

Survey response	
Please indicate: [State:]	Lithuania
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Please indicate: [Affiliation:]	Academia
Please indicate your profession:	Academia
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
Press "Next" to continue	
1.1 What are your views on the scope of the Draft Text?	Scope is drafted correctly
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?	Yes
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)?	We agree on arbitration exclusion but related proceedings need to be explained in the draft to avoid ambiguity
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).	We believe that the geographical scope of the draft text should cover the Contracting States
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.	Several practical issues may arise: "Same parties" requirement: Questions will arise regarding corporate groups – are parent and subsidiary companies the "same parties"? What about proceedings involving additional parties alongside the core disputants? Assignees, successors in title, and parties acting in representative capacities may create difficulties Related actions: Condition (i) – Parties "connected to each other": This phrase requires further clarification – what constitutes a sufficient connection? In corporate contexts, various forms of connection exist (parent-subsidiary, joint ventures, common shareholders, contractual relationships) The optional "substantially the same" language in brackets adds uncertainty Condition (ii) – Same transaction/occurrence: The bracketed nature suggests uncertainty about inclusion Modern commercial disputes often involve complex fact patterns – determining whether facts arise from the "same transaction, occurrence, or series" may prove difficult "Material part" requires evaluative judgment that may vary between courts Condition (iii) – Risk of inconsistent findings: The

	<p>distinction between "irreconcilable" and "inconsistent" (both in brackets) is significant "Irreconcilable" suggests a higher threshold (direct logical contradiction) whilst "inconsistent" could capture broader practical tensions Courts may differ in assessing what creates a sufficient "risk" The requirement for "material" facts (in brackets) adds another layer of evaluative judgment The alternative criteria for habitual residence provide flexibility, but practical issues include: Entities may satisfy multiple criteria, potentially creating forum shopping opportunities The relationship between this definition and the definitions of parallel/related proceedings requires consideration – could parties manipulate entity structure to avoid or create "relatedness"? Unincorporated associations may present particular difficulties The success of these definitions will ultimately depend on whether they can be applied consistently across different legal systems and whether they appropriately balance the competing objectives of preventing conflicting judgments and respecting party autonomy and national jurisdiction.</p>
<p>3. What are your views on Article 4?</p>	<p>Article 4's two-track approach sensibly recognises fundamental differences between filing-based and service-based procedural systems, providing a necessary foundation for determining temporal priority in parallel proceedings. However, the provision requires significant refinement to work effectively across diverse global legal systems. The key practical challenges include: (1) the binary categorisation may not accommodate hybrid procedural systems cleanly; (2) subparagraph (b) contains ambiguity regarding whether "received by authority" and "served on defendant" are alternatives for different national systems or optional within a single system; (3) verification of when foreign courts were seised may prove difficult and time-consuming; and (4) the provision creates opportunities for strategic behaviour, including protective filings and forum shopping based on procedural timing advantages. The utility of Article 4 depends fundamentally on what legal consequences flow from determining when a court is seised. If the Draft Text does not adopt temporal priority rules (such as "first in time" suspension), the necessity and appropriate scope of this provision become questionable. The drafters should clarify whether Article 4 applies only to parallel proceedings or instrument-wide, as</p>

	<p>this affects the precision required. To enhance workability, we recommend: clarifying the internal alternative in sub-paragraph (b); providing mechanisms for accommodating hybrid systems (possibly through national declarations); establishing efficient verification procedures for cross-border situations; including safeguards against abusive tactical filings; and providing illustrative examples demonstrating application across different procedural systems.</p> <p>Fundamentally, the question of whether Article 4 is needed at all should be resolved based on the Draft Text's overall approach to managing parallel proceedings and the role that temporal priority will play in that regime.</p>
<p>4. What are your views on Article 5?</p>	<p>The suspension and dismissal mechanism in Chapter II establishes a workable framework, but several aspects require clarification to ensure effective operation in practice. The obligation to suspend proceedings "as soon as [the court] is informed" (Article 5(1)) raises timing questions: what constitutes sufficient information, must it be verified, and can courts suspend before determining whether proceedings are genuinely "parallel" under Article 3(1)(a)? The bracketed reference to "other relevant person" also needs resolution - who qualifies, and does this risk premature or inappropriate suspensions based on unverified third-party information? The dismissal provision (Article 5(2)) logically requires the first court's judgment to be capable of recognition and enforcement in the suspending State, ensuring the dismissed proceedings could be replaced by an effective remedy. However, this creates practical difficulties: courts must assess foreign judgments' recognisability prospectively, which may be uncertain until the judgment actually exists and recognition is formally sought. Additionally, the interaction with Chapter V safeguards requires clarification - if a judgment ultimately proves unrecognisable due to public policy or other grounds, has the dismissing court acted prematurely? Article 5(3)'s resumption provision addresses legitimate concerns about indefinite suspension, but the bracketed alternatives create significant uncertainty. "Is unlikely to render" requires speculative assessment and may prove difficult to establish evidentially, whilst "has not rendered" provides objectivity but may allow excessive delay. The optional "within a reasonable</p>

	<p>time" qualifier adds further discretion. Without clearer standards, courts may apply this provision inconsistently, and parties face uncertainty about when resumption becomes available.</p> <p>Consideration should be given to establishing indicative timeframes or objective criteria. The overall structure is conceptually sound - suspend, then either dismiss (if foreign judgment is recognisable) or resume (if foreign proceedings stall). However, the mechanism needs refinement regarding: the standard of information triggering suspension; verification requirements before suspension; clearer criteria for resumption timing; and coordination with Chapter V safeguards to ensure courts don't dismiss prematurely in favour of judgments that may ultimately prove unrecognisable. The communication mechanism in Chapter IV will be critical to making this framework operate efficiently in practice.</p>
<p>5. What are your views on Articles 6 – 8 including how they will work in practice?</p>	<p>The hierarchical structure in Articles 6-8 provides a clear and logical framework for resolving parallel proceedings, working from the most compelling connections (immovable property) through party autonomy to general jurisdiction/connection requirements. This tiered approach should promote predictability and reduce disputes about which court should proceed.</p> <p>However, several aspects require refinement to ensure workable application across diverse legal systems. Article 6 - Exclusive/Priority Jurisdiction: The immovable property rule is well-established in international practice and generally uncontroversial, but the bracketed alternatives ("exclusive" vs "priority" and whether to permit suspension "or dismiss") require resolution. The "[main] object" qualifier needs clarification - disputes often involve immovable property alongside other claims, and determining whether property rights form the "main" object may prove contentious. Expansion to cover tenancy and registration would align with the 2019 Judgments Convention and is sensible, as these matters are closely connected to the situs. The question of whether Article 6 applies when proceedings haven't yet commenced in the situs court requires careful consideration - this could encourage tactical racing to file elsewhere before situs proceedings begin. Article 7 - Party Autonomy: Treating non-exclusive choice of court agreements as a connection for parallel proceedings purposes</p>

is conceptually sound and respects party autonomy. However, Article 7 requires substantial development. The absence of formal validity requirements (unlike Article 3(c) of the 2005 Convention) creates uncertainty - without writing or equivalent documentation requirements, proving the existence and scope of non-exclusive agreements may generate satellite litigation. Similarly, the lack of applicable law rules for substantive validity leaves courts without guidance on how to assess whether agreements are valid, potentially leading to divergent approaches across Contracting States. The relationship between paragraphs (1) and (3) urgently needs clarification: if a defendant consents to jurisdiction in Court B despite a prior non-exclusive agreement favouring Court A, which prevails? The hierarchy must be specified to prevent conflicts. The distinction between exclusive agreements (covered by the 2005 Convention), non-exclusive agreements with derogatory effect (Article 7(1)), and purely prorogatory agreements (currently uncertain placement) requires careful delineation. Purely prorogatory agreements add jurisdictional options without removing others - their treatment under the Draft Text remains unclear and needs resolution. The defendant consent provision (Article 7(3)) also needs temporal limitations: must consent occur before substantive defence, and does later consent override earlier procedural objections? The bracketed "[and positively]" qualifier suggests debate about whether passive acceptance suffices or whether active, affirmative consent is required. Article 8 - General Jurisdiction/Connection: Article 8(2)'s list of jurisdiction/connection requirements (not reproduced in the query but referenced) will be critical to the framework's operation, yet its content remains to be assessed. The obligation in Article 8(1)(a) to suspend/dismiss if lacking Article 8(2) jurisdiction whilst another court possesses it is logical, though the bracketed "[at the request of a party]" raises questions about whether courts must act proprio motu or only upon application. Article 8(1)(b)'s "reasonable timeframe" concept introduces significant uncertainty - what constitutes reasonable timing will vary by case and jurisdiction, creating unpredictability. The provision may also create perverse incentives: parties might delay

	<p>commencing proceedings in well-connected forums to avoid being bound by Article 8(1)(b), or rush to file in marginally connected forums to secure temporal priority. The relationship between Article 8(1)(b) and the "more appropriate court" analysis (Articles 9-10) requires clarification, as both involve comparative assessment of multiple courts with connection. Overall Assessment: The three-tier hierarchy is conceptually sound, but implementation requires resolving numerous bracketed alternatives and addressing gaps in party autonomy provisions. Key priorities include: establishing formal and substantive validity requirements for Article 7 agreements; clarifying the hierarchy within Article 7 itself; defining "reasonable timeframe" in Article 8(1)(b) with greater precision or replacing it with objective criteria; and ensuring consistency between Article 8(1)(b)'s temporal approach and the more appropriate court analysis. The framework's success depends on Article 8(2)'s content (not yet reviewed) and on clear guidance preventing strategic manipulation of timing and forum selection. The communication mechanism in Chapter IV will be essential to inform courts quickly about parallel proceedings and enable efficient application of these rules.</p>
<p>6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?</p>	<p>The fundamental tension between a narrow list (promoting certainty through Article 8(1) operation) and a broader list (ensuring sufficient cases benefit from the more appropriate court analysis) reflects competing but legitimate objectives. A narrow list provides predictability: fewer courts will satisfy Article 8(2), making it more likely that only one court has the requisite connection, thus resolving parallel proceedings through Article 8(1) without need for discretionary assessment. However, an overly restrictive list risks excluding genuinely well-connected courts from the framework, potentially leaving parallel proceedings unresolved or forcing parties to invoke the more complex "more appropriate court" machinery in cases where natural connecting factors exist. The optimal approach likely lies between these extremes: the list should include well-established, objectively verifiable connections that command broad international acceptance whilst avoiding excessively remote or tenuous links that would undermine the framework's effectiveness. The decision to depart</p>

	<p>from Article 5(1) of the 2019 Judgments Convention requires careful justification for each additional ground. Whilst the instruments serve different purposes (direct jurisdiction allocation versus recognition of judgments), significant divergence creates practical complications: judgments rendered under a court's Article 8(2) connection may not qualify for recognition under the 2019 Convention, fragmenting the international enforcement landscape. Each proposed connection in Article 8(2) should therefore be assessed against two criteria: first, does it reflect a sufficiently strong link to justify requiring other courts to suspend or dismiss proceedings; and second, does it represent a connection that most legal systems would recognise as conferring legitimate adjudicatory authority? The categories mentioned (defendant connections, consent-based connections, and claim-court connections) are conceptually sound, but specific formulations within Article 8(2) require individual scrutiny to ensure they meet these standards. The equal footing approach, treating all Article 8(2) connections as equivalent without hierarchy, simplifies application but may produce counterintuitive results where courts with stronger versus weaker connections both qualify. This reinforces the importance of the "more appropriate court" analysis (Articles 9-10) when multiple courts satisfy Article 8(2). Overall, I would favour a moderately expansive list that includes core, well-recognised connections (habitual residence of defendant, place of performance for contracts, place of harmful event for torts, express or implied consent) whilst excluding marginal or controversial grounds. This balances the need for sufficient coverage with the objectives of predictability and international acceptability, whilst ensuring the more appropriate court mechanism serves its intended function of refining outcomes when multiple well-connected courts are seised.</p>
<p>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?</p>	<p>The appropriateness of Article 8(2) factors for obliging courts to suspend or dismiss proceedings depends critically on whether each connection reflects a sufficiently strong and legitimate link to justify requiring mandatory deference from other courts. Core connections such as the defendant's habitual residence, express or implied consent to jurisdiction, place of contractual performance, and</p>

place of harmful event for torts represent well-established jurisdictional principles recognised across legal systems. These connections create genuine links between the dispute and the forum, provide parties with reasonable predictability about where litigation may occur, and typically ensure practical access to evidence and witnesses. Such factors appropriately justify suspension/dismissal obligations because they command broad international consensus as legitimate bases for adjudicatory authority and balance plaintiff access to justice against defendant protection from inappropriate forums. However, more attenuated connections require careful scrutiny before inclusion in Article 8(2). Factors such as mere presence of assets (absent claims relating to those specific assets), temporary physical presence of defendants (tag jurisdiction), or general "doing business" without connection between the claim and the commercial activities represent weaker links that may not justify mandatory suspension of parallel proceedings. Requiring courts to abandon their own jurisdiction based on such tenuous foreign connections risks undermining access to justice for local parties and may face resistance from courts reluctant to defer on grounds not universally accepted as conferring legitimate jurisdiction. Moderately strong connections such as registered office, principal place of business, or branch/agency locations may be appropriate but require careful formulation to ensure the claim genuinely relates to activities in that location. Unlike recognition of judgments (where broader tolerance for foreign jurisdictional assertions is appropriate), requiring courts to suspend or dismiss ongoing proceedings represents a more intrusive obligation that demands higher justification. Article 8(2) connections should therefore be limited to those that: (1) reflect genuine adjudicatory appropriateness rather than mere plaintiff convenience; (2) provide objective, readily verifiable criteria to minimise disputes; (3) command broad international acceptance as legitimate jurisdictional bases; and (4) establish sufficiently strong links to justify displacing other courts' jurisdiction. The Working Group should rigorously evaluate each proposed factor against these principles, including core defendant-based and claim-based connections whilst excluding marginal grounds that could undermine the

	<p>framework's legitimacy and practical acceptance across diverse legal systems.</p>
<p>6.3 Are there any additional factors that you believe should be included?</p>	<p>Several additional factors merit consideration for inclusion in Article 8(2), provided they meet the criteria of strong connection, objective verifiability, and international acceptance. First, the location of immovable property for claims directly relating to that property (beyond the Article 6 exclusive/priority context) could provide an appropriate connection where the property itself is central to the dispute but does not constitute the "main object" of rights in rem proceedings. This would cover situations where property-related claims form part of broader commercial disputes. Second, the place of incorporation or statutory seat for claims concerning corporate governance, validity of corporate decisions, or internal corporate disputes reflects a well-established principle that the State of incorporation has a legitimate interest in regulating its own corporate entities' internal affairs, though this should be narrowly defined to avoid capturing ordinary commercial claims against corporations. Third, consideration should be given to intellectual property rights registration location for claims concerning validity, ownership, or infringement of registered rights (patents, trademarks, registered designs), as the registration State has particular competence and interest in disputes affecting rights it has granted. Fourth, the location where a trust is administered for claims concerning trust administration or trustee duties recognises the close connection between the forum and trust-related disputes. Finally, the State of nationality or registration for ships or aircraft in maritime or aviation disputes represents an internationally recognised connection, particularly for matters concerning ownership, operation, or incidents involving vessels or aircraft. Each of these additional factors should be carefully circumscribed to ensure they apply only where the connection is genuinely material to the dispute, avoiding overly broad formulations that could undermine the framework's coherence and acceptance.</p>
<p>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</p>	<p>Both approaches reflect legitimate but fundamentally different philosophies about allocating decision-making authority in parallel proceedings. Approach 1 prioritises the court first</p>

proceedings which Articles 6 – 8 have not resolved?

seised, requiring it to conduct the more appropriate court determination and giving its decision presumptive weight, with other courts able to resume only in exceptional circumstances or as appropriate (depending on bracketed alternatives). Approach 2 reverses this priority, requiring courts other than the court first seised to suspend initially but empowering them to make independent determinations about whether they are more appropriate forums without being bound by decisions of the first seised court. Approach 1 promotes efficiency and reduces duplicative decision-making but risks the first seised court being unsuitable or subject to tactical forum shopping. Approach 2 preserves judicial independence and prevents courts from being obliged to defer to foreign determinations, but creates potential for inconsistent decisions and prolonged uncertainty if multiple courts each determine themselves more appropriate. Approach 1 presents several practical advantages: it provides a clear primary decision-maker, reduces the risk of conflicting determinations about forum appropriateness, and creates pressure for early resolution of forum disputes. However, significant concerns arise. First, temporal priority alone may not correlate with forum appropriateness—a party might file first in a marginally connected court precisely to secure the advantageous position of conducting the determination. Second, requiring the first seised court to assess whether another court is "more appropriate" may produce defensive or self-serving decisions, particularly where courts are reluctant to cede jurisdiction. Third, the Article 9(5) exceptions require further refinement: "exceptional circumstances" sets a very high bar that may prove difficult to satisfy even when the first seised court's determination is clearly wrong; "as appropriate" provides flexibility but introduces uncertainty; Option 1 (effective access to justice) may be too narrow; Option 2 (more appropriate court) essentially allows re-litigation of the determination; and Option 3 (clearly more appropriate) sets a high threshold but provides more predictability than Option 2. Approach 2 respects judicial sovereignty by preventing courts from being bound by foreign determinations and allows each court to assess independently whether it should proceed. This approach acknowledges that courts other than the first seised may be better

	<p>positioned to evaluate their own appropriateness and avoids creating hierarchies amongst courts of different Contracting States. However, Approach 2 creates significant risks of inconsistent determinations—if the court first seized considers itself appropriate whilst a court second seized reaches the same conclusion about itself, parallel proceedings continue unresolved, potentially requiring resort to Chapter V safeguards or Article 5(3) resumption provisions. The absence of any mechanism for coordinating or reconciling competing determinations represents a substantial gap. Additionally, if multiple courts determine themselves more appropriate and proceed, the framework fails to resolve parallel proceedings, undermining the instrument's core purpose.</p> <p>Recommendation: Neither approach is entirely satisfactory as currently drafted. A hybrid approach merits consideration: require the court first seized to make an initial determination (as in Approach 1) but allow courts other than the first seized to resume proceedings if they determine they are "clearly more appropriate" (Option 3) after considering Article 10 factors, without requiring "exceptional circumstances." This balances efficiency against accuracy and preserves meaningful oversight of the first seized court's determination. Alternatively, adopt Approach 2 but include a mechanism requiring courts to communicate their determinations and providing that if conflicting determinations arise, specified tiebreaker rules apply (potentially involving factors from Article 10 or temporal considerations). Critical refinements needed for either approach include: establishing clear, objective time limits for applications (preferably fixed periods rather than "reasonable timeframe"); requiring expeditious determinations with indicative timeframes; mandating use of the Article 16 communication mechanism; and clarifying the relationship between Article 9 determinations and Chapter V safeguards to prevent overlapping or inconsistent grounds for declining jurisdiction.</p>
<p>7.2 What are your views on how the two approaches may work in practice?</p>	<p>Approach 1 would likely function more smoothly in straightforward cases where the court first seized genuinely lacks connection or recognises another forum as superior, producing relatively quick resolution through a single determination. However, in contested cases, significant practical</p>

problems emerge. Courts first seised may prove reluctant to decline jurisdiction, particularly where doing so disadvantages local parties or reflects negatively on the court's competence. This creates risk of self-serving determinations that other courts can challenge only by satisfying high thresholds ("exceptional circumstances" or demonstrating they are "clearly more appropriate"). The result may be extended delays whilst parties exhaust the Article 9(5) process, followed by potential resort to Chapter V safeguards if the second seised court disagrees but cannot meet the resumption threshold. The temporal pressure created by strict time limits for applications may force parties to act before adequately assessing forum appropriateness, whilst "reasonable timeframe" provisions introduce uncertainty that will generate satellite litigation about whether applications were timely. Approach 2 provides greater flexibility and respects judicial independence, but risks creating parallel determination processes that fail to resolve the underlying parallel proceedings. In practice, if Court A (first seised) considers itself appropriate and proceeds, whilst Court B (second seised) independently determines it is more appropriate under Article 10 factors and resumes, both proceedings continue—precisely the outcome the framework seeks to avoid. Without binding effect of determinations or coordination mechanisms, Approach 2 essentially returns parties to managing parallel proceedings through other means (likely Chapter V safeguards or waiting until Article 5(2) dismissal upon recognition of the first judgment). This undermines the instrument's effectiveness. Courts may also adopt divergent interpretations of Article 10 factors, with each emphasising aspects favouring its own jurisdiction. The approach works only if courts generally defer to temporal priority or if one court voluntarily declines jurisdiction, which could occur informally but lacks the structured decision-making of Approach 1. Overall practical assessment: Approach 1 provides clearer structure but depends heavily on the first seised court acting objectively and on workable exception mechanisms in Article 9(5). Approach 2 preserves autonomy but may fail to resolve parallel proceedings in contested cases. In practice, both approaches will likely drive parties toward strategic behaviour: under Approach 1, racing to file first in favourable forums; under

	<p>Approach 2, filing in multiple forums and seeking resumption regardless of the first seised court's position. Success of either approach depends critically on: (1) effective Article 16 communication enabling courts to coordinate informally; (2) judicial culture encouraging deference to genuinely more appropriate forums; (3) clear, objective Article 10 factors that produce consistent assessments; and (4) realistic time limits that allow meaningful assessment without enabling indefinite delay. Without these supporting elements, both approaches risk generating additional litigation about forum appropriateness rather than efficiently resolving parallel proceedings.</p>
<p>7.3 Do you have a preference for either approach? If so, please explain why.</p>	<p>We prefer Approach 1 with significant modifications, primarily because it provides a structured decision-making framework that is more likely to resolve parallel proceedings definitively rather than leaving them unresolved. The fundamental problem with Approach 2 is that it permits multiple courts to make independent, potentially conflicting determinations without any binding effect or coordination mechanism. This creates a high risk that parallel proceedings will continue despite the Article 9 process, forcing parties to fall back on Chapter V safeguards or await final judgments for Article 5(2) dismissal—essentially rendering the "more appropriate court" mechanism ineffective in contested cases. Approach 1 at least creates a primary decision-maker and establishes a presumption that other courts will defer unless specific conditions are met, providing greater likelihood of actually resolving the parallel proceedings situation. The efficiency gained from a single authoritative determination outweighs concerns about potential bias from the first seised court, provided adequate safeguards exist. However, Approach 1 requires substantial refinement to address legitimate concerns about temporal priority creating inappropriate advantages. The critical modification needed is adopting Option 3 in Article 9(5)—allowing courts other than the first seised to resume proceedings if they determine they are the "clearly more appropriate" court after considering Article 10 factors. This standard is preferable to "exceptional circumstances" (too restrictive) or simply "more appropriate" (too permissive, effectively re-litigating the first court's</p>

	<p>determination). "Clearly more appropriate" provides meaningful oversight of the first seised court's determination whilst maintaining a threshold that prevents routine second-guessing. Additionally, the timing requirements should use fixed periods (such as 30 days from the first seised court's determination) rather than vague "reasonable timeframe" language, and applications should be permitted "no later than the first defence on the merits" to ensure parties have adequate opportunity to assess forum appropriateness without enabling indefinite delay. The modified Approach 1 better balances the competing objectives of: (1) providing structured, efficient resolution of parallel proceedings; (2) preventing tactical forum shopping based purely on filing speed; (3) respecting judicial independence and preventing inappropriate deference to unsuitable forums; and (4) creating predictability for parties navigating multi-jurisdictional disputes. Success depends on courts applying Article 10 factors objectively, robust use of the Article 16 communication mechanism to facilitate informal coordination, and judicial culture that genuinely considers whether other forums are clearly more appropriate rather than reflexively protecting local jurisdiction. Approach 2's preservation of complete judicial independence is conceptually attractive but practically unworkable if it fails to resolve parallel proceedings—the very problem the instrument addresses. A refined Approach 1 with meaningful oversight mechanisms represents the better compromise between efficiency and accuracy in forum determination.</p>
<p>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)?</p>	<p>The factors listed in Article 10 are generally appropriate and reflect well-established forum non conveniens considerations recognised across common law jurisdictions and similar doctrines in civil law systems. The list captures the essential elements courts should consider when assessing comparative forum appropriateness: party convenience, evidentiary accessibility, applicable law, procedural efficiency, completeness of resolution, and enforceability of judgments. These factors serve complementary objectives—reducing litigation burdens, promoting judicial efficiency, and ensuring effective dispute resolution. However, several aspects require refinement to ensure consistent application across diverse legal systems and to provide courts with clearer</p>

guidance on how to weigh competing considerations. Specific factor assessment: The burdens/convenience factor appropriately focuses on habitual residence, providing an objective anchor rather than purely subjective convenience claims. The evidentiary access factor is critical and well-placed, though "preserving evidence" may need clarification regarding interim measures versus trial accessibility. Including "the law applicable to the claims" (in brackets) merits strong support—courts applying the *lex causae* generally have advantages in expertise, efficiency, and reducing errors, making this a legitimate consideration. The procedural stage factor sensibly recognises that advanced proceedings should not lightly be displaced, though the bracketed alternatives (limitation periods versus delay likelihood) serve different purposes and both may warrant inclusion. The "complete resolution" factor addresses practical concerns about piecemeal litigation, though its application may prove difficult where different courts could resolve different aspects of complex disputes. The enforceability factor is essential—there is little point designating a court as more appropriate if its judgment will prove unenforceable in relevant jurisdictions. Significant gaps and additional factors: Article 10 should explicitly include consideration of connections under Article 8(2)—whilst all courts in Article 9 situations have Article 8(2) jurisdiction/connection, the strength and nature of those connections vary significantly (habitual residence versus contractual performance place versus consent, for example) and should inform forum appropriateness. Judicial expertise and familiarity with relevant legal issues merits inclusion, particularly for specialised disputes (intellectual property, maritime, insolvency) where particular courts may have developed expertise. Proportionality and case value could be relevant—requiring parties to litigate low-value disputes in distant forums may effectively deny justice. Language of proceedings and documentation has practical significance for efficiency and costs. Finally, explicit reference to avoiding irreconcilable judgments would reinforce the instrument's core objective, though this may be implicit in the "complete resolution" factor. Application concerns: The bracketed alternative between "have regard to the proper administration

	<p>of justice, taking" versus simply "take" into account the factors is significant. The "proper administration of justice" formulation provides an overarching principle that may guide courts when factors point in different directions, but also introduces discretion that could lead to divergent application. Courts need guidance on whether all factors must be considered, whether any factors carry greater weight, and how to resolve situations where factors point toward different forums. The non-exhaustive nature of the list (presumably intended given judicial discretion typically inherent in forum appropriateness determinations) should be clarified—can courts consider additional factors, and if so, what limitations apply? Additionally, the Article lacks guidance on the standard of proof or degree of comparative advantage required—must the more appropriate court be clearly superior, or is marginal preference sufficient? Interaction with cooperation mechanisms: The provision encouraging information exchange through Article 16 is valuable and should be mandatory rather than permissive for Article 10 determinations. Courts cannot meaningfully assess comparative procedural stages, delay likelihood, or evidentiary access without information from other seised courts. Joint hearings under Article 17 could prove particularly valuable for Article 10 determinations, allowing courts to coordinate assessments and potentially reach consensus on the more appropriate forum. However, the framework needs safeguards ensuring that cooperation does not disadvantage parties unable to participate effectively in multi-court processes or compromise procedural rights. Overall, Article 10 provides a sound foundation but requires refinement regarding factor weighting, explicit inclusion of connection strength and expertise considerations, clearer application standards, and mandatory coordination mechanisms to ensure the determination process produces consistent, well-reasoned outcomes that genuinely identify the most appropriate forum rather than simply validating the first seised court's position.</p>
<p>8.2 Do you have any views on how Article 10 might work in practice?</p>	<p>In practice, Article 10 will function differently depending on whether courts approach the determination cooperatively or adversarially. In an ideal scenario, courts will use the Article 16 communication mechanism to exchange</p>

information about procedural stages, evidentiary locations, applicable law, and enforcement prospects, enabling informed, objective assessments that genuinely identify the superior forum. Courts in jurisdictions with experience applying forum non conveniens or similar doctrines should find the factors familiar and workable. However, significant practical challenges will arise. First, assessing factors like "ease of accessing evidence" or "burdens of litigation on the parties" requires detailed factual information that may not be readily available early in proceedings—parties may need to conduct mini-trials on forum appropriateness, generating significant costs and delays that undermine the efficiency objectives. Second, without clear guidance on weighting factors or resolving conflicts between them, different courts may reach opposite conclusions from the same facts: Court A emphasises that it applies the governing law whilst Court B stresses superior evidentiary access, with each determining itself more appropriate. The lack of hierarchy amongst factors creates particular difficulties when they point in different directions, which will occur frequently in genuinely contested cases. For example, the applicable law may favour Court A, advanced procedural stage and party convenience favour Court B, whilst complete resolution prospects favour Court C. Courts will struggle to apply Article 10 consistently without guidance on which factors should predominate or how to balance competing considerations. This uncertainty risks outcomes being determined more by judicial attitudes toward retaining jurisdiction than by objective application of the factors. Additionally, the "likelihood of recognition and enforcement" factor requires courts to predict how their judgements will be treated in other States—a speculative exercise that may prove difficult, particularly regarding non-Contracting States or where Chapter V safeguards might apply. Courts may reach different conclusions about their own judgements' enforceability, with first seised courts potentially optimistic whilst second seised courts express scepticism. Cultural and systemic differences across jurisdictions will significantly affect Article 10's operation. Common law courts familiar with forum non conveniens possess institutional experience weighing similar factors and may apply Article 10 relatively comfortably,

	<p>though even these courts sometimes reach inconsistent outcomes. Civil law courts less accustomed to discretionary forum assessments may struggle with the open-textured nature of the analysis or apply factors mechanically without genuine comparative evaluation. Courts in jurisdictions favouring local parties or protective of their jurisdiction may interpret factors generously in their own favour—emphasising local party convenience, downplaying evidentiary difficulties, or asserting expertise in applying foreign law. Without mandatory, robust use of Article 16 communication and genuine dialogue between seised courts, Article 10 determinations risk becoming unilateral, self-serving assessments rather than objective comparative analyses. The practical success of Article 10 depends less on the factors themselves (which are conceptually sound) and more on developing judicial culture, training, and cooperation mechanisms that ensure courts apply the factors objectively, communicate effectively, and genuinely seek to identify the most appropriate forum rather than defending their own jurisdiction.</p>
<p>8.3 Are there additional considerations that, in your view, should be taken into account?</p>	<p>Several additional factors should be explicitly included in Article 10 to ensure comprehensive and consistent determinations. First, the relative strength and nature of each court's Article 8(2) connection should be a central consideration—whilst all courts in Article 9 situations possess qualifying connections, a court seised based on the defendant's habitual residence presents a fundamentally stronger connection than one based on implied consent through unqualified merits defence or a tangential contractual performance location. Second, judicial expertise and specialisation merits explicit inclusion, particularly for disputes involving complex technical areas (intellectual property, maritime law, financial regulation, insolvency) where specialised courts or judges with developed expertise can adjudicate more efficiently and accurately. Third, language considerations—both the language of key documents/evidence and the languages in which parties and witnesses can effectively communicate—have significant practical impact on costs, delay, and quality of fact-finding. Fourth, the existence of related proceedings or judgments in any seised court should be considered; if Court A has already decided preliminary issues, issued</p>

	<p>interim measures, or is handling related claims, efficiency favours consolidating matters there. Finally, proportionality relative to dispute value and party resources should feature explicitly—requiring individual litigants or small businesses to pursue modest claims in distant, expensive forums may constitute practical denial of justice even if that forum is theoretically superior on other factors. Additionally, Article 10 should address how courts should handle situations where factors conflict by providing either a hierarchy (certain factors presumptively outweigh others) or a structured balancing test. Courts need guidance on whether marginal superiority suffices or whether one forum must be clearly or significantly more appropriate to justify displacing the first seised court—this standard fundamentally affects outcomes and should not be left unstated. The provision should also clarify whether courts may consider parties' conduct, such as tactical forum shopping, deliberate delay in raising forum objections, or attempts to manipulate the Article 9 process, as relevant to the determination. Finally, given the cooperation mechanisms in Chapter IV, Article 10 should explicitly recognise the courts' collective interest in avoiding duplicative proceedings and irreconcilable judgments as an independent consideration beyond individual party interests, reinforcing that the more appropriate court determination serves systemic objectives of international judicial cooperation, not merely private convenience.</p>
<p>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.</p>	<p>The Draft Text framework represents an ambitious and comprehensive attempt to address parallel proceedings in international commercial disputes, offering significant advantages over the current fragmented landscape where parties often face uncoordinated litigation in multiple jurisdictions. The tiered structure—priority/exclusive jurisdiction (Articles 6-7), mandatory connections triggering suspension/dismissal obligations (Article 8), and forum appropriateness determination (Articles 9-10)—provides progressively nuanced mechanisms for resolving conflicts. The incorporation of cooperation mechanisms (Chapter IV) and safeguards (Chapter V) demonstrates sophisticated recognition that rigid rules require flexibility to address diverse situations and prevent injustice. Key advantages include: creating predictability for parties about</p>

how parallel proceedings will be managed; reducing duplicative litigation costs and risks of irreconcilable judgments; establishing structured frameworks for judicial dialogue; and providing mechanisms beyond simple "first-filed" rules that can produce inappropriate outcomes. If implemented with robust judicial cooperation and good faith application, the framework could substantially improve efficiency and fairness in cross-border commercial litigation. However, significant disadvantages and practical concerns temper this optimistic assessment. The framework's complexity—multiple approaches in brackets, numerous unresolved options, and intricate interactions between provisions—risks inconsistent interpretation and application across diverse legal systems, potentially generating satellite litigation about the framework's operation rather than resolving underlying disputes efficiently. The success of Articles 9-10 depends critically on courts making objective, well-informed determinations about comparative forum appropriateness, yet courts may prove institutionally resistant to declining jurisdiction or may lack information and incentives to conduct genuine comparative analyses. The Article 8(2) connections require careful calibration—too broad and courts suspend inappropriately; too narrow and the mechanism rarely applies. Crucially, the framework assumes judicial good faith and effective cooperation, but provides limited enforcement mechanisms if courts ignore obligations, make self-serving determinations, or fail to communicate. In practice, the framework will likely work well in straightforward cases involving cooperative judiciaries and clear forum superiority, but may struggle in contested cases where parties exploit ambiguities, courts protect local interests, or the "more appropriate court" determination involves genuinely balanced factors. Success ultimately depends less on the text itself and more on developing supporting infrastructure: training judges across participating States, establishing effective Article 16 communication mechanisms, building judicial culture favouring international cooperation over jurisdictional territorialism, and creating institutional incentives for courts to apply the framework objectively rather than defensively.

<p>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.</p>	<p>The related actions framework in Chapter III addresses a genuinely important problem—cases that are related but not identical often proceed separately across multiple jurisdictions, creating inefficiency, inconsistent outcomes, and missed opportunities for comprehensive dispute resolution. The framework's advantages include providing mechanisms for judicial coordination beyond the parallel proceedings context, enabling courts to consolidate related matters even when they don't meet the strict identity requirements for Articles 6-8, and offering flexibility through three distinct pathways (full consolidation, partial consolidation, or separate proceedings). The use of the same Article 10 factors (with addition of choice of court agreements) provides consistency with the parallel proceedings framework and familiarity for courts. Importantly, the framework is entirely voluntary and cooperative—it doesn't mandate consolidation but rather creates structured processes for courts to consider whether consolidation serves the interests of justice. This respects judicial sovereignty whilst enabling coordination when genuinely beneficial. However, the framework suffers from fundamental structural weaknesses that will severely limit its practical effectiveness. The core problem is that Article 11 requires each court to make independent determinations about whether a single court should adjudicate and, if so, which court is more appropriate—but provides no mechanism for ensuring courts reach consistent conclusions. Articles 12 and 13 only operate when "two or more courts seised" make the same determinations (that a single court should adjudicate and that the same specific court is more appropriate). If courts reach different conclusions—each determining itself the more appropriate forum, or disagreeing about whether consolidation is desirable—Article 14 simply allows separate proceedings to continue. This renders the framework effective only in cases where courts already agree, precisely the situations requiring the least regulatory intervention. In contested cases where consolidation would provide the greatest benefit but courts have competing interests, the framework offers no resolution. The practical difficulties are compounded by the absence of any priority rule or tiebreaker mechanism. Unlike parallel proceedings where temporal priority (court first seised)</p>
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provides at least an initial ordering principle, related actions give all courts equal standing to make determinations. If three courts are seised of related actions and each independently determines it is the more appropriate forum for full adjudication, the framework simply fails—separate proceedings continue under Article 14. Parties seeking consolidation must somehow persuade all seised courts to reach identical conclusions favouring the same forum, whilst parties opposing consolidation need only ensure one court disagrees. This creates strong asymmetry favouring continuation of separate proceedings. Additionally, "within a reasonable time" appears repeatedly but lacks definition—if Court A determines quickly that Court B should adjudicate whilst Court B delays its determination, does Court A suspend indefinitely or resume under Article 14? The framework provides no clear answer. The partial consolidation mechanism in Article 13, whilst conceptually attractive for managing complex multi-faceted disputes, presents enormous practical challenges. Courts must not only agree that partial consolidation is appropriate but also agree on precisely which parts should be consolidated and which court should handle them. Dividing related actions into parts, assessing which court is most appropriate for each part, and coordinating these determinations across multiple courts requires extraordinary levels of judicial cooperation and sophistication. The bracketed provision allowing "different parts of the case may be most appropriately assigned to different courts" further complicates matters—if three courts are seised of related actions involving contract, tort, and regulatory claims, and they determine that Court A should handle contracts, Court B should address torts, and Court C should decide regulatory matters, how are these partial proceedings coordinated? How are common factual or legal issues addressed? The framework provides no guidance on managing these complexities, and the risk of inconsistent findings on overlapping issues remains high. The requirement that consolidation determinations be party-driven (requiring applications) may prove problematic. Parties with tactical reasons to maintain separate proceedings can simply refrain from making applications, preventing the framework's operation entirely. Even when

applications are made, courts lack clear guidance on the standard for deciding whether "a single court should adjudicate"—should courts consolidate whenever marginally more efficient, or only when separate proceedings would create serious risks of inconsistency or injustice? Different courts will apply different thresholds, making consistent determinations unlikely. Furthermore, unlike parallel proceedings where all courts must have Article 8(2) connections, related actions can proceed in any court with jurisdiction under domestic rules. This means consolidation determinations may involve courts with dramatically different connection strengths—one court with strong connections to all issues, another with tangential connections to one aspect—yet the framework treats their determinations equally and provides no mechanism for resolving disagreements. In practice, the related actions framework will likely have limited impact. It may facilitate consolidation in straightforward cases where courts already recognise clear efficiency benefits and have no institutional resistance to deferring—for example, when one court is clearly superior and parties jointly request consolidation. However, in contested cases—where consolidation is opposed by one party or where courts have competing interests in retaining jurisdiction—the framework's reliance on achieving consensus amongst independent courts with no binding decision-maker or tiebreaker will prove ineffective. The framework will work best where least needed and fail where most needed. Significant improvements would require: establishing priority rules (perhaps favouring the court with the strongest connections to the greatest number of related actions); creating binding determination mechanisms (one designated court makes the consolidation decision); providing clearer standards for when consolidation is appropriate versus when separate proceedings should continue; and developing detailed guidance on managing partial consolidation, including coordination of factual findings and treatment of overlapping issues. Without such refinements, Chapter III risks being largely aspirational—encouraging judicial cooperation without providing effective tools for achieving it when courts disagree.

<p>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?</p>	<p>The communication mechanisms in Chapter IV are essential to the Draft Text's overall effectiveness—without meaningful judicial dialogue, the parallel proceedings and related actions frameworks risk producing uncoordinated, conflicting determinations that fail to resolve the underlying problems. The flexibility offered through multiple communication methods (direct court-to-court, via central authorities, combined approaches, and through parties) sensibly recognises that different legal systems have varying levels of comfort with direct judicial communication and different constitutional or procedural constraints. Allowing Contracting States to declare which methods they accept respects sovereignty whilst creating pathways for cooperation. The default availability of party-mediated communication (Article 16(3)) ensures a baseline mechanism exists in all cases, even between States that haven't accepted other methods. The practical guidance on language requirements and translation (Article 16(4)) addresses real operational challenges and demonstrates thoughtful attention to implementation details. However, the framework's effectiveness is severely undermined by making cooperation entirely voluntary and aspirational. Article 15's bracketed alternatives—"undertake" versus "are encouraged" versus "shall endeavour"—all fall short of creating meaningful obligations. Courts facing heavy dockets, institutional pressures to retain jurisdiction, or lacking familiarity with international cooperation may simply decline to engage, particularly when cooperation might result in losing jurisdiction or requiring additional work to coordinate with foreign courts. The provision that courts "are encouraged" to exchange information creates no consequences for non-cooperation, and parties cannot compel courts to communicate. In practice, this means the communication mechanisms will be used primarily by courts already disposed toward cooperation—precisely the situations where informal coordination might occur anyway. Courts resistant to coordination, protective of local interests, or sceptical of international judicial dialogue can ignore the provisions entirely. This voluntary nature critically weakens the parallel proceedings and related actions frameworks, both of which depend on courts having accurate information about each other's proceedings to</p>
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make informed Article 10 or Article 11 determinations. The party-mediated communication method (Article 16(3)) provides a useful fallback but has significant limitations. Parties may not accurately or completely convey information between courts, particularly when strategic interests favour incomplete communication. Parties opposing consolidation or forum coordination have incentives to delay or obstruct information exchange. Additionally, party-mediated communication cannot facilitate the kind of confidential judicial dialogue that might be most productive—courts discussing preliminary views, exploring compromise solutions, or candidly assessing their own forums' limitations. The indirect method via central authorities (Article 16(2)(b)) may prove too cumbersome and slow for time-sensitive determinations, introducing bureaucratic delays that undermine the framework's efficiency objectives. Direct court-to-court communication (Article 16(2)(a)) would be most efficient but requires judicial culture shift in many jurisdictions and may face constitutional or ethical constraints where judges are prohibited from ex parte communications or engaging with foreign authorities without party involvement. Joint hearings under Article 17 represent an innovative and potentially valuable mechanism, particularly for related actions where courts must coordinate complex determinations about partial consolidation or sequencing of proceedings. Joint hearings could enable courts to develop shared factual understanding, identify common legal issues, coordinate case management, and potentially reach consensus on forum appropriateness or consolidation. However, the provision's effectiveness is limited by being entirely optional (requiring both State declaration and individual court willingness) and lacking detail on critical operational aspects. How are joint hearings conducted when courts operate in different languages, time zones, and procedural systems? What happens when parties object to joint hearings or refuse to participate? Can courts share confidential information or preliminary views during joint hearings without violating due process rights? How are joint hearing outcomes documented and used in subsequent proceedings? Article 17(3) requires courts to "agree on the

scope, process, format, and other aspects"—but if courts cannot reach agreement, the mechanism simply fails. The provision that "each court shall retain power and independence over the conduct of its own proceedings" is necessary to respect sovereignty but creates risk that joint hearings devolve into parallel presentations rather than genuine coordination. In practice, Chapter IV mechanisms will likely operate on a spectrum. Sophisticated courts in jurisdictions with experience in international judicial cooperation (particularly those familiar with transnational insolvency protocols, Hague Convention cooperation, or judicial networks like the International Hague Network of Judges) may embrace these mechanisms and develop effective practices for communication and joint hearings. Courts in such jurisdictions may establish direct relationships, communicate efficiently, and use joint hearings productively to coordinate parallel proceedings and related actions determinations. However, courts lacking such experience, facing institutional resistance, or operating under restrictive domestic procedural rules may rarely or never use the mechanisms. The voluntary nature means effectiveness will vary dramatically across States and even amongst courts within States. The safeguards in Article 18 regarding sovereignty, procedural rights, and confidentiality are essential but create additional complexity—courts must navigate varying domestic standards whilst attempting coordination, and conservative interpretation of these safeguards may prevent meaningful information exchange. To enhance effectiveness, the Draft Text should: make communication mandatory (not merely encouraged) when making Article 9-11 determinations; establish minimum information exchange requirements; provide detailed procedural guidance for joint hearings including template protocols; create training programmes and judicial networks to build cooperation culture; and develop technological infrastructure (secure communication platforms, translation services, videoconferencing standards) to facilitate practical implementation. Without such supporting measures, Chapter IV risks being aspirational rhetoric that fails to generate meaningful cooperation in the contested cases where it is most needed.

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

The primary advantage of these communication methods is enabling courts to make genuinely informed decisions rather than operating in isolation with incomplete information. Direct communication allows courts to clarify procedural stages, coordinate timing of determinations, share information about applicable law and evidentiary issues, and potentially reach consensus on forum appropriateness—transforming what would otherwise be unilateral, potentially conflicting decisions into coordinated outcomes. Joint hearings offer particular advantages for complex cases, enabling courts to develop shared factual understanding, hear parties' arguments simultaneously, identify areas of agreement, and coordinate case management to avoid duplication. For courts willing to engage cooperatively, these mechanisms can substantially improve efficiency, reduce costs for parties litigating in multiple forums, and decrease risks of inconsistent outcomes. The flexibility in communication methods accommodates different legal systems—civil law jurisdictions uncomfortable with direct judicial communication can use central authorities, whilst common law jurisdictions familiar with judicial dialogue can communicate directly. Party-mediated communication ensures a baseline mechanism exists regardless of State declarations, whilst optional joint hearings allow experimentation without forcing participation. However, significant challenges will limit practical effectiveness. The voluntary nature means courts can simply refuse to engage, particularly when cooperation might result in losing jurisdiction or requiring additional effort without clear benefit to the court itself. Language barriers create substantial obstacles—even with Article 16(4) translation requirements, nuanced legal communication across languages is difficult, expensive, and time-consuming, potentially defeating efficiency objectives. Time zone differences, varying court schedules, and different procedural timelines complicate coordination of communications and joint hearings. Courts face uncertainty about what information can be shared without violating confidentiality obligations, compromising party rights, or engaging in improper ex parte communications under domestic procedural rules—conservative interpretation of these constraints may prevent meaningful

	<p>dialogue. Joint hearings present particular challenges: parties may object or refuse to participate; courts must navigate different evidentiary rules, procedural standards, and case management approaches; and the requirement that each court "retain power and independence" may prevent genuine coordination, reducing joint hearings to parallel presentations. Crucially, courts lack training, institutional support, and technological infrastructure for effective cross-border communication—without investment in secure communication platforms, professional interpretation services, coordination protocols, and judicial education programmes, even willing courts will struggle to implement these mechanisms effectively. The success of Chapter IV depends less on the text itself and more on whether States commit resources to building supporting infrastructure and developing judicial culture that values international cooperation over jurisdictional territorialism.</p>
<p>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?</p>	<p>The three safeguards in Chapter V address genuine concerns about rigid application of the parallel proceedings and related actions frameworks producing unjust outcomes, but each provision raises significant questions about scope, application standards, and potential for undermining the Draft Text's core objectives. The safeguards reflect tension between creating predictable, binding rules for managing parallel proceedings and preserving judicial discretion to address exceptional circumstances. Whilst necessary in principle, the provisions' broad language and lack of definition risk creating significant uncertainty and opportunities for courts to circumvent obligations under Chapters II and III when inconvenient. Avoiding Denial of Justice (Article 19) addresses a critical concern—that mechanistic application of suspension or dismissal obligations could prevent parties from obtaining justice. The example of limitation periods expiring in the supposedly more appropriate forum is compelling; forcing a party to litigate in a forum where their claim is now time-barred would constitute manifest injustice. Similarly, if the alternative forum lacks legal aid, prohibits representation by the party's chosen counsel, or applies discriminatory procedures, requiring proceedings there could deny effective access to justice. However, the provision's breadth creates</p>

significant risks. "Denial of justice" is undefined and potentially encompasses a wide range of situations from genuine inability to access an alternative forum to mere inconvenience or tactical disadvantage. Without the "manifest" threshold, courts might invoke this safeguard liberally to retain jurisdiction based on marginal differences in procedural convenience, costs, or applicable law—precisely the forum shopping the Draft Text aims to address. Courts under institutional pressure to retain cases could characterize routine differences between legal systems as "denial of justice." The provision's statement that it "is not intended to create new grounds of jurisdiction" provides limited protection, as courts already seized with jurisdiction under domestic law would simply be declining to exercise suspension or dismissal obligations. The question of whether Article 19 should apply to Article 6 exclusive/priority jurisdiction requires careful consideration. On one hand, denial of justice concerns are most acute where parties cannot access the designated forum—if Article 6 requires litigation in the chosen court but that court has become genuinely inaccessible (due to armed conflict, closure of courts, inability to obtain representation, or discriminatory treatment), parties need an escape valve. On the other hand, allowing denial of justice exceptions to Article 6 would significantly undermine choice of court agreements and exclusive jurisdiction provisions, defeating their core purpose of providing certainty. A better approach might distinguish between genuine access barriers (court closure, impossibility of representation, discriminatory treatment) and mere inconvenience or cost, requiring clear evidence of the former before permitting Article 6 deviation. The "manifest" threshold is essential to prevent overuse—without it, routine differences in costs, procedures, or substantive law might be characterized as denial of justice. However, even "manifest denial of justice" requires definition through guidance, examples, or jurisprudence to ensure consistent application. Prevention of Abuse of Process (Article 20) addresses legitimate concerns about parties manipulating the Draft Text's mechanisms for tactical advantage. The examples provided—initiating proceedings in bad faith to frustrate legitimate litigation elsewhere, deceiving courts, or engaging in vexatious

multiple proceedings—clearly warrant judicial intervention. Racing to file in a favoured jurisdiction to trigger Article 8 priority or Article 9 "court first seised" status, commencing declaratory judgment proceedings to preempt substantive claims, or deliberately providing misleading information about parallel proceedings all represent potential abuses. The safeguard appropriately preserves courts' inherent powers to control their own processes and prevent manipulation. However, the provision's open-ended nature creates serious uncertainty and risks undermining the Draft Text's objectives. As the Working Group acknowledged, distinguishing legitimate strategic litigation from abuse of process is extraordinarily difficult. Parties routinely engage in forum selection, timing decisions, and procedural choices for tactical advantage—this is normal litigation behaviour, not abuse. Where is the line between permissible strategy and impermissible abuse? The negative declaratory judgment scenario illustrates the difficulty. A party facing potential litigation might legitimately seek declaratory relief that no liability exists, particularly when uncertainty about their legal position causes business harm. Filing such proceedings before the potential claimant initiates their own action is normal protective litigation. Yet such proceedings can also be characterized as preemptive strikes to secure a favoured forum and frustrate the would-be claimant's forum choice. Without clearer definition, courts will apply dramatically different standards—some treating any "race to the courthouse" as abuse, others tolerating aggressive tactical manoeuvring unless demonstrably fraudulent. This inconsistency will generate uncertainty and satellite litigation about whether Article 20 applies. Moreover, courts sympathetic to local parties or reluctant to cede jurisdiction might characterize foreign parties' legitimate procedural choices as "abuse," using Article 20 to circumvent suspension or dismissal obligations. The provision's statement that courts may "suspend, dismiss, continue or resume proceedings" to prevent abuse gives courts broad discretion that could be exercised in conflicting ways—one court might dismiss proceedings it views as abusive whilst another court continues proceedings claiming the other court's actions constitute abuse. Public Policy (Article 21)

represents the most problematic safeguard because it potentially allows courts to decline any obligation under the Draft Text when suspension or dismissal would be "manifestly incompatible with public policy or fundamental principles." Public policy exceptions are notoriously elastic and subject to divergent interpretation, particularly given that "public policy" encompasses different concepts across legal systems. In recognition and enforcement contexts, public policy provides a narrow safety valve for refusing recognition of foreign judgments that violate fundamental forum values. However, applying public policy to suspend the Draft Text's obligation to suspend or dismiss proceedings in favour of another forum is qualitatively different—it allows courts to retain jurisdiction based on domestic policy considerations, potentially swallowing the rule. The provision also references "sovereignty or security interests of the forum State," which could be interpreted broadly to cover any case touching State interests, regulatory matters, or public law dimensions. The practical concern is that courts might invoke Article 21 to avoid inconvenient obligations. If a court determines another forum is more appropriate under Article 10 but prefers to retain the case (perhaps involving a local party, significant amounts, or important legal issues), characterizing suspension as "manifestly incompatible with public policy" provides a ready escape. What constitutes "fundamental principles" of a State? Does this include procedural principles like jury trials, discovery rights, or punitive damages? If a court believes transferring proceedings to a forum lacking these features would violate fundamental principles, Article 21 might permit retention. The "manifestly" threshold helps by establishing a high bar, but courts protective of their jurisdiction or local interests might apply it loosely. The Working Group's questioning whether public policy safeguards are even necessary in the parallel proceedings context is well-founded. Unlike recognition and enforcement, where courts are being asked to give effect to foreign judgments, parallel proceedings involve each court deciding whether to exercise its own jurisdiction—it is less clear why public policy should override international obligations to coordinate jurisdiction. If a court has legitimate public policy concerns about a case being decided

elsewhere, these should typically be addressed through the Article 10 or Article 11 factors (proper administration of justice, connections to the dispute) rather than through an open-ended exception. The interaction amongst the three safeguards and their relationship to the operative provisions creates additional complexity. Can a court invoke multiple safeguards simultaneously? If a court determines proceedings before it constitute abuse of process under Article 20, can it nevertheless continue them based on Article 19 denial of justice concerns? If Articles 19-21 permit courts to decline obligations under Articles 8-9 and 12-13, does this fundamentally undermine those provisions' binding character? The provisions state they allow courts to exercise jurisdiction or continue proceedings "despite other provisions in the Draft Text," but this sweeping language could render the entire framework optional—courts facing any obligation could search for a safeguard to avoid it. Additionally, there is no mechanism for reviewing or challenging a court's invocation of these safeguards. If Court A improperly claims denial of justice or abuse of process to continue proceedings it should suspend, Court B has no recourse except continuing its own proceedings, defeating the coordination objectives. To operate effectively, these safeguards require substantial refinement. Article 19 should include the "manifest" threshold and provide clearer guidance on what constitutes denial of justice, distinguishing genuine access barriers from mere inconvenience. Examples should be provided: court closure due to force majeure; impossibility of legal representation due to discriminatory bar admission rules; actual (not theoretical) inability to present evidence or witnesses; and proven time bar that would extinguish substantive rights. Mere differences in costs, procedural efficiency, or applicable substantive law should not qualify. Article 19's application to Article 6 should be carefully limited to genuine impossibility or fundamental unfairness, not mere inconvenience. Article 20 requires definition of abuse of process or at minimum clear examples distinguishing legitimate tactical litigation from impermissible abuse. Guidance should address: what level of bad faith is required; how courts should evaluate negative declaratory actions; whether racing to file

constitutes abuse; and what evidence of manipulation or deception is necessary. Courts should be required to make specific findings supporting abuse determinations rather than invoking the concept conclusorily. Article 21 should be either eliminated or drastically narrowed. If retained, it should clearly specify that public policy must relate to the specific case's adjudication in the alternative forum, not general preferences for domestic jurisdiction or routine differences in legal systems. The sovereignty/security interests component should be limited to genuine matters of State security, not any case involving regulatory law or State interests. Examples of appropriate public policy invocation should be provided: cases involving national security genuinely requiring domestic adjudication; matters where the alternative forum would apply law fundamentally violating forum State values (perhaps analogous to recognition and enforcement standards); or situations where the alternative forum's procedures would violate basic due process guarantees recognized internationally. Differences in substantive law, procedural rules, remedies available, or costs should not constitute public policy grounds. All three safeguards should include procedural requirements: courts invoking them should be required to make specific written findings explaining why the safeguard applies; provide notice to the other seised court(s) of the invocation; and allow parties to contest the safeguard's application. Creating an appellate review mechanism for safeguard invocations would help develop consistent standards, though this raises sovereignty concerns. In practice, these safeguards will likely be invoked frequently, particularly in early years before interpretive consensus develops. Courts uncertain about or uncomfortable with the Draft Text's obligations will use safeguards as safety valves, characterizing inconvenient coordination requirements as creating denial of justice, labelling foreign parties' legitimate litigation choices as abuse, or finding suspension incompatible with public policy. This will undermine the framework's predictability and effectiveness, particularly since other courts lack effective recourse when safeguards are invoked improperly. Over time, if the Draft Text is widely adopted and courts develop cooperative relationships through Chapter IV mechanisms,

	<p>safeguard invocation might decrease as courts gain confidence in the framework and each other. However, without clearer definitions, procedural safeguards, and review mechanisms, Articles 19-21 risk creating broad exceptions that substantially limit the Draft Text's practical impact, allowing courts to circumvent coordination obligations whenever locally convenient whilst claiming to apply exceptional safeguards—transforming binding obligations into discretionary suggestions.</p>
<p>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.</p>	<p>The Draft Text would partially achieve its stated objectives but with significant limitations. On legal certainty and predictability, the framework provides marginally more structure than the current status quo by establishing processes for coordinating parallel proceedings and related actions, but falls short of creating genuine certainty. The voluntary nature of cooperation provisions, broad safeguards allowing courts to circumvent obligations, and lack of binding resolution mechanisms when courts disagree mean outcomes remain substantially unpredictable. Parties cannot reliably anticipate which forum will ultimately adjudicate their dispute when parallel proceedings arise, as this depends on discretionary determinations by multiple courts applying open-textured standards (Article 10 factors) with potential divergent results. Regarding reduced litigation costs, the Draft Text could reduce costs in cases where courts successfully coordinate—avoiding duplicative proceedings, discovery, and motion practice across multiple forums. However, the framework also creates new costs: parties must make applications under Articles 9, 11, or 14; engage in potentially complex litigation about which court is "more appropriate" under Article 10 or 11; navigate multiple courts' determinations that may be inconsistent; and possibly litigate about whether safeguards apply under Articles 19-21. The satellite litigation potential is substantial. Moreover, the voluntary cooperation mechanisms and lack of enforcement means the Draft Text will reduce costs primarily in uncontested cases where parties already agree on consolidation—precisely the cases where costs are already manageable. In contested cases where costs are highest, the framework provides limited assistance. On mitigating inconsistent judgments, the Draft Text offers modest improvement. For true parallel proceedings (identical parties, causes of action,</p>

	<p>and relief), Articles 8-9 requiring suspension or dismissal should prevent inconsistent judgments if courts comply. However, the lis pendens approach only addresses identical proceedings—it does nothing for related but non-identical actions, which are perhaps more common and equally prone to inconsistency. The related actions framework (Articles 11-14) theoretically addresses this gap but depends on courts reaching consensus about consolidation without any tiebreaker mechanism, making it largely ineffective for contested cases. Both frameworks are undermined by the broad safeguards in Articles 19-21, which allow courts to continue proceedings that "should" be suspended or dismissed, potentially producing precisely the inconsistent judgments the Draft Text aims to prevent. The fundamental problem is that the Draft Text creates a cooperative framework requiring consensus amongst courts with competing interests but provides no binding dispute resolution mechanism when consensus fails. It establishes obligations (suspend, dismiss, determine more appropriate court) but allows courts to decline them through expansive safeguards. It encourages coordination but makes it voluntary. This produces a framework that works where least needed (when courts already agree) and fails where most needed (when courts disagree about forum appropriateness or have institutional interests in retaining jurisdiction). Full achievement of the objectives would require: mandatory rather than voluntary cooperation; binding determination mechanisms with clear priority rules when courts disagree; narrowly defined safeguards with procedural requirements for invocation; and enforcement mechanisms ensuring courts comply with their obligations. Without these elements, the Draft Text provides aspirational guidance that incrementally improves the status quo for cooperative courts whilst leaving fundamental problems unresolved for contested cases.</p>
<p>13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?</p>	<p>The Draft Text would modestly improve the status quo but the improvement would be uneven and limited in scope. Currently, most jurisdictions have no international obligations regarding parallel proceedings beyond bilateral treaties or regional instruments like the Brussels regime. Courts generally apply domestic doctrines (forum non conveniens, lis pendens, anti-suit injunctions)</p>

unilaterally without coordination, producing the problems the Draft Text addresses: duplicative proceedings, inconsistent judgments, forum shopping, and litigation costs. The Draft Text improves upon this by establishing common standards, creating processes for judicial coordination, and introducing mechanisms for determining the more appropriate forum using shared criteria. Specific improvements include: establishing Article 8 as a baseline *lis pendens* rule that creates some predictability about priority based on temporal filing order; providing Article 10 factors that guide courts toward consistent analysis of forum appropriateness rather than applying divergent domestic standards; creating Chapter IV mechanisms enabling courts to communicate and coordinate rather than operating in isolation; offering related actions provisions that at least contemplate coordination of non-identical proceedings, which most current systems ignore entirely; and potentially reducing the use of anti-suit injunctions (which generate international friction) by providing alternative coordination mechanisms. For States lacking domestic doctrines addressing parallel proceedings, the Draft Text would provide needed framework. For parties in jurisdictions covered by the instrument, having defined processes and timelines for coordination determinations is preferable to complete uncertainty. However, improvements are constrained by the weaknesses already discussed: voluntary cooperation, lack of binding resolution when courts disagree, broad safeguards permitting non-compliance, and insufficient detail on implementation. The Draft Text's impact will vary dramatically depending on jurisdiction pairs involved. Between States with strong judicial cooperation traditions and experience with international coordination (European states, common law jurisdictions with *forum non conveniens* experience), the Draft Text may facilitate coordination that might occur informally anyway whilst providing helpful structure. Between States lacking such traditions or with institutional resistance to ceding jurisdiction, the Draft Text may have minimal impact as courts invoke safeguards or simply decline to cooperate. The instrument does nothing to address situations where one jurisdiction is not a Contracting State, meaning parties still face uncoordinated parallel

	<p>proceedings in mixed scenarios. The status quo, whilst problematic, at least provides certainty about what courts will do (apply domestic doctrines unilaterally). The Draft Text introduces uncertainty about whether and how courts will apply the new framework, whether they will cooperate, and whether they will invoke safeguards. During transition periods and in early years of operation, this uncertainty might actually increase costs and unpredictability as parties and courts navigate unfamiliar provisions without developed jurisprudence. Over longer timeframes, if widely adopted and consistently applied, the Draft Text could generate meaningful improvements through developed interpretive consensus, established cooperation practices, and judicial familiarity with the framework. But this outcome is uncertain and depends on factors beyond the text itself—State commitment to implementation, judicial training, technological infrastructure for cooperation, and development of international judicial networks. Measuring whether the Draft Text improves the status quo requires assessing not just the text but the ecosystem supporting its implementation, and currently that ecosystem is underdeveloped.</p>
<p>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?</p>	<p>Tactical Litigation Risks: The Draft Text creates substantial tactical litigation opportunities, some greater than current risks and some merely shifting existing tactics into new forms. The most significant new tactical risk involves racing to file under Article 8 to secure "court first seised" status and priority treatment. Parties anticipating disputes will have strong incentives to file preemptively in their preferred jurisdiction—potentially before disputes fully mature—to trigger Article 8(1) suspension obligations in other courts. This race-to-the-courthouse dynamic exists currently but the Draft Text intensifies it by making filing sequence determinative of priority. Parties might file skeletal or premature claims simply to establish temporal priority, forcing other parties to litigate in disfavoured forums. Negative declaratory judgment actions become particularly attractive—filing for declaration of non-liability in a favoured forum before the claimant files substantive claims elsewhere could secure advantageous positioning. Article 9's "more appropriate court" determination creates tactical opportunities around influencing the Article 10 factors. Parties might strategically</p>

locate witnesses, evidence, or business operations in preferred jurisdictions to strengthen applicable law and location-of-facts connections. They might forum-shop for jurisdictions likely to find themselves "more appropriate" based on local judicial attitudes or national pride. The procedural efficiency factor invites parties to deliberately complicate proceedings in disfavoured forums whilst streamlining matters in preferred forums—perhaps by asserting numerous defences, requesting extensive discovery, or raising collateral issues in one forum whilst seeking expedited treatment elsewhere. Since Article 10 requires assessing "stage of the respective proceedings," parties might deliberately advance or delay proceedings strategically to influence appropriateness determinations. The safeguards in Articles 19-21 create opportunities for tactical invocation. Parties wishing to avoid suspension or dismissal under Articles 8-9 or 12-13 might assert denial of justice, abuse of process, or public policy grounds, forcing courts to evaluate these claims and potentially generating satellite litigation about whether safeguards apply. A party could claim the alternative forum presents denial of justice concerns (limitation periods, inability to obtain evidence, discriminatory treatment), requiring the court to investigate these assertions and delaying coordination. Parties might characterise opponents' legitimate litigation choices as abuse of process, triggering contested proceedings about whether the other party filed in bad faith or engaged in manipulation. Since these safeguards lack clear definitions, parties can assert them creatively, knowing courts will need to take such assertions seriously. Related actions provisions (Articles 11-14) create tactical complexity around characterising proceedings as "related." Parties might deliberately structure claims to appear related (to seek beneficial consolidation) or unrelated (to avoid unwanted coordination), depending on their strategic interests. The partial consolidation mechanism in Article 13 invites tactical positioning about which parts of disputes should be consolidated where—parties will advocate for divisions favouring their interests, generating complex subsidiary litigation. The requirement that courts make independent determinations without binding resolution mechanisms means parties can pursue inconsistent

positions before different courts, arguing for consolidation before one tribunal whilst opposing it before another, hoping at least one court accepts their position. Satellite Litigation Risks: Beyond tactical positioning, the Draft Text creates substantial satellite litigation risks—procedural disputes about the framework's application that distract from merits adjudication. The most obvious satellite litigation concerns Article 10 determinations: extensive motion practice about which court is "more appropriate" based on contested facts about witness locations, applicable law, procedural efficiency, and other factors. Each Article 10 factor could generate evidentiary disputes requiring hearings, expert testimony about foreign law or procedural systems, and appellate challenges. If multiple courts make Article 10 determinations, parties might relitigate these issues before each tribunal with potentially inconsistent results. Satellite litigation about whether proceedings are "parallel" under Article 8 or merely "related" under Article 11 seems inevitable. Parties will dispute whether causes of action are identical, whether parties are truly the same (accounting for subsidiaries, affiliates, agents, or successors), and whether relief sought is equivalent. These characterisation disputes will require courts to analyse foreign proceedings' substance, potentially requiring expert testimony about foreign law and procedural pleading requirements. Similar satellite litigation about whether actions are "related" under Article 11—whether they share common questions of law or fact, whether consolidation would avoid inconsistent judgments—will arise, again requiring substantial evidentiary development. The safeguards generate dedicated satellite litigation streams. Denial of justice claims under Article 19 will require courts to investigate conditions in alternative forums: whether limitation periods have expired, whether parties can obtain legal representation, whether procedures are fundamentally unfair, whether evidence is accessible. This might involve expert testimony about foreign procedural law, evidence about foreign legal services markets, and factual development about specific barriers facing the party. Abuse of process allegations under Article 20 will require investigating parties' motivations for filing, timing of proceedings relative to each

other, and whether conduct constitutes bad faith or manipulation—potentially requiring discovery into litigation strategy, communications with counsel, and subjective intent. Public policy determinations under Article 21 will require analysis of whether alternative forum adjudication would violate fundamental forum State principles, potentially requiring constitutional analysis and expert testimony about foreign legal systems. Temporal determinations create satellite litigation about when proceedings were "instituted" under Article 5—parties will dispute whether specific filings constitute institution under foreign procedural law, potentially requiring expert testimony and analysis of foreign procedure. Disputes about whether determinations were made "within a reasonable time" under Articles 8(3), 12(2), 13(2), and 14 will arise, generating litigation about what constitutes reasonable timeframes in different contexts. Challenges to whether courts properly cooperated or communicated under Chapter IV might arise, with parties claiming coordination obligations were violated and determinations should be invalidated. Comparison to Current Risks: These tactical and satellite litigation risks are partially greater than current risks and partially just reconfigurations of existing problems. Currently, parties already race to file in preferred jurisdictions, engage in forum shopping, and litigate about forum appropriateness through doctrines like forum non conveniens. However, these disputes occur within single courts applying domestic law, not across multiple courts applying international instruments. The Draft Text potentially multiplies satellite litigation by creating parallel disputes in multiple forums about coordination issues, whereas current doctrines typically involve one court unilaterally deciding whether to exercise jurisdiction. The Draft Text's new concepts (Articles 10 factors, Article 11 related actions, Articles 19-21 safeguards) create novel grounds for satellite litigation that don't exist under current doctrines. However, the Draft Text might reduce certain current tactical risks. Anti-suit injunctions, which generate intense international friction and retaliatory injunctions, might decrease if courts use the Draft Text's coordination mechanisms instead. Forum non conveniens litigation, currently extensive and costly, might be streamlined if courts apply

common Article 10 factors rather than varying domestic standards. The *lis pendens* framework in Article 8, despite encouraging racing to file, at least provides temporal clarity that might reduce disputes about priority compared to current uncoordinated systems. If courts cooperate effectively under Chapter IV, information exchange might reduce satellite litigation about foreign proceedings' status, nature, and likely outcomes. Addressing Risks in the Draft Text: Several textual refinements could mitigate tactical and satellite litigation risks. To address racing to file, Article 8 could include anti-manipulation provisions: proceedings filed primarily to secure temporal priority without genuine intention to prosecute could be disregarded; skeletal or premature filings could be treated as not "instituted" until properly developed; or negative declaratory actions could receive different treatment than affirmative claims. Article 5's definition of "institution" could include temporal safeguards preventing tactical filing—perhaps requiring certain procedural steps beyond initial filing before proceedings are deemed "instituted." Article 10 factors could be refined to reduce manipulation opportunities: factors could be prioritised or weighted to provide clearer guidance; procedural efficiency assessment could occur at a fixed moment rather than considering subsequent developments parties might strategically influence; and objective criteria could replace or supplement subjective factors like "proper administration of justice." Article 9 could establish presumptions (favouring defendant's domicile, place of contract performance, or tort location) rather than requiring fresh appropriateness analysis in each case, reducing satellite litigation whilst preserving flexibility for exceptional circumstances. Safeguards could be substantially narrowed and proceduralised to reduce tactical invocation. Article 19 should include the "manifest" threshold, provide clear examples of qualifying denial of justice scenarios, and establish evidentiary requirements for parties asserting it—perhaps requiring clear proof of specific barriers rather than speculative concerns. Article 20 should define abuse of process with specificity, provide safe harbours for legitimate tactical litigation (including negative declaratory actions filed in good faith), and require detailed

	<p>judicial findings before invocation. Article 21 should either be eliminated or limited to narrow sovereignty/security situations with clear examples and high proof requirements. The Draft Text could establish procedural rules limiting satellite litigation: consolidated procedures for addressing coordination issues rather than piecemeal motion practice; expedited timelines for Article 9 and Article 11 determinations; limits on discovery and evidentiary development for threshold coordination issues; and appellate review limitations preventing multiple layers of satellite litigation. Clear guidance about burden of proof for various determinations—who must prove proceedings are parallel versus related, who must prove abuse of process, who must prove denial of justice—would reduce evidentiary disputes. Templates or model procedures for making common determinations (Article 10 appropriateness analysis, Article 11 related actions assessments) could promote efficiency and consistency whilst reducing litigation about process. Finally, mandatory cooperation under Chapter IV could reduce satellite litigation by ensuring courts have accurate information about each other's proceedings, reducing disputes about foreign proceedings' status, nature, and likely trajectory. If courts communicate effectively, they might reach consensus on coordination issues without requiring parties to fully litigate them before each tribunal. However, even with these refinements, some satellite litigation is inevitable when introducing new international framework—parties and courts will need to develop understanding through practice, and contested cases will generate interpretive disputes requiring resolution. The question is whether satellite litigation costs are outweighed by benefits from improved coordination and reduced inconsistent judgments—an assessment depending heavily on implementation quality and judicial cooperation culture beyond the text itself.</p>
<p>14. What other comments, if any, do you have?</p>	<p>1. Lack of Appellate Review Mechanisms: The Draft Text provides no framework for appealing or challenging a court's determinations under Articles 9-11 or invocations of safeguards under Articles 19-21 (unless it is for the domestic procedural law to decide). This creates risks of inconsistent application and leaves parties without recourse when courts make questionable decisions about</p>

forum appropriateness or improperly invoke exceptions. Including provisions for expedited appellate review or establishing an international advisory body to provide non-binding guidance on disputed interpretations would strengthen consistency and legitimacy.

2. Insufficient Guidance on Timing and Procedural Requirements: The Draft Text lacks detail on critical procedural matters: how quickly must courts make Article 9 or 11 determinations? What are parties' obligations to notify courts about parallel proceedings? What happens if parties conceal parallel proceedings? Must courts provide reasoned decisions explaining Article 10 factor analysis? What are time limits for Chapter IV communications? Without procedural specifications, implementation will vary dramatically across jurisdictions, undermining uniformity and creating opportunities for manipulation.

3. No Enforcement Mechanism for Non-Compliance: If a court violates its obligations—continuing proceedings it should suspend under Article 8, refusing to cooperate under Chapter IV, or improperly invoking Article 19-21 safeguards—the Draft Text provides no consequences or remedies. Other courts cannot compel compliance, and parties have no enforcement mechanism beyond domestic appeals. This fundamental weakness means the instrument operates on good faith alone, limiting effectiveness when courts have institutional interests in non-compliance. Consider including provisions allowing judgments rendered in violation of the Convention to be denied recognition or creating monitoring mechanisms through the Hague Conference.

4. Inadequate Treatment of Interim and Protective Measures: Article 18 preserves courts' ability to order interim measures but doesn't address coordination when multiple courts issue conflicting provisional orders. In parallel proceedings, parties frequently seek interim injunctions, attachments, or protective orders from multiple forums—the Draft Text should provide guidance on prioritising or harmonising such measures. Additionally, unclear whether Article 8 suspension obligations apply to proceedings seeking only interim relief, creating potential loopholes.

5. Missing Provisions on Cost Allocation and Sanctions: The Draft Text doesn't address who bears costs when proceedings are

suspended, dismissed, or consolidated, nor does it provide for cost sanctions against parties who abuse the framework by filing vexatious parallel proceedings, concealing material information, or engaging in bad faith. Including cost-shifting provisions penalising abusive tactics and compensating parties harmed by unjustified parallel litigation would deter manipulation whilst promoting fairness.

6. Unclear Interaction with Regional Instruments: The relationship between the Draft Text and existing regional frameworks (Brussels regime, Lugano Convention, Latin American instruments) requires clarification. Article 22 declarations might address this partially, but more explicit provisions establishing hierarchy, coordination protocols, or mutual recognition would prevent conflicts. States party to both instruments need clear guidance on which applies when, whether one supersedes the other, and how courts should navigate competing obligations.

7. Limited Scope of Related Actions Framework: Articles 11-14 address related actions but only contemplate consolidation or coordinated determination—they don't provide for other coordination mechanisms like coordinated case management, shared discovery, or sequential determinations on common issues with preclusive effect. Expanding the related actions framework to include these intermediate coordination options would provide flexibility between full consolidation and complete separation, potentially accommodating more cases productively.

8. Absence of Technology and Infrastructure Requirements: Effective implementation requires secure communication platforms for Chapter IV judicial coordination, case management systems tracking parallel proceedings across borders, standardised forms for notifications and applications, and interpretation services for cross-border hearings. The Draft Text should include provisions requiring Contracting States to establish necessary technological infrastructure and provide implementation guidance, potentially through a dedicated Hague Conference secretariat or working group supporting courts in applying the Convention.

9. No Provision for Periodic Review and Amendment: Given the novel nature of these provisions and uncertainties about practical operation, the Draft Text should include mechanisms for systematic review after defined

periods (perhaps 5 and 10 years post-entry into force), allowing Contracting States to assess effectiveness, identify problems, and consider amendments based on accumulated experience. This would enable evidence-based refinement rather than locking States into provisions that may prove unworkable. 10. Insufficient Attention to Power Imbalances: The Draft Text assumes relatively equal parties with comparable resources navigating parallel proceedings, but fails to address situations where significant power or resource disparities exist—such as individuals versus multinational corporations, small businesses versus well-funded entities, or parties from developed versus developing States. Stronger parties can more easily engage in parallel proceedings, manipulate procedural timing, and litigate jurisdictional issues extensively. The framework should include provisions protecting weaker parties from oppressive parallel litigation tactics, perhaps through expedited procedures, cost protections, or rebuttable presumptions favouring fora more accessible to resource-limited parties.