



Special EU Regulations on disability matters in the field of public procurement, state aid, transport, telecommunications, etc:  
obligations for the State and public bodies

by John Horan



ICRPD in form:

- “social” not “medical” model of disability
- Articles of general application (Art 3-9) and specific substantive rights (Art 10 to 30). Note:
  - Art 4.1(a)(b)(d)
  - Art 5.1 and 5.2
  - Art 12 and 13
- System of monitoring and implementation (Art 31 to 40) i.e. Art 31 – acquiring disability data



How was the IORPD approved by the EU?

Council Decision 2010-48 26/11/09

- Art 1.1 - approved
- Art 2 - authorized signatory
- Art 3 - focal point for monitoring
- Art 4 - matter which for under EU exclusive and shared competence



What the effect of CD 2010-48?

- UNRPD becomes an integral part of EU law
  - Relevant text in domestic law
  - Relevant case law
  - EU/UN rules of construction
  - Direct Effect?



#### Art 3 and 4 CD 2010-48

- Art 3 – Exclusive (e.g. common market) and shared (e.g. combat discrimination of “disabled” grounds, transport) competence
- Art 4 – Illustrative Directives which may “establish common rules that are affected by the provisions of the Convention”
- ?



#### Art 4 cont.

- A lot of Directives and Commission Decision!
- Accessibility e.g. D 2004/18/EC: Procedures for award of public contracts
- Independent living, social inclusion, work and employment e.g. D 2000/78/EC: Equal treatment in employment and occupation
- Personal mobility e.g. R (EC) 1371/2007: Rail passengers right and obligations



### Art 4 cont.

- Access to information e.g. D 2001/29/EC: Copyright
- Statistics and data collection e.g. Protection of individuals from processing of personal data
- International cooperation e.g. R (EC) 1905/2006: Financing development cooperation



### What does that mean for Judges?:

- Direct Affect?
- EU/UN rules of construction where domestic law follow EU law
- ICRPD
- Different rule which follow ICRPD
- A hint by EU that it's Directive etc will have to be re-interpreted in light of ICRPD?



- What does that mean for Judges (2)?:
  - Courts and the State
  - E.g. English “Common Law”
    - Establish disabled rights “which have always been there”
    - Is informed by the ICRPD – Art 12, 13
    - Rules of Procedure
    - Unwritten rules



Final thoughts:

- Training – Art 13.2 -“Training is an essential component of Art 13 and should be provided to all justice agency personnel so as to facilitate access to justice for persons with disabilities. Therefore training should be provided to ...legal practitioners, magistrates and judges... and should cover human rights and access to justice for persons with disabilities” - Study on Challenges and Good ERC Practices, Oct 2010
- Monitoring and data collection - European Disability Strategy 2010-2020



John Horan  
jh@cloisters.com