

**Información general**

La Unión Europea se ha fijado el objetivo de crear un espacio de libertad, seguridad y justicia, mediante la adopción de medidas en el ámbito de la cooperación judicial en materia civil con implicaciones transfronterizas. Al mismo tiempo, el aumento de la movilidad de los ciudadanos en el mercado interior exige más flexibilidad y una mayor seguridad jurídica.

El [Reglamento \(UE\) n.º 1259/2010](#) del Consejo, de 20 de diciembre de 2010, por el que se establece una cooperación reforzada en el ámbito de la ley aplicable al divorcio y a la separación judicial (denominado Reglamento «Roma III») ofrece a los ciudadanos soluciones apropiadas en términos de seguridad jurídica, previsibilidad y flexibilidad, protege a la parte más débil durante los litigios de divorcio e impide la búsqueda del foro de conveniencia («forum shopping»). Ello también ayuda a evitar los procedimientos complejos, largos y dolorosos.

Más concretamente, el Reglamento (UE) n.º 1259/2010 permite a las parejas internacionales acordar de antemano la ley aplicable a su divorcio o separación judicial, siempre que se trate de la ley del Estado miembro con el que tienen un vínculo más estrecho. En el caso de que la pareja no llegue a un acuerdo, los jueces disponen de una solución común para decidir la ley nacional aplicable.

Este Reglamento no se aplicará, por otra parte, a las siguientes materias: la capacidad jurídica de las personas físicas; la existencia, validez o reconocimiento de un matrimonio; la nulidad matrimonial; el nombre y apellidos de los cónyuges; las consecuencias del matrimonio a efectos patrimoniales; la responsabilidad parental; la obligación de alimentos y los fideicomisos y sucesiones. Tampoco afectará a la aplicación del Reglamento (CE) n.º 2201/2003 relativo a la competencia, el reconocimiento y la ejecución de resoluciones judiciales en materia matrimonial y de responsabilidad parental.

Se trata de un instrumento de aplicación de la cooperación reforzada entre los Estados miembros participantes. La cooperación reforzada permite a un grupo de al menos nueve Estados miembros aplicar medidas en uno de los ámbitos contemplados en los tratados en el marco de las competencias no exclusivas de la Unión. Según el artículo 331 del TFUE, los Estados miembros no participantes conservan el derecho de sumarse a una cooperación reforzada en curso.

El Portal Europeo de e-Justicia ofrece información sobre la aplicación del Reglamento.

**Cooperación Reforzada**

El 12 de julio de 2010, el Consejo adoptó la [Decisión 2010/405/UE](#), por la que se autoriza una cooperación reforzada en el ámbito de la ley aplicable al divorcio y a la separación legal entre Bélgica, Bulgaria, Alemania, España, Francia, Italia, Letonia, Luxemburgo, Hungría, Malta, Austria, Portugal, Rumanía y Eslovenia. Como consecuencia, los citados 14 Estados miembros participantes adoptaron el [Reglamento \(UE\) n.º 1259/2010](#), que entró en vigor el 21 de junio de 2012.

El 21 de noviembre de 2012, la Comisión adoptó la [decisión de 2012/714/UE](#) por la que se confirma la participación de Lituania en la cooperación reforzada en el ámbito de la ley aplicable al divorcio y a la separación judicial. Dicha Decisión prevé que el Reglamento (UE) n.º 1259/2010 se aplicará a Lituania a partir del 22 de mayo de 2014.

El 27 de enero de 2014, la Comisión adoptó la [Decisión 2014/39/UE](#) por la que se confirma la participación de Grecia en la cooperación reforzada en el ámbito de la ley aplicable al divorcio y a la separación judicial. Dicha Decisión prevé que el Reglamento (UE) n.º 1259/2010 se aplicará a Grecia a partir del 29 de julio de 2015.

El 10 de agosto de 2016, la Comisión adoptó la [Decisión \(UE\) 2016/1366](#), por la que se confirma la participación de Estonia en la cooperación reforzada en el ámbito de la ley aplicable al divorcio y a la separación judicial. Dicha Decisión prevé que el Reglamento (UE) n.º 1259/2010 se aplicará a Estonia a partir del 11 de febrero de 2018.

**Para obtener información detallada sobre un país, seleccione la bandera nacional correspondiente.**

**Enlace relacionado**

[Web ARCHIVADA del ATLAS Judicial Europeo \(cerrada el 30 de septiembre de 2017\)](#)

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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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