

Developing Fundamental and Human Rights Impact Assessments in Finland



MINISTRY OF JUSTICE
FINLAND



Starting point

Legislative proposals have to be in line with the Constitution, the European Convention on Human Rights, Finland's other international human rights obligations as well as fundamental rights guaranteed in EU law.

Ensuring human rights compliance (ex-ante)

- All ministries are responsible for ensuring that draft legislation within their legislative branch is in line with fundamental and human rights obligations
- Ministry of Justice often consulted in the drafting stage
- Council of Regulatory Impact Analysis
- Chancellor of Justice
- Constitutional Law Committee of the Parliament



Policy documents on developing fundamental and human rights impact assessments

- [Government Programme of Prime Minister Sanna Marin](#) (2020)
- [Action Plan for Better Regulation](#) (2020)
- [National Action Plan for Fundamental and Human Rights](#) 2020-2023
- [Government Report on Human Rights](#) (2021)

“Human Rights Impact Assessment”?

The English term can be understood to cover two separate sections in Finnish Government Proposals:

1. Regulatory Impact Assessment
2. Constitutional issues and enactment procedure
(= Constitutionality review)



1. Regulatory Impact Assessment

- Identifies and assesses the essential positive and negative impacts of the legislative proposal
- Strengthens the knowledge base of decision-making by producing assessments that are as reliable as possible on the different options for implementing the reforms and their impacts
- Concrete economic, environmental and social impacts, including the proposal's impacts on fundamental and human rights
- Empirical and descriptive

2. Constitutionality review

- Legal analysis: how the proposal relates to the Constitution, international human rights obligations and fundamental rights of the European Union
- Has to be included if the proposed legislation includes provisions that need to be analysed in view of the Constitution and international human rights obligations
- Presents a conclusion regarding the enactment procedure in Parliament: simple majority or the procedure for constitutional enactment (derogations from the Constitution should be avoided)

Fundamental and human rights impact assessment (FHRIA)

- Assessment of how a proposed statute or policy measure would **concretely** affect the realisation of fundamental and human rights of different people and groups of people
- Legal obligations related to fundamental and human rights are brought down to the **level of everyday life** and the potential effects of the proposal on people's lives are analysed

Why should a human rights perspective be included regulatory impact assessment?

- When fundamental and human rights are taken into account in impact assessments, the quality of the constitutionality review is improved and the legal analysis is based on the actual, concrete impacts of the law
 - FHRIA = bridging the two sections together
- Legislative proposals should not just meet the minimum requirements of the Constitution and international obligations
 - Positive obligations; promoting the realisation of fundamental and human rights in the best possible way

Measures so far

- Discussions with stakeholders and partners on FHRIA
- In the new [Guidelines for Impact Assessment in Law Drafting](#) (2022), fundamental and human rights impacts have a more prominent role than previously
- [Guide on fundamental and human rights impact assessments](#) (2022)
- Training for law drafters arranged by the Prime Minister's Office and Ministry of Justice
- Informal Fundamental and Human Rights Impact Assessment Network

Guide on fundamental and human rights impact assessments: Contents

- What are fundamental and human rights?
- Difference between FHRIA and the constitutionality review
- Process, contents and documentation of FHRIA
- FHRIA checklist
- Additional sources for information on fundamental and human rights
- Links to examples

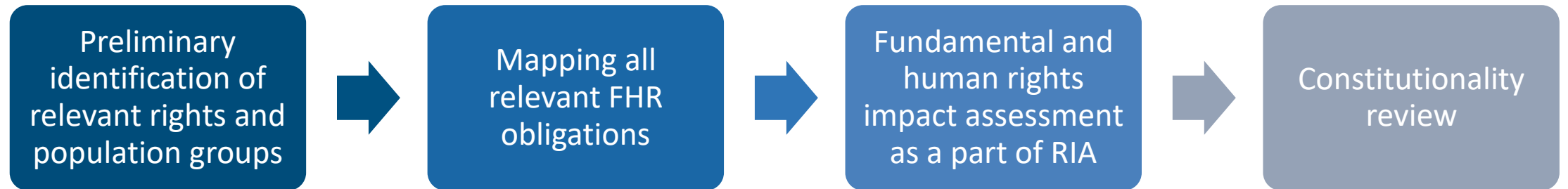
FHRIA Check List: preliminary questions

- Which fundamental and human rights could be relevant for the proposal?
- What are the the population groups (e.g. children, persons with disabilities, language minorities) whose rights the proposal might impact?
- What are the relevant fundamental and human rights obligations (Constitution, EU fundamental rights, international human rights treaties)?
- What kind of information about the realisation of these rights is available? What kind of additional information is needed?
- How will stakeholders be included in the drafting process? What kind of information can they provide about the possible fundamental and human rights impacts of the proposal?

FHRIA Check List: further questions

- How do the proposal's impacts on fundamental and human rights present themselves in the everyday lives of people and different population groups?
- What is the scope of the impacts? Do they target a large group of people or are they especially significant for a small group of people?
- Are the impacts direct or indirect?
- Can there be side effects? Can negative impacts be reduced or avoided?
- Will the impacts occur immediately or emerge at a later stage? Will the impacts be short-lived or long-term, one off or repeated, temporary or permanent?
- How likely are the impacts? Are there risks involved?
- What are the relationships between different impacts and their possible combined effects? Will impacts cumulate for a particular group?
- Are different rights in collision with each other? Does the proposal impact the rights of different groups in different ways?
- Are there other legislative processes or other changes which should be taken into account and which can cause cumulative effects for fundamental and human rights?

Process (example)





Fundamental and Human Rights Impact Assessment Network

- Informal and open network for all ministry employees working on law drafting and/or different human rights themes
- Aims to 1) increase cooperation and exchange of information on FHRIA within the Government and 2) support FHRIA of legislative proposals
- Thematic meetings approx. 4 times a year
- Sharing information e.g. on trainings, projects and data sources related to human rights
- Currently approx. 55 people on the mailing list, information shared also through the Government's intranet pages

Plans for 2023 and beyond

- Raising awareness about new guidelines
- Online training course on fundamental and human rights in law drafting to be published in April 2023
- Training workshops for law drafters in the beginning of the new Government term?
- Advanced courses on different human rights themes annually
- Continuing and developing the FHRIA network
- Launching the national fundamental rights indicator website

Thank you!

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