

Personal Details

Name:

State: *Romania*

Region: *Europe*

Affiliation:

E-mail:

Please indicate your profession:

Practitioner

Judge

Company/business lawyer

Government official

Legal professional in international organisation

Academia

Retired diplomat jurist

Do you have practical expertise in cross-border civil or commercial litigation:

Yes

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No, I do not provide consent to the publication of my name and affiliation

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News from associations or organisations

Questions

Consultation on the draft text of a possible convention on parallel proceedings and related actions

Question 1 on the scope of the Draft Text

1. What are your views on the scope of the Draft Text/
As this future international legal instrument may also facilitate the application of the Judgements Convention and supplement it , it is desirable to have the same wording of article 1 as the Judgements Convention. Therefore, 2 and 3 of article 1 may not be included and eventually be dealt with in other articles of the `draft Convention.
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? ***Article 2 may be similar as to wording to Judgements Convention and therefore art. 1(e) t, i.e. the issue of excluding the proceedings based on general rules of civil and commercial law should be eventually dealt with in the Explanatory Note.***
3. What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?
Arbitration should be excluded from the subject-matters of this Convention because it has a different regime than disputes in courts of law. Also, the recognition and enforcement of such awards.
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).
Click or tap here to enter text.

Question 2 on definitions

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.

Most probably more definitions should be included, i.e. "judgement" and "defendant".

Question 3 on when a court is deemed to be seised

What are your views on Article 4?

Art.4(a) may be sufficient because it is unlikely that before filing the claim with the court, a court may be deemed to be seised by the mere receipt of the claim by an authority responsible to service the documents .

Question 4 on Article 5 obligations

What are your views on Article 5?

It should further elaborated, having in view that the suspension should operate not later than the first defense term on the merits of the case; also the suspension should be requested by a party and/or through the communication mechanism; the request by a party may not be sufficient unless it is confirmed through the

communication mechanism. Also, it should be considered the case in which the court to the benefit of which the proceedings were suspended declined the jurisdiction and consequently the first court should resume the proceedings (in the present form it is envisaged only the case where the court does not pronounce a judgement in a reasonable period of time).

Question 5 on priority jurisdiction / connection

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

As to art.6 the sole competence of the court of law of the Contracting State in which the immovable property, tenancies of immovable property and the registration of such immovable property is situated should be provided and no derogation be granted where the tenant habitually resides in another Contracting State. Thus there is also consistency with art. 5(3) of the Judgments Convention.

Question 6 on Article 8(2) jurisdiction / connection requirements

1. What are your views on the 'jurisdiction / connection' list in Article 8(2)?
The term "jurisdiction" seems to be more appropriate than the term 'connection'.
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?
Click or tap here to enter text.
3. Are there any additional factors that you believe should be included?
Click or tap here to enter text.

Question 7 on the determination of the more appropriate court

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?
Click or tap here to enter text.
2. What are your views on how the two approaches may work in practice?
Click or tap here to enter text.
3. Do you have a preference for either approach? If so, please explain why.
Click or tap here to enter text.

Question 8 on factors to be considered to determine the more appropriate court

- 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)?
Click or tap here to enter text.
- 8.2 Do you have any views on how Article 10 might work in practice?
Click or tap here to enter text.
- 8.3 Are there additional considerations that, in your view, should be taken into account?

Click or tap here to enter text.

Question 9 on the effectiveness of the framework for parallel proceedings

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.

Click or tap here to enter text.

Question 10 on related actions

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.

Click or tap here to enter text.

Question 11 on the communication mechanism

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?

The communication mechanism is very important because the cooperation between the relevant authorities, such as the ministries of justice should facilitate the application of the international legal instrument

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

There may have some delays in solving the cases as the administrative authorities may be sometimes slow in carrying out the communication with similar foreign institutions, but this mechanism is needed to strengthen the appropriate application of the Convention.

Question 12 on safeguards

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?

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Question 13 on the objectives of the Draft Instrument

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

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.

The Convention can bring more clarity as to the more appropriate court of law to decide a case and provides for rules for determining such a court.

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

By setting out uniform rules meant to determine the most appropriate court to settle a cross border litigation in civil and commercial matters the Convention may strengthen the principle forum non conveniens which in the absence of a treaty may not be achieved.

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?

Click or tap here to enter text.

Question 14 - comments

What other comments, if any, do you have?

An article on the Relationship with other international instruments should be included. Also, the possibility of Regional Economic Integration Organizations to be a party to the Convention and other articles specific to international legal instruments, such as Entry into force.