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Abielu lahutamine ja kooselu lõpetamine

Riigi teave seoses määrusega (EL) nr 1259/2010

Üldine teave

Euroopa Liit on seadnud endale eesmärgi luua vabadusel, turvalisusel ja õigusel rajanev ala, võttes vastu meetmed, mis on seotud õiguslase koostööga tsiviilasjades, millel on piiriline mõju. Samas nõuab kodanike liikuvuse suurendamine siseturul suuremat paindlikkust ja õiguskindlust.

Nõukogu 20. detsembri 2010. aasta määrusega (EL) nr 1259/2010 tõhustatud koostöö rakendamise kohta abielulahutuse ja lahuse suhtes kohaldatava õiguse valdkonnas (nn Rooma III määrus) tagatakse kodanikele õiguskindluse, etteaimatavuse ja paindlikkuse põhimõttest lähtudes asjakohased lahendused, kaitstakse lahutusmenetluses nõrgemat osapoolt ja hoitakse ära meelepärase kohtualluvuse valimine. Samuti aidatakse vältida keerukaid, pikalevenivaid ja emotsionaalselt koormavaid menetlusi.

Täpsemalt lubatakse määrusega (EL) nr 1259/2010 rahvusvahelistel paaridel eelnevalt kokku leppida, millist õigust nad soovivad oma lahutuse või lahuse suhtes kohaldada, eeldusel et kõnealune õigus on selle liikmesriigi õigus, millega neil on tihedam seos. Kui abielupaar ei jõua kohaldatava õiguse valikul kokkuleppele, saab kohtunik ühise korra alusel otsustada, millise riigi õigust oleks kõige asjakohasem kohaldada.

Kõnealust määrust ei kohaldata järgmiste küsimuste suhtes: füüsiliste isikute õigus- ja teovõime; abielu olemasolu, kehtivus ja tunnustamine; abielu kehtetuks tunnistamine; abikaasade nimi; abielu omandiõiguslikud tagajärjed; vanemlik vastutus; ülalpidamiskohustus ning usaldusomand ja pärimine.

Samuti ei mõjuta see Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility kohaldamist.

Tegemist on vahendiga, mis võimaldab teha osalevatel liikmeriikidel tihedamat koostööd. Tänu tihedamale koostööle saab vähemalt üheksast liikmesriigist koosnev rühm rakendada meetmeid mõnes aluslepingutega hõlmatud valdkonnas, kus liidul ei ole ainupädevust. ELi toimimise lepingu artikli 331 kohaselt on nendel liikmesriikidel, kes veel ei osale, õigus tõhustatud koostööga ühineda.

Euroopa e-õiguskeskonna portaalist leiate teavet määruse kohaldamise kohta.

Tõhustatud Koostöö

12. juulil 2010 võttis nõukogu vastu [otsuse 2010/405/EL](#) tõhustatud koostöö lubamise kohta abielulahutuse ja lahuse suhtes kohaldatava õiguse valdkonnas Belgia, Bulgaaria, Saksamaa, Hispaania, Prantsusmaa, Itaalia, Läti, Luksemburgi, Ungari, Malta, Austria, Portugali, Rumeenia ja Sloveenia vahel. Nimetatud 14 liikmesriiki võtsid selle tulemusel vastu [nõukogu määruse \(EL\) nr 1259/2010](#), mida kohaldatakse alates 21. juunist 2012.

21. novembril 2012 võttis komisjon vastu [otsuse 2012/714/EL](#), millega kinnitatakse Leedu osalemine tõhustatud koostöös abielulahutuse ja lahuse suhtes kohaldatava õiguse valdkonnas. Kõnealuse otsusega nähakse ette, et määrust (EL) nr 1259/2010 kohaldatakse Leedu suhtes alates 22. maist 2014.

27. jaanuaril 2014 võttis komisjon vastu [otsuse 2014/39/EL](#), millega kinnitatakse Kreeka osalemine tõhustatud koostöös abielulahutuse ja lahuse suhtes kohaldatava õiguse valdkonnas. Kõnealuse otsusega nähakse ette, et määrust (EL) nr 1259/2010 kohaldatakse Kreeka suhtes alates 29. juulist 2015.

10. augustil 2016 võttis komisjon vastu [otsuse \(EL\) nr 2016/1366](#), millega kinnitatakse Eesti osalemine tõhustatud koostöös abielulahutuse ja lahuse suhtes kohaldatava õiguse valdkonnas. Selle otsusega nähakse ette, et määrust (EL) nr 1259/2010 kohaldatakse Eesti suhtes alates 11. veebruarist 2018.

Riigi kohta üksikasjaliku teabe saamiseks klõpsake paremas servas selle lipukesel.

Seonduv link

[Euroopa justiitsatlase ARHIVEERITUD veebisait \(suleti 30. septembril 2017\)](#)

Viimati uuendatud: 09/10/2020

Käesolevat lehekülge haldab Euroopa Komisjon. Sellel veebisaidil avaldatud teave ei kajasta tingimata Euroopa Komisjoni ametlikku seisukohta. Komisjon ei võta mingit vastutust ega kohustusi seoses käesolevas dokumendis esitatud või viidatud teabe ega andmetega. Palun lugege õigusteabe viida alt ELi veebilehtede autoriõiguste eeskirjade kohta.

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 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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