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## **Divórcio e separação judicial**

Informações nacionais relativas ao Regulamento n.º 1259/2010

### **Informações gerais**

A União Europeia fixou como objetivo a criação de um espaço de liberdade, segurança e justiça, através da adoção de medidas no domínio da cooperação judiciária em matéria civil com incidência transfronteiriça. Ao mesmo tempo, o aumento da mobilidade dos cidadãos no mercado interno exige mais flexibilidade e maior segurança jurídica.

O [Regulamento \(UE\) n.º 1259/2010](#) do Conselho, de 20 de dezembro de 2010, que cria uma cooperação reforçada no domínio da lei aplicável em matéria de divórcio e separação judicial (chamado Regulamento Roma III), prevê soluções adequadas para os cidadãos em termos de segurança jurídica, previsibilidade e flexibilidade, protege os cônjuges mais vulneráveis durante os processos de divórcio e impede a seleção abusiva do foro (forum shopping). Deste modo, o Regulamento contribuirá também para evitar processos complicados, lentos e dolorosos.

Mais especificamente, o Regulamento (UE) n.º 1259/2010 permite que os casais internacionais escolham antecipadamente qual a lei aplicável ao seu divórcio ou separação judicial, desde que esta seja a lei do Estado-Membro com o qual têm uma conexão mais estreita. Na ausência de acordo entre os cônjuges, os juízes podem recorrer a uma fórmula comum para decidir qual a lei nacional aplicável.

Este Regulamento não abrange, em contrapartida, as seguintes matérias: capacidade jurídica das pessoas singulares; existência, validade ou reconhecimento do casamento; anulação do casamento; nome dos cônjuges; efeitos patrimoniais do casamento; responsabilidade parental; obrigação de alimentos, fideicomissos e sucessões. Também não afeta a aplicação do Regulamento (CE) n.º 2201/2003 relativo à competência, ao reconhecimento e à execução de decisões em matéria matrimonial e em matéria de responsabilidade parental.

Trata-se de um instrumento que aplica uma cooperação reforçada entre os Estados-Membros participantes. A cooperação reforçada permite que um grupo de pelo menos nove Estados Membros tome medidas num dos domínios abrangidos pelos Tratados no âmbito das competências não exclusivas da União. De acordo com artigo 331.º do TFUE, os Estados Membros não participantes podem associar-se à cooperação reforçada em curso.

O Portal Europeu da Justiça disponibiliza informações sobre a aplicação do Regulamento.

### **Cooperação Reforçada**

A 12 de julho de 2010, o Conselho adotou a [Decisão 2010/405/UE](#), que autoriza uma cooperação reforçada no domínio da lei aplicável em matéria de divórcio e separação judicial entre a Bélgica, Bulgária, Alemanha, Espanha, França, Itália, Letónia, Luxemburgo, Hungria, Malta, Áustria, Portugal, Roménia e Eslovénia. Por conseguinte, os 14 Estados-Membros participantes mencionados adotaram o [Regulamento \(UE\) n.º 1259/2010](#), que entrou em vigor a 21 de junho de 2012.

A 21 de novembro de 2012, a Comissão adotou a [Decisão 2012/714/UE](#), que confirma a participação da Lituânia numa cooperação reforçada no domínio da lei aplicável em matéria de divórcio e separação judicial. Esta decisão prevê que o Regulamento (UE) n.º 1259/2010 é aplicável à Lituânia a partir de 22 de maio de 2014.

A 27 de janeiro de 2014, a Comissão adotou a [Decisão 2014/39/UE](#) que confirma a participação da Grécia na cooperação reforçada no domínio da lei aplicável em matéria de divórcio e separação judicial. Esta decisão prevê que o Regulamento (UE) n.º 1259/2010 é aplicável à Grécia a partir de 29 de julho de 2015.

Em 10 de agosto de 2016, a Comissão adotou a [Decisão \(UE\) 2016/1366](#) que confirma a participação da Estónia na cooperação reforçada no domínio da lei aplicável em matéria de divórcio e separação judicial e prevê que o Regulamento (UE) n.º 1259/2010 é aplicável a este país a partir de 11 de fevereiro de 2018.

**Para obter informações pormenorizadas sobre o direito nacional de um país, clique na respetiva bandeira.**

### **Ligação relacionada**

[Sítio ARQUIVADO do ATLAS Judiciário Europeu \(encerrado em 30 de setembro de 2017\)](#)

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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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