Enhanced cooperation in the area of the law applicable to divorce and legal separation. Implementing rules. Council Regulation

2010/0067(CNS) - 20/12/2010 - Final act

PURPOSE: to implement enhanced cooperation in the area of the law applicable to divorce and legal separation.

LEGISLATIVE ACT: Council Regulation (EU) No 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

CONTENT: this Regulation constitutes the implementation of the first enhanced cooperation in the history of the EU. It provides for a **comprehensive legal framework in matrimonial matters ensuring legal certainty and predictability in the field of divorce and legal separation in 14 participating Member States**:Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia. Other EU Member States which are not yet ready but wish to join this pioneer group at a later stage will be able to do so.

This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

Scope: this Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation. It shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings: (a) the legal capacity of natural persons; (b) the existence, validity or recognition of a marriage; (c) the annulment of a marriage; (d) the name of the spouses; (e) the property consequences of the marriage; (f) parental responsibility; (g) maintenance obligations; (h) trusts or successions.

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

- the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- 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
- the law of the State of nationality of either spouse at the time the agreement is concluded; or
- the law of the forum.

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.

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.

Applicable law in the absence of a choice by the parties: in the absence of a choice, divorce and legal separation shall be subject to the law of the State:

- where the spouses are habitually resident at the time the court is seized; or, failing that
- 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
- of which both spouses are nationals at the time the court is seized; or, failing that
- where the court is seized.

Where the law applicable 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.

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.

Measures are also laid down in the case where a State has two or more legal systems — territorial conflicts of laws and inter-personal 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:

Review clause: by 31 December 2015, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation.

ENTRY INTO FORCE: 30/12/2010. The Regulation shall apply from 21/06/2012, with the exception of Article 17 (Information to be provided by participating Member States), which shall apply from 21/06 /2011.