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Please indicate your profession:

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- ☒ Others, please specify: Association and Qualified Entity

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?
Click or tap here to enter text.

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?
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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)?

2 Article 2 of the draft excludes, among others, the following matters from its scope of application: passenger transport, privacy, and anti-competitive infringements. Article 2 also excludes arbitration proceedings and contracts with consumers and users.Ius Omnibus is keen to ensure that these matters, as set out, are not excluded from the objective scope of the regulation.

3 In the HCCH's introduction to the comments on the Draft Text, the above exclusion is justified by the existence of international regulatory texts, to avoid a conflict between the rules already in force and the new convention on parallel proceedings and related actions. Paragraph 15 of the Consultation Paper also argues that consumers are often the weaker party in this type of litigation.

4 While this is a prudent approach, it should also be noted that the power of each party in consumer litigation varies significantly between individual cases and collective proceedings, in which a specialised entity represents the interests of a group of consumers. We must remember that, in cases such as Ius Omnibus, the protection of consumer rights is sometimes provided through third-party funding and financial resources that are not usual in litigation of individual claims.

5 Therefore, while we support the considered decision to exclude consumer-related matters from the scope of the future convention, Ius Omnibus believes that this exclusion should not apply when the proceedings in question affect the collective protection of consumer rights. In short, consumer-related matters should not be excluded in their collective aspect.

6 Another option for limiting or maintaining the scope of these exclusions is to apply them only to certain types of proceedings. In other words, they would be excluded from parallel proceedings, but not from related actions, so that such cases could arise, but only in certain circumstances and for certain proceedings.

7 Another filter applicable to these exclusions is that they may apply when the award of the proceedings is total, but not when it is partial. As will be explained throughout this contribution, there are various reasons why it is advisable for the future convention not to cease applying to matters that generate large amounts of homogeneous litigation and whose processing could be streamlined, thereby reducing costs and improving procedural efficiency in the courts.

8 In this regard, although there may be international regulations governing such matters, they do not take into account the specific circumstances of parallel proceedings and related actions. It is therefore necessary to provide a framework that gives legal certainty to the internationalisation of actions in these areas of activity.

9 Firstly, because consumer, privacy and competition litigation share a number of characteristics that make them particularly vulnerable to the negative effects of parallel proceedings, such as the multiplicity of potential forums (consumer's domicile, company headquarters, place of damage, place of the affected market), the plurality of claimants, with claims of low individual value but high aggregate impact, the coexistence of individual and collective actions and, on occasion, administrative or regulatory proceedings, as well as the structural asymmetry of resources between consumers and users vis-à-vis large economic operators.

10 In these contexts, the proliferation of parallel proceedings is not an exceptional anomaly, but a natural consequence of the functioning of the digital and transnational market. Excluding these matters means leaving unanswered those cases in which judicial coordination would be most necessary from the point of view of effective protection.

11 Secondly, from the perspective of the individual consumer or user, parallel proceedings have particularly burdensome effects, among which we highlight the risk of contradictory decisions that make it difficult to enforce or calculate damages.

12 Thirdly, in terms of competition and privacy, exclusion is particularly difficult to justify from the perspective of end users. In competition, private redress (follow-on or stand-alone actions) often depends on coordination between multiple national proceedings.

13 Furthermore, it is difficult to define which cases affect consumers in isolation without touching on other matters. For example, returning to the Draft Text, many of the proposed exclusions may occur simultaneously in practices that violate consumer rights.

14 The conduct currently observed in the digital environment often combines several of the matters now excluded under the current Draft Text. It is not unusual to find conduct in which a competition infringement, such as an abuse of a dominant position, causes compensable damage in which the fundamental right to data protection and personal and family privacy has been violated. In cases such as the one described, the infringing conduct is not limited to a small group of consumers, but can affect thousands or millions of people across different countries.

15 In the face of large-scale infringements, national legal systems (mainly European ones) typically offer solutions at the national level, which, at least in the European case, result in duplicate litigation across several countries, with the consequent risk of fragmentation that may lead to contradictory proceedings.

16 The lack of rules on related actions can lead to fragmented redress, incompatible decisions on facts or quantification of damage, or unequal outcomes for victims located in different States. In privacy and personal data cases, damages are often diffuse and cross-border, and multiple proceedings are the rule rather than the exception. Exclusion from the Convention deprives courts of tools to coordinate collective actions, avoid contradictory rulings on processing obligations or liability, or effectively manage mass litigation arising from the same incident.

17 Ultimately, given that the judicial reality reflects a proliferation of this type of action, the material inclusion of these actions contributes, to some extent, to significantly improving

procedural efficiency and reducing the resources courts must use to resolve the case. Failure to include them would result in much higher procedural costs, due to the greater difficulty in managing these proceedings.

18 In conclusion, the lack of judicial coordination weakens the remedial and deterrent function of the law, to the direct detriment of users, who, if they act collectively, will not be able to benefit from the synergies and coordination tools of the Draft Text.

Alternatively, should the exclusion be maintained, we urge that explanatory report of the final convention clarify whether the wording “related to contracts concluded by … consumers” indeed refers strictly to the technical, private international law conception of the word “contracts”. This would mean, in our view, that collective actions dealing with consumer-related torts such as product liability would still fall under the scope of the convention.

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).
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.

19 Given the Draft Text's current wording, the distinction between related proceedings and actions is somewhat unclear, and we believe it warrants more nuanced treatment, as discussed below.

20 The requirements for establishing parallel proceedings are the similarity between the parties and the subject matter of the dispute. This being the case, and comparing with the requirements established for related actions, we identify that, of the three criteria required for the latter, two are identical, with the difference being only in the last criterion: that relating to common questions of law, which, if resolved differently, could give rise to contradictions or irreconcilable rulings.

21 Based on the above premise, there is a high degree of overlap between the two definitions. Given that the last criterion seems to be the most decisive in justifying the particular connection with the action, i.e., the specific legal claim, it would be advisable to clarify the latter much further. In this regard, it is expressly recommended to develop what those cases are in which contradictions may arise, what type of contradictions and their incidence, so that two consequences can be achieved: first, a greater distinction between the two categories; secondly, greater clarity regarding those specific cases ( ) in which an action should be considered related for the purposes of Article 3.1.b), thereby achieving greater legal certainty.

22 Furthermore, in the case of parallel proceedings, we consider that the reference to the identity of the parties should be made in the same sense as for related actions, adding that the parties are the same "[or substantially the same]". We consider it important that this nuance be included in the definition of parallel proceedings. Although in identical proceedings before courts located in different States the parties should be the same, they may differ when different companies can be sued. It would be important for the Draft Text to distinguish what happens in cases of joint action, whether active or passive, where the parties are not completely identical.

23 In line with the above, the Consultation Paper raises the question of whether 'parallel proceedings' should include cases where an order is sought against a defendant to do or refrain from doing something within the State of the competent court, and where such proceedings are related to other proceedings in another Contracting State. In this regard, as highlighted in paragraph 22 of the Consultation Paper, further study of the issue is urged in order to clarify in the Draft Text that, where proceedings are pending in a court of a Contracting State, the fact that a related court order is sought to compel or restrain the performance of any act in a court of another Contracting State, if the act is confined to the territory of that other State, does not give rise to parallel proceedings and may not give rise to related actions within the scope of the Draft Text.

Finally, we also consider that it would be beneficial if the convention could provide a definition of what constitutes “same parties”. The reasons for that are as follows. In the context of collective actions, the same qualified entity may bring multiple proceedings against the same trader in different Member States on the basis of the same harmful event and the same legal rules, yet each action may be defined by a different group of consumers concerned. This structural feature complicates the application of lis pendens rules, since formal identity of litigants does not necessarily reflect an identity of the interests represented or of the object of the proceedings. As a result, it becomes unclear whether such actions should be treated as involving the “same parties” and the same cause of action for the purposes of staying proceedings.

Question 3 on when a court is deemed to be seised

What are your views on Article 4?

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Question 4 on Article 5 obligations

What are your views on Article 5?

24 Article 5 of the draft provides that “[a] court that suspended its proceedings in accordance with this Chapter 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]”.

25 In relation to the previous paragraph, the draft includes a note stating that in such cases, dismissal should be considered rather than suspension. In this regard, we consider it important to emphasize that such dismissal would be restricted to the jurisdiction of another court, not to the merits of the case, and that the reason for dismissal would be stated, always in accordance with the convention itself.

From a functional point of view, the provision seeks to avoid duplicative proceedings, reduce the risk of incompatible decisions, and promote judicial efficiency and legal certainty. However, it would be advisable to expressly reinforce in the text that suspension is an exceptional power, which must be applied after careful consideration and should not occur when it has a disproportionate and unfair effect on effective access to justice. Likewise, the concept of "reasonable time" requires greater specificity (e.g., procedural stages, the parties' diligence, or the progress of other proceedings)..

Question 5 on priority jurisdiction / connection

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

26 Article 8, as drafted in the Draft Text, is intended to play a central role in the Convention system by linking the stay or dismissal of parallel proceedings to the existence of sufficient jurisdiction or connection, but its current wording reveals significant structural problems that require clarification and simplification. These criteria, as highlighted in paragraphs 38-41 of

the Consultation Paper, will only apply when Articles 6 and 7 do not apply. However, several observations are needed regarding Article 8.

27 Firstly, the combination in a single provision of rules on effect (suspension or dismissal), connecting factors, and open references to an analysis of the 'most appropriate court' creates functional confusion about the article's true role, which oscillates between an indirect jurisdiction rule and a procedural coordination clause.

28 Secondly, the extensive and still incomplete list of connecting factors in paragraph 2, many of which are formulated in an alternative manner, introduces a high risk of discretion and tactical litigation, especially in contexts with multiple defendants.

29 Furthermore, the possible coexistence of multiple 'connected' forums raises the need to clarify whether the assessment should be made by claim, by defendant, or by the procedure as a whole, an issue the text leaves open.

30 From a systematic perspective, Article 8 should be more clearly conceived as a minimum and objective connecting factor filter, avoiding becoming an exhaustive and rigid catalogue of jurisdictional bases that competes with other international instruments (in particular, the Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil or commercial matters, known as the Judgments Convention), and its coordination with Articles 6, 7 and 9 should be strengthened to avoid overlaps and inconsistent results.

Without these improvements, there is a real risk that Article 8, far from facilitating the management of parallel proceedings, will become one of the main sources of uncertainty, interpretative fragmentation and strategic use of the Convention. .

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

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?
Click or tap here to enter text.

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?
Click or tap here to enter text.

6.3 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

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?
Click or tap here to enter text.

7.2 What are your views on how the two approaches may work in practice?
Click or tap here to enter text.

7.3 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)?

31 Article 9 aims to regulate the central mechanism for coordinating decisions when there are parallel proceedings before courts that already have jurisdiction or a connection under Article 8, but its current wording reveals unresolved conceptual and operational tensions that require clarification.

32 In particular, the provision reflects a structural division over the role to be played by the court first assigned: on the one hand, a model in which that court assumes a quasi-central role in determining the 'most appropriate court'; on the other, a more traditional model in which the first court to hear the case enjoys procedural priority, but without strong decision-making power over the other courts. The lack of specificity in some elements of judgment may lead to confusion ("reasonable timeframe", "exceptional circumstances", "as appropriate"), reducing predictability and legal certainty.

33 From a systemic perspective, Article 9 risks overlapping with Articles 5, 8, and 10, confusingly, without clearly defining whether the decision on the 'most appropriate court' constitutes a strict exception to the principle of temporal priority or a broader analysis.

34 Paragraph 52 of the Consultation Paper states that, although approach 1, whereby the receiving court assumes a quasi-central role in determining the "most appropriate court", gives the court that first heard the case a primary role in determining which court is the most appropriate.

35 This approach also establishes that, in certain circumstances, a court other than the one that first heard the case may, upon a party's request, resume proceedings if two conditions are met. First, if the request is made within certain time limits. And second, if the court other than the court first seised decides that:

36 1. Option 1: It must hear the case to ensure effective access to justice.

37 2. Option 2: It is the most appropriate court to resolve the dispute, after taking into account the factors in Article 10.

38 3. Option 3: It is clearly the most appropriate court to resolve the dispute, after taking into account the factors in Article 10 (Article 9(5)).

39 The Consultation Paper states that the options listed above are under consideration, as further discussion is needed to determine which option is most appropriate for the Draft Text.

40 In this regard, several observations can be made. The first is that options 2 and 3 have the same wording, so they are understood in the same way. In this regard, it is recommended that option 2 be followed for two reasons. The first is to preserve systemic consistency within the wording of the convention itself. The second is because it is a less arbitrary criterion, unlike option 1, which states "to ensure the most effective access to justice", which may end up being an indeterminate legal concept and susceptible to controversy in litigation practice.

41 Additionally, although the reference to judicial communication in Article 16 is positive, its mere optional nature is insufficient to compensate for the complexity of the regime. In short, Article 9 needs a clear and consistent regulatory framework, either by explicitly reinforcing the priority of the first court to hear the case or by articulating a structured test for the "most appropriate court" with strict safeguards.

42 In its current state, the provision risks becoming one of the main sources of uncertainty, interpretative fragmentation and strategic use of the Convention, rather than an effective instrument of judicial coordination. An example of the strategic use of the Convention would be as follows: in an international contractual dispute between two parties with jurisdictional connections to States X and Y, the defendant pre-empts by filing a negative declaratory action before the court of State Y with the sole aim of activating temporal priority, forcing the court of State X to lose its jurisdiction. In this way, he prevents the matter from being discussed in a State with which he has a stronger material connection to the dispute and forces the suspension of proceedings under Article 9.

43 In this regard, taking advantage of the vagueness of concepts such as "reasonable time", the defendant can strategically delay proceedings in State Y through procedural motions and, at the same time, request that that court declare itself the "most appropriate court", invoking in a self-serving manner the factors in Article 10 or the criterion of effective access to justice, which in practice allows the objectively most appropriate forum to be blocked and transforms the judicial coordination mechanism into a tool for defensive and dilatory forum shopping.

Ultimately, it would be advisable to coordinate the criteria for selecting the appropriate court in parallel proceedings with those established in Article 11 for selecting the appropriate court in related actions. In this regard, Article 10 sets out a very similar set of factors that the administration of justice must assess in designating the most competent court. Consequently, beyond the recommendations made above for Article 9, it would be beneficial to consider drafting a single article, in the common provisions section, setting out the general factors for determining when a court is the most appropriate, since, beyond the vicissitudes of the case, there does not appear to be a need to devote one article to the most appropriate court in parallel proceedings and another to related actions. .

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.

44 Article 11 plays an essentially protective role within the instrument. It acts as a closing clause against overly rigid applications of Articles 5, 8 and 9; a mechanism to ensure that the coordination of parallel proceedings does not produce manifestly unfair results; an anchor point with fundamental principles of international civil procedure. From a systematic perspective, Article 11 is key to preserving the balance between procedural efficiency, legal certainty and effective judicial protection.

45 Article 11 allows the court not to apply the consequences provided for in the instrument when doing so would lead to a manifestly unjust result or one incompatible with the fundamental principles of the forum.

46 It is also important to note that the Draft Text offers three mechanisms for handling related actions following court determinations, i.e., if a court decides to hear all or part of the related actions. These are: adjudicating the related actions in their entirety by a single court (Article 12), in part by a single court (Article 13) or continuing separate proceedings (Article 14).

47 In this regard, in line with the provisions of paragraph 63 of the comments on the draft, we urge further examination of the use of the word 'resolution' and possible alternative descriptions, because 'resolution' encompasses different methods of dispute settlement in the work of other international organizations in the field of international trade.

48 In addition, other factors such as the status of the proceedings should be considered, as noted in subparagraph (e). An explanation indicating the limitation periods for action is added in square brackets. This is particularly relevant for two reasons: the first is the different duration of this period according to the internal rules of each State, and the second is the possibility of having different starting dates for the calculation of the period (dies a quo), which may result in related actions being separated in time, even by years.

49 This time lag may help to determine which court is most appropriate, not only because of the stage of the proceedings, but also because of the instance in which they are being heard. For example, we understand that, for hierarchical reasons (albeit indirect), a court of appeal or a Supreme Court of another State may be better placed to be the court to which the total or partial decision on the related action is referred. In order to facilitate understanding and application of the provision, we believe that such situations should be reflected in the Draft Text, either in the article itself or in another more indicative or explanatory part of the text.

50 Another factor of paramount importance in deciding which court is most appropriate is the evidence presented and in the possession of each court in its respective proceedings. This is not only a matter of timing but also depends on other variables. In all proceedings, the parties provide the evidence they consider relevant to asserting their claims. However, the court and the parties also face significant limitations on what information they can obtain under their applicable procedural rules. For example, the discovery procedure typical of Anglo-Saxon legal systems sometimes allows the court to obtain more information and evidence for the trial. In a case where an action is brought before a court and it is known that there is a related action in which the evidence has already been taken with the

corresponding guarantees, it would be reasonable for that court to choose to defer to the judgement of another court that has more evidence available to make the same decision that the first court would have to make with less information available.

This issue can also be approached from a more technical perspective, making the existence of experts and expert reports that may be revealing in deciding the matter a criterion to be assessed within the evidence. For example, preparing an expert report can delay resolution of the matter and increase costs for the parties (either the party commissioning the report or the party ordered to pay the costs).

51 Article 12 serves a different function from Articles 5, 8, 9 and 11.

52 While these regulate how to decide between parallel proceedings, Article 12 focuses on the effects of that decision and how it is articulated in time and legal space.

53 It can be understood as a rule for stabilising the system, ensuring legal certainty, and providing predictability in the procedural effects of international coordination. In this sense, Article 12 is not merely a technical provision, but a key element for mutual trust between courts. A relevant feature of Article 12 is that it does not impose automatic or binding recognition of decisions taken by another court in application of the instrument.

54 This approach is legally prudent, as it avoids conflicts with constitutional or public policy rules and preserves judicial independence. At the same time, it encourages reciprocal consideration of foreign decisions, consistent with the cooperative, non-hierarchical nature of the instrument.

55 Article 12 directly affects the predictability of transnational litigation: parties can anticipate the effects of a decision to stay or continue proceedings, and courts can avoid conflicting decisions on the same procedural status.

The degree of predictability will depend largely on how the scope of the effects is interpreted, i.e., whether courts consider foreign decisions merely informative or quasi-persuasive. It would be useful for Article 12 to specify more clearly the weight to be given to these decisions, at least in indicative terms (e.g., obligation to expressly state reasons for not taking them into account).

56 The main objective of Article 13 is to regulate the interaction between the proposed instrument and other existing or future regulatory frameworks, whether international, regional or national.

57 In this sense, Article 13 serves as a clause of compatibility and regulatory coexistence, a mechanism to avoid conflicts between international instruments, and a guarantee of the system's long-term flexibility. It is not designed to resolve a specific case, but to ensure the sustainability of the instrument in a pluralistic legal environment.

58 This option is particularly attractive in proceedings involving several actions, not all of which are reflected in the related action. For example, consider a case involving a breach of contract and a declaration of infringement of a specific sectoral rule that does not apply in the related action. In such a case, the court could delegate the decision on whether there has been a breach of contract and rule on the infringement of the sectoral rule once the delegated court has decided on contractual liability.

59 This mechanism is not only very useful in cases where the claims in the related actions are not identical, but it can also enable courts that are more reluctant to cede their jurisdiction to use this tool, with the guarantee of retaining part of the decision of the proceedings at their seat.

60 At Ius Omnibus, given the potential of this provision, we believe it is necessary to further develop this article, explaining in greater depth what types of decisions may be subject to partial adjudication (quantification of damages, determination of liability), or whether more specific parts of the proceedings, such as the taking of certain evidence, may be adjudicated. In this regard, this proposal could be useful for evidence, such as the inspection of a property that is no longer in the same condition as when the evidence was taken, or the examination of a witness whom the court does not have jurisdiction to summon.

61 Finally, we must consider the potential of related actions for procedural agility. Thus, related actions contribute to a more efficient process while simultaneously providing greater justice for the parties.

If one court is better equipped, i.e., more suitable to hear part of the proceedings, it lightens the procedural burden on another court. This helps the other court, which is familiar with another part of the proceedings, to reach the correct decision on the action brought once the first court has ruled on the first action. In this sense, both actions are resolved, bearing in mind that the resolution of one is likely to influence certain scenarios in the outcome of the second, without contributing to irreconcilable rulings.

62 Article 14 is a key piece of operational closure for the related actions regime. Its main value lies in its procedural pragmatism: it does not seek to guarantee perfect coordination, but rather to ensure that the system works even when coordination fails.

63 Overall, the article prevents jurisdictional paralysis, manages inactivity and divergent decisions, and reinforces the continuity and effectiveness of the process.

64 At the same time, its effectiveness could be enhanced by further specifying the concept of 'reasonable time', integrating the partial suspension scenario into the rules, and expressly clarifying rights in rem over immovable property.

In terms of legislative policy and regulatory technique, Article 14 represents a successful balance between international coordination and the guarantee of effective adjudication and is essential to prevent the related actions regime from paradoxically resulting in a denial of justice.

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?

65 Article 16 introduces an essential element for the Convention's operation: cross-border judicial communication. Unlike other provisions, which establish substantive criteria or procedural consequences, this article is instrumental and institutional in nature, providing the channel through which the coordination envisaged in the Convention can effectively materialise.

66 The article is based on a clear premise: the effective management of parallel proceedings and related actions requires some degree of communication between the courts involved. Without this possibility, the mechanisms for staying, resuming, or continuing proceedings risk being based on incomplete, late, or indirect information.

67 However, the article raises several questions. Among them, the third paragraph does not clearly describe the communication channel. In the second paragraph, it refers to three options: one direct (between courts and, if permitted by law, with court representatives), one indirect (through the administration of justice), and a third mixed option. In the absence of any of the above, it does not clarify what method should be used for notifications, beyond stating that: [t]he absence of such notification means that the Contracting State in question allows only for indirect communication through the parties to the proceedings. Consequently, it is necessary to clarify what method of communication would be used.

68 On the other hand, Article 16.4, although still in square brackets, provides that the initial communication between courts shall be in writing and in an official language of the State of the receiving court, or in an official language of the State of the sending court, accompanied by a translation. For subsequent communications, the article adopts a flexible model based on agreement between courts regarding the language or method of translation.

69 This approach implicitly recognises the importance of language in judicial cooperation but does not guarantee the existence of an effective common language or offer a clear solution when courts do not share an official language. Nor does it expressly address the linguistic impact on the transparency of the proceedings or on the parties' right of defence.

70 In this context, it is legally appropriate for Article 16 to expressly recognise the possibility of using English, together with other languages, as a language to facilitate judicial communication, provided that the receiving court accepts it. This provision would not imply the imposition of a single language or the replacement of the official languages of the States, but rather the incorporation of a practical tool to improve the system's efficiency.

71 The inclusion of English is justified for clear functional reasons: it is the most widely used working language in international legal cooperation, it reduces costs and delays arising from multiple translations, and it offers a neutral solution when there is no common language between the courts involved. Furthermore, its use would be consistent with the flexibility that already characterises Article 16 and with the practice of other international instruments.

In order to preserve procedural guarantees, the use of English — or any non-official language — should be accompanied by minimum safeguards, in particular the r written documentation of relevant communications and their availability to the parties in a procedurally understandable language when such communications affect their legal position..

11.2 Are there particular advantages and challenges you foresee in applying these methods?
Click or tap here to enter text.

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.

72 With regard to Article 17, it should be clarified that any Contracting State may, at any time, withdraw the authorization granted to its courts to participate in joint hearings by giving written notice to the depositary of the Convention, with effect only for the future, so that such withdrawal does not affect joint hearings already agreed upon or in progress at the time the notice takes effect, unless the State itself indicates otherwise for compelling reasons of public policy.

This possibility of withdrawal is justified by the institutional, organizational and procedural impact of joint hearings and should be understood as a regulatory power of the State that does not compromise judicial independence or prevent other forms of cooperation provided for in the Convention, while ensuring transparency and predictability through the immediate publication of the notification by the depositary and the provision of adequate information to the courts and the parties..

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

73 Article 18 fulfils an essential function, but its current wording has significant weaknesses that should be corrected to prevent it from becoming an excessively broad exception capable of neutralising the cooperation mechanisms provided for in Articles 16 and 17. in particular, the generic reference to "sovereignty" is legally imprecise and could be interpreted as a general veto on judicial cooperation, so it would be preferable to redirect it towards more specific notions such as the independence and powers of the courts under domestic law.

Similarly, the vague reference to 'procedural rights' should be reinforced by explicit references to the adversarial principle, equality of arms and the right of the parties to be heard, which are most directly affected by judicial communication and joint hearings; with regard to confidentiality, the exclusive reference to applicable national laws may lead to unequal standards and a lack of predictability, so it would be advisable to provide for at least a minimum common standard of protection for the information exchanged; Finally, the article should be interpreted—and, preferably, expressed—systematically, making it clear that these safeguards operate as obligations of compatibility and consideration and not as automatic exceptions, so that they protect fundamental principles without undermining the judicial cooperation that the Convention seeks to promote.

74 Article 23 establishes a classic clause on uniform interpretation, requiring that the Convention be interpreted in light of its international character and the need to promote uniformity in its application, thereby helping to avoid divergent domestic interpretations that undermine the instrument. However, its wording is somewhat generic and may remain a programmatic statement if not reinforced with more specific interpretative guidelines, especially in a Convention that confers broad margins of judicial discretion (e.g., in matters of communication between courts, joint hearings, or 'reasonable time').

75 In this regard, it would be a significant improvement to clarify that the requirement of uniformity implies not only avoiding strictly national interpretations but also taking into

consideration the practice and case law of other Contracting States, as well as the preparatory work and functional objectives of the Convention.

The article could also be strengthened by emphasizing that uniformity should be sought without sacrificing the instrument's effectiveness, and by avoiding defensive interpretations that, under the guise of respect for domestic law, render the cooperation mechanisms meaningless. Understood in this way, Article 23 can play a key role as a cross-cutting guiding principle, guiding courts towards a consistent, evolving and cooperative application of the Convention, beyond a purely literal or nationalized reading.

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?
Click or tap here to enter text.