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Divorce et séparation de corps

Informations nationales concernant le règlement n° 1259/2010

Informations générales

L'Union européenne s'est fixée pour objectif d'instaurer un espace de liberté, de sécurité et de justice, par l'adoption de mesures dans le domaine de la coopération judiciaire en matière civile ayant des incidences transfrontières. Dans un même temps, accroître la mobilité des citoyens au sein du marché intérieur exige davantage de flexibilité et une plus grande sécurité juridique.

Le [règlement \(UE\) n° 1259/2010](#) du Conseil du 20 décembre 2010 mettant en œuvre une coopération renforcée dans le domaine de la loi applicable au divorce et à la séparation de corps (appelé règlement Rome III) garantit aux citoyens des solutions appropriées en termes de sécurité juridique, de prévisibilité et de souplesse, protège les partenaires plus faibles au cours des différends liés au divorce et prévient le «forum shopping». Cela contribue aussi à éviter des procédures complexes, longues et pénibles.

Le règlement (UE) n° 1259/2010 permet plus spécifiquement aux couples «internationaux» de désigner à l'avance la loi applicable à leur divorce ou séparation de corps, pour autant que la loi choisie soit celle de l'État membre avec laquelle ils ont les liens les plus étroits. À défaut d'accord entre les conjoints, les juges peuvent recourir à une solution commune pour déterminer le pays dont les règles s'appliquent.

Par ailleurs, ce règlement ne s'applique pas aux matières suivantes: la capacité juridique des personnes physiques; l'existence, la validité ou la reconnaissance d'un mariage; l'annulation d'un mariage; le nom des époux; les effets patrimoniaux du mariage; la responsabilité parentale; les obligations alimentaires; les trusts et successions. Il n'affecte pas non plus l'application du règlement (CE) n° 2201/2003 relatif à la compétence, la reconnaissance et l'exécution des décisions en matière matrimoniale et en matière de responsabilité parentale.

Il s'agit d'un instrument de mise en œuvre d'une coopération renforcée entre les États membres participants. La coopération renforcée permet à un groupe d'au moins neuf États membres de mettre en œuvre des mesures dans un des domaines couverts par les traités dans le cadre des compétences non exclusives de l'Union. Conformément à l'article 331 du TFUE, les États membres non participants conservent le droit de s'associer à une coopération renforcée en cours.

Le portail européen e-Justice vous informe sur l'application du règlement.

Coopération Renforcée

Le 12 juillet 2010, le Conseil a adopté la [décision 2010/405/UE](#) du Conseil autorisant une coopération renforcée dans le domaine de la loi applicable au divorce et à la séparation de corps entre la Belgique, la Bulgarie, l'Allemagne, l'Espagne, la France, l'Italie, la Lettonie, le Luxembourg, la Hongrie, Malte, l'Autriche, le Portugal, la Roumanie et la Slovaquie. Par conséquent, les quatorze États membres participants susmentionnés ont adopté le [règlement \(UE\) n° 1259/2010](#) du Conseil, qui est devenu applicable le 21 juin 2012.

Le 21 novembre 2012, la Commission a adopté la [décision 2012/714/UE](#) confirmant la participation de la Lituanie à la coopération renforcée dans le domaine de la loi applicable au divorce et à la séparation de corps. Cette décision prévoit que le règlement (UE) n° 1259/2010 s'appliquera à la Lituanie à partir du 22 mai 2014.

Le 27 janvier 2014, la Commission a adopté la [décision 2014/39/UE](#) confirmant la participation de la Grèce à la coopération renforcée dans le domaine de la loi applicable au divorce et à la séparation de corps. Cette décision prévoit que le règlement (UE) n° 1259/2010 s'applique à la Grèce à compter du 29 juillet 2015.

Le 10 août 2016, la Commission a adopté la [décision \(UE\) 2016/1366](#) confirmant la participation de l'Estonie à la coopération renforcée dans le domaine de la loi applicable au divorce et à la séparation. Cette décision dispose que le règlement (UE) n° 1259/2010 est applicable à l'Estonie à partir du 11 février 2018.

Veuillez cliquer sur le drapeau du pays concerné pour obtenir de plus amples informations.

Lien connexe

[ATLAS judiciaire européen: site web ARCHIVÉ \(fermé le 30 septembre 2017\)](#)

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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 privaatrecht/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(e)(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(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 641(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 notarially authenticated form, or the entry into such judicial proceedings may be recorded as a substitute for the notarially authenticated form.

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

Under Section 641(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

Following a statement from Greece on this issue, the European Commission, in its Decision of 27.1.2014 (OJ L 23, p. 41), confirmed the participation of Greece in enhanced cooperation in the area of the law applicable to divorce and legal separation, which is established by Regulation (EU) No 1259/2010 ('Rome III').

Under the above Decision, Regulation (EU) No 1259/2010 applies in Greece as of 29 July 2015.

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 unmistakably 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 EU Regulation lays down three formal requirements that must be met if an agreement on the choice of law is to be valid: the agreement must be in writing, it must be dated, and it must be signed by the parties.

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 further 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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