

Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

## CHAPTER II

### UNIFORM RULES ON THE LAW APPLICABLE TO DIVORCE AND LEGAL SEPARATION

#### *Article 5*

##### **Choice of applicable law by the parties**

1 The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

- a the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- b the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or
- c the law of the State of nationality of either spouse at the time the agreement is concluded; or
- d the law of the *forum*.

2 Without prejudice to paragraph 3, an agreement designating the applicable law may be concluded and modified at any time, but at the latest at the time the court is seized.

3 If the law of the *forum* so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the *forum*.

#### *Article 6*

##### **Consent and material validity**

1 The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.

2 Nevertheless, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

#### *Article 7*

##### **Formal validity**

1 The agreement referred to in Article 5(1) and (2), shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

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**Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EU) No 1259/2010, CHAPTER II. (See end of Document for details)

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2 However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply.

3 If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

4 If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for this type of agreement, those requirements shall apply.

#### *Article 8*

##### **Applicable law in the absence of a choice by the parties**

In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:

- (a) where the spouses are habitually resident at the time the court is seized; or, failing that
- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that
- (c) of which both spouses are nationals at the time the court is seized; or, failing that
- (d) where the court is seized.

#### *Article 9*

##### **Conversion of legal separation into divorce**

1 Where legal separation is converted into divorce, the law applicable to divorce shall be the law applied to the legal separation, unless the parties have agreed otherwise in accordance with Article 5.

2 However, if the law applied to the legal separation does not provide for the conversion of legal separation into divorce, Article 8 shall apply, unless the parties have agreed otherwise in accordance with Article 5.

#### *Article 10*

##### **Application of the law of the forum**

Where the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the *forum* shall apply.

### *Article 11*

#### **Exclusion of renvoi**

Where this Regulation provides for the application of the law of a State, it refers to the rules of law in force in that State other than its rules of private international law.

### *Article 12*

#### **Public policy**

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

### *Article 13*

#### **Differences in national law**

Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.

### *Article 14*

#### **States with two or more legal systems — territorial conflicts of laws**

Where a State comprises several territorial units each of which has its own system of law or a set of rules concerning matters governed by this Regulation:

- (a) any reference to the law of such State shall be construed, for the purposes of determining the law applicable under this Regulation, as referring to the law in force in the relevant territorial unit;
- (b) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- (c) any reference to nationality shall refer to the territorial unit designated by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of choice, to the territorial unit with which the spouse or spouses has or have the closest connection.

### *Article 15*

#### **States with two or more legal systems — inter-personal conflicts of laws**

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons concerning matters governed by this Regulation, any reference to the law of such a State shall be construed as referring to the legal system

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determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouse or spouses has or have the closest connection applies.

#### *Article 16*

##### **Non-application of this Regulation to internal conflicts of laws**

A participating Member State in which different systems of law or sets of rules apply to matters governed by this Regulation shall not be required to apply this Regulation to conflicts of laws arising solely between such different systems of law or sets of rules.

**Changes to legislation:**

There are currently no known outstanding effects for the Council Regulation (EU) No 1259/2010, CHAPTER II.