

SEMINAR PROGRAMME

FUTURE PERSPECTIVES ON LEGAL CAPACITY LAW

Dublin, 9 October 2013

**Department of The Taoiseach / Government Buildings / Room 308
Upper Merrion Street, Dublin**

- 8:00-8:30 Registration
- 8:30-8:40 **Welcome addresses**
Chair: Conan McKenna, Assistant-Secretary, Civil Law Reform Division, Department of Justice and Equality
Sunniva McDonagh S.C., Acting Chairperson, Irish Human Rights and Equality Commission (Designate)
Mario Oetheimer, EU Agency for Fundamental Rights (FRA)
- 8:40-8:45 **Opening of the seminar**
Máire Whelan, S.C., Attorney General of Ireland
- 8:45-9:30 **Legal capacity in Europe: normative requirements and implementation**
The approach of the CRPD Committee on Article 12 of the CRPD
Theresia Degener, Vice Chairperson of the UN Committee on the Rights of Persons with Disabilities
The Council of Europe standards
Irena Kowalczyk-Kedziora, Council of Europe, DG II Democracy
The legal capacity of persons with intellectual disabilities and persons with mental health problems in the EU
Mario Oetheimer and **Martha Stickings**, EU Agency for Fundamental Rights (FRA)
- 9:30-10:30 **Trends in legal capacity law reform**
Chair: Teresa Blake BL, Member Designate of the Irish Human Rights and Equality Commission
Several EU Member States will present legislative reform processes in their countries
- 10:30-10:45 **Questions and answers**
- 10:45-11:15 **Coffee break**
- 11:15-11:30 **How to legislate for next generation legal capacity law: questions and issues**
Gerard Quinn, Director of the Centre for Disability Law and Policy, National University of Ireland Galway
- 11:30-13:45 **Parallel working group discussions on the questions and issues**
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| WG I | WG II | WG III |
| Facilitator: Gerard Quinn | Facilitator: Michael Bach | Facilitator: Theresia Degener |
- 12:30-13:30 **Lunch provided in the seminar room**

13:45-14:00

Keynote address

Chair: Sunniva McDonagh SC, Acting Chairperson of the Irish Human Rights and Equality Commission (Designate)

Kathleen Lynch T.D., Minister of State for Justice and Equality

14:00-14:15

Coffee break

14:15-15:30

Facilitated discussions on working groups results/conclusions

Chair: Des Hogan, Acting Chief Executive, Irish Human Rights Commission

15:30-15:45

The way forward

Mario Oetheimer, EU Agency for Fundamental Rights (FRA)

The seminar will be held in English.

CONCEPT NOTE

FUTURE PERSPECTIVES ON LEGAL CAPACITY LAW

A seminar on developing legislation for support to exercise legal capacity

1. RATIONALE

It is now widely accepted that States Parties to the UN Convention on the Rights of Persons with Disabilities (CRPD) will have to take tangible steps to move away from substitute decision-making mechanisms such as adult guardianship and ‘best interests’ decision making, toward a support-oriented framework for the exercise of legal capacity. This ‘paradigm shift’ is required in light of Article 12 CRPD and the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities.

This seminar offers a learning space for Ministry officials from EU Member States concerned with crafting and implementing CRPD related legislation. This space will enable officials to reflect together on the issues that need to be addressed in order to give the support model a clear and effective legislative basis and receive guidance from experts in the area of legal capacity law reform.

Article 12 of the CRPD requires States to provide support to enable persons with disabilities to exercise their legal capacity, rather than stripping away their legal capacity and vesting power to make substitute decisions in third parties. The reforms required will include, but are not limited to, systems of supported decision-making (e.g., where persons can enter into legally binding agreements with designated supporters for certain areas of decision-making). Other supports, such as access to information that is easy to understand, independent advocacy, reasonable accommodations and advance directives, will also be required to ensure the vision of Article 12 is given practical effect.

These empowering measures will need to be accompanied by safeguards to ensure an individual’s fundamental rights are respected throughout the support process. In particular, safeguards will be needed to ensure the person’s supporters respect the individual’s ‘will and preferences’ and do not exploit, abuse, or mistreat them. Such safeguards should be in line with the obligations in Article 16 of the CRPD to protect people against exploitation, abuse and violence.

There is a clear shift in approach towards support to exercise legal capacity. But this trend has yet to be matched by legislation that gives adequate expression to a support-oriented framework. This may reflect the novel nature of the legislation and a previous agenda not oriented towards support. There is a need for new thinking about the practicalities of legislating for the support paradigm and the transitional process towards it.

Some CRPD-oriented reform processes are already on-going across the EU and they provide a useful learning and sharing opportunity. This seminar will generate tangible added-value to reform processes underway in EU Member States, who retain exclusive legal competence in this regard. It will stimulate creative thinking about how to go about framing legislation that complies with the CRPD.

2. CONTENT OF THE SEMINAR

This one day-event will focus on how to legislate for supported decision-making. Discussions will concentrate on three core components:

A: Conceptual framing

This will highlight the latest and most authoritative thinking on the normative requirement of Article 12. It will comprise:

- input from the UN Committee on the Rights of Persons with Disabilities;
- input from Council of Europe;
- input from FRA (presentation of the FRA report on legal capacity).

B: Legislative trends

This second part of the seminar will focus on reforms of legal capacity legislation on-going in the EU. It will examine the process of legislating for supported decision-making, such as the kinds of issues that were felt necessary to address and the final shape of the legislation. It will consider experiences from selected EU Member States where innovative legislative processes are underway, and consider what steps would be needed to give legislative effect to the support paradigm in other EU Member States.

C: Future perspectives on legal capacity law

Following these preparatory discussions, the main focus of the seminar will be a facilitated discussion among participants about building a coherent legislative agenda to deliver on the transition to supported decision-making. This will build upon previous discussions and experience of the philosophy, content and structure of an appropriate piece of legislation.

In advance of the seminar, a list of issues, questions and challenges relating to the drafting of future legislation on legal capacity will be circulated to participants, containing points for consideration and discussion.