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Echtscheiding en scheiding van tafel en bed

Nationale informatie over Verordening (EU) 1259/2010

Algemene informatie

De Europese Unie stelt zich ten doel een ruimte van vrijheid, veiligheid en recht te ontwikkelen door maatregelen te nemen op het gebied van de justitiële samenwerking in burgerlijke zaken met grensoverschrijdende gevolgen. Tegelijk vereist een grotere mobiliteit van de burgers in de interne markt meer flexibiliteit en grotere rechtszekerheid.

Verordening (EU) nr. 1259/2010 van de Raad van 20 december 2010 tot nauwere samenwerking op het gebied van het toepasselijke recht inzake echtscheiding en scheiding van tafel en bed (de Rome III-verordening) reikt de burgers oplossingen aan die rechtszekerheid, voorspelbaarheid en flexibiliteit waarborgen, beschermt de zwakkere partij in echtscheidingsgeschillen en voorkomt "forum shopping". Dit helpt ook complexe, langdurige en pijnlijke procedures voorkomen.

Meer in het bijzonder kunnen internationale paren op grond van Verordening (EU) nr. 1259/2010 op voorhand overeenkomen welk recht van toepassing zal zijn op hun echtscheiding of scheiding van tafel en bed op voorwaarde dat het overeengekomen recht het recht is van de lidstaat waarmee zij nauwer verbonden zijn. Wanneer een paar het niet eens kan worden, kunnen de rechters een gemeenschappelijke formule gebruiken om te bepalen welk recht van toepassing is.

De verordening is echter niet van toepassing op: de handelingsbekwaamheid van natuurlijke personen; het bestaan, de geldigheid en de erkenning van een huwelijk; de nietigverklaring van een huwelijk; de naam van de echtgenoten; de vermogensrechtelijke gevolgen van het huwelijk; ouderlijke verantwoordelijkheid; onderhoudsverplichtingen, en trusts en erfopvolgingen. Deze verordening laat ook de toepassing onverlet van Verordening (EG) nr. 2201/2003 betreffende de bevoegdheid en de erkenning en tenuitvoerlegging van beslissingen in huwelijkszaken en inzake de ouderlijke verantwoordelijkheid.

Zij is een instrument tot nauwere samenwerking tussen de deelnemende lidstaten. De nauwere samenwerking biedt een groep van ten minste negen lidstaten de mogelijkheid om maatregelen te nemen op een van de onder de Verdragen vallende gebieden in het kader van de niet-exclusieve bevoegdheden van de Unie. Op grond van artikel 331 VWEU behouden de niet-deelnemende lidstaten het recht om aan een bestaande nauwere samenwerking deel te nemen.

Op het Europees e-justitieportaal vindt u informatie over de toepassing van de verordening.

Nauwere Samenwerking

Op 12 juli 2010 keurde de Raad [Besluit 2010/405/EU](#) goed houdende machtiging om nauwere samenwerking aan te gaan op het gebied van het toepasselijke recht inzake echtscheiding en scheiding van tafel en bed tussen België, Bulgarije, Duitsland, Spanje, Frankrijk, Italië, Letland, Luxemburg, Hongarije, Malta, Oostenrijk, Portugal, Roemenië en Slovenië. Als gevolg daarvan namen de vermelde 14 deelnemende lidstaten

Verordening (EU) nr. 1259/2010 van de Raad aan, die van toepassing werd op 21 juni 2012.

Op 21 november 2012 nam de Commissie [Besluit 2012/714/EU](#) aan houdende bevestiging van de deelneming van Litouwen aan de nauwere samenwerking op het gebied van het toepasselijke recht inzake echtscheiding en scheiding van tafel en bed. Dat besluit bepaalt dat Verordening (EU) nr. 1259/2010 met ingang van 22 mei 2014 van toepassing is op Litouwen.

Op 27 januari 2014 nam de Commissie [Besluit 2014/39/EU](#) aan houdende bevestiging van de deelneming van Griekenland aan de nauwere samenwerking op het gebied van het toepasselijke recht inzake echtscheiding en scheiding van tafel en bed. Dat besluit bepaalt dat Verordening (EU) nr. 1259/2010 met ingang van 29 juli 2015 van toepassing is op Griekenland.

Op 10 augustus 2016 nam de Commissie [Besluit \(EU\) 2016/1366](#) aan houdende bevestiging van de deelneming van Estland aan de nauwere samenwerking op het gebied van het toepasselijke recht inzake echtscheiding en scheiding van tafel en bed. Dat besluit bepaalt dat Verordening (EU) nr. 1259/2010 met ingang van 11 februari 2018 van toepassing is op Estland.

Klik op een van de vlaggen voor landspecifieke informatie.

Link

GEARCHIVEERDE website Europese justitiële atlas (afgesloten op 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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