

Domovská stránka>Podanie na súd>Európsky justičný atlas v občianskoprávných veciach>Rozvod a súdna rozluka

## Rozvod a súdna rozluka

Vnútroštátne informácie týkajúce sa nariadenia č. 1259/2010

### Všeobecné informácie

Európska únia si za cieľ určila rozvíjať priestor slobody, bezpečnosti a spravodlivosti prostredníctvom prijatia opatrení týkajúcich sa justičnej spolupráce v občianskych veciach, ktoré majú cezhraničné dôsledky. Zároveň si intenzívnejší pohyb občanov v rámci vnútorného trhu vyžaduje viac flexibility a väčšiu právnu istotu.

**Nariadenie Rady (EÚ) č. 1259/2010** z 20. decembra 2010, ktorým sa vykonáva posilnená spolupráca v oblasti rozhodného práva pre rozvod a rozluku (nazvané nariadenie Rím III) zabezpečuje vhodné riešenia pre občanov z hľadiska právnej istoty, predvídateľnosti a flexibility, chráni slabšieho z partnerov počas rozvodových sporov a predchádza vyhľadávaniu čo najvýhodnejšieho právneho postavenia (tzv. „forum shopping“). Pomáha tiež predchádzať komplikovaným, zdĺhavým a bolestným konaniam.

Konkrétnejšie, nariadenie (EÚ) č. 1259/2010 umožňuje medzinárodným manželským párom dohodnúť sa v predstihu na tom, ktorý právny poriadok sa pri ich rozvode alebo rozluke bude uplatňovať, za predpokladu, že právny poriadok, na ktorom sa dohodnú, je právnym poriadkom členského štátu, s ktorým má daný manželský pár užšiu väzbu. Ak sa páry nevedia dohodnúť, sudcovia môžu použiť jednotnú úpravu na prijatie rozhodnutia o právnom poriadku určitej krajiny, ktorý sa potom bude uplatňovať.

Na druhej strane sa však toto nariadenie neuplatňuje, pokiaľ ide o nasledujúce záležitosti: právna spôsobilosť fyzických osôb, existencia, platnosť alebo uznanie manželstva, vyhlásenie manželstva za neplatné, priezvisko manželov, majetkovoprávne dôsledky manželstva, rodičovské práva a povinnosti, vyživovacia povinnosť, správa majetku a dedičstvo. Toto nariadenie taktiež neovplyvňuje uplatňovanie nariadenia (ES) č. 2201/2003 o súdnej právomoci a uznávaní a výkone rozsudkov v manželských veciach a vo veciach rodičovských práv a povinností.

Je to nástroj, ktorým sa vykonáva posilnená spolupráca medzi zúčastnenými členskými štátmi. Posilnená spolupráca umožňuje skupine pozostávajúcej z aspoň deviatich členských štátov vykonávať opatrenia v jednej z oblastí, na ktoré sa vzťahujú zmluvy v rámci iných ako výlučných právomocí Únie. Podľa článku 331 ZFEÚ majú nezúčastnené členské štáty naďalej právo pridať sa k prebiehajúcej posilnenej spolupráci.

Na Európskom portáli elektronickej justície nájdete informácie týkajúce sa uplatňovania tohto nariadenia.

### Posilnená Spolupráca

Rada prijala 12. júla 2010 **rozhodnutie 2010/405/EÚ**, ktorým sa povoľuje posilnená spolupráca v oblasti rozhodného práva pre rozvod a rozluku medzi Belgickom, Bulharskom, Nemeckom, Španielskom, Francúzskom, Talianskom, Lotyšskom, Luxemburskom, Maďarskom, Maltou, Rakúskom, Portugalskom, Rumunskom a Slovinskom. V dôsledku toho prijalo spomenutých 14 zúčastnených štátov **nariadenie Rady (EÚ) č. 1259/2010**, ktoré sa uplatňuje od 21. júna 2012.

Komisia prijala 21. novembra 2012 **rozhodnutie 2012/714/EÚ**, ktorým sa potvrdzuje účasť Litvy na posilnenej spolupráci v oblasti rozhodného práva pre rozvod a rozluku. Podľa tohto rozhodnutia sa má nariadenie (EÚ) č. 1259/2010 uplatňovať na Litvu od 22. mája 2014.

Komisia prijala 27. januára 2014 **rozhodnutie 2014/39/EÚ**, ktorým sa potvrdzuje účasť Grécka na posilnenej spolupráci v oblasti rozhodného práva pre rozvod a rozluku. Podľa tohto rozhodnutia sa má nariadenie (EÚ) č. 1259/2010 uplatňovať na Grécko od 29. júla 2015.

Komisia 10. augusta 2016 prijala **rozhodnutie (EÚ) 2016/1366**, ktorým sa potvrdzuje účasť Estónska na posilnenej spolupráci v oblasti rozhodného práva pre rozvod a rozluku. V tomto rozhodnutí sa stanovuje, že nariadenie (EÚ) č. 1259/2010 sa uplatňuje na Estónsko od 11. februára 2018.

**Podrobnejšie informácie na vnútroštátnej úrovni sa zobrazia, ak si zvolíte príslušnú štátnu vlajku.**

### Súvisiaci odkaz

**ARCHIVOVANÉ webové sídlo Európskeho justičného ATLASU (zatvorené 30. septembra 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(d)(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(d)(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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Upozorňujeme, že verzia tejto stránky v pôvodnom jazyku  bola nedávno zmenená. Na preklade zobrazenej jazykovej verzie v súčasnosti pracujeme.

#### **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 - 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.

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