1.1 What are your views on the scope of the Draft Text?

A: Very positive opinion.

1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?

A: Yes.

1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice?

A: We agree with all the exclusions listed, and with the reasoning set out in paragraphs 11 to 15 of the document "Consultation on the Draft text…".

For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?

A: Agreed. This is a sign of the autonomy and freedom of the parties, as explained in paragraph 13.

1.4 What are your views on the geographical scope of the Draft Text and how it would work in practice? (See paragraph 16 for further information)

A: Agreed.

2. What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.

A: According to Portuguese procedural law, the moment at which an action is considered to have been brought before the court is when the defendant is served with the writ (Articles 260, 564 and 582, all of the Portuguese civil procedural law).

However, having read the reasoning given in paragraph 23 – and considering the different legal systems of the Contracting States – we have nothing to say on this matter, as the wording of Article 4 reflects the closest approximation between all the legal systems concerned.

3. What are your views on Article 4?

A: The same answer as the previous question.

4. What are your views on Article 5?

A: We agree with the content of Article 5(1).

Paragraph 2 should be more objective, defining more specifically at what exact moment the judge of the court where the proceedings were suspended may decide to close the case. It is suggested that it should be stated that the judge of the suspended proceedings should close the case after being notified/informed that the decision handed down in the other Contracting State has become final (not subject to ordinary appeal).

Paragraph 3 should contain a more objective formulation: it seems to us that it should contain a time limit and/or circumstances which, once verified, would allow the judge of the suspended proceedings to renew the proceedings, thereby ending the suspension.

5. What are your views on Articles 6 – 8 including how they will work in practice?

A: We agree with the wording and the comments made.

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?

A: We agree with the wording and the comments made.

6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?

A: We agree entirely, as this is the only way to avoid conflicting decisions and unnecessary repetitions, with all the consequences that this entails for the parties and for justice in general.

6.3 Are there any additional factors that you believe should be included?

A: We believe that, for greater ease and broader coverage, it would be worth considering establishing a general criterion for all situations not covered by the rules of the *2005 Choice of Court Convention* and of the *2019 Judgments Convention* on

the international jurisdiction of a court of a Contracting State. In other words, in parallel proceedings that cannot be resolved through those Conventions, the court of the Contracting State where the proceedings were first brought would have jurisdiction to hear the case in accordance with Article 4, and proceedings brought second in another Contracting State would have to be stayed.

7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?

A: It is considered that only the court in which the action was first brought (in accordance with Article 4) should decide which of the courts of the Contracting States having jurisdiction/connection in accordance with Article 8 is the most appropriate to resolve the dispute in accordance with the factors listed in Article 10. Even if it has not been requested by one of the parties, the court may, and should, hear the matter *ex officio*. This is for reasons of security, utility and speed.

7.2 What are your views on how the two approaches may work in practice?

A: It is considered that, in practice, situations may arise where there are contradictions or repetitions in decisions regarding which Contracting State court, having jurisdiction/connection in accordance with Article 8, is the most appropriate to resolve the dispute in accordance with the factors listed in Article 10.

7.3 Do you have a preference for either approach? If so, please explain why

A: As mentioned above, the decision in question must be taken by the court where the action was first brought (in accordance with Article 4), either *ex officio* or at the request of the parties).

8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?

A: The factors set out in points (a) and (b) may objectively justify the choice of the most appropriate court to hear the case. For example, when one of the competent courts – for example, that of the defendant's habitual residence – has the most

favourable litigation costs. Or, for example, the party has all its witnesses residing in the same Contracting State where it also has its habitual residence, and they are elderly people with limited financial resources.

The factors set out in the remaining subparagraphs require a judgement on the merits of the main case, which may only be favourable to one of the parties. In addition, this judgement, which must be made in order to fulfil each of the remaining subparagraphs, may imply a reduction in the guarantees of the opposing party.

8.2 Do you have any views on how Article 10 might work in practice?

A: Following on from the above, we believe that, at the request of one or both parties and citing the factual circumstances set out in points (a) and (b), the Court should consider these as justification for choosing a particular court, which will, for these reasons, be more appropriate for hearing the main case.

Consideration of the other factors set out in points (c) to (f) may imply that the decision on the choice of the most appropriate court already implies a judgement on the merits of the main case and, in particular, that by favouring one party (for example, by choosing the court according to the law most favourable to the defendant or the one with a shorter or longer limitation period), it is diminishing the guarantees of the opposing party.

8.3 Are there additional considerations that, in your view, should be taken into account?

A: Nothing further to add.

9. Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with parallel proceedings in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.

A: We agree in general, but we believe that the text should remain as simple and objective as possible, so that it is clear and easy to understand for its intended audience.

10. Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with related actions in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice

A: It complies with the previous provisions. For the reasons mentioned above, we do not agree with the factors set out in paragraphs d) and g) of Article 11. We maintain that the text should be simple and objective so as not to create more problems than it aims to solve.

11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seised, in cases involving parallel proceedings and related actions?

A: We agree in full.

11.2 Are there particular advantages and challenges you foresee in applying these methods?

A: We understand that there are many advantages to these means of communication, starting with greater and more controlled knowledge of the existence of parallel proceedings, thus avoiding contradictory judgements or repeated decisions, thereby promoting time savings, efficiency and usefulness in the justice system.

12. What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?

A: We believe it will work well in practice if the communication mechanisms are efficient.

13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument?

A: We believe so.

The objective of a future instrument is to enhance legal certainty, predictability and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?

A: Nothing relevant to note.

13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than those that currently exist? Are there any ways that such risks could be addressed in the Draft Text?

A: Nothing relevant to note.

14. What other comments, if any, do you have?

A: Nothing relevant to note.

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Juíza de Ponto de Contacto

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