Belgien

1 Sources of the rules in force

1.1 National rules

The binding sources of Belgian domestic law are legislation, the general principles of law, and customary law. Legislation is necessarily enacted by a public authority; the general principles of law are legally binding because society is convinced of their legal value; customary law consists of unwritten usage and generally accepted practice.

In Belgium, courts are not required to follow precedent: case law, like academic opinion, carries authority but is not binding. Court judgments are valid only between the parties to the case and are not binding on other judges ruling in similar cases. With the exception of the Constitutional Court (*Cour constitutionnelle/Grondwettelijk Hof*), no court can require other courts to follow a precedent it sets. Even a judgment of the Court of Cassation (*Cour de cassation/Hof van Cassatie*), which may quash a judgment of a lower court and refer it for reexamination, does not give instructions that bind the court that hears the case afresh. Only if the Court of Cassation issues a judgment for the second time in the same case does the content of that judgment become binding on the court called upon to issue a final judgment.

1.2 Multilateral international conventions

Please note that the Federal Public Service for Foreign Affairs has a database providing an overview of bilateral and multilateral conventions signed since 1987:

https://diplomatie.belgium.be/fr/traites
https://diplomatie.belgium.be/fr/traites
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The text of numerous conventions in force in Belgium is published in the Belgian official gazette (*Moniteur belge/Belgisch Staatsblad*), available electronically since 1997: https://justice.belgium.be

Moreover, the text of many conventions, even those concluded before 1987, can be found on the same website under the heading '*Législation consolidée*'/'*Geconsolideerde Wetgeving*' (which contained 2 800 items as of 1 August 2004).

Belgium is in principle a sovereign State which holds supreme authority over those subject to the jurisdiction of its courts. However, given the increasing internationalisation of society, Belgium is increasingly bound by the rules made by supranational and international organisations and institutions. In particular the European Union (EU), the United Nations (UN), the North Atlantic Treaty Organisation (NATO) and the Council of Europe have made their mark on Belgian law by enacting treaties and regulations (which may or may not be directly applicable) and by imposing directives and legal harmonisation processes in order to compel the Member States of these organisations to align their internal legal systems.

The human rights conventions directly applicable in Belgium are the European Convention on Human Rights and the European Social Charter, both of which were enacted by the Council of Europe. The corresponding texts at the United Nations level are the Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, respectively.

As a supranational organisation, the European Union (EU) has a significant influence on its Member States, including Belgium. The EU's main legal instruments are regulations, which are directly applicable, and directives, which have to be transposed by the Member States themselves.

Countless institutions and organisations are active in the development of various branches of law, such as private international law, international criminal law, and international trade and economic law. To mention only a few: the United Nations, Uncitral, the Hague Conference on Private International Law, Unidroit, the Council of Europe, the European Union and the European Community, the International Commission on Civil Status, the International Maritime Organisation (IMO), IATA (Air Transport), the Benelux Union, etc.

1.3 Principal bilateral conventions

Both the federal authorities and the authorities of Belgium's component states may conclude bilateral conventions with other countries or regions of the world, depending on whether the subject-matter lies within the scope of their own powers. Most of these conventions are concluded with neighbouring countries or countries with which Belgium has close or important commercial relations.

2 Implementation of conflict of law rules

The Law of 16 July 2004 establishing the Code of Private International Law (*Code de doit international privé*, hereinafter 'the Code') was published in the official gazette on 27 July 2004 (https://justice.belgium.be). It can be consulted via this weblink: 'législation consolidée'.

This factsheet explains the situation under the Code. The provisions of the Code relating to both international jurisdiction and the effects of foreign court judgments and authentic instruments are applicable to actions brought after the entry into force of the Law, as well as to court judgments and authentic instruments delivered after its entry into force. Earlier cases that fall outside the transitional arrangements in the Code are governed by a wide variety of legislation and a substantial body of case law and academic writing. The following websites may be useful:

- https://www.law.kuleuven.be/ipr/en
- https://www.ipr.be/fr
- https://www.dipr.be/fr

The Code applies only in so far as the case is not governed by international conventions, European Union law or specific legislation.

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Belgian judges do not apply only Belgian law. They often have to give judgment on the basis of a foreign law.

Belgian private international law states that foreign law is to be applied on the basis of the interpretation that is accepted in the foreign country; if the court cannot determine the content of the foreign law itself, it may request the cooperation of the parties. Where it is clearly impossible for the court to determine the content of the foreign law in reasonable time, it must apply Belgian law (Article 15 of the Code).

2.2 Renvoi

Since the adoption of the Code, *renvoi* is no longer generally accepted (Article 16 of the Code). The Code does, however, contain an exception for the law applicable to legal persons (Article 110 of the Code) and a possible *renvoi* to Belgian law on the capacity of natural persons (see below).

2.3 Change of connecting factor

A connecting factor can vary in time (e.g. nationality) or in space (e.g. habitual residence).

The DIP Code attempts to specify the rule to be applied in the most common situations in which there is a change of connecting factor.

As regards the effects of marriage, for example, the first connecting factor under the Code is the spouses' habitual residence at the time when the effects are invoked (Article 48 of the Code).

In the case of filiation, the Code specifies that the applicable law is the law of the nationality held at the time of the child's birth by the person whose parentage is at issue (Article 62 of the Code).

Rights *in rem* to property are governed by the law of the State where the property is located at the time the right is invoked. However, the Code specifies that the acquisition and loss of such rights is governed by the law of the State where the property is located at the time of the acts or facts relied upon as the basis for the acquisition or loss of the right (Article 87 of the Code).

2.4 Exceptions to the normal application of conflict rules

The ordinary conflict-of-law rules do not apply in a number of cases defined in the Code.

1. By way of exception, the law designated by the Code is not applicable where it is obvious that, in view of all the circumstances, the situation has only a very weak connection with Belgium and is very closely connected with another State. In such case, the law of that other State applies (Article 19 of the Code).
2. The overriding or public-law rules of Belgian law which govern an international situation remain applicable, irrespective of the law designated by the conflict-of-law rules (Article 20 of the Code).
3. There is an exception for international public policy which makes it possible not to apply certain aspects of a foreign law if their effect would be unacceptable in the Belgian legal system (Article 21 of the Code).

2.5 Proof of foreign law

The Belgian court may require the parties to establish the content and scope of the foreign law. The court may also apply the European Convention on information on foreign law, signed in London on 7 June 1968. Where authentic evidence is requested, the party will be asked to produce a statement known as a *certificat de coutume*, in which the appropriate foreign authority gives authentic evidence of the rules that are or were applicable in its country.

3 Conflict of law rules

When the Belgian court has jurisdiction under the rules already mentioned, it still has to consider which law it should apply to the dispute. It decides that question in accordance with Belgian private international law. Depending on the subject-matter of the dispute, there are various factors that may connect the case to a particular legal system. The DIP Code is structured by subject, and indicates the relevant connecting factor according to the subject area. Some of these areas are discussed below.

3.1 Contractual obligations and legal acts

This subject area is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations, known as the 'Rome I' Regulation. The DIP Code extends the application of the old 1980 Rome Convention to those contractual matters which were excluded from its scope. The Code should shortly be adapted to take into account the situation resulting from the replacement of the old Rome Convention by the Rome I Regulation.

Certain matters excluded from the scope of the Regulation are, however, governed by specific rules, either:

- under international conventions (in particular the Geneva Convention of 7 June 1930 for the settlement of certain conflicts of laws in connection with bills of exchange and promissory notes, and the Geneva Convention of 19 March 1931 for the settlement of certain conflicts of laws in connection with cheques), or
- under specific provisions of the Code (in particular Article 124 on trusts and Article 111 on partnership agreements).

Finally, it should be noted that, pursuant to Article 25 of the Regulation, certain international conventions continue to apply, namely:

- the Budapest Convention of 21 June 2001 on the contract for the carriage of goods by inland waterway,
- the London International Convention of 28 April 1989 on assistance,
- the International Conventions for the unification of certain rules with respect to collisions and to assistance and salvage at sea, signed in Brussels on 23 September 1910, and the Protocol of Signature attached thereto.

3.2 Non-contractual obligations

This area is governed by Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations, known as the 'Rome II Regulation'. The DIP Code extends its application to matters excluded from its scope.

Certain matters not covered by the Regulation are, however, governed by specific rules. Thus, the obligation deriving from an act of defamation or from an infringement of privacy or personality rights is governed by the law of the State where the act or the damage occurred or threatened to occur, at the choice of the applicant, unless the person responsible establishes that he or she could not have foreseen that the damage would occur in that State (see Article 99 of the Code).

It should be noted that, pursuant to Article 28 of the Regulation, certain international conventions continue to apply, namely:

- the Hague Convention of 4 May 1971 on the law applicable to traffic accidents,
- the International Convention for the unification of certain rules concerning civil jurisdiction in matters of collision, the International Convention for the unification of certain rules relating to penal jurisdiction in matters of collision or other incidents of navigation, and the International Convention for the unification of certain rules relating to the arrest of sea-going ships, all signed in Brussels on 10 May 1952,
- the International Convention on assistance, London, 28 May 1989,
- the Convention on the grant of European patents, Munich, 5 October 1973,
- the International Convention of 29 May 1933 for the unification of certain rules relating to the precautionary attachment of aircraft,
- the International Conventions for the unification of certain rules with respect to collisions and to assistance and salvage at sea, signed in Brussels on 23 September 1910, and the Protocol of Signature attached thereto.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

Unless otherwise provided by the Code, the law applicable in disputes relating to personal status and capacity is the law of the State of which the person is a national. The same rule governs gender changes (Article 35 ter of the Code).

As regards the capacity of natural persons, the Code includes a provision for partial *renvoi*: the question will be governed by Belgian law if the foreign law calls for the application of Belgian law (Article 34 of the Code).

In accordance with the general principle, the law applicable to the determination of surnames and forenames is the law of the State of which the person is a national (Article 37(1) of the Code) or, if they hold several nationalities, the law of one of the States of which the person is a national (Article 37(2) of the Code).

3.4 Establishment of parent-child relationship, including adoption

3.4.1 Establishment of parent-child relationship

As a general rule for the establishment of the applicable law, Article 62(1), first subparagraph of the Code states that the establishment and the challenging of a person's parentage is governed by the law of the State of which the parent is a national at the time of the birth of the child or, if the establishment of parentage results from a voluntary act, at the time of that act.

Where the designated law does not require the child's consent in the case of a voluntary establishment of parentage, the requirement and conditions of such consent and its forms of expression are determined by the law of the State in which the child was habitually resident at the time of the consent (Article 62(1), second subparagraph of the Code).

3.4.2 Adoption

The conditions for the establishment of an adoption are governed by the national law of the adopter or the joint common national law of the adopters. If the adopters do not have the same nationality, the conditions are governed by the law of their habitual residence or, failing that, by Belgian law (Article 67 of the Code).

The law applicable to the various consents required is that of the State of the adoptee's habitual residence. However, if this law does not require the consent of the adoptee or the authors or legal representatives, or does not provide for adoption, such consents will be governed by Belgian law (Articles 67 and 68 of the Code).

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

3.5.1 Marriage

As regards the law applicable to a marriage, the Code makes a distinction between:

1. the promise of marriage: the law of the State of the future spouses' habitual residence is applicable or, failing that, the law of the State of which the two future spouses are nationals or, failing that, Belgian law (Article 45 of the Code);
2. the formation of marriage: the national law of each of the spouses is applicable, with the possible exception of marriage between persons of the same sex, in that the provisions of a foreign law prohibiting such marriage will be disregarded if either spouse is a national of or has their habitual residence in a State whose law does permit such marriage (Article 46 of the Code);
3. formalities: the law of the State where the marriage is celebrated is applicable (Article 47 of the Code);
4. the effects of marriage: the law of the State where the spouses have their habitual residence is applicable, or, failing that, the law of the State of which both spouses are nationals or, failing that, Belgian law (Article 48 of the Code).

3.5.2 Unmarried/Cohabiting couples and partnerships

As regards partnerships or any form of cohabitation subject to registration, Belgian law distinguishes between relationships between cohabitants that create a bond equivalent to marriage and relationships that do not create a bond equivalent to marriage.

The law applicable to the former is the law that applies to marriage (see above), whereas the law applicable to cohabiting relationships that do not create a bond equivalent to marriage is the law of the State where the cohabiting relationship was registered for the first time.

There are no specific provisions governing unregistered cohabiting relationships.

3.5.3 Divorce and judicial separation

As regards divorce and de facto separation, the rules contained in the Council Regulation (EU) of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, known as 'Rome III', have been made generally applicable. The choice of law applicable to the spouses must be specified no later than their first appearance before the court to which the petition for divorce or legal separation has been submitted.

3.5.4 Maintenance obligations

Article 15 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations refers to the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. Normally, the applicable law is that of the State where the recipient has his or her habitual residence. Special rules, however, exist between children and their parents, for persons under 21 years of age in their relationship to persons other than their parents, between spouses and ex-spouses, and between persons whose marriage has been annulled. The Protocol also has a provision allowing the parties to designate the applicable law.

In addition, the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children will be applied to relations between Belgium and a State which is a party to the 1956 Hague Convention but has not yet ratified the above-mentioned Hague Protocol of 23 November 2007.

3.6 Matrimonial property regimes

The partners themselves may choose the law applicable to their matrimonial property regime. Such choice is limited to either the law of the State of the partners' first habitual residence after the celebration of their marriage, or the national law of one of the spouses (Article 49 of the Code).

In the absence of a choice of applicable law, the matrimonial property regime is governed by the law of the State of the partners' first habitual residence after the celebration of their marriage. If their habitual residences were not in the same State, the applicable law is that of the State of which both partners were nationals at the time of their marriage celebration. In all other cases, the applicable law is the law of the State where the marriage was celebrated (Article 51 of the Code).

3.7 Wills and successions

This area is governed by Regulation (EU) No 650/2012 of 4 July 2012 on the jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession.

3.8 Real property

The place where property is situated is also used to determine the applicable law (Article 87 of the Code).

3.9 Insolvency

Insolvency is governed by Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings. The basic principle in the Regulation is that there is one main universal insolvency procedure, possibly followed by secondary territorial procedures.

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