

Survey response	
Please indicate: [Name:]	Österreichischer Rechtsanwaltskammertag (ÖRAK)
Please indicate: [State:]	Austria
Please indicate: [Region:]	Austria
Please indicate: [Affiliation:]	Austrian Bar
Please indicate your profession:	Other
Please indicate your profession: [Other]	Austrian Bar
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?	The scope of the Draft Text is comprehensive and adequate, in particular, if also related actions are included.
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, if also related actions are included.
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)?	The subject matter exclusions are very wide, e.g., if you compare them to the subject matter exclusions of legal instruments like the Brussels Regulation or its predecessor, the Brussels Convention. On the other hand, if you compare them with the subject matter exclusions of the 2005 Convention on Choice of Court Agreements or the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, the exclusions appear adequate. This applies also to the arbitration exclusion in Article 2(3).
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).	It might be advisable if the fact that parallel proceedings or related actions are pending in the courts of different contracting states is sufficient for the Draft Text to apply. The additional requirement set out in Article 1(2) that the defendants in the proceedings in a court of a Contracting State must be habitually resident in another Contracting State might be impractical. On the one hand, it narrows the scope of application quite significantly. On the other hand, it creates possible disputes over the definition of "habitual residence", in particular, with regard to legal entities. See, e.g., the many different opinions on the concept of "Center of Main Interest" (COMI) in the context of the European Insolvency Regulation.
2. What are your views on the definitions of parallel proceedings and related	The definition of "parallel proceedings" appears to be appropriate if the terms "the same parties" and

<p>actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.</p>	<p>"the same subject" are construed in accordance with, or similar to Article 29 of the Brussels Regulation, meaning, e.g., that a claim for payment, launched by A (plaintiff) against B (defendant), and a claim which is launched by B against A, which is aimed a declaratory judgment stating that B does not owe A the said amount, would constitute "the same subject". As regards the definition of "related actions" it might be useful to also refer to the text of the Brussels Regulation, in particular, Article 30, and the respective jurisprudence of the European Court of Justice (ECJ).</p>
<p>3. What are your views on Article 4?</p>	<p>This appears to be appropriate.</p>
<p>4. What are your views on Article 5?</p>	<p>In general, the Article 5(1) obligations. i.e., to suspend proceedings in certain circumstances, appear to be appropriate. However, the obligation in Article 5(2), appears to be probably too far-reaching if dismissal is based on the mere "capability" of recognition and enforcement of the other judgment. In practice, it can sometimes be difficult to predict whether even a final and unappealable judgment will be recognized and enforced in another country.</p>
<p>5. What are your views on Articles 6 – 8 including how they will work in practice?</p>	<p>Article 6 appears to be appropriate. It should be reconciled, however, with the exclusion of residential leases of immovable property (tenancies) according to Article 5(3) of the 2005 Judgments Convention. Article 7(1) last sentence provides only for suspension. If one compares this with the provision in Art 32(3) of the Brussels Regulation one might want to consider dismissal, instead of mere suspension. The requirement in Article 8(1)a that one or more of the other courts has or have such jurisdiction/connection might be problematic to assess before that other court has rendered its decision on its jurisdiction/connection.</p>
<p>6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?</p>	<p>The list of possible and alternative jurisdiction/connection requirements in Article 8(2) appear to be quite ambitious as they go beyond the basis for recognition and enforcement set out in Article 5(1) of the 2005 Judgments Convention. This might create possible friction. However, in view of the goal to draft a future instrument on jurisdiction it could indeed be appropriate.</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</p>	<p>In principle, yes, these factors appear to be appropriate. However, the Draft Text might want to also consider situations where a defendant does not oppose the jurisdiction of a court that does not</p>

if they are not seised on the basis of one of these? Why or why not?	fulfill these jurisdiction criteria because this would constitute a tacit consent to establishing jurisdiction of said court.
6.3 Are there any additional factors that you believe should be included?	See comment 6.2
7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?	The mechanism for determination of "the more appropriate court" appears to be quite complex, and prone to excessive, time-consuming, and expensive dispute and litigation.
7.2 What are your views on how the two approaches may work in practice?	That appears to be the case for both approaches.
7.3 Do you have a preference for either approach? If so, please explain why.	Approach 2 might be preferable, because Approach 1 where the court first seised is required to determine whether any other seised court might be more appropriate to resolve the dispute requires the court first seised with a determination of the jurisdiction/connection of the court in another Contracting State. This is difficult because the court first seised probably cannot easily assess all aspects that could be relevant for the jurisdiction/connection of the courts of other Contracting States.
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)?	Except for the likelihood of recognition and enforcement (lit. f) the factors in Article 10 appear to be problematic because they give courts an enormous amount of discretion and may lead to excessive, time-consuming and expensive litigation.
8.2 Do you have any views on how Article 10 might work in practice?	See comment 8.1.
8.3 Are there additional considerations that, in your view, should be taken into account?	Public policy considerations, like, e.g, whether the judicial system in a given country is functioning to a reasonable extent, and grants due process to both parties.
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.	In general, the framework developed in the Draft Text for dealing with parallel proceedings appears to be adequate, however, it also appears to be, at least in some aspects overly complex. The Draft Text might want to consider more simple solutions such as the provisions of Articles 29 - 34 of the Brussels Regulation.
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	The framework developed in the Draft Text for dealing with related actions in an international context, namely the idea that a single court should adjudicate the entirety of the related actions

<p>context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.</p>	<p>(Article 11(1)a) appears to be innovative and creative. However, it would be interesting to know whether a similar system has, in practice, been legislated and proven to be useful, and generally accepted in any given country.</p>
<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>Chapter IV of the Draft Text appears to be useful, in particular, for countries where it is uncertain whether courts have the discretion to communicate freely with other courts, either directly or indirectly.</p>
<p>11.2 Are there particular advantages and challenges you foresee in applying these methods?</p>	<p>For advantages, see comment 11.1, challenges might arise from language issues.</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>Providing access to justice by avoiding an effective denial of justice (Article 19) is essential and therefore appears to be appropriate. Abuse of process (Article 20) is a concept that could give rise to excessive dispute and litigation. Public policy (Article 21) is a concept that is widely accepted but should be interpreted narrowly.</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>In general, yes, but in some instances outlined above the concepts established by the Draft Text appear to be overly complex, thus giving rise to excessive, time-consuming and expensive dispute and litigation.</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>With a a region where an instrument like the Brussels Regulation is in force, no. Vis-à-vis counties where no such instrument exists, yes.</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>There is always a risk for tactical litigation. The Draft Text addresses some of these issues adequately.</p>
<p>14. What other comments, if any, do you have?</p>	<p>To summarize, the instrument appears to be, in most instances, a step towards enhancing legal certainty, predictability, and access to justice, and to mitigate inconsistent judgments. Whether it contributes to reducing litigations costs could be, at least, in some aspects, doubtful. Securing compatibility/alignment with the Brussels Regulation for the regions in which the Brussels</p>

	Regulation is in force, also with a viewpoint of practical application, is necessary.
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