

**l) Study drawn up by the Technical Commission of the Meeting of Ministers of Justice of MERCOSUR Member States and Associate States on pending provisions of the Preliminary Draft Hague Convention on Maintenance, for the purpose of undertaking uniform positions within the framework of the Conference on Private International Law, to be held on the oncoming month of November.**

As a result of the study on this subject-matter, consensus was reached by the Commission regarding the following provisions dealt with:

## **PERSONAL SCOPE**

### **ARTICLE 2**

#### **Number 1**

- a) Propose to extend the capacity as beneficiary granted by the Convention to a child under the age of 21 to whoever, having reached that age, continues being a creditor pursuant to the law governing the application for support.
- b) Delete brackets foreseen in art. 2, number 1, in connection to claims between spouses or former spouses in combination with claims for maintenance in respect of such children, thereby confirming its contents.
- c) Extend the rights granted to spouses and former spouses to non-married couples.
- d) Include disabled persons.

#### **Number 3:**

Delete brackets, confirming the wording of the paragraph and adding that “Decisions rendered pursuant to this Convention shall be without prejudice to questions of parentage and family relationships between support creditors and debtors. Where relevant, however, such decisions may be used as evidence.”, in accordance with the provisions set forth in article 5 of the 1989 Inter-American Convention on Support Obligations.

#### **Number 4:**

Delete brackets

## FREE LEGAL ASSISTANCE

### ARTICLE 3, paragraph c

Delete brackets and ratify the definition given in 3.c, specially mentioning the costs of genetic testing, when such testing is necessary, and leaving the wording of the last sentence as follows: “...*This includes assistance such as legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of genetic testing when this is necessary* and from costs of proceedings.”

### ARTICLE 14

Chose Option 2 and delete the expression “*brought by the creditor*” in number 5.

### ARTICLE 14 bis

**Number 1.** Delete brackets, ratifying its contents. It has been understood that the situation of the debtor is envisaged under the provisions of 14 ter.

Extend the benefits foreseen for parent-child relationships, to those envisaged in art. 2, number 1, according to the wording proposed “*ut-supra.*”

#### **Number 2.**

**Paragraph a):** To be deleted, insisting on the inclusion of the cost exemption for the necessary genetic testing in the definition of “legal assistance” of Art. 3, paragraph c).

**Paragraph b)** To be deleted, since it was considered that its wording may authorize revisions, on the merits, of foreign decisions.

It is pointed out that the revision on the merits of the case, in proceedings for the recognition of foreign decisions, is expressly forbidden by the very same art. 24 of the Preliminary Draft Convention, as well as by art. 13 of the 1989 Inter-American Convention on Support Obligations (CIDIP IV).

**Paragraph c)** To be deleted, and if deletion would not be possible, maintaining the spirit of Option B), with pertinent modifications thereto, is considered adequate.

#### **ARTICLE 14 ter**

**Paragraph a)** For the reasons stated in the comments to art. 14 bis, number 2, paragraph b), it does not seem convenient to have pronouncements based on the merits of the case, in the process of deciding whether a free legal assistance is relevant or not.

Alternatively, it is proposed to replace the term “merits” for “admissibility”.

**Paragraph b)** Delete “*creditor*” and ratify the term “*applicant*.”

### **TRANSFER OF FUNDS**

#### **ARTICLE 31.**

There is agreement regarding the need of implementation of mechanisms tending to facilitate the transfer of funds and reduce its costs, taking into account for that purpose the Preliminary Document No. 9/2004 of the Hague Conference and art. 20 of the Inter-American Convention on Support Obligations.

### **RECOGNITION AND ENFORCEMENT**

#### **ARTICLE 10, number 3)**

Deletion is suggested, since if it refers to the law of procedure, it has already been foreseen in art. 20.1 and if it refers to the merits, it would be an unsuitable solution in view of the aforesaid reasons.

### **PRECAUTIONARY MEASURES**

#### **ARTICLE 6 I)**

Ratify contents, deleting brackets.

## **PARTY AUTONOMY**

### **ARTICLES. 15, number 2, paragraph a) and 17, number 1, paragraph e)**

The inconvenience of including the party autonomy in this subject-matter, for the purpose of deciding the jurisdiction, is pointed out, since this would eventually affect the international public order in some of the States of the region and thus the recognition of judgments rendered in such cases.

## **AUTHENTIC INSTRUMENTS AND PRIVATE AGREEMENTS**

### **ARTICLE 26**

By reason of the doubts arising from the statements of this article, it is deemed convenient that, for the purpose of deciding about the formula proposed, States attributing enforceability to authentic instruments and private agreements, should explain the conditions that said instruments shall meet in order to be considered as such.

## **TEMPORAL SCOPE**

### **ARTICLE 50**

Extend the application of this Convention to claims brought before it has entered into force, and, if this were not possible, confirm the provisions of number 2, ratifying the provisions between brackets.

## **ENTRY INTO FORCE**

### **ARTICLE 52.**

It was agreed that it was convenient to use option 1, number 5 (first wording) .

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