

Αρχική σελίδα>Προσφυγή στη δικαιοσύνη>Ευρωπαϊκός δικαστικός άτλας στον τομέα των αστικών υποθέσεων>Διαζύγιο και δικαστικός χωρισμός

Διαζύγιο και δικαστικός χωρισμός

Εθνικές πληροφορίες σχετικά με τον κανονισμό αριθ. 1259/2010

Γενικές πληροφορίες

Η Ευρωπαϊκή Ένωση έθεσε ως στόχο να αναπτύξει έναν χώρο ελευθερίας, ασφάλειας και δικαιοσύνης, θεσπίζοντας μέτρα στον τομέα της δικαστικής συνεργασίας σε αστικές υποθέσεις με διασυνοριακές επιπτώσεις. Ταυτόχρονα, η αύξηση της κινητικότητας των πολιτών στο πλαίσιο της εσωτερικής αγοράς προϋποθέτει, αφενός, περισσότερη ευελιξία και, αφετέρου, μεγαλύτερη ασφάλεια δικαίου.

Ο **κανονισμός (ΕΕ) αριθ. 1259/2010 του Συμβουλίου**, της 20ής Δεκεμβρίου 2010, για τη θέσπιση ενισχυμένης συνεργασίας στον τομέα του δικαίου που είναι εφαρμοστέο στο διαζύγιο και τον δικαστικό χωρισμό (ο λεγόμενος κανονισμός Ρώμη III) διασφαλίζει στους πολίτες ενδεδειγμένες λύσεις από άποψη ασφάλειας δικαίου, προβλεψιμότητας και ευελιξίας, προστατεύει τους ασθενέστερους εταίρους κατά τις διαφορές λόγω διαζυγίων και αποτρέπει την καταχρηστική αναζήτηση της «πλέον ευνοϊκής έννομης τάξης». Επίσης συμβάλλει στην αποφυγή πολύπλοκης, χρονοβόρας και επώδυνης διαδικασίας. Ειδικότερα, ο κανονισμός (ΕΕ) αριθ. 1259/2010 επιτρέπει στα διεθνή ζευγάρια να συμφωνήσουν εκ των προτέρων το δίκαιο που θα εφαρμοσθεί στη δική τους διαδικασία διαζυγίου ή δικαστικού χωρισμού εφόσον το δίκαιο που επιλέγεται είναι το δίκαιο του κράτους μέλους με το οποίο διατηρούν στενότερο δεσμό. Σε περίπτωση που το ζευγάρι δεν μπορεί να συμφωνήσει, οι δικαστές δύνανται να χρησιμοποιήσουν κοινή μέθοδο για να αποφασίσουν σχετικά με το εφαρμοστέο εθνικό δίκαιο.

Ο εν λόγω κανονισμός, εξάλλου, δεν εφαρμόζεται στα ακόλουθα ζητήματα: την ικανότητα δικαίου φυσικών προσώπων, την ύπαρξη, το κύρος ή την αναγνώριση ενός γάμου, την ακύρωση ενός γάμου, το όνομα των συζύγων, τα περιουσιακά αποτελέσματα του γάμου, τη γονική μέριμνα, τις υποχρεώσεις διατροφής και καταπιστεύματα ή κληρονομική διαδοχή. Επίσης δεν επηρεάζει την εφαρμογή του κανονισμού (ΕΚ) αριθ. 2201/2003 για τη διεθνή δικαιοδοσία και την αναγνώριση και εκτέλεση αποφάσεων σε γαμικές διαφορές και διαφορές γονικής μέριμνας.

Ο υπόψη κανονισμός αποτελεί μέσο για τη θέσπιση ενισχυμένης συνεργασίας μεταξύ των συμμετεχόντων κρατών μελών. Η ενισχυμένη συνεργασία επιτρέπει σε ομάδα αποτελούμενη από εννέα τουλάχιστον κράτη μέλη να εφαρμόσουν μέτρα σε κάποιον από τους τομείς που υπάγονται στις Συνθήκες στο πλαίσιο των μη αποκλειστικών αρμοδιοτήτων της Ένωσης. Σύμφωνα με το άρθρο 331 της ΣΛΕΕ, τα μη συμμετέχοντα κράτη μέλη διατηρούν το δικαίωμα να συμμετάσχουν στην καθιερωμένη υπό εξέλιξη ενισχυμένη συνεργασία.

Στην ευρωπαϊκή πύλη e-Justice θα βρείτε πληροφορίες για την εφαρμογή του κανονισμού.

Ενισχυμένη Συνεργασία

Το Συμβούλιο εξέδωσε, στις 12 Ιουλίου 2010, την **απόφαση 2010/405/ΕΕ** για την έγκριση ενισχυμένης συνεργασίας στον τομέα του δικαίου που είναι εφαρμοστέο στο διαζύγιο και τον δικαστικό χωρισμό μεταξύ Βελγίου, Βουλγαρίας, Γερμανίας, Ισπανίας, Γαλλίας, Ιταλίας, Λετονίας, Λουξεμβούργου, Ουγγαρίας, Μάλτας, Αυστρίας, Πορτογαλίας, Ρουμανίας και Σλοβενίας.

Κατά συνέπεια, τα ανωτέρω 14 συμμετέχοντα κράτη μέλη θέσπισαν τον **κανονισμό (ΕΕ) αριθ. 1259/2010** του Συμβουλίου, ο οποίος ετέθη σε εφαρμογή στις 21 Ιουνίου 2012.

Στις 21 Νοεμβρίου 2012, η Επιτροπή εξέδωσε την **απόφαση 2012/714/ΕΕ**, που επιβεβαιώνει τη συμμετοχή της Λιθουανίας σε ενισχυμένη συνεργασία στον τομέα του δικαίου που είναι εφαρμοστέο στο διαζύγιο και τον δικαστικό χωρισμό. Η απόφαση αυτή προβλέπει ότι ο κανονισμός (ΕΕ) αριθ. 1259/2010 αρχίζει να εφαρμόζεται στη Λιθουανία από τις 22 Μαΐου 2014.

Στις 27 Ιανουαρίου 2014, η Ευρωπαϊκή Επιτροπή εξέδωσε την **απόφαση 2014/39/ΕΕ** που επιβεβαιώνει τη συμμετοχή της Ελλάδας σε ενισχυμένη συνεργασία στον τομέα του δικαίου που είναι εφαρμοστέο στο διαζύγιο και τον δικαστικό χωρισμό. Η εν λόγω οδηγία προβλέπει ότι ο κανονισμός (ΕΕ) αριθ. 1259/2010 θα εφαρμόζεται στην Ελλάδα από τις 29 Ιουλίου 2015.

Στις 10 Αυγούστου 2016 η Επιτροπή εξέδωσε την **απόφαση (ΕΕ) 2016/1366** που επιβεβαιώνει τη συμμετοχή της Εσθονίας σε ενισχυμένη συνεργασία στον τομέα του δικαίου που είναι εφαρμοστέο για το διαζύγιο και τον δικαστικό χωρισμό. Η απόφαση προβλέπει ότι ο κανονισμός (ΕΕ) αριθ. 1259/2010 τίθεται σε ισχύ στην Εσθονία στις 11 Φεβρουαρίου 2018.

Επιλέξτε τη σημαία της χώρας που σας ενδιαφέρει για περισσότερες πληροφορίες.

Σύνδεσμος

ΑΡΧΕΙΟΘΕΤΗΜΕΝΟΣ ιστότοπος του Ευρωπαϊκού Δικαστικού ΑΤΛΑΝΤΑ (έκλεισε στις 30 Σεπτεμβρίου 2017)

Τελευταία επικαιροποίηση: 09/10/2020

Για τη διαχείριση αυτής της ιστοσελίδας υπεύθυνη είναι η Ευρωπαϊκή Επιτροπή. Οι πληροφορίες που περιλαμβάνονται στην παρούσα σελίδα δεν απηχούν κατ' ανάγκη την επίσημη θέση της Ευρωπαϊκής Επιτροπής. Η Επιτροπή δεν αναλαμβάνει καμία απολύτως ευθύνη όσον αφορά πληροφορίες ή δεδομένα που περιέχονται ή αναφέρονται στο παρόν έγγραφο. Παρακαλείσθε να συμβουλευθείτε την ανακοίνωση νομικού περιεχομένου σχετικά με το καθεστώς πνευματικής ιδιοκτησίας που διέπει τις σελίδες των ευρωπαϊκών θεσμικών οργάνων.

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 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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