

Strona główna>Wszczęcie postępowania sądowego>Europejski atlas sądowy w sprawach cywilnych>**Rozwód i separacja sądowa**

Rozwód i separacja sądowa

Informacje krajowe dotyczące rozporządzenia nr 1259/2010

Informacje ogólne

Unia Europejska postawiła sobie za cel stworzenie obszaru wolności, bezpieczeństwa i sprawiedliwości poprzez przyjęcie środków dotyczących współpracy sądowej w sprawach cywilnych, w których występuje element transgraniczny. Równocześnie zwiększanie mobilności obywateli na rynku wewnętrznym wymaga większej elastyczności i pewności prawnej.

Rozporządzenie [Rady \(UE\) nr 1259/2010](#) z 20 grudnia 2010 r. wprowadzające w życie wzmocnioną współpracę w dziedzinie prawa właściwego dla rozvodu i separacji prawnej (zwane rozporządzeniem Rzym III) zapewnia obywatelom właściwe rezultaty w sensie pewności prawnej, przewidywalności i elastyczności, chroni słabszych partnerów podczas sporów rozwodowych oraz zapobiega zjawisku wyboru jurysdykcji ze względu na możliwość uzyskania korzystniejszego rozstrzygnięcia. Pomaga ono również uniknąć skomplikowanych, długotrwałych i bolesnych postępowań.

Bardziej konkretnie rozporządzenie (UE) nr 1259/2010 umożliwia międzynarodowym parom uzgadnianie z góry, jakiemu prawu zostanie poddany ich rozwód lub separacja prawna, o ile uzgodnione prawo jest prawem państwa członkowskiego, z którym mają bliższy związek. Na wypadek gdyby małżonkowie nie zdołali się w tej sprawie porozumieć, sędziowie mogą ustalić prawo właściwe na podstawie jednolitej formuły.

Z drugiej strony rozporządzenie nie ma zastosowania do następujących kwestii: zdolność do czynności prawnych osób fizycznych; istnienie, ważność lub uznanie związku małżeńskiego; stwierdzenie nieważności małżeństwa; nazwisko małżonków; wpływ małżeństwa na kwestie majątkowe; odpowiedzialność rodzicielska; zobowiązania alimentacyjne oraz czynności powiernicze i dziedziczenie. Nie wpływa ono również na zastosowanie rozporządzenia Rady (WE) nr 2201/2003 dotyczącego jurysdykcji oraz uznawania i wykonywania orzeczeń w sprawach małżeńskich oraz w sprawach dotyczących odpowiedzialności rodzicielskiej.

Jest to instrument wprowadzający w życie wzmocnioną współpracę między uczestniczącymi państwami członkowskimi. Wzmocniona współpraca umożliwia grupie co najmniej dziewięciu państw członkowskich wprowadzanie w życie środków w jednym z obszarów objętych zakresem zastosowania Traktatów w ramach niewyłącznych kompetencji Unii. Zgodnie z art. 331 TFUE nieuczestniczące państwa członkowskie zachowują prawo do dotychczas realizowanej wzmocnionej współpracy.

W europejskim portalu „e-Sprawiedliwość” można znaleźć informacje dotyczące stosowania rozporządzenia.

Wzmocniona Współpraca

W dniu 12 lipca 2010 r. Rada przyjęła [decyzję 2010/405/UE](#) w sprawie upoważnienia do podjęcia wzmocnionej współpracy w dziedzinie prawa właściwego dla rozwodów i separacji między Belgią, Bułgarią, Niemcami, Hiszpanią, Francją, Włochami, Łotwą, Luksemburgiem, Węgrami, Maltą, Austrią, Portugalią, Rumunią i Słowenią. W rezultacie wymienione 14 uczestniczących państw członkowskich przyjęło rozporządzenie [Rady \(UE\) nr 1259/2010](#), które zaczęło obowiązywać w dniu 21 czerwca 2012 r.

W dniu 21 listopada 2012 r. Komisja przyjęła [decyzję 2012/714/UE](#) potwierdzającą udział Litwy we wzmocnionej współpracy w dziedzinie prawa właściwego dla rozwodów i separacji. Decyzja ta przewiduje, że rozporządzenie (UE) nr 1259/2010 zacznie obowiązywać wobec Litwy od dnia 22 maja 2014 r.

W dniu 27 stycznia 2014 r. Komisja przyjęła [decyzję nr 2014/39/UE](#) potwierdzającą udział Grecji we wzmocnionej współpracy w dziedzinie prawa właściwego dla rozwodów i separacji. Zgodnie z tą decyzją od 29 lipca 2015 r. rozporządzenie (UE) nr 1259/2010 jest stosowane w odniesieniu do Grecji.

W dniu 10 sierpnia 2016 r. Komisja przyjęła [decyzję \(UE\) nr 2016/1366](#) potwierdzającą udział Estonii we wzmocnionej współpracy w dziedzinie prawa właściwego dla rozwodów i separacji. Decyzja ta przewiduje, że rozporządzenie (UE) nr 1259/2010 ma zastosowanie do Estonii od dnia 11 lutego 2018 r.

Aby uzyskać szczegółowe informacje krajowe, należy kliknąć na flagę kraju.

Przydatna strona

[ARCHIWALNA strona europejskiego atlasu sądowego \(zamknięta 30 września 2017 r.\)](#)

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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 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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