

Startside>Anlæggelse af retssag>Det Europæiske Civilretlige Atlas>Skilsmisse og separation

Skilsmisse og separation

Nationale oplysninger vedrørende forordning nr. 1259/2010

### Generelle oplysninger

Den Europæiske Union har sat sig som mål at udvikle et område med frihed, sikkerhed og retfærdighed ved at vedtage foranstaltninger vedrørende samarbejde om civilretlige spørgsmål med virkninger på tværs af grænserne. Samtidig kræver borgernes øgede mobilitet inden for det indre marked mere fleksibilitet og større retssikkerhed.

**Rådets forordning (EU) nr. 1259/2010** af 20. december 2010 om indførelse af et forstærket samarbejde om lovvalgsreglerne i forbindelse med skilsmisse og separation (kaldet Rom III-forordningen) sikrer borgerne hensigtsmæssige løsninger, der giver retssikkerhed, retlig forudsigelighed og fleksibilitet, og beskytter den svageste part, når der opstår tvister i forbindelse med en skilsmisse og forhindrer "forum-shopping". Dette er også med til at forhindre komplicerede, langvarige og smertefulde retssager.

Mere præcist giver forordning (EU) nr. 1259/2010 internationale par mulighed for på forhånd at aftale, hvilken lov der skal finde anvendelse på deres skilsmisse eller separation, så længe det er loven i den medlemsstat, de har tættest tilknytning til. Hvis parret ikke selv kan nå til enighed, kan domstolene anvende et sæt fælles regler for at fastlægge, hvilket lands lovgivning der skal være gældende.

Forordningen finder dog ikke anvendelse på følgende forhold: fysiske personers rets- eller handleevne, et ægteskabs eksistens eller gyldighed eller anerkendelsen heraf, omstødelse af et ægteskab, ægtefællernes navn, ægteskabets virkninger på formueforhold, forældreansvar, underholdspligt og båndlæggelse eller arv. Den påvirker heller ikke anvendelsen af Rådets forordning (EF) nr. 2201/2003 om kompetence og om anerkendelse og fuldbyrdelse af retsafgørelser i ægteskabssager og i sager vedrørende forældreansvar.

Den er et instrument til gennemførelse af et forstærket samarbejde mellem de deltagende medlemsstater. Det øgede samarbejde gør det muligt for en gruppe på mindst ni medlemsstater at gennemføre foranstaltninger på et af de områder i traktaterne, hvor Unionen ikke har enekompetence. I henhold til artikel 331 i TEUF har de medlemsstater, der ikke deltager i samarbejdet, ret til at tilslutte sig det allerede eksisterende forstærkede samarbejde.

På den europæiske e-Justice-portal finder du oplysninger om hvordan forordningen anvendes.

### Forstærket Samarbejde

Den 12. juli 2010 vedtog Rådet [afgørelse 2010/405/EU](#) om bemyndigelse til et forstærket samarbejde om lovvalgsreglerne i forbindelse med skilsmisse og separation mellem Belgien, Bulgarien, Tyskland, Spanien, Frankrig, Italien, Letland, Luxembourg, Ungarn, Malta, Østrig, Portugal, Rumænien og Slovenien. Som følge heraf vedtog de nævnte 14 deltagende medlemsstater Rådets [forordning \(EU\) nr. 1259/2010](#), som fandt anvendelse fra 21. juni 2012.

Den 21. november 2012 vedtog Kommissionen [afgørelse 2012/714/EU](#) om bekræftelse af Litauens deltagelse i et forstærket samarbejde om lovvalgsreglerne i forbindelse med skilsmisse og separation. Det fastsættes i denne afgørelse, at forordning (EU) nr. 1259/2010 skal finde anvendelse på Litauen fra 22. maj 2014.

Den 27. januar 2014 vedtog Kommissionen [afgørelse 2014/39/EU](#) om bekræftelse af Grækenlands deltagelse i et forstærket samarbejde om lovvalgsreglerne i forbindelse med skilsmisse og separation. Ifølge afgørelsen gælder forordning (EU) nr. 1259/2010 for Grækenland fra den 29. juli 2015.

Den 10. august 2016 vedtog Kommissionen [afgørelse \(EU\) nr. 2016/1366](#) om bekræftelse af Estlands deltagelse i et forstærket samarbejde om lovvalgsreglerne i forbindelse med skilsmisse og separation. Ifølge afgørelsen gælder forordning (EU) nr. 1259/2010 for Estland fra den 11. februar 2018

**Vælg det relevante lands flag for at få detaljerede nationale oplysninger.**

### Relevant link

[ARKIVERET websitet for Det Europæiske Civilretlige Atlas \(lukket den 30. september 2017\)](#)

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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 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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