

So, the immediate legal context. To the relationship. Between the convention and the EU legal order.

The immediate legal context to that relationship is the act of accession. It took a council decision 2010/48.

Where included with the decision was the declaration of competence. From the EU, as to its idea of its core competence in relation to the convention.

I'll come back to the declaration later. What I want to highlight now is the legal basis on which the decision is based-

As the Council decision is a binding instrument within the EU law. If you want an abiding measure, you have to justify it

in a legal basis in a treaty. That provides the justification for doing that.

We can't just have any articles. It is important that you find what the court of justice describes as the center of gravity for the justification of the purpose of the instrument.

And here, the legal bases found in article 19 and 114. And they both relate to participation in the market.

And I think, that in itself gives us reinforced understanding. As to how the council of the European Union at least envisages its main contribution towards the meeting of the obligations under the convention.

Article 19 is a legal basis that allows combatting discrimination on a number of grounds, one is disability. Article 114-

is concerned with the adoption of laws with the view to facilitating the functioning of the internal market. Specifically by adopting harmonisation measures with a view to reducing disparities, national laws, inconsistencies that could create barriers to the participation of businesses in the internal market.

Combatting discrimination on grounds of disability. Again is a market participation measure. Enabling people with disabilities to participate in the labor market and participate as consumers. And producers of goods and services.

A year later the EU ratified the convention. In the hope all member states would ratify. The formal ratification took place on the 23rd of December 2010 for the EU. In terms of the EU's commitment legally speaking took effect in 2009, a year earlier. Previously referred to.

With the accession, the convention bound the EU institutions and the member states. The EU as a contracting party. Just like the member states. It has competence. It also has to specify monitoring mechanism and focal point. And it also obliged to attend the states bi-annual meeting. I'm sure you heard this in the previous presentation.

It bound the member states as well. The member states were already bound.

They are. They are also bound, not just to the convention and the UN, but also to the EU to the extent that they can contribute or not contribute to the fulfillment of

f the EU's obligations under the convention. And so, in terms of enforcement that's interesting. Because the EU member-states are potentially open to enforcement action against them. By the institutions. If they do not fulfill their obligations. They also have a duty of law cooperation not just to the EU, but also each other, in pursuit of the EU agenda.

So, member states might find themselves pleasing 2 paymasters in relation to the convention.

And along with the accession, the convention formed an integral part of the EU. And at that, as a result of that. A quite some would describe as a quasi constitutional status. It meant, the convention was beneath the hierarchical status of the treaty. It is above the secondary measures, such as directives and regulations and decisions.

That also means, as a minimum, that secondary EU law must be interpreted as far as possible in line with the convention.

And that duty of interpretation consistent interpretation extends not just to the EU institutions. When it is adopting

its legislation. In areas in its competence. But also the member states.

Having this status is very significant. For disabled people. Within the European Union.

Without the EU, they would have of course the innovative enforcement monitoring mechanisms that you have heard about in the earlier presentation. Supplied by the convention. But ultimately, the enforcement mechanisms that come with the EU law, are far more accessible to individuals and enforceable than the equivalent UN instruments.

Before we get too excited, what we need to remember is that this enforceability and accessibility of EU law only applies

where we are within the area of EU competence.

And, the benefit of the EU enforcement mechanisms includes direct effect. We only get the full money's worth if some of

the convention articles had direct effect. In my view, a couple of the key provisions, would satisfy the technical criteria for direct effect. The Court of Justice doesn't agree. As we will find a little

bit later.

Nonetheless, even if the convention provisions not to have direct effect, that there is this principle of interpretation

. Which can be of significant value in the application of EU law in this area.

The act of accession with the council decision is a mixed agreement. By mixed, what is meant by mixed is, it is partly

falling within the scope of EU powers, competence and partly within the powers of the member states.

You might have heard that the common understanding or consensus is that the convention does not actually provide new

rights. What it does do is provide a really useful articulation of the existing human rights at international level. And ma-

And make that articulation very relevant, concrete to the context of disability. The other thing it does is that it consolidates the full range of human rights, civil and political and socio-economic and cultural wise. Disability policy is extremely wide. Extremely wide. And it will touch on areas that are outside of EU competence. At that point, then the obligations under the convention are the responsibility of the member states. How do we find out when the EU has competence and when the member states have competence? The short answer is, at this stage, it is anybody's guess. But, there is a broad structure that we can refer to. And that's the types of competences recognized in relation to the EU legal order. There are 3 types. There is exclusive competence, where the EU itself has the exclusive ability to act. Where member states cannot act. That field is occupied. But those are limited areas. Such as competition policy, fiscal policy. Outside of those very restricted areas, we have 2 other possibilities of competence. That's shared competence. One of those. And shared competence is where it is shared between the member states and the EU institutions. And the member states are free to act. Within that field. Until the EU institutions decide to act. When they can make it quite clear they intend to act. And then the third type of competence is the competence to support, coordinate and supplement national policy and law making. And with this competence, what we are talking about is the organisation of meetings, of key personnel within the member states, with a view on a particular issues, with a view on common problems, good practice. Sharing the resource, the expertise. Sharing the expertise of the Commission and its policy makers with a view to identifying areas where future collaboration may be advantageous.

Binding EU law, which is of great interest to individuals with disabilities, in respect of the convention. Binding law comes with that enforcing that was mentioned earlier. The member states obligations and the EU's commitment. Binding law can only be adopted outside of the competence to support coordinate and supplement. Binding EU law will not fall within that third category.

Disability policy stretches across all 3 of those categories. There is a declaration of competence, mentioned before, in-

Annex 2. The act of accession. And there, the community, European Union expresses its view of what is competence. And limited itself to those areas where it has legislation and made specific reference to the disability issue.

Most experts have the view that this is a restricted view of the EU's competence to act.

And that leaves us with a huge potential area of shared competence. Where maybe, arguably, in the scope of the mixed agr-

ement.

I mentioned earlier that the convention touches on a range of civil political and socio-economic rights.

And as a rule of thumb, I would suggest that the closer the particular right is to a socio-economic and cultural right and the further, the greater the distance, the issue you are thinking about, the greater distance, that issue has from the market, market participation, the more likely the issue will fall outside of the EU competence to act.

In contrast, the closer the provision is to a civil and political type of right. And the closer it is to market participation, market generally, the more likely it is that the EU will have competence in this area.

However, we could analyse this and debate this all day. But my point would be not to get hung up on the issue of competence. I would say, to disability NGO's, rather than the legal text and make legal arguments, I would focus on identifying those areas where the EU has or potentially have an interest. And make the case. Actually in the interest of the EU and the member states, that the EU takes action. That the EU has competence. If the member states decide they are going to implement an aspect of the convention and they do it differently to each other, then the chances are you are going to have inconsistencies that create problems for which the EU is designed to remove.

In terms of potential. If you look at the response of the committee on rights of people with disabilities to the report in 2015 that was delivered by the EU institutions, in terms of what it has done in respect of the convention, the call to action in that response, the range of things, that were recommended, many of which I would not have thought of, are significant. and the reasoning the inclusion of some of these things is very well supported in terms of the point I was making. It is beneficial for the EU, for the member states and of course to business and individuals that the EU acquires some competence in this area, acts in this area.

Assuming that there is an instrument, an action from the EU institutions that is binding, and is within its area of competence, the vital question is whether the provision in the convention has direct effect.