The European Union has set itself the objective of developing an area of freedom, security and justice, by adopting measures relating to judicial cooperation in civil matters having cross-border implications. At the same time, increasing the mobility of citizens within the internal market calls for more flexibility and greater legal certainty.

**Council Regulation (EU) No 1259/2010** of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (called Rome III Regulation) provides citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, protects weaker partners during divorce disputes and prevents ‘forum shopping’. This also helps avoiding complicated, lengthy and painful proceedings. More specifically, Regulation (EU) No 1259/2010 allows international couples to agree in advance which law would apply to their divorce or legal separation as long as the agreed law is the law of the Member State with which they have a closer connection. In case the couple cannot agree, the judges can use a common formula for deciding which country’s law applies.

This Regulation does not, on the other hand, apply to the following matters: the legal capacity of natural persons; the existence, validity and recognition of a marriage; the annulment of a marriage; the name of the spouses; the property consequences of the marriage; parental responsibility; maintenance obligation and trusts and successions. It also does not affect the application of Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. It is an instrument implementing enhanced cooperation between the participating Member States. The enhanced cooperation allows a group of at least nine Member States to implement measures in one of the areas covered by the Treaties within the framework of the Union’s non-exclusive competences.

According to Article 331 TFEU, the non-participating Member States keep the right to join the established enhanced cooperation in progress. The European e-Justice Portal provides you with information concerning the application of the Regulation.

**Enhanced Cooperation**

On 12 July 2010, the Council adopted Decision 2010/405/EU authorizing enhanced cooperation in the area of the law applicable to divorce and legal separation between Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. As a consequence, the mentioned 14 participating Member States adopted Council Regulation (EU) No 1259/2010, which became applicable on 21 June 2012.

On 21 November 2012, the Commission adopted Decision 2012/714/EU confirming the participation of Lithuania in enhanced cooperation in the area of the law applicable to divorce and legal separation. That Decision foresees that Regulation (EU) No 1259/2010 shall apply to Lithuania from 22 May 2014.


Please select the relevant country's flag to obtain detailed national information.

**Related link**

ARCHIVED European Judicial ATLAS website (closed on 30 September 2017)

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**Law applicable to divorce and legal separation - Belgium**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

Belgian legislation does not lay down any specific formal requirements for agreements on the choice of applicable law in accordance with Article 7(2) to (4) of Regulation (EU) No 1259/2010.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

With regard to the rules on the choice of applicable law, the third paragraph of Article 55, § 2, of the Belgian Code of Private International Law (Wetboek van internationaal privérecht/Code de droit international privé) provides that the choice must be expressed at the first appearance (Act on the Code of Private International Law of 16 July 2004, Belgisch Staatsblad/Moniteur belge of 27 July 2004, which entered into force on 1 October 2004).

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**Law applicable to divorce and legal separation - Germany**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

According to German law (Article 46(1) EGBGB), a choice-of-law agreement pursuant to Article 7(2) to (4) of Regulation (EU) No 1259/2010 is to be recorded in a notarial act. Article 127(e)(a) of the Civil Code applies mutatis mutandis.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

According to German law (Article 46(e)(2) EGBGB), the spouses can choose the applicable law pursuant to Article 5(3) of Regulation (EU) No 1259/2010 up to the conclusion of the hearing at first instance.

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**Law applicable to divorce and legal separation - Estonia**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

Under Section 64(2) and (3) of the Family Law Act, spouses may enter into an agreement on the law applicable to the divorce corresponding to Council Regulation (EU) No 1259/2010 in person in a notarily authenticated form, or the entry into such judicial proceedings may be recorded as a substitute for the notarily authenticated form.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

Under Section 64(4) of the Family Law Act, spouses may enter into and amend the agreements specified at any time until a petition for divorce is accepted by a notary or in judicial proceedings until the conclusion of preliminary proceedings or the expiry of the deadline for applications in written procedure.

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**Law applicable to divorce and legal separation - Greece**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

In Greek law there are no specific national provisions concerning the formal requirements that apply to agreements on the choice of applicable law pursuant to Article 7(2) to (4) of Regulation (EU) No 1259/2010.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

In Greek law there are no specific national provisions concerning the possibility of designating the applicable law in accordance with Article 5(3) of Regulation (EU) No 1259/2010.

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**Law applicable to divorce and legal separation - Spain**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

Spanish law lays down additional formal requirements for agreements on the choice of applicable law in accordance with Articles 7(2) to 7(4) of Regulation (EU) No 1259/2010, namely that the choice of applicable law must be agreed upon in an authentic instrument before a notary public or in an authentic document, which must be clearly and unmistakeably dated and signed by the parties, even if the document itself is not a notarial act.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

Under Spanish law, the spouses may not designate the applicable law before the court during the proceedings.

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**Law applicable to divorce and legal separation - France**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

The Regulation also gives states the right to lay down additional formal requirements and clarifies how such rules are to be applied depending on the situation of the spouses.

There are no provisions in French law regarding the formal requirements applicable to agreements on the choice of law in divorce or legal separation cases. Consequently, France has not made a declaration under Article 17(1)(a).

If they so wish, therefore, the spouses can choose to seek professional help from the person they believe is best placed to advise them.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

The Regulation states that an agreement between the spouses choosing the law applicable to a divorce or legal separation may be concluded and modified at any time, but at the latest at the time a court is seized.

However, if the law of the forum so provides, the applicable law can also be designated by the spouses before the court during the proceedings (Article 5(2) and (3)).

This option is not expressly provided for in French law. This explains why France has not made a declaration under Article 17(1)(b).

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**Law applicable to divorce and legal separation - Latvia**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**
Latvian law lays down no additional formal requirements applicable to agreements on the choice of law, other than those referred to in Article 7(1) of Regulation (EU) No 1259/2010.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

Latvian law does not provide for the possibility of designating the applicable law before the court in the course of the proceedings.

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**Law applicable to divorce and legal separation - Lithuania**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

Lithuanian national law does not lay down additional formal requirements for agreements on the law applicable to divorce and legal separation.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

Lithuanian national law does not provide for the possibility of designating the law applicable to divorce and legal separation before the court during the course of the proceedings.

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**Law applicable to divorce and legal separation - Luxembourg**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

No additional formal requirements are currently in place in Luxembourg.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

In Luxembourg, it is not possible to designate the applicable law before the court during the proceedings.

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**Law applicable to divorce and legal separation - Hungary**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

No additional formal requirements apply to agreements on the choice of applicable law other than those provided for in Article 7(1) of Regulation (EU) No 1259/2010.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

The latest time spouses can choose the applicable law is at the trial preparation stage, within the deadline set by the court.

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**Law applicable to divorce and legal separation - Austria**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

Austrian Law provides no additional formal requirements for a choice-of-law agreement pursuant to Article 7(2) to (4) of Regulation (EU) No 1259/2010.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

According to Austrian Law (§ 11(3) IPRG), the spouses can choose the applicable law pursuant to Article 5(3) of Regulation (EU) No 1259/2010 also before the court during the course of the proceedings, provided that the choice of law is exercised explicitly and not only by implied behaviour.

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**Law applicable to divorce and legal separation - Portugal**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

Nothing to communicate.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

Nothing to communicate.

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**Law applicable to divorce and legal separation - Romania**

**Article 7 (2) to (4) - Formal requirements applicable to agreements on the choice of applicable law**

There are no further formal requirements applicable to agreements on the choice of law than those stipulated by Article 7 (1) of Regulation (EU) No 1259/2010.

**Article 5 (3) - Possibility of designating the applicable law during the course of the proceeding**

Under Romanian law, the spouses may also designate the law applicable to divorce after the court has been seised, but no later than the date of the first court hearing at which the spouses have been legally summoned.

The relevant texts of the Civil Code are reproduced below:
Article 2598.
Date of the agreement to select the applicable law
(1) The agreement to select the law applicable to divorce may be concluded or amended at the latest by the date on which the competent authority has been seised to grant a divorce.
(2) However, the court may take note of the spouses' agreement at the latest by the first hearing to which the parties have been legally summoned.
Article 2599.
Form of the agreement to select the applicable law
The agreement to select the law applicable to divorce must be concluded in writing and must be signed and dated by the spouses.
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