Rozvod a rozluka

Vnitrostátní informace týkající se nařízení č. 1259/2010

Všeobecné informace

Evropská unie si dala za cíl zachovávat a rozvíjet prostor svobody, bezpečnosti a práva přijímáním opatření v oblasti justiční spolupráce v občanských věcech s mezinárodním prvkem. Rostoucí mobilita občanů v rámci vnitřního trhu zároveň vyžaduje jednak větší flexibilitu a jednak vyšší právní jistotu.

Nařízení Rady (EU) č. 1259/2010 ze dne 20. prosince 2010, kterým se zavádí posílená spolupráce v oblasti rozhodného práva ve věcech rozvodu (tzv. nařízení Řím III), poskytuje občanům vhodná řešení, pokud jde o právní jistotu, předvídatelnost a pružnost, chrání slabší partnery během rozvodu a brání účelovému převádění soudní příslušnosti (tzv. problematika „forum shopping“). Umožňuje tím rovněž vyvarovat se komplikovaným, zdlouhavým a bolestivým řízením.

Konkrétněji nařízení (EU) č. 1259/2010 umožňuje, aby se mezinárodní páry předem dohodly, jakým právem se bude řídit jejich rozvod či rozluka pod podmínkou, že zvoleným právem je právo členského státu, k němuž mají úzkou vazbu. V případě, že pár nemůže v dané věci dosáhnout shody, mohou soudci pro účely stanovení státu, jehož právo se má použít, postupovat podle společné metody.

Nařízení se na druhou stranu nevztahuje na tyto věci: právní způsobilost fyzických osob; existence, platnost a uznání manželství; prohlášení manželství za neplatné; jméno manželů; majetkové důsledky manželství; rodičovská odpovědnost; vyživovací povinnosti a svěřenectví a dědění. Nemá rovněž vliv na uplatňování nařízení Rady (ES) č. 2201/2003 o příslušnosti a uznávání a výkonu rozhodnutí ve věcech manželských a ve věcech rodičovské zodpovědnosti.

Jde o nástroj, kterým se mezi zúčastněnými členskými státy provádí posílená spolupráce. Posílená spolupráce umožňuje, aby skupina nejméně devíti členských států zavedla opatření v jedné z oblastí uvedené ve Smlouvách v rámci nevýlučných pravomocí Unie. Podle článku 331 SFEU si členské státy, které se spolupráce neúčastní, uchovávají právo připojit se k probíhající posílené spolupráci.

Portál evropské e-justice vám poskytuje informace týkající se platnosti nařízení.

Posílená Spolupráce

Rada přijala dne 12. července 2010 rozhodnutí 2010/405/EU, kterým se povoluje posílená spolupráce v oblasti rozhodného práva ve věcech rozvodu a rozluky mezi Belgií, Bulharskem, Německem, Španělskem, Francií, Itálií, Lotyšskem, Maďarskem, Maltou, Rakouskem, Portugalskem, Rumunskem a Slovinskem.

V důsledku toho 14 uvedených účastnících se členských států přijalo nařízení Rady (EU) č. 1259/2010, které se stalo použitelným dne 21. června 2012.

Komise dne 21. listopadu 2012 přijala rozhodnutí 2012/714/EU, kterým se potvrzuje účast Litvy na posílené spolupráci v oblasti rozhodného práva ve věcech rozvodu a rozluky. Toto rozhodnutí plánuje, že se nařízení (EU) č. 1259/2010 bude na Litvu vztahovat od 22. května 2014.

Komise dne 27. ledna 2014 přijala rozhodnutí 2014/39/EU, kterým se potvrzuje účast Řecka na posílené spolupráci v oblasti rozhodného práva ve věcech rozvodu a rozluky. Toto rozhodnutí předpokládá, že se nařízení (EU) č. 1259/2010 bude na Řecko vztahovat od 29. července 2015.

Dne 10. srpna 2016 přijala Komise rozhodnutí (EU) č. 2016/1366, kterým se potvrzuje účast Estonska na posílené spolupráci v oblasti rozhodného práva ve věcech rozvodu a rozluky. Toto rozhodnutí stanoví, že nařízení (EU) č. 1259/2010 se na Estonsko vztahuje od 11. února 2018.

Chcete-li získat podrobné informace o právu některého členského státu, zvolte si jeho vlaječku.

Související odkaz

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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 theFamily 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 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 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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