

Belgian Euthanasia Act as at July 2018

Article 1

This law governs a matter provided in article 78 of the Constitution.

Chapter I: General provisions

Article 2

For the purposes of this Act, euthanasia is defined as intentionally terminating life by someone other than the person concerned, at the latter's request.

Chapter II: Conditions and procedure

Article 3

§1. A physician who practices euthanasia does not commit an offense if he/she has ensured that:

- the patient is an adult or emancipated minor, capable or still a minor with the capacity for discernment, and is conscious at the time of his/her request;
- the request is formulated voluntarily, thoughtfully and repeatedly, and does not result from external pressure;
- the patient, adult or emancipated minor, finds himself in a medically futile situation and reports a constant and unbearable physical or psychological suffering that cannot be alleviated and that results from a serious and incurable accidental or pathological affliction;
- the minor patient with capacity for discernment is in a medically futile situation with constant and unbearable physical suffering which cannot be alleviated and which causes death in the short term, and which results from a serious or incurable accidental or pathological affliction;
- the conditions and procedures prescribed by this Act have been met.

§2 Without prejudice to the additional conditions that the physician wishes to include in his/her intervention, he/she must, in advance and in all cases:

1. inform the patient of his/her state of health and life expectancy, to consult with the patient on his/her request for euthanasia and to discuss with him/her the therapeutic possibilities still conceivable as well as the possibilities offered by palliative care and their consequences. It must come to the patient's conviction that there is no other reasonable solution in his/her situation and that the patient's request is entirely voluntary;
2. be certain of the persistence of the physical or psychic suffering of the patient and his/her durable will. To this end, the physician conducts several interviews with the patient, spaced a reasonable amount of time apart with regard to the patient's state of health;
3. consult another physician about the serious and incurable nature of the condition, specifying the reasons for the consultation. The consulting physician takes note of the medical file, examines the patient and makes sure of the constant, unbearable and unappeasable nature of the physical or psychic suffering. He/she writes a report concerning his/her findings.

The consulting physician must be independent, both with regard to the patient and the attending physician and be competent in the pathology concerned. The attending physician informs the patient about the results of this consultation;

4. if there is a health care team in regular contact with the patient, discuss the patient's request with the team or members of the team;
5. if the patient so desires, discuss his/her request with relatives that the patient designates;
6. ensure that the patient has had the opportunity to discuss his/her request with the people he or she wishes to meet.
7. in addition, when the patient is an unemancipated minor, consult a child psychiatrist or psychologist, specifying the reasons for this consultation. The consulted specialist takes note of the medical file, examines the patient, ensures the capacity of discernment of the minor, and certifies it in writing. The attending physician informs the patient and his legal representatives of the result of this consultation.

The attending physician shall discuss with the legal representatives of the minor, providing them with all the information referred to in §2.1, and ensure that they agree on the minor patient's request.

§3 If the physician is of the opinion that the death of the adult or emancipated minor patient will clearly not occur in the short term, he/she must, in addition:

1. consult a second physician, psychiatrist or specialist of the pathology concerned, specifying the reasons for the consultation. The consulting physician takes note of the medical file, examines the patient, ensures the constant, unbearable and unappeasable nature of the physical or mental suffering and the voluntary, thoughtful and repeated nature of the request. He/she writes a report concerning his/her findings. This consulting physician must be independent with regard to the patient as well as to the attending physician and the first consulting physician. The attending physician informs the patient about the results of this consultation;
2. allow at least a month to pass between the patient's written request and euthanasia.

§4 The patient's request, as well as the agreement of the legal representatives if the patient is a minor, are recorded in writing. The document is written, dated and signed by the patient him/herself. If he/she is not in a position to do so, his/her application shall be recorded in writing by an adult of his/her choice who cannot have any material interest in the death of the patient.

This person mentions the fact that the patient is not able to formulate his/her request in writing and indicates the reasons. In this case, the application is recorded in writing in the presence of the physician, and said person mentions the name of the physician in the document. This document must be placed in the medical file.

The patient may revoke his/her request at any time, in which case the document is removed from the medical record and returned to the patient.

§4/1 After the patient's request has been enacted by the physician, the possibility of counseling is offered to those affected.

§5 All requests made by the patient, as well as the steps taken by the attending physician and their results, including the report(s) of the physician(s) consulted, are regularly recorded in the patient's medical record.

Article 3bis.

A pharmacist who delivers a euthanizing substance does not commit an offense when he does so on the basis of a prescription in which the physician explicitly mentions that it is in accordance with this Act.

The pharmacist provides the prescribed euthanizing substance in person to the physician. The King lays down the criteria of prudence and the conditions to which the prescription and the delivery of drugs which will be used as a euthanizing substance that must be adhered to.

The King takes the necessary measures to ensure the availability of euthanizing substances, including pharmacies that are accessible to the public.

Chapter III: The advance directive

Article 4

§1 For cases where one is no longer able to express one's will, every legally competent person of age, or emancipated minor, may draw up an advance directive instructing a physician to perform euthanasia if the physician ensures that:

- the patient suffers from a serious and incurable disorder, caused by illness or accident;
- the patient is no longer conscious;
- this condition is irreversible given the current state of medical science.

In the advance directive, one or more person(s) taken in confidence may be designated in order of preference, who inform(s) the attending physician about the patient's will. Each person taken in confidence replaces his or her predecessor as mentioned in the advance directive, in the case of refusal, hindrance, incompetence or death. The patient's attending physician, the consulting physician and the members of the nursing team may not act as persons taken in confidence.

The advance directive may be drafted at any moment. It must be composed in writing in the presence of two witnesses, at least one of whom has no material interest in the death of the patient and it must be dated and signed by the drafter, the witnesses and by the person(s) taken in confidence, if applicable.

If a person who wishes to draft an advance directive is permanently physically incapable of writing and signing an advance directive, he/she may designate a person who has attained the age of majority, and who has no material interest in the death of the person in question, to draft the request in writing, in the presence of two witnesses who have attained the age of majority and at least one of whom has no material interest in the patient's death. The advance directive indicates that the person in question is incapable of signing and why. The

advance directive must be dated and signed by the drafter, by the witnesses and by the person(s) taken in confidence, if applicable.

A medical certificate must be annexed to the advance directive proving that the person in question is permanently physically incapable of drafting and signing the advance directive.

An advance directive is only valid if it is drafted or confirmed no more than five years prior to the person's loss of the ability to express his/her wishes.

The advance directive may be amended or revoked at any time.

The King determines the manner in which the advance directive is drafted, registered and confirmed or revoked, and the manner in which it is communicated to the physicians involved via the offices of the National Register.

§2 The physician who performs euthanasia, in consequence of an advance directive as referred to in §1, commits no criminal offence when he/she ensures that:

- the patient suffers from a serious and incurable disorder, caused by illness or accident;
- the patient is unconscious;
- and this condition is irreversible given the current state of medical science;
- when he/she has adhered to the conditions and procedures as provided in this Act.

Without prejudice to any additional conditions imposed by the physician on his/her own action, before carrying out euthanasia he/she must:

- 1) consult another physician about the irreversibility of the patient's medical condition and inform him/her about the reasons for this consultation. The consulting physician consults the medical record and examines the patient. He/she reports on his/her findings.
When the advance directive names a person taken in confidence, the latter will be informed about the results of this consultation by the attending physician.
- 2) The consulting physician must be independent of the patient as well as of the attending physician and must be competent to give an opinion about the disorder in question;
- 3) if there is a health care team that has regular contact with the patient, discuss the content of the advance directive with that team or its members;
- 4) if a person taken in confidence is designated in the advance directive, discuss the request with that person;
- 5) if a person taken into confidence is designated in the advance directive, discuss the content of the advance directive with the relatives of the patient designated by the person taken in confidence.

The advance directive, as well as all actions by the attending physician and their results, including the report of the consulting physician, are regularly noted in the patient's medical record.

Chapter IV: Notification

Article 5

Any physician who has performed euthanasia is required to fill in a registration form, drawn up by the Federal Control and Evaluation Commission established by Article 6 of this Act, and

to deliver this document to the Commission within four working days.

Chapter V: The Federal Control and Evaluation Commission

Article 6

§1 There is hereby established a Federal Commission for the Control and Evaluation of the Application of this Law, hereinafter referred to as "the Commission".

§2 The Commission shall consist of sixteen members, appointed on the basis of their knowledge and experience in matters falling within the competence of the Commission. Eight members are medical physicians, at least four of whom are lecturers, professors or professors emeritus at a Belgian university. Four members are lecturers, professors or emeritus professors of law at a Belgian university, or lawyers. Four members come from the circles responsible for the problem of patients suffering from an incurable disease.

Membership in the Commission is incompatible with the membership of a legislature or membership of the federal government or a community or regional government.

The members of the Commission are appointed, in accordance with linguistic parity — each linguistic group having at least three candidates of each sex — and ensuring a pluralist representation, by royal decree deliberated in the Council of Ministers, from a double list of candidates presented by the House of Representatives, for a renewable term of four years. The term of office expires automatically when the member loses the capacity in which he/she sits. Candidates who have not been nominated as full members are appointed as alternate members, according to a list determining the order in which they will be called upon as replacement. The Commission is chaired by a French-speaking president and a Dutch-speaking president. Presidents are elected by the members of the Commission belonging to their respective linguistic group.

The Commission may deliberate validly only if two-thirds of its members are present.

§3 The Commission establishes its own internal regulations.

Article 7

The Commission establishes a registration document that must be completed by the physician each time he/she practices euthanasia.

This document is composed of two parts. The first part must be sealed by the physician. It contains the following data:

1. the surname, first names and home address of the patient;
2. surname, first names, registration number at the INAMI and home address of the attending physician;
3. surname, first names, registration number at INAMI and home address of physician(s) who have been consulted about the request for euthanasia;
4. the surname, first names, home address and qualification of all persons consulted by the attending physician, and the dates of these consultations;
5. if there was an advance declaration and it designated one or more people of trust, the name and surname of the person(s) of trust who intervened.

6. the surname, first names, registration number at the INAMI and the address of the pharmacist who delivered the euthanizing substance, the name of the products delivered and their quantity and, if applicable, the surplus that was returned to the pharmacist.

This first part is confidential. It is transmitted by the physician to the Commission. It may only be consulted after a decision of the Commission, and may under no circumstances serve as a basis for the Commission's evaluation mission.

The second part is also confidential and contains the following information:

1. the sex and date and place of birth of the patient and, in the case of the minor patient, whether he/she was emancipated;
2. the date, place and time of death;
3. mention of the serious or incurable injury or pathological condition suffered by the patient;
4. the nature of the suffering that was constant and unbearable;
5. the reasons why this suffering was described as unable to be alleviated;
6. the elements that made it possible to ensure that the request was formulated voluntarily, thoughtfully and repeatedly and without outside pressure;
7. if it could be estimated that the death would occur in the near future;
8. if there is an advance directive;
9. the procedure followed by the physician;
10. the qualification of the physician(s) consulted, the opinion and the dates of these consultations;
11. the qualification of the persons consulted by the physician, and the dates of these consultations;
12. the manner in which euthanasia was performed and the means used.

Article 8

The Commission studies the completed registration form submitted to it by the attending physician. On the basis of the second part of the registration form, the Commission determines whether the euthanasia was performed in accordance with the conditions and the procedure stipulated in this Act. In cases of doubt, the Commission may decide by simple majority to revoke anonymity and examine the first part of the registration form. The Commission then becomes aware of the first part of the registration document. The Commission may request the attending physician to provide any information from the medical record relating to the euthanasia.

The Commission hands down a verdict within two months.

When, by a two-thirds majority decision, the committee considers that the conditions laid down in this law have not been complied with, it sends the file to the public prosecutor in the jurisdiction where the patient died.

If, after anonymity has been revoked, facts or circumstances come to light which would compromise the independence or impartiality of one of the Commission members, this member will have an opportunity to explain or to be challenged during the discussion of this matter in the Commission.

Article 9

For the benefit of the legislative chambers, the Commission will draft the following reports, the first time within two years of this Act's coming into force and every two years thereafter:

- a) a statistical report processing the information from the second part of the completed registration forms submitted by physicians pursuant to Article 8;
- b) a report in which the implementation of the law is indicated and evaluated;
- c) if required, recommendations that could lead to new legislation or other measures concerning the execution of this Act.

For the purpose of carrying out this task, the Commission may seek additional information from various public services and institutions. The information thus gathered is confidential. None of these reports may reveal the identities of any persons named in the documents submitted to the Commission for the purposes of the review as determined in Article 8.

The Commission may decide to supply statistical and purely technical data, purged of any personal information, to university research teams that submit a reasoned request for such data.

The Commission may grant hearings to experts.

Article 10

The King places an administration at the Commission's disposal for the fulfillment of its legal missions. The staff and the linguistic framework of the administrative staff are fixed by royal decree deliberated in the Council of Ministers, on the proposal of the Ministers of Health and the Minister of Justice.

Article 11

The Commission's operating costs and personnel costs, including remuneration for its members, are divided equally between the budget of the Minister of Health and the budget of the Minister of Justice.

Article 12

Any person who is involved, in whatever capacity, in implementing this Act is required to maintain confidentiality regarding the information provided to him/her in the exercise of his/her function. He/she is subject to Article 458 of the Penal Code.

Article 13

Within six months of the tabling of the first report and, where appropriate, the recommendations of the committee referred to in Article 9, the House of Representatives shall hold a debate on this subject. This period of six months is suspended during the time that the House of Representatives is dissolved and/or during which there is no government having the confidence of the House of Representatives.

Chapter VI: Special Provisions

Article 14

The request and the advance directive referred to in Articles 3 and 4 of this Act are not compulsory in nature.

No physician may be compelled to perform euthanasia.

No other person may be compelled to assist in performing euthanasia.

Should the physician consulted refuse to perform euthanasia, then he/she must inform the patient and the persons taken in confidence, if any, of this fact in a timely manner, and explain his/her reasons for such refusal. If the refusal is based on medical reasons, then these reasons are noted in the patient's medical record.

At the request of the patient or the person taken in confidence, the physician who refuses to perform euthanasia must communicate the patient's medical record to the physician designated by the patient or person taken in confidence.

Article 15

Any person who dies as a result of euthanasia performed in accordance with the conditions established by this Act is deemed to have died of natural causes for the purposes of contracts he/she had entered into, in particular insurance contracts.

The provisions of Article 909 of the Civil Code apply to members of the health care team referred to in Article 3 of this Act.

Article 16

This Act shall enter into force no later than three months after its publication in the Official Belgian Gazette.

We promulgate this Act, and order that it be sealed with the seal of the State and published by the Official Belgian Gazette.

Brussels, 28 May 2002.

ALBERT

By the King:

The Minister of Justice,

Mr VERWILGHEN

Sealed with the seal of state:

The Minister of Justice,

Mr VERWILGHEN.

Modifications:

- Law of 16-06-2016 published on 30-06-2016 (amended Article: 6)
- Law of 28-02-2014 published on 12-03-2014 (amended Articles: 3; 7)
- Law of 06-01-2014 published on 31-01-2014 (amended Articles: 6; 13)
- Law of 10-11-2005 published on 13-12-2005 (amended Articles: 3bis; 7)

[Note: This unofficial English translation of the Euthanasia Act is based in part on a translation by Dale Kidd published in 2002 (see 'Ethical Perspectives, vol 9, no. 2-3, pp182-8'), with later amendments and modifications incorporated into this text.]