

FRA Opinions: 10 questions and answers

1. What are FRA Opinions?

FRA Opinions are standalone FRA deliverables which, from a fundamental rights perspective, look at proposals for EU legislation or at issues closely related to EU legislation. FRA Opinions are a key tool for the provision of fundamental rights assistance and expertise to EU institutions. This is in line with FRA’s overall institutional objective and mandate, as stipulated by Article 2 of Regulation (EC) No. 168/2007 establishing FRA:

“to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States [...] with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.”

2. What do FRA Opinions offer?

FRA Opinions on legislative proposals contribute to better legislation by assisting to make it fully Charter-compliant. They

- identify relevant human rights standards available under EU and international law;
- point to the interplay and possible conflicts between these standards and the legislative draft in question; and
- suggest, where appropriate, more fundamental rights compliant options.

FRA Opinions also provide an analysis ensuring a proper balancing of rights, in order to guarantee that legislation is sustainable and not at risk of being successfully challenged before courts. They give evidence-based advice drawing on socio-legal expertise. In doing so, FRA Opinions complement legal assessments carried out within the EU institutions themselves.

“The European Council invites the Union institutions to: make full use of the expertise of the [FRA] and to consult, where appropriate, with the Agency, in line with its mandate, on the development of policies and legislation with implications for fundamental rights.”

Stockholm Programme (2010),
OJ 2010/C115, 4 May 2010, Point 2.1

FRA Opinions are not legally binding and do not deal with the legality of acts within the meaning of Article 263 of the Treaty on the Functioning of the EU (the annulment procedure before the Court of Justice of the European Union). However, they do address the “compatibility with fundamental rights”, as stated by the regulation establishing FRA.

3. Why independent advice from within the EU is needed?

Independent fundamental rights advice from within the EU is needed to allow for objective, targeted and constructive input to legislation that is fully Charter-compliant.

Experts, including lawyers, social and political scientists, criminologists, economists and statisticians, at FRA draft the FRA Opinions. FRA is an institution that fulfils “its tasks in complete independence” from the EU’s political actors – namely the European Parliament, the Council of the EU, the European Commission and the EU Member States (Article 16 of Regulation (EC) No. 168/2007 establishing FRA). While FRA

is an independent centre of fundamental rights expertise in the EU, it is still part of the EU's institutional structure thereby combining independence with insights 'from within'.

4. How long does it take to deliver a FRA Opinion?

FRA can usually deliver an Opinion within 12 weeks of the request formally having reached the agency, depending on the questions posed and the resources available at FRA at a given moment of time.

5. How does FRA test the practical relevance of a draft Opinion?

To test the practical relevance of a FRA Opinion, FRA experts informally consult relevant practitioners prior to and during the drafting of the Opinion. The aim is to ensure that the Opinion takes a hands-on approach to avoid remaining at an abstract level. These consultations may also be formalised offering short-term but efficient 'opinion-labs' which allow FRA staff to meet relevant experts from both national and EU levels.

6. How are quality and best methodologies assured?

FRA Opinions undergo, just as any other FRA deliverable, thorough internal and external quality assurance procedures. For instance, FRA's Scientific Committee scrutinises each FRA Opinion. The Scientific Committee comprises 11 members, most of them university professors who come from different disciplines and have held high-level positions, such as judges of the European Court for Human Rights, chairpersons of National Human Rights Institutions, UN Special Rapporteurs, and Members of international human rights monitoring committees.

7. How to integrate national level information and expertise?

Interviews with national experts allow FRA to integrate relevant information from the national context. FRA can collect data and analysis at short notice through its multidisciplinary research network Franet, composed of contractors in each EU Member State. FRA as a network of networks can build on institutional partners in government, parliaments, national human rights bodies and civil society. Against this backdrop, FRA Opinions can provide comparisons of the legal systems in the EU Member States.

8. Are FRA Opinions limited to assessing the 'law on the books' or do they also deal with the law in practice?

FRA Opinions are not necessarily limited to a legal analysis of the 'law on the books'. Based on the assumption that law exists in a social context, FRA Opinions also build on the rich evidence that the agency has collected over the past years through its large-scale surveys, focus group discussions, social studies and more. See, for example, the FRA Opinion 01/2013 on the situation of equality in the European Union 10 years on from initial implementation of the equality directives or the FRA Opinion 05/2016 on fundamental rights in the 'hotspots' which builds on information collected in field missions to Greece and Italy.

9. Who can request such FRA Opinions?

Only the European Parliament, the Council of the European Union or the European Commission may request FRA Opinions that “concern proposals from the Commission” or “positions taken by the institutions in the course of legislative procedures”. Other institutions or Member States cannot request such Opinions. Where a FRA deliverable does not concern a proposal for EU legislation, FRA can become active on its own motion.

10. How can FRA Opinions be requested?

In practice, institutions intending to request a FRA Opinion informally address FRA in advance to check the feasibility of the intended request in terms of both the legal mandate, and human and financial resources. They then proceed with the formal avenues that differ from institution to institution.

- **European Parliament:** The President of the Parliament, “after consulting the committee responsible” that addressed the agency, can formally request FRA for an Opinion, according to Rule 139 of the European Parliament’s rules of procedure. Any member of the Parliament may “submit such a request in writing to the President of Parliament. Such requests shall be on matters falling within the mandate of the Agency and shall be accompanied by background information explaining the issue and the Union interest”.
- **Council of the European Union:** The Council can request FRA for Opinions based on a decision taken at the Committee of the Permanent Representatives of the Governments of the Member States to the European Union (COREPER), in accordance with Article 19 (7) point (h) of the Council’s rules of procedure.
- **European Commission:** The European Commission requests FRA Opinions through a formal letter sent by a Director (General) to the FRA Director.

FRA Opinions delivered between 2008 and the beginning of 2015

Topic (date)	Asylum law (4)	Criminal law (7)	Other (5)	Year (number)	Requested by		
					EC	EP	Council
Business and human rights (April 2017)				2017 (1)			
Revised EURODAC (Dec 2016)				2016 (6)			
Situation in the hotspots (Nov 2016)							
Children rights and revised Dublin (Nov 2016)							
CRPD monitoring in the EU (May 2016)							
Article 2 TEU values (April 2016)							
EU Common list of safe countries of origin (March 2016)							
European Criminal Record Information System (Dec 2015)				2015 (1)			
European Public Prosecutor Office (Feb 2014)				2014 (1)			
Framework Decision on Racism and Xenophobia (Oct 2013)				2013 (2)			
Equality directives (Oct 2013)							
Confiscation of proceeds of crime (Dec 2012)				2012 (3)			
Data protection reform package (Oct 2012)							
Property consequences of registered partnerships (Jun 2012)							
Passenger Names Record II (Jun 2011)				2011 (2)			
European Investigation Order (Feb 2011)							
Passenger Names Record I (Oct 2008)				2008 (1)			
Total				17	2	12	3

Further information:

All FRA Opinions are available for download free of charge on FRA's website at:

<http://fra.europa.eu/en/publications-and-resources/opinions>

Some of the FRA Opinions are also available in other EU languages.