Personal Details

Name: Austrian Federal Chamber of Labour ("Bundesarbeitskammer")

State: Austria

Region: Nationwide statutory body under public law

Affiliation: Representation of of approximately 4 million employees and consumers

E-mail:

Please indicate your profession:

☒ Practitioner

☐ Judge

☐ Company/business lawyer

☐ Government official

☐ Legal professional in international organisation

☐ Academia

☒ Others, please specify: Statutory body under public law representing employees and consumers

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

☒ Yes

☐ No

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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

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

The Austrian Federal Chamber of Labour (hereinafter also referred to as "Chamber (of Labour)") welcomes the Draft's objective 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. From our perspective, the scope of the Draft Text is, in general, appropriate to achieve this objective.

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?

While the Draft Text's intention to address parallel proceedings and related actions in cross-border civil and commercial matters is fundamentally valuable for reducing litigation duplication and inconsistency, a current or future expansion of the subject matter scope of the Draft is desirable in order to better take into account also the interests of employees and consumers.

For this the subject matter scope would need to be explicitly extended to cover these cases. However, in this case, the Draft would have to take particular account of the special need for protection of employees and consumers (see sections 1.3., 5. and 8.1. below for further details).

1.3 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)?

Articles 2(4) and 2(5) expressly exclude consumer contracts and individual employment contracts from the subject matter scope of the Draft. These exclusions remove from the scope of the Draft precisely those disputes where workers and consumers are most vulnerable to the harms of multiple parallel proceedings — including high litigation costs, procedural complexity, and power imbalances against well-resourced corporate defendants.

We recognize the difficulty that the inclusion of consumer and individual employment contracts may pose for the broad adoption of the Draft. However, improving the protection of workers and consumers should be a priority objective of international treaties and all international legislation. Only in this way can and will broad acceptance of international cooperation be maintained in the long term.

We therefore recommend that the possibilities of broadening of the scope to include consumer and individual employment matters (or at minimum that special procedural safeguards be incorporated to protect resource-constrained parties if full inclusion is not immediately adopted), should be given more consideration in the Working Group. Such safeguards could include simplified notification requirements, enhanced assistance for self-represented claimants, and explicit recognition of power imbalances in procedural rules.

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).

The Draft addresses parallel proceedings and related actions in the courts of different Contracting States. In addition, the Draft Text sets out a potential additional requirement for

the applicability of the provisions to parallel proceedings [and related actions], namely that [any of] the defendant[s] must be habitually resident in another Contracting State.

The inclusion of this additional criterion, which has been proposed for discussion as one of the options suggested by the Working Group, appears problematic to us. It would specifically exclude from the geographical scope of the Draft Text those cases in which a party might invoke an extraterritorial jurisdiction (or another jurisdiction, e.g., the location of the immovable property), even though in the specific case a forum at the place where the immovable property is situated does not simplify the proceedings because, for instance, the dispute between the parties, both habitually resident in the same State, concerns only payments. In such cases, conducting the proceedings in the court of the State where both/all parties are habitually resident would be more appropriate.

For this reason, the inclusion of this additional criterion appears to run counter to the objectives of the Draft and, moreover, could to increase the risk of strategic litigation. For example, where, in the above-mentioned scenario, the landlord brings proceedings at the place where the immovable property is situated solely because the tenant, as the party that is generally in a weaker position, is particularly burdened or placed under pressure by having to conduct the proceedings in that forum, even though, in principle, conducting the proceedings in the State in which both parties are habitually resident would be more advantageous for all parties involved).

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.

We welcome the fact that parallel proceedings are defined narrowly, and related actions are defined in a broader way. However, particularly with regard to parallel proceedings, there is a risk that the instruments of the Draft could be misused in practice in a "race to the courthouse" and strategic litigation, such as a proliferation of requests for negative declaratory judgments.

Question 3 on when a court is deemed to be seised

What are your views on Article 4?

In Austria, there is the possibility that (in certain limited cases) an action may be brought orally before the court and recorded in the minutes (see Section 434 of the Austrian Code of Civil Procedure ("Zivilprozessordnung")). It can be assumed that a similar possibility exists in other potential Contracting States,

This should therefore be additionally taken into account in the further drafting of Article 4.

Question 4 on Article 5 obligations

What are your views on Article 5?

We welcome that, a court that suspended its proceedings shall, on request of a party, proceed with the case if the court for the benefit of which proceedings were suspended [is unlikely to render] [has not rendered] a judgment on the merits [within a reasonable time]. However, the assessment of what constitutes a "reasonable time" may vary between Contracting States and could from our point of view, in practice, give rise to difficulties in the interpretation of the Convention.

Question 5 on priority jurisdiction / connection

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

In the further drafting of Articles 6 to 8, particular attention should be paid to the specific need for protection of tenants, employees and consumers.

On the specific need for protection of tenants:

In addition to consumers and employees, tenants also constitute a particularly vulnerable group in need of protection. In practice, based on our experience, tenancy disputes often involve large commercial landlords on the one hand and tenants on the other, who are deterred from initiating proceedings because of the associated cost risks or who are particularly burdened by such proceedings. Many states have therefore enacted specific rules to protect tenants. This protective rationale should also be reflected in international procedural law.

In its current version, the Draft provides, as an option, for [exclusive] [priority] jurisdiction /connection for "tenancies of immovable property" at the place where the immovable property is situated.

We reject this approach, as the draft does not sufficiently take into account the particular need for protection of tenants in this respect. It should be noted that even if this [exclusive] [priority] jurisdiction/connection in Article 7 were abandoned, jurisdiction at the place where the property is situated would exist in many cases (e.g. due to the tenant's place of residence, the ease of taking evidence, etc.). However, this will not necessarily always be the case (see the above already mentioned example, where only payment obligations are in dispute, the tenant no longer has their residence at the place where the property is situated, and conducting proceedings there would impose a particular burden on the tenant). In such cases, jurisdiction should not necessarily lie with the court at the place where the property is situated, and the tenant's particular need for protection should be given special consideration within the determination of the more appropriate court under Article 10.

If a Special Commission were to be convened for further negotiations on the Draft, further consideration should be given to the particular need for protection of tenants.

On the specific need for protection of employees and consumers:

The Draft excludes proceedings related to contracts concluded by consumers (Art. 2(4)) and proceedings related to individual contracts of employment (Art. 2(5)). However, if a Special Commission were convened, HCCH Members would need to consider the scope of the subject matter exclusions and agree a final position.

Should the two above-mentioned categories be included within the scope of application of the Draft at a later stage, the particular need for protection of employees and consumers would have to be given due and specific consideration.

This could be achieved, inter alia, by providing for an [exclusive] [priority] jurisdiction/connection at the place of residence of employees and consumers in respect of claims brought against them, by limiting the possibility of establishing jurisdiction/connection on the basis of choice-of-court agreements (e.g. only after proceedings have been instituted), and by requiring qualified legal representation where jurisdiction/connection is based on an uncontested submission to the proceedings.

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

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?
The factors would have an autonomous meaning under the Convention and would therefore require interpretation by a wide range of courts. This may present certain challenges, in particular for legal systems that do not traditionally employ comparable factors, as well as

for those that use similar concepts but would need to distinguish their domestic understanding from the Convention's autonomous interpretation.

As a consequence, a degree of legal uncertainty may arise, and the application of the factors could necessitate more detailed legal analysis. It cannot be excluded that different courts applying the same Convention factors might arrive at divergent results, which could add complexity at an early stage of the process, prior to the consideration of the Convention's substantive objectives.

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?
Notwithstanding these considerations, the criteria, in general, appear appropriate, and it also seems conducive to the effective operation of the instrument to go beyond the criteria set out in the 2019 Judgments Convention.

6.3 Are there any additional factors that you believe should be included?
For disputes arising out of collective labour law in which a Works Council or a comparable employee-representative body is a party to the proceedings, [exclusive] jurisdiction/connection should be provided for at the place of its seat. However, this should not apply in cases where a Works Council represents the specific interests of individual employees. In Austria, for example, a Works Council is entitled to challenge the dismissal of an employee. In such cases, due to the particular need to protect employees, the appropriate forum should be that of the employee's place of residence.

Question 7 on the determination of the more appropriate court

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?
The Chamber welcomes that, under both approaches, the court shall make the determination under Article 9 expeditiously and that courts are encouraged to exchange information through the communication mechanism.

7.2 What are your views on how the two approaches may work in practice?
Under both approaches, there is a risk that parties to proceedings could, through strategic litigation in a country with longer or comparatively longer procedural timelines, abuse the mechanisms of the agreement in order to delay the proceedings. This risk could, under both approaches, from our point of view be mitigated by the choice of Option 2 (and the choice of the wording "as appropriate" instead of "in exceptional circumstances" in Article 9(5)), as under this option another court may resume the proceedings more easily if it determines that it is the more appropriate court to resolve the dispute

The choice of Option 2 therefore entails — when compared to Options 1 and 3 — a risk of a higher number of parallel proceedings (and thus appears to run counter to the stated objective of the agreement). However, this risk would be less pronounced (among the majority of bona fide parties) once the present agreement has established clearer rules on jurisdiction with regard to parallel proceedings.

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

From our perspective, both approaches seem feasible and practicable. However, a final assessment will only be possible once a Special Commission has decided on a specific approach and the respective sub-options within a final draft. The Chamber will then be pleased to submit a further opinion on the matter.

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)?

The Chamber considers the factors proposed in Article 10 to be appropriate and suitable for determining the more appropriate court in cases of parallel proceedings. We welcome that, when making a determination pursuant to Article 10, the courts may exchange information through the communication mechanism established pursuant to Article 1.

In its current form, the Draft does not foresee its application to consumers and employees. However, if a Special Commission were convened, HCCH Members would need to consider the scope of the subject matter exclusions and agree on a final position. Improving the protection of workers and consumers should be a priority objective of international treaties and all international legislation. The Working Group should therefore give further consideration to how these groups may also benefit from the advantages of the Convention, while at the same time ensuring that the existing level of protection afforded to them is not weakened.

Should the scope of Draft be extended to the aforementioned groups, it would — apart from mandatory jurisdictions in favor of employees and consumers (see our comments above) — also be essential to specifically take into account, within the balancing under Article 10, the particular burden that proceedings in courts can impose on these especially vulnerable groups.

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

The factors in Article 10 are open and very broadly formulated, which is inherent to their nature and, from the Chamber's perspective, generally appropriate. In practice, however, this broad formulation could lead to inconsistent or uneven application by the courts of the Contracting States.

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

To ensure a uniform application of the Convention, a comprehensive exchange of information between the Contracting States and their courts, as well as extensive training measures for the courts in the Contracting States, should be promoted.

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.

The provisions of the Draft will carry an independent meaning under the Convention and, as such, will need to be interpreted by courts across different jurisdictions. This may pose certain difficulties, particularly for legal systems that do not normally use comparable factors, as well as for those that apply similar concepts but must distinguish between their domestic understanding and the Convention's autonomous framework.

As a result, some legal uncertainty could arise, and applying the factors may require more in-depth legal analysis. It is possible that different courts, when applying the same Convention factors, could reach differing conclusions, potentially introducing additional complexity at an early stage of proceedings, even before the Convention's substantive objectives are addressed.

For this reason, accompanying measures that support the courts of the Contracting States in the implementation of the Convention are of paramount importance (for further details, see below) and should also be coordinated at the international level.

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.

The Chamber welcomes that the Draft provides that, if any court seised decides not to adjudicate the entirety of the related actions under Article 12 or any part of the related actions under Article 13, or makes a determination that is inconsistent with the determination of any other court under Article 12 or Article 13, then such a court shall proceed with the related actions case before it.

Moreover, the Chamber welcomes particularly, that if one or more courts seised do not make the determinations under Article 12 or Article 13 within a reasonable time, any other court seised may, upon application of a party or on its own motion, [proceed to adjudicate] [adjudicate] the proceedings before it. From our perspective, this provision may contribute to curbing strategic litigation intended to cause procedural delays.

Although the Chamber acknowledges that what constitutes a reasonable time for determinations under Article 12 and 13 depends on each individual case, the lack of a clear definition of what qualifies as a "reasonable" may represent a weakness of the Draft in its practical implementation. One possible way to enhance clarity would be to agree on maximum time limits, which should/could be exceeded only in exceptional circumstances.

Should the scope of the Draft (in the future) be extended to consumers and employees, it would be essential to specifically take into account, also within the determination under Article 11 (2), the particular burden that proceedings in courts can impose on these especially vulnerable groups.

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?

From our perspective, the communication mechanisms set out in Chapter IV of the Draft Text have the potential to enhance procedural coordination in cases involving parallel proceedings and related actions. Effective communication between courts may contribute to the avoidance of irreconcilable judgments and promote procedural efficiency, both of which are legitimate and important objectives.

However, the practical effectiveness of these mechanisms will depend heavily on the manner in which they are implemented. Especially parties with limited financial and organizational resources may be particularly affected by procedural decisions taken at an early stage of proceedings. Communication between courts that is insufficiently transparent

or not clearly framed may create uncertainty for such parties and risk undermining their confidence in the fairness of the process.

In our view, the communication methods can function effectively only if they are accompanied by clear procedural safeguards. In particular, it is essential that any communication between courts remains limited to procedural coordination issues, is properly documented, and does not prejudice the substantive rights of the parties. Any communication between the courts must be accessible to the parties. Without such safeguards, the risk arises that coordination mechanisms may, in practice, operate to the detriment of weaker parties by facilitating stays or deferrals that are difficult for them to challenge.

In many cases, the information to be exchanged will be particularly sensitive for the parties and therefore especially deserving of protection. It is thus especially important that data protection and the security of communication be given due consideration.

For this reason, the Chamber welcomes that the Contracting States may choose which methods of communication they permit. In order to address potential security concerns (and to ensure that these do not hinder accession), it therefore appears advisable from our perspective that the Contracting States be able to determine the permissible forms of communication with each individual Contracting State separately, and also to revoke them if security concerns arise over time (in particular with regard to electronic communication).

11.2 Are there particular advantages and challenges you foresee in applying these methods?
Structured communication may help reduce duplication of proceedings, prevent conflicting decisions, and limit abusive litigation strategies aimed at delaying the enforcement of workers' or consumers' rights.

We welcome that, further communications between courts may be carried out using any translation method or common language agreed upon by the relevant courts (Art 16(4)(b), as this can help prevent procedural delays, provided, however, that this is expressly authorized by the Contracting States.

Key challenges include ensuring transparency and respect for the right to be heard, addressing inequalities of arms between parties, managing differences between legal systems, and avoiding additional delays. We therefore consider that further clarification of the scope and safeguards of inter-court communication is necessary to ensure that these mechanisms operate fairly and effectively in practice.

The Draft Text provides joint hearings of courts of different Contracting States as an additional avenue of cooperation and coordination. The possibility of joint hearings between Austrian and foreign courts is not explicitly provided for under Austrian law. Holding such joint hearings raises many questions, which must first be addressed at the domestic level or within the EU. For this reason, we consider it advisable that Contracting States be given the discretion to decide whether to allow their courts to hold such joint hearings.

Furthermore, the development of (additional) safeguards under Chapter V should be considered in cases where the communication by a participating court is deemed insufficient.

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?

The Chamber welcomes the safeguards provided for in the Draft and considers them, in principle, suitable to achieve their objectives as well as to prevent abusive litigation.

Article 19 provides that nothing in the Draft Text shall prevent a court from exercising its jurisdiction if the court determines it is reasonable and foreseeable that its exercise is necessary in order to avoid a [manifest] denial of justice. The Working Group itself emphasizes the exceptional nature of these provisions in Article 19. For this reason in particular, and also because it constitutes a vaguely formulated exception, there is concern that courts may apply these provisions very cautiously. From our perspective, there is therefore a risk and a high probability that cases expressly mentioned by the Working Group in the consultation paper itself — such as the absence of legal representation, legal aid, or ongoing limitation and forfeiture periods — will not be (sufficiently) taken into account by the courts of the Member States when applying Article 19.

It therefore appears desirable to include further clarifications in the Draft with regard to the above-mentioned points in particular, as well as, more generally, provisions that in this context ensure the protection of the (economically) weaker party to the proceedings.

All of this would be all the more important and absolutely necessary should the scope of application (in the future) also be extended to employees and consumers.

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 Draft provides a framework for coordinating parallel proceedings and identifying the more appropriate forum, which could enhance legal certainty, reduce costs, and mitigate inconsistent judgments. However, the exclusion of consumer and individual employment claims limits these benefits for the parties most vulnerable to procedural complexity and high litigation costs.

We would therefore welcome, if the Working Group and/or a Special Commission would explore ways in which employees and consumers could benefit from the Draft while preserving their existing level of protection in the Contracting States, for example, through exclusive jurisdiction/connection at their place of residence.

The protection of workers and consumers should be a priority objective of international treaties and all international legislation. Only in this way can and will broad acceptance of with regard to the proposed Draft in particular and international cooperation in general be maintained in the long term.

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

The Draft Text can improve the status quo by introducing systematic mechanisms for court cooperation and clearer criteria for forum selection, which can reduce uncertainty and inefficiency.

The Chamber therefore welcomes the preparation of a Draft and expresses its support for the convening of a Special Commission in order to further consider the Draft.

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?

Compared to the current status quo, the risks of tactical and satellite litigation are not entirely new. These already occur in cross-border disputes due to the lack of a comprehensive international framework. It should be noted that these are often proceedings involving high amounts in dispute between (large) companies. However, requests for negative declaratory judgments (e.g., a declaration in favor of a party who expects to be sued in another forum that the party bringing the request has no legal obligations toward the other party) can also be abused by dishonest companies to delay insolvency proceedings. This may in turn place a burden on Contracting States and insurance pools (e.g., insolvency costs borne by the general public, loss of tax revenues, insurance contributions, etc.).

By establishing clear rules and promoting cooperation between courts, the Draft is, in our view, generally suitable to prevent abusive tactical and satellite litigation. However, under the provisions of the Draft, even in proceedings in which the courts of a Member State would previously have affirmed their jurisdiction without extensive examination, jurisdictional assessments could take longer. This may occur where parallel proceedings are initiated by a party solely to delay the progress of the main proceedings (e.g., to postpone insolvency).

Member States must therefore ensure that decisions under the possible Convention are taken swiftly and that their courts are provided with the necessary resources. In particular, with regard to communication between courts, it must be ensured that such communication can be handled expeditiously and does not lead to procedural delays. In the context of further developing the Draft, consideration should therefore be given to whether concrete requirements should be imposed on the Contracting States in this respect and/or whether and how the Contracting States could mutually support each other on this issue.

In addition, explicit provisions allowing courts to impose cost consequences or other procedural sanctions for manifestly tactical or dilatory applications would help deter misuse.

Question 14 - comments

What other comments, if any, do you have?

The Chamber thanks you for the invitation to provide comments.

It should be noted that substantial parts of the Draft have not yet been finalized and include various approaches and sub-options on which the Contracting States would still need to reach agreement in further negotiations. Accordingly, the observations set out above can only be regarded as a preliminary assessment and initial reflections. The Chamber would, therefore, be pleased to submit further comments once another (final) Draft has been prepared.