Survey response	
Please indicate: [Name:]	Gaetano Vitellino
Please indicate: [State:]	Italy
Please indicate: [Region:]	Lombardia
Please indicate: [Affiliation:]	University Cattaneo – LIUC
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?	Article 1(2) should be deleted, as it would result in an excessive and unjustified restriction of the scope of the Draft Text. In addition, it could make the application of the proposed rules even more complicated than it actually is (for instance, what if in one of the pending proceedings there are more than one defendant, only one of them being habitually resident in a Contracting State?).
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?	No specific remarks on this point, but please consider my considerations under 1.3 below.
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 alignment with the 2019 Judgments Convention is in principle to be appreciated. It must however be taken in due account that some of the subject matters excluded, such as defamation, privacy or intellectual property, are those usually giving rise to parallel proceedings in cross-border situations. The exclusion of interim measures of protection is justified by the fact that the rules in the Draft Text would not be appropriate for interim proceedings.
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).	
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.	
3. What are your views on Article 4?	
4. What are your views on Article 5?	This provision raises a number of questions. First of all, the relationship between Article 5 and Articles 6 to 9 is not clear. Does the first rule deal with the procedural aspects of the

	mechanism set out in the Draft Text? Does it mean that the court which, according to Article 6 to 9, is not permitted to hear the case must stay the proceedings, pursuant to Article 5(1), and dismiss them only when the court in another Contracting State simultaneously seised has given a judgment capable of recognition in the first Contracting State? In my view, these aspects have not been definitively assessed by the Draft Text. In the second place, it is not clear whether a recognition prognosis is allowed or required by the Draft Text. On the one hand, in Article 5(2) the dismissal of the case is made conditional upon the proceedings abroad having resulted in a decision capable of recognition in the first Contracting State; on the other hand, the likelihood of recognition is one of the factors to be considered in the determination of the more appropriate court under Article 9. Does it mean that a recognition prognosis is not allowed in other circumstances, notably as requirement to be met in order to stay proceedings in favour of a concurrently seised court? This does not seem to be the case, at least from a practical perspective. In fact, a court is required to stay or dismiss proceedings in favour of a court in another Contracting State only once assessed that this latter court has jurisdiction under the Draft Text. In this regard it must be considered that the recognition prognosis in the parallel proceedings stage essentially consists in verifying the indirect jurisdiction of the foreign court. Furthermore, parallel proceedings can be disregarded if the resulting judgment is deemed manifestly incompatible with the public policy of the forum State and thus not capable of recognition therein (Article 21).
5. What are your views on Articles 6 – 8 including how they will work in practice?	1. The Executive Summary argues that Articles 6-8 "are not meant to directly regulate international jurisdiction", but this is what they actually do. In fact, in case of parallel proceedings, only the court with jurisdiction under the uniform criteria laid down in the Draft Text can hear the case, irrespective of whether it has jurisdiction in accordance with its own domestic rules. On the other hand, courts that do not have jurisdiction on the

	basis of the Draft Text are required to refuse to try the action, regardless of whether they could be competent under national law. In practice, if a party who is sued before court A in Contracting State X brings the same dispute before court B in Contracting State Y, both courts have to determine which one has jurisdiction according to the criteria in the Draft Text. For example, if the dispute concerns a right in rem in immovable property, under Article 6 court A is not permitted to try it once ascertained that the property at stake is situated in State Y; on the other hand, court B must hear the case on the merits, regardless of whether it has jurisdiction under its own law. Therefore, for both the seised courts the respective national grounds of jurisdiction have no role to play. Furthermore, the rules set out in the Draft Text cannot be seen as tools for judicial cooperation between courts equally competent, unlike traditional mechanisms dealing with concurrent proceedings. 2. Neither Article 7 nor Article 9 deal with parallel proceedings pending in the courts of two Contracting States when both courts have jurisdiction in accordance with a non-exclusive choice of court agreements. The following would be an example of such an agreement: "Proceedings under this contract may be brought before court A in State X or court B in State Y, to the exclusion of all other courts". So, if the same proceedings before the two courts designated by the parties, and thus equally competent, it is not possible to determine which one has to hear the dispute on the basis of the Draft Text. But even if Article 9 - duly modified - were to be applied, it is far from clear which court would be the more appropriate in light of the factors listed in Article 10.
6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?	
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?	

6.3 Are there any additional factors that you believe should be included?	
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?	
7.2 What are your views on how the two approaches may work in practice?	
7.3 Do you have a preference for either approach? If so, please explain why.	
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)?	
8.2 Do you have any views on how Article 10 might work in practice?	
8.3 Are there additional considerations that, in your view, should be taken into account?	
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.	
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.	
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?	
11.2 Are there particular advantages and challenges you foresee in applying these methods?	
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?	The public policy exception under Article 21 could be relied on in various situations. Example No 1 (inspired by the London Steam-Ship or Prestige saga). An injured party claims for damages before a court sitting in Spain,

	where he/she is domiciled and allegedly suffered the damage, directly against the insurer of the tortfeasor, a company domiciled in France. This latter brings a claim for declaratory reliefs before the court in a Contracting State (not member of the EU) which is designated in the asymmetric jurisdiction clause contained in the insurance contract. Pursuant to Article 7 of the Draft Text, the Spanish court may not try the action if it holds that the claimant is bound by the jurisdiction clause, as interpreted according to the criteria laid down by the law governing it. However, pursuant to the Brussels Ia Regulation regime, such a clause would be ineffective vis-à-vis the weaker party. One solution can be a declaration by the EU under Article 22 of the Draft Text. Otherwise, can the public policy exception be relied on? Example No. 2. In many fields (for instance, commercial agents), EU law provides for overriding mandatory rules which have to be complied with regardless of which law applies. Proceedings ongoing outside the EU could then be disregarded by courts in the EU Member States if, and to the extent that, they are likely to lead to a decision in contrast with those overriding mandatory rules. From a more general perspective, Article 21 can be seen as a way for introducing a sort of limited recognition prognosis within the mechanism created by the Draft Text.
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.	
13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?	
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	Quite paradoxically, the overall approach of the Draft Text could actually result in tactical litigation thus increasing cross-border parallel proceedings. This risk essentially depends on the fact that the common set of rules on direct jurisdiction established by the Draft Text only

there any ways that such risks could be addressed in the Draft Text?	apply in case of parallel proceedings. Consequently, a defendant before a court in a Contracting State is somewhat "forced" to file a similar lawsuit in another Contracting State in order to be able to rely on those uniform jurisdictional criteria before the court in the first Contracting State.
14. What other comments, if any, do you have?	