expert from the government of Slovenia.

> *My own assessment is that the process followed is the 'ticking of boxes'. I am not even sure if the persons completing the form are familiar with the concepts of 'necessity' and 'proportionality' …*
>
> Expert from the government of Cyprus.

Experts from four countries covered by the fieldwork noted the limited use and availability of empirical data or studies on human rights impacts of legislative proposals in HRIAs (Cyprus, Finland, North Macedonia, Slovenia [144] .

> *… if we do not have adequate data … if we do not collect it, if it is not disaggregated in such a way that it allows us to monitor the potential impact on individual groups who are more often at risk of being discriminated against, then their rights are in some way threatened, we cannot even detect potential negative effects.*
>
> Expert from the government of Croatia.

indicators … do not summarise the truth. But they are a tool. In my view, they concretize the conversation, they bring to light the problems. Especially information gaps.

Expert from the government of Finland.

Time constraints in preparing HRIAs were highlighted by the experts interviewed in various countries (Denmark, Germany, Estonia, Finland, Netherlands, North Macedonia and Slovenia [145]. The need for sufficient human resources in the relevant public administration was also stressed (Croatia and Netherlands) [146]. Experts further highlighted the need for human rights training in the public administration (Croatia, Cyprus, Estonia, Finland, Germany, North Macedonia and Slovenia) [147]. The need for training on human rights was also stressed for national parliaments and expert bodies involved in the legal scrutiny of legislative initiatives (France) [148].

Every person that is drafting law should be trained in human rights. They should at least be aware that every law could affect human rights.

Expert from the NHRI in Germany.

We often rush to prepare law amendments because we've been tasked with doing so within a short timeframe to align with EU legislation. As a result, we don't dedicate enough time to preparing these reports.

Expert from the government of North Macedonia.

Given that RIAs are regularly carried out at the EU level, one would expect that national lawmakers would make use of these when transposing the respective directives. However, the recent OECD report on better regulation came to the conclusion that in the absence of specific evidence-sharing mechanisms for transposition, this potential remains untapped as only around half of Member States use the Commission's impact assessment. Most of them only do so 'sometimes' and less than a quarter of Member States use impact assessments conducted by other Member States to inform their transposition process [149]. What also seems illogical is the fact that it appears not to be the standard practice of national lawmakers to complement EU-level RIAs with national RIAs to inform the position of their government when negotiating the respective EU legislation in the Council. The OECD notes in this regard that less than half of Member States have systematic requirements to conduct RIAs to inform the national negotiation position for new EU regulations and directives [150]. The need for national RIAs complementing EU level RIAs is especially obvious when national lawmakers intend to go beyond the scope of the EU legislation, thereby doing more than what is required 'by Brussels' (so called 'gold-plating'). According to the OECD report, only a handful of Members States systematically assess the impacts of gold-plating [151].

2.2.2. Legal scrutiny

Legal scrutiny might be carried out separately or in combination with impact assessments. Given that legal scrutiny as such is a legal exercise where impact assessment is a wider activity, legal scrutiny is usually centralised and often concentrated in the national ministry of justice, as the example of Germany shows (see below for the other actors involved), whereas the responsibility for human rights impact assessments varies and is spread over many ministries. A horizontal responsibility for human rights usually lies with the ministry of justice, for example in Denmark and Slovenia, or with the Ministry of the Interior and Kingdom Relations in the Netherlands. These ministries can provide non-binding advice across other ministries. Experts from NHRIs in France and Slovenia highlighted the lack of a dedicated interministerial interlocutor for human rights who could have a broader vision. Furthermore, experts from Slovenia and North Macedonia noted limited collaboration among different ministries on human rights issues [152]. In Finland, there is an independent impact assessment body, the Finnish Council of Regulatory Impact Analysis [153], which consists of experts, and which undertakes reviews of key legislative proposals on its own initiative. Their statements have often emphasised the need to strengthen HRIAs in the individual proposals and more generally.

Promising practice: government network of experts on impact assessments

In Finland, a government network of experts on impact assessments that includes all ministries was established. The network, comprising 25 members and a secretary, has been used to discuss and promote human and fundamental rights impact assessments conducted by the government.

Source: Ministry of Justice of Finland, Valtioneuvoston vaikutusarvioinnin osaamisverkosto 2023–2027 [Government Impact Assessment Competence Network 2023–2027]. Interview with an expert from the government of Finland.

In addition to the legal scrutiny carried out within the legal services of the governments, there are also other bodies which carry out legal scrutiny and which are independent from the government (e.g. the Council of State in the Netherlands and France, the Legal Service of the Parliament of Denmark, the Chancellor of Justice in Estonia, the Constitutional Law Committee of the Parliament of Finland, the Constitutional Court of Germany). A specific feature of the *ex ante* review by the Constitutional Law Committee in Finland is the consultation of prominent experts in constitutional and human rights law in the form of both hearings and written statements.

However, these different legal scrutiny procedures are not always binding on legislators, as is the case for the advisory opinions of the Council of State in the Netherlands and France, and that of the Ministry of Justice in Slovenia.

Legal scrutiny coming from bodies independent from the government adds considerable value as they offer an alternative perspective that might differ from the view of legislators. However, legal scrutiny procedures should not be conducted as a substitute to HRIAs. For instance, in the

Netherlands, the government and the House of Representatives must seek the advice of the Council of State on every legislative proposal. Although the advice is not binding, a reply must be provided. When a problematic provision is put forward, the Council of State holds a consultation with the competent minister [154] . However, there are instances where their mandate may be limited or is circumvented in practice. For instance, the Chancellor of Justice of Estonia reported the problem of policy decisions being made by way of general administrative orders which fall outside the Chancellor of Justice's oversight [155] .

Promising practice: Assessment framework

The analysis of every legislative proposal seeking the advice of the Council of State of the Netherlands consists of four components: a policy analysis, a constitutional and legal analysis, an implementation analysis and an analysis of the consequences for legal practice. The various components are often interrelated. The constitutional and legal analysis checks the compliance with the ECHR and the Charter when EU law is at stake. The policy analysis verifies whether the proposal efficiently deals with the issue addressed by it, namely whether the proposal can solve the problem, whether relevant stakeholders were involved and whether the proposal is evidence-based. The implementation analysis and/or analysis of the consequences of legislation look at the effectiveness of the proposal or its practical application and enforceability.

Source: The Council of State of the Netherlands, Beoordelingskader [assessment framework], 2022.

Legal scrutiny procedures consider the Charter more frequently than human rights impact assessment procedures. Out of the mentioned 200 human rights impact assessment documents collected between 2019–2023, 50 concerned legal scrutiny activities in the Member States (except in Hungary, Malta and Spain where no examples were reported). In 85 % of those documents, the Charter was used, along with other human rights standards, to check the legality of the interference of the proposals into fundamental rights. In the remaining instances, the Charter was either referred to as a standard to interpret the proposed national law or to interpret EU law. In about a third of cases, the Charter bore modest relevance.

Experts from France and Slovenia expressed the view that human rights checks of legislative proposals by the relevant legal scrutiny bodies were fairly limited. Experts also criticised the legal scrutiny by the Council of State of France, the Legislative Service of the Government of Slovenia and the Legal Service of the Republic of Cyprus as limited to a formal and abstract control without identifying human rights-related issues [156] .

When it comes to the involvement of parliaments with impact assessments of legislative proposals and evaluation of adopted legislation, the picture is diverse. More than a third of the parliaments engage in both activities (Austria, Bulgaria, France, Ireland, Italy, Lithuania, Latvia, Poland, Portugal, Spain, Sweden) [157] . Some parliaments actively conduct their own impact

assessments (Bulgaria, Estonia, Finland, Hungary, Ireland, Poland, Sweden), while many parliaments limit themselves to considering the government's assessment (Belgium, Croatia, Czechia, Cyprus, Denmark, Greece, Luxembourg, Malta, Netherlands, Romania, Slovakia, Slovenia) [158] . Where proposals coming from the parliament do not in principle undergo an impact assessment, there is a risk that this legislative route could be used to circumvent the obligation to carry out a HRIA by the government. Draft laws that are expected to have significant fundamental rights impacts can in that case be tabled as parliamentary proposals. Against this background, the ODIHR guidelines on democratic lawmaking for better laws suggest that parliamentary draft laws and draft amendments should also undergo an impact assessment when not required by law, especially where they have a significant impact on the fundamental rights [159] .

> *I am working on a text on the fight against drug trafficking now, which is a text on the initiative of senators, so a proposal for which I do not have an impact study, which poses a lot of problems.*
>
> Expert from the parliament of France.

> *More awareness is needed, especially at the level of the Parliament, which has the responsibility of adopting legislation. Perhaps a department needs to be set up in Parliament to specifically scrutinise proposed legislation for compatibility with the Charter and to do so drastically rather than superficially.*
>
> Expert from the government of Cyprus.

2.2.3. *Ex post* evaluations

The decision whether an evaluation of human rights impacts of existing legislation will be carried out sometimes also depends on the available resources and time [160] . The fieldwork results indicate that *ex post* human rights evaluations of existing legislation are rare and very much depend on the political context and a decision of the relevant ministry (for example, in Croatia, Denmark, Greece, Slovenia) [161] or parliament (for example in France) [162] . In some countries, they are carried out when the respective law explicitly requires an evaluation [163] . In the Netherlands and Slovenia, evaluations are usually done for laws which have far-reaching consequences, e.g. in case of major legislative reforms [164] . However, even an obligatory evaluation is not a guarantee that human rights are duly considered, as found in the countries of the field research [165] .

> *Specifically, in my work on drafting legislative texts proposed by MPs, having access to these evaluations would make the process much easier.*

For example, in areas such as human rights protection, if I had that data, I could suggest better legislative solutions. We could further refine their initiative with additional information available to ensure the proposal is as strong as possible.

Expert from the parliament of North Macedonia.

In various countries where interviews were conducted, human rights indicators are not used or are rarely used systematically and effectively in the evaluations of laws (Cyprus, Denmark, Estonia, Finland, France) [166] .

The OECD has found similar issues, noting that only about half of Member States have procedures in place for evaluating adopted laws and even fewer Member States use indicators or methodologies to measure the achievement of the goals pursued by the relevant legislation. The same report also finds that most Member States do not systematically consider implementation issues when they develop new rules, nor do they systematically compare actual versus predicted impacts [167] .

Furthermore, data from the Venice Commission confirms that national parliaments' activities on *ex post* evaluations vary depending on the country. In more than half of the Member States, national parliaments do not go beyond traditional parliamentary scrutiny [168] . According to the Venice Commission, parliaments in eight Member States carry out their own evaluations (Belgium, Bulgaria, France, Italy, Latvia, Netherlands, Poland, Sweden) [169] .

The European Commission used the Recovery and Resilience Facility (RRF) [170] to push amendments of the relevant lawmaking procedural rules in the Member States concerning impact assessments. The RRF allows the Commission not to disburse funds if country-specific recommendations were not followed (Articles 19(3) and 20 of the RRF). These country-specific recommendations may also address reforms related to the rule of law and the Charter. For example, Bulgaria and Poland introduced rules of procedure for their national parliaments ensuring that legislative proposals from all Members of Parliament are reasoned and are accompanied by an *ex ante* impact assessments [171] . The same milestone is also envisaged for Hungary [172] , but has not yet been achieved [173] . Croatia amended the rules on impact assessments, simplifying *ex post* impact assessments and including methodology and procedures [174] . In Greece, specific actions included setting up an online platform to conduct impact assessments and training the competent civil servants [175] .

3. Ensuring informed lawmaking

This section presents findings on how, during the HRIA process, lawmakers gather the relevant expert advice, evidence and experiences from the ground from stakeholders including human rights expert bodies, equality bodies, ombuds institutions and CSOs and groups/people affected by the legislative proposal. The analysis is divided into two subsections considering the different roles played by NHRIs and CSOs in the process. It aims at showcasing the practical value of obtaining independent human rights expertise and having a participatory process in lawmaking. This section only covers consultations with expert human rights bodies (NHRIs, ombuds institutions and equality bodies), and not with other specialised oversight bodies, such as data protection authorities which may also contribute to the legislative process with their expert advice.

3.1. National human rights institutions and equality bodies

Expert human rights and equality bodies' involvement in the legislative process can substantially contribute to better lawmaking and have a real impact on the protection, respect and promotion of human rights.

> *… since the ratification of the CRPD, we influenced almost every equality law that was passed afterwards. Because the human rights concern in the area of equality laws is very obvious and that way we are necessarily asked …*
>
> Expert from the NHRI in Germany.

Promising practice: Guidance on equality impact assessments

The European Network of Equality Bodies (Equinet) produced the *Compendium of good practices on equality mainstreaming: The use of equality duties and equality impact assessments* in which they collected the experience and expertise of national equality bodies on equality impact assessments.

Source: Equinet, 'Compendium of good practices on equality mainstreaming: The use of equality duties and equality impact assessments', Brussels, 2021.

Experts in some countries stressed that, when NHRIs are consulted or when they react to a legislative proposal, their opinions tend to be taken seriously (e.g. Denmark, Finland, France) [176]. A positive example from France shows how the government followed the advice of the National Consultative Commission on Human Rights to repeal a national provision according to which a

guardianship judge could suspend the voting rights of a protected adult. As a result, 3000 citizens could vote in the 2024 European elections [177].

Although NHRIs from almost all states are involved in the legislative process [178], this involvement presents several practical challenges. The ENNHRI reports the lack of adequate time for providing input during legislative procedures as a major problem (Germany, Greece, Finland, France, Ireland, Latvia, Portugal, Slovakia, Slovenia) [179]. Early involvement is key. For instance, the Ombudsperson of Slovenia noted with concern that they had not been consulted at the earlier stages of the policy and lawmaking process, especially in the case of the proposal of the Public Media Act which provided for an additional mandate to the Ombudsperson [180].

The ENNHRI noted that the EU institutions should inform and consult NHRIs (including through the ENNHRI) early enough on EU legislative initiatives that could have major impacts on fundamental rights to facilitate meaningful engagement and fundamental rights impact assessments [181].

In a few countries, NHRIs report that they are not consulted regularly on HRIA (Cyprus, Slovenia) [182]. A further barrier to effective participation of NHRIs is the use of accelerated procedures (France, Poland, Slovakia, Slovenia, Sweden) [183] or the lack of capacity on the side of the NHRIs to be involved in all consultations [184].

> *… to give an opinion, it is necessary that we carry out hearings, a legal analysis, a multidisciplinary analysis and therefore it needs time and so it is. The sooner one is grasped, the more useful work one can produce.*
>
> Expert from the NHRI in France.

> *We often observe that these deadlines are very short or take place during … holidays, which we also consider critical, because we cannot avoid the feeling that the intention is to give as little time as possible for public consultation … We also draw attention to the problem that too many regulations are adopted in a fast-track procedure later in the legislative procedure, which also prevents a proper debate.*
>
> Expert from the NHRI in Slovenia.

Promising practice: Stakeholder hearing in Greece

When preparing a proposal for a law on school bullying, the government of Greece contacted the Greek National Commission for Human Rights to assist in consultations with relevant stakeholders. The National Commission together with the competent authorities convened a stakeholder meeting where the draft bill was discussed. In addition, the National Commission provided its written comments to the draft legislative proposal. The National Commission

was further invited by the Hellenic Parliament to provide its expert opinion in the lawmaking procedure before the parliament. After the law was enacted, the National Commission helped promote the regulation by participating in training for teachers on the topic.

Source: Interview with an expert from the Greek National Commission for Human Rights.

3.2. Civil society organisations and other stakeholders

This section shows how consulting CSOs, the groups affected, and other stakeholders can contribute to a more informed and evidence-based lawmaking process, including *ex post* and *ex ante* HRIAs. Although limited data is available on their participation during HRIAs, some evidence indicates barriers to their participation in the legislative process in general. These barriers relate to effective and meaningful engagement, timing and accessibility.

Definitions: what is a civil society organisation?

In this report, the term 'civil society' covers 'non-governmental organisations' and 'institutions of civil society, active in the field of fundamental rights including the combating of racism and xenophobia at national, European or international level'. The term includes academia and representative organisations of people or groups (e.g. people with disabilities).

Source: Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, pp. 1–14, Article 10(1); Commission Recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes, C/2023/8627 final, 12 December 2023, paragraph 4.

Many marginalized groups do not have a clear advocacy organization or do not have a person who can submit such a consultation response … you really always must think for yourself, when you are reviewing such a proposal, to look at what this proposal does and could it indeed constitute indirect discrimination against certain groups, perhaps vulnerable groups that are affected by this, who actually do not have a lot of voice/influence in/on the whole process.

Expert from the Council of State of the Netherlands.

Generally, public participation and consultation of citizens and CSOs by the Commission during the EU-level lawmaking process appears to be satisfactory and improving. According to the

agency's own findings, out of 408 surveyed CSOs who are part of the agency's Fundamental Rights Platform [185], 37 % of respondents considered that the level of consultation at EU level in 2024 had been very high, high or acceptable (), and only a small number considered it to be poor or very poor (6 % of respondents) [186]. In 2019, the European Court of Auditors found the European Commission's public consultations framework to be of high standard and noted the participants' overall satisfaction [187]. However, the Court of Auditors found gaps in language access to key consultation documents, a lack of tailored questionnaires for different audiences, data protection issues and a lack of feedback on the consultations' outcome [188].

Legal corner: Call for evidence and public consultation at the EU level

The Commission's better regulation guidelines provide for a consultation system for legislative proposals, evaluations, fitness checks and communications. The system is composed of a call for evidence and, when required, a public consultation. The call for evidence contains key elements of the Commission's impact assessment and is open for four weeks. The call for evidence is published on the 'Have your say' portal where stakeholders can provide their views within 12 weeks. Both the call for evidence and the portal are in principle multilingual.

Source: Commission, Better regulation and Better regulation guidelines; 'Have Your Say on Europe and its policies', Commission website.

When the Member States prepare negotiating positions regarding directives and regulations, they do not systematically engage with national stakeholders. If they do consult national stakeholders, they only engage with a few selected stakeholders [189]. However, once an EU directive is adopted and needs to be transposed, most Member States require an impact assessment and stakeholder engagement [190].

According to the 2023 European Commission Recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policymaking processes [191], Member States should 'promote and facilitate a framework allowing citizens and CSOs to participate in public policy-making processes' [192]. 'The framework for participation should be clear and accessible, including by ensuring the dissemination of timely and adequate information, providing genuine opportunities and appropriate means of participation based on predefined parameters' (p. 10, paragraph 5). The Commission follows up public consultations on RIA in its rule of law reports. For example, in the 2025 Rule of Law Report, the Commission notes positively that Cyprus has introduced the systematic use of an online platform, significantly contributing to improving stakeholder consultation of legislative proposals from the government. In Denmark, the rules on the legislative process have been amended to give parliament more time to consider legislation [193]. For Cyprus, the report even notes significant progress on ensuring the effective and timely consultation of stakeholders [194]. The Commission acknowledges Greece's 'efforts to ensure the effective and timely consultation in practice of stakeholders on

draft legislation, including by observing the statutory timeframe for public consultation' [195].

At the same time, the Commission noted that in Slovakia, the tendencies to bypass stakeholders' involvement in lawmaking and to frequently use fast-track procedures continue to raise concerns [196]. The Commission also commented on the implementation of its country-specific recommendations that focused on the participative process in national lawmaking. In this regard it calls on Bulgaria to 'strengthen the quality of the legislative process by ensuring the use of public consultations and impact assessments for legislative initiatives by Parliament' [197]. The report notes some progress in Romania, but it calls for the stepping up of efforts to address the frequent use of government emergency ordinances. Previously, the Commission noted that in Hungary 'the obligatory public consultation of draft legal acts and their impact assessments [had] been systematically disregarded' [198]. In October 2022 new rules entered into force which aim to enforce the obligation to consult by allowing the Government Control Office to levy a fine on the ministry responsible for omitting the consultation [199].

Short deadlines or accelerated procedures in case of complex legislative proposals further hinder CSOs' participation in many countries (Cyprus, Denmark, Estonia, Greece, North Macedonia, Poland, Slovakia, Slovenia, Sweden) [200]. This is particularly challenging for groups or persons at risk of exclusion [201] and academia providing research input which requires time and resources [202].

> *One of the pressing issues is that politics rarely turn to academic approaches or institutions because these require time and resources to conduct research, which do not align with political demands for immediate results.*
>
> Academic from North Macedonia.

Promising practice: Providing prisoners with the chance to participate

The SILE project, implemented by the University of Helsinki, the University of Turku and the Finnish Institute of Health and Welfare, examined silent agents affected by legislation. As part of the project, the role of prisoners in the drafting of a legislative proposal was examined. With the close involvement of the Ministry of Justice of Finland, workshops with prisoners and the drafters of the reform of the Imprisonment Act were organised. The SILE project will produce guidance on how to consult 'silent agents', namely those who typically do not participate in lawmaking but whose lives are significantly affected by laws.

Source: 'SILE' website.

Evidence collected in two Member States (Croatia and Slovenia) [203] suggests that CSOs are consulted only at the very end of the policymaking process, which arguably undermines their meaningful participation. Similarly, the OECD notes that the Member States do not often engage

with stakeholders before drafting legislative proposals. This systematically happens only once a legislative draft is ready [204].

When consultations occur, there is rarely an obligation to consider CSOs' or affected groups' input or to provide feedback. In many countries, reports on the feedback of the consultation are often inconsistent or lack substantial explanation on how the comments submitted by CSOs were taken in consideration (Bulgaria, Croatia, Cyprus, Denmark, Germany, Greece, North Macedonia, Slovakia) [205]. Feedback can be provided in different ways. In the Netherlands and Slovenia, general feedback is provided in the explanatory memorandum, while in Estonia all comments should be addressed specifically [206].

> *We must continue to have a very active civil society. We have a society in France, a civil society which has an extraordinary fabric, which is underfunded but which is absolutely remarkable in these battles, in its expertise.*
>
> Expert from the NHRI in France.

Issues with the effective participation of people with disabilities have been reported in four Member States (Czechia, Germany, Ireland, Romania) [207]. For example, the German Institute for Human Rights criticised that when people with disabilities are consulted in Germany, the consultation does not sufficiently consider accessibility or reasonable accommodation obligations under the CRPD [208].

> *The questionnaires that are offered by the ministries are usually not accessible. Also, the timeframe in which responses are expected are usually too short.*
>
> Expert from the NHRI in Germany.

Promising practice: guidelines on meaningful engagement with people with disabilities in public decision-making

The Irish National Disability Authority's guidelines for public authorities present how to effectively engage with people with disabilities in, among other things, the lawmaking process. The guidance includes key concepts under the CRPD: why, when and with whom it is important to engage, and how participation should be planned and implemented in practice.

Source: National Disability Authority, 'Participation Matters – Guidelines on implementing the obligation to meaningfully engage with disabled people in public decision-making', September 2022.

Finally, few Member States systematically engage with stakeholders during the *ex post* evaluation of adopted legislation [209] .

4. Ways forward

HRIAs require time, knowledge and resources. In certain situations, such as in cases of emergency, it might be very challenging to carry out a substantial HRIA. However, this report highlights the benefits of conducting effective HRIAs, both *ex ante* and *ex post*, of legislation as they help to prevent or minimise negative impacts on human rights and thereby contribute to the quality, sustainability and efficiency of lawmaking. They contribute to ensuring compliance with human rights law and can help promote their application, including – in the EU context – the application the Charter. At the same time, the report shows that there is a rather inconsistent landscape of legal provisions and practice on legal scrutiny, HRIAs and evaluations across the Member States. Currently human rights impacts are not systematically and efficiently considered in the lawmaking process. Moreover, the Charter is frequently overlooked in national HRIAs, thereby unnecessarily increasing the risk that Member States might violate EU fundamental rights when legislating within the scope of EU law. The situation is very different at the EU level, where the Charter plays a very visible role. EU legislators consider fundamental rights as part of better lawmaking, and the Commission adopted guidelines to ensure that the Charter plays a key role when assessing fundamental rights impacts when proposing EU legislation. Nevertheless, there is also potential for improvement at the EU level: it is concerning that HRIAs are often too superficial and sometimes even entirely absent in the context of important legislative proposals, as examples from EU migration law show. With this context in mind, the report concludes below with ways forward for legislators both at the EU and national levels.

4.1. The EU level

4.1.1. Ensure the systematic application of fundamental rights impact assessments

- The Commission should continue implementing the measures foreseen in the strategy to strengthen the application of the Charter in the EU. These measures should ensure that fundamental rights impact assessments are conducted systematically and thoroughly for every legislative proposal, unless it can be safely presumed from the outset that the legislative proposal has no links to and potential impacts on fundamental rights. For this purpose, the Commission should strengthen in-house fundamental rights expertise across services, including amongst the members of the Regulatory Scrutiny Board.
- The Commission should consider revising the better regulation toolbox so that any absence of an impact assessment comes with a reasoned justification. The better regulation toolbox should also ensure that key revisions of EU legislation relevant to fundamental rights can be substantially based on the results of an evaluation of the human rights impacts of the current legislation.

4.1.2. Increase the accessibility and inclusiveness of public consultations

- To expand the evidence base of its impact assessments, the Commission should ensure that its public consultations with citizens and CSOs are as inclusive and accessible as possible, for example by translating key documents into the EU's official languages and making them easy to read for people with disabilities. Moreover, the better regulation guidelines and toolbox should require mandatory and timely consultations with fundamental rights expert bodies and institutions whenever a legislative proposal is likely to have serious impacts on EU fundamental rights. These consultations should include the European networks of national human rights institutions, ombuds institutions and equality bodies, along with international and regional human rights organisations. Moreover, the Commission should strive to fully implement the better regulation rules and show in the impact assessment how it has considered the views of citizens and civil society in the selection of the preferred regulatory option.

4.1.3. Consider independent external fundamental rights expertise

- The European Parliament, the Council and the Commission are invited to consult the EU Agency for Fundamental Rights when assessing fundamental rights impacts or when considering the compatibility of certain provisions with fundamental rights standards and to use its data, research and expertise in that regard. They are further encouraged – especially once a legislative proposal has been tabled – to use the procedure under Article4(2) of the agency's Founding Regulation and request opinions during the legislative procedures in accordance with Article4(1)(d) of this regulation.
- When amending the Interinstitutional Agreement on Better Law-Making, the EU institutions should envisage the consultation of independent expertise, including that of the agency and the ENNHRI, in a consistent manner.

4.1.4. Support peer-learning between Member States to further improve their HRIA systems

- The Council could organise an exchange of experiences on fundamental rights impact assessments, procedures of legal scrutiny and the evaluation of laws amongst all Member States. The European Parliament could organise similar exchanges with national parliaments to allow for mutual exchanges and to foster a culture of parliamentary HRIAs. These exchanges could be supported by FRA.
- To support national reforms in the process of legal scrutiny, *ex ante* and *ex post* HRIAs (see below), the EU should ensure that relevant tools such as country-specific recommendations in the context of the Recovery and Resilience Facility or national and regional partnership plans effectively contribute to such steps. The EU should also ensure that such national reforms can be co-financed with relevant EU funds.

- To ensure that fundamental rights expertise and practical experiences from the ground effectively and timely inform the fundamental rights impact assessment processes, the Commission could use its annual report on the application of the Charter or its rule of law reporting cycle highlighting the extent to which the Member States involve fundamental rights experts and bodies (human rights/ombuds institutions, equality bodies) and CSOs (which also include academia and representative organisations of people or groups) in these processes.

4.2. The national level

4.2.1. Develop coherent and comprehensive guidelines that explicitly use the Charter when legislating within the scope of EU law

- Member States should ensure that throughout the legislative process fundamental and human rights are respected, protected and fulfilled. When conducting HRIAs, it is important not to single out certain rights or to focus only on potential impacts on certain groups of people so that the potential relevance of the full spectrum of fundamental rights is considered. Member States could draw inspiration from existing tools and guidelines on human and fundamental rights impact assessment, such as those from the Commission, the Council of Europe or the OSCE. Whenever a legislative proposal falls within the scope of EU law, special attention needs to be given to the Charter, which should be explicitly referred to in the respective rules and guidelines so as to avoid overlooking the Charter and excluding its potential added value.
- The fact that a legislative proposal originates from the national parliament and not the government should not lead to a situation where HRIAs are not carried out. Where the legislator considers that no HRIA is needed, it should provide sufficient reasons as to why it considers that no relevant impacts are to be expected.

4.2.2. Use the EU-level HRIA as starting point and complement it with a national impact assessment to appropriately address the national context

- Where the national legislator works on legislation transposing EU law, the starting point of the national impact assessment should be the impact assessment already carried out at the EU level. While the EU-level HRIA will provide useful hints regarding potential concerns and problematic elements, the national HRIA will in addition have to consider dimensions linked to the specific national context, including possible side-effects of 'gold-plating' (cases where the national legislator goes beyond the requirements laid down in the EU legislation).

4.2.3. Ensure high quality assessments through appropriate coordination, consultation and capacity building

- The consideration of human rights across the legislative procedure can be ensured with the early involvement in policy planning of a focal point for human rights, an interministerial network and advisory and consultative bodies including CSOs. It can also be ensured with the advice of independent national human rights and ombuds institutions or equality bodies participating in the process of their own accord. Moreover, the human rights capacity of the legislator could be strengthened by providing training on human rights (including the Charter) to ministries and parliamentary officials and by increasing interinstitutional cooperation.

- Cooperation with independent fundamental rights expert bodies can be especially useful to ensure that fundamental rights considerations are not overlooked in the legislative process. In this regard inspiration can be drawn from the area of equality where Member States are obliged under EU law to set up procedures 'to ensure that the government and relevant public authorities consult equality bodies on legislation, policy, procedure and programmes' related to equality and non-discrimination (Articles15 of Directive (EU) 2024/1499 of 7May 2024 and Directive (EU) 2024/1500 of 14May 2024 on standards for equality bodies). Member States should ensure that, for every legislative proposal, national human rights and ombuds institutions and equality bodies are informed in a timely manner and given adequate time and resources to provide feedback where they deem it is necessary.

- To ensure a sufficient evidence base for any impact assessment exercise, Member States should ensure that in the legislative process relevant CSOs, including self-advocacy organisations representing people with disabilities, are informed in a timely manner, involved in the legislative process and provided with enough time to comment on laws and regulations. The impact assessment or the text accompanying the legislative proposal should show how the results of the consultation of independent fundamental rights expert bodies and civil society were considered.

4.2.4. Ensure that *ex post* evaluations become the rule and systematically consider human rights impacts

- National governments, parliaments or other institutions or bodies in charge of evaluations of adopted legislation, should strive to conduct evaluations for all laws that have considerable impacts on human rights. The decision not to conduct evaluations should be evidence-based. An evaluation should be conducted especially when an accelerated procedure was used to adopt the law without a HRIA. Evaluations of adopted legislation should include the expert views of national human rights and ombuds institutions and equality bodies. Finally, evaluations of legislation should use human rights indicators to measure the effectiveness of the adopted legislation. FRA could support the Member States in establishing mechanisms for the evaluation of legislation, by making available its human rights indicators, survey data and its methodologies for data collection.

Acronyms and Abbreviations

- ***CJEU*** *– Court of Justice of the European Union*
- ***CRPD*** *– Convention on the Rights of Persons with Disabilities*
- ***CSO*** *– Civil society organisation*
- ***ECHR*** *– European Convention on Human Rights and Fundamental Freedoms*
- ***ECtHR*** *– European Court of Human Rights*
- ***EPRS*** *– European Parliamentary Research Service*
- ***EU*** *– European Union*
- ***FRA*** *– EU Agency for Fundamental Rights*
- ***HRIA*** *– human and fundamental rights impact assessment*
- ***RIA*** *– regulatory impact assessment*
- ***NGO*** *– non-governmental organisation*
- ***NHRI*** *– national human rights institution*
- ***OECD*** *– Organisation for Economic Co-operation and Development*
- ***OSCE*** *– Organisation for Security and Co-operation in Europe*
- ***ODIHR*** *– Office for Democratic Institutions and Human Rights of the OSCE*
- ***RRF*** *– Recovery and Resilience Facility*
- ***TEU*** *– Treaty on European Union*
- ***TFEU*** *– Treaty on the Functioning of the European Union*
- ***UN*** *– United Nations*

Endnotes

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[19] Judgment of the Court of Justice of 10 December 2002, British American Tobacco (Investments) and Imperial Tobacco, C-491/01, ECLI:EU:C:2002:741, paragraph 122; Judgment of the Court of Justice of 7 March 2024, Fallimento Esperia and GSE, C-558/22, ECLI:EU:C:2024:209, paragraph 56.

[20] Judgment of the Court of Justice of 19 December 2019, Deutsche Umwelthilfe, C-752/18, ECLI:EU:C:2019:1114, paragraph 50.

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