

Survey response	
Please indicate: [Name:]	Stephan Madaus
Please indicate: [State:]	Germany
Please indicate: [Region:]	Sachsen-Anhalt
Please indicate: [Affiliation:]	Martin-Luther-University
Please indicate your profession:	Academia
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
1.1 What are your views on the scope of the Draft Text?	Fine in general.
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?	I am not sure. I see a benefit for parallel debt restructuring proceedings that are not covered by the applicable insolvency framework (EIR) and do not concern sovereign debt (Art. 2 (1) q of the draft). Such proceedings are harmful and the resolution as described in this text appears to offer a fitting framework.
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 bankruptcy exception as defined in in Art. 2 (1) e) is worth reviewing for two reasons: First, its wording is traditional but has caused uncertainty as to whether it includes debt restructuring proceedings as "analogous proceedings" even if these fall outside the scope of the applicable bankruptcy framework, such as the European Insolvency Regulation. The limitation of exclusion q) to sovereign debt could be interpreted as only excluding such restructurings, thus leaving corporate restructurings within the scope. The new second sentence also could be understood as including proceedings that are based on general rules of civil or commercial law, such as schemes of arrangements or similar. Second, the new addition in brackets in Art. 2(1) e) collides with Art. 6 of the EIR that provides for exclusive jurisdiction for the courts in the State of the insolvency proceedings. While such a specific jurisdiction rule is not common beyond the EIR in international instruments, insolvency-related proceedings are often left for the bankruptcy court to adjudicate under national laws (eg in the US). I would nonetheless appreciate the new Convention to offer a framework in case this is not regulated in bankruptcy law. Maybe it could be clarified that the scope applies with deference to the

	relevant rules in insolvency law frameworks as far as these rules collide.
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.	Parallel restructuring proceedings would easily qualify as related proceedings since not all affected creditors may be included in the same way. A proper interpretation of the "subject matter" to a debt adjustment matter would enable us to apply the framework for parallel proceedings.
3. What are your views on Article 4?	In a restructuring proceedings, time is of the essence. Is there an option to secure a fast-track resolution (no Commission) for such or similar types of proceedings?
4. What are your views on Article 5?	
5. What are your views on Articles 6 – 8 including how they will work in practice?	
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?	

<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>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>We have experience with cooperation frameworks in insolvency proceedings. It can work well provided that courts are open to communicate and coordinate with foreign courts. This requires skills, budget, equipment and, potentially, a common mediating person (speaking all relevant languages).</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>CoCo Guidelines for courts have been developed and applied in insolvency courts. You may find additional experience there.</p>
<p>11.2 Are there particular advantages and challenges you foresee in applying these methods?</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>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>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>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>14. What other comments, if any, do you have?</p>	