

Home>Legislation and case law>National legislation

National legislation

Belgium

This section presents an overview of the various sources of law in Belgium.

1. What legal instruments or 'sources of law' set out the rules of law?

The law is a set of hard legal rules, written or otherwise, which govern social relations between citizens and the authorities and among citizens and also organise public administration.

A distinction is made between **formal** and **material sources**. Unlike formal sources, material sources do not contain actual rules of law. Examples of material sources include good faith, equity and reasonable conduct.

There are five categories of material sources. Three of these are mandatory – **legislation**, **customary law** and the **general principles of law**. The other two are merely 'persuasive' – **case-law** and **academic writings**.

Legislation is considered in greater detail in points 3 and 5 below. Legislation is defined as the written rules enacted by an authority. Customary law is defined as unwritten law operating on the customs and usage of people in general and traders in particular. The general principles of law express the higher values which a particular society wishes to respect, such as the equality of all citizens, the proportionality of rules and measures taken and the principle that authorities must act in accordance with the law. Many of these principles are set out in so-called legal maxims, such as '*non bis in idem*' in criminal law and the principle that '*lex posterior derogat legi priori*'.

Case-law and academic writings are persuasive sources of law. Case-law consists of the entire body of judgments issued by courts. A judgment is binding only on the parties to the case; there is no system of legal precedents in Belgium. The only judgments which are universally binding are those issued by the Constitutional Court (*Cour constitutionnelle*). The other high courts are the Council of State (*Conseil d'Etat*) (the highest administrative court) and the Court of Cassation (*Cour de cassation*) (the highest court dealing with ordinary law).

Another significant source is international law, consisting in particular of the Treaty on European Union, EU Regulations and Directives and the European Convention on Human Rights. In addition, there are many conventions concluded within the framework of international institutions such as the United Nations or the Council of Europe (multilateral conventions) or between Belgium and another state (bilateral conventions). This source of law has become very large in recent decades and continues to grow. Many provisions contained in these instruments directly influence our everyday lives.

The [sites Législation belge](#) (in French) or [Belgische Wetgeving](#) (in Dutch) provide access to a database of **consolidated Belgian legislation**. A search and indexing engine may be used to search for any normative text still in force and published in the *Moniteur Belge* **since 1830**. However, administrative and fiscal normative texts published **before 1994** are not yet completely covered.

2. What is the legal status of the general principles of law, customary law and caselaw?

See [question 1](#).

3. What is the hierarchy of these legal instruments?

Persons residing in Belgium are subject to various categories of legal rules. They are subject not only to rules issued by the Belgian federal authorities, but also to those issued by lower entities such as the provinces and local districts⁽¹⁾. Belgium is also a member of various international and supranational organisations such as the United Nations, the European Union, the Council of Europe and NATO. Rules issued by these organisations also apply to the Belgian authorities and population.

Not all law-making authorities have strictly demarcated areas of jurisdiction and not all categories of rules have the same status, so conflicts can arise. Consequently, there is a hierarchy of norms, the principle being that lower-level norms should never conflict with higher-level ones.

The **Constitution** is the highest-ranking norm for Belgian internal law. It governs the separation of powers and the way in which these powers are exercised.

The Constitution also sets out the fundamental values of society and the fundamental rights of citizens. In a judgment given on 27 May 1971, the Court of Cassation held that all international and supranational instruments take precedence over national instruments, including the Constitution. If an EU Regulation conflicted with the Constitution, the Regulation would prevail.

Below the Constitution, in descending order, there are:

special acts (*lois spéciales*) (acts passed by special majority which determine the division of powers and the key operational rules of public institutions);

acts (*lois*), decrees (*décrets*) and ordinances (*ordonnances*);

royal orders (*arrêtés royaux*) and government orders (*arrêtés de gouvernement*) implementing acts or decrees; and

ministerial orders (*arrêtés ministériels*).

4. How do rules in supranational instruments enter into force nationally?

EU Regulations are directly applicable and the Belgian legislature is not directly involved in their implementation. But internal legislation is needed to approve and ratify international treaties. In certain areas, all legislative bodies in Belgium must approve and ratify treaties, which can be a cumbersome and time-consuming process. The domestic legislatures are also involved in implementing EU Directives, for these always require internal legislation.

5. Which authorities will be expected to adopt legal rules?

Three separate constitutional powers form the Belgian federal State: the legislature, the executive and the judiciary. The legislature draws up acts, the executive implements them and the judiciary resolves disputes arising from application of the acts.

Federal legislative power

A initiative for federal legislation may come from one or more Members of the House of Representatives, one or more Members of the Senate or the King (in practice his Ministers or Secretaries of State). These are the three components of the legislative authority in Belgium.

An act may be based on a proposal for an act (*proposition de loi*), moved by a Member of the House or the Senate, or a draft act (*projet de loi*), moved by the King (Ministers are authorised by the King to move draft acts). Proposals for acts and draft acts have equal weight.

Instruments to implement federal legislation are prepared by the executive authority, headed by the King. Powers may be delegated to a Minister – hence the distinction between royal and ministerial orders.

Communities, regions, provinces and municipalities

Belgium is a **federal state** consisting of communities (*communautés*) and regions (*régions*). These, in turn, are at the root of law within the powers allocated to them under the Constitution and by certain special laws.

The powers of the communities concern in particular culture and education, while the powers of the regions cover economic policy and environmental protection. In order to exercise these powers, each community and region has a parliament. **The communities and regions may draw up acts**, called **decrees** (ordinances in the Brussels-Capital Region). Along with Members of Parliament, community and regional governments belong to the legislature at EU, regional or community level (legislative initiative). These governments must also enforce all enacted decrees and ordinances.

Belgium is also divided into **provinces** and **municipalities**. At the corresponding levels, provincial and municipal councils (*conseils*) also enact **regulations** and **ordinances** in the fields for which they are responsible, such as public safety, waste collection, culture and provincial and municipal education. The provincial executive (*collège provincial*) and municipal executive (*collège communal*) implement these regulations (as well as higher norms such as acts, decrees, ordinances and orders, within the limits of their powers).

Two of the three powers are present at these levels: legislative power, exercised by the community and regional parliaments and the provincial and municipal councils; and executive power, exercised by the community and regional governments and the provincial and municipal executives. Judicial power is not divided in this way. Organisation of the courts is solely a federal responsibility.

6. What is the procedure for adopting these legal rules?

See [question 5](#).

At federal level, the House of Representatives and, if appropriate, the Senate, **vote on draft acts or proposals for acts**, after possible consideration by the Council of State. They are then transmitted to the **King**, who **gives his assent and promulgates them** once they have been **countersigned by the relevant minister**.

7. How do rules of national origin enter into force?

Federal legislation comes into existence when enacted and promulgated by the King. As a rule, legislation enters into force ten days after publication in the Belgian State Gazette, unless otherwise specified⁽²⁾.

Legislation of a federal unit of the state – decrees and ordinances – is brought into force and published by the government of that federal unit. It enters into force ten days after being published in the *Moniteur Belge*, unless otherwise specified.

8. How are conflicts between different legal rules resolved within the Member State?

Conflicts between properly enacted legal instruments may be resolved in a number of ways. The hierarchy of norms allows most conflicts to be avoided, but if conflicts do arise they must be resolved.

Under Article 142 of the Constitution, the Constitutional Court has sole jurisdiction to review legislation for compatibility with the rules governing the powers of the State, the communities and the regions. These rules are laid down in the Constitution and in the legislation on institutional reform in the federal state of Belgium.

The Constitutional Court is also empowered to rule in cases where it is alleged that legislation violates the fundamental rights and freedoms secured by Title II (Articles 8-32) of the Constitution. These include the principle of equality (Article 10) and the ban on discrimination (Article 11). The Constitutional Court may also review legislation for compatibility with Article 170 (legality in tax law), Article 172 (equality in tax law) and Article 191 (protection for foreign nationals) of the Constitution.

See also [Service public fédéral Justice](#) and the special Act of 6 January 1989 on the Constitutional Court – 'législation consolidée'.

The Council of State⁽³⁾, acting under Article 160 of the Constitution, settles all conflicts between implementing instruments (orders and regulations) and legislative instruments. There is also a Parliamentary Review Committee, which looks into conflicts of interest.

(1) Cf. [Service public fédéral Justice](#) (<https://justitie.belgium.be>), 'Législation consolidée', the 1994 Constitution and the special Act of 8 August 1980 on institutional reform, as well as the [federal portal website](#), under 'La Belgique'.

The Flemish Community with the Flemish Council (also known as the Flemish Parliament)

The French Community with the Council of the French Community

The German-speaking Community with the Council of the German-speaking Community

The Flemish Region with the same Flemish Council

The Walloon Region with the Council of the Walloon Region

The Brussels-Capital Region with the Council of the Brussels-Capital Region (for certain matters organised as the Flemish and French Committees for Community Affairs)

The communities have powers over:

cultural affairs;

education, except [...];

cooperation between the communities and international cooperation, including powers to conclude treaties on matters under points 1 and 2.

The Councils of the Flemish and French Communities each enact decrees applicable to their own territory on various matters relating to cooperation between the communities and to international cooperation, including powers to conclude treaties. The Council of the German-speaking Community has similar powers.

The Regional Councils have powers in matters relating to land planning, monuments and rural management, the economy, agriculture, etc.

(2) See [Service public fédéral Justice](#), 'Législation consolidée', Act of 31 May 1961 on the use of languages in legislation and the drafting, publication and entry into force of legislation and regulations.

(3) See [Service public fédéral Justice](#), 'Législation consolidée', consolidated acts of 12 January 1973 on the Council of State.

« [Legal order - General information](#) | [Belgium - General information](#)

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