



Regulation of Assisted Dying

Belgium • Luxembourg • Netherlands
Portugal • Spain • Switzerland

March 2024

LL File No. 2024-023064
LRA-D-PUB-002648

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

Contents

I. Introduction.....	1
II. Jurisdictional Surveys.....	2
A. Belgium.....	2
B. Luxembourg.....	4
C. The Netherlands.....	7
D. Portugal.....	9
E. Spain.....	10
F. Switzerland.....	12
<i>Figures:</i>	
Figure 1: Jurisdictions Permitting Euthanasia.....	15
Figure 2: Jurisdictions Permitting Assisted Suicide.....	15
Figure 3: Jurisdictions with Assisted Dying Procedures Available to Minors.....	15
<i>Table:</i>	
Table of Primary Sources.....	16

Regulation of Assisted Dying

Staff of the Global Legal Research Directorate

I. Introduction

This report addresses the regulation of assisted dying in Belgium, Luxembourg, the Netherlands, Portugal, Spain, and Switzerland. It sets out the general legal frameworks on assisted dying and examines whether specific diseases, in particular Parkinson's disease, were discussed during the parliamentary debates or invoked as a reason for passing the respective laws.

Assisted dying includes euthanasia and assisted suicide. Euthanasia is generally defined as the act of causing death to prevent further suffering. It can take the form of active euthanasia (e.g., administering a lethal dose of a drug) or passive euthanasia (withholding life-sustaining treatment). This report does not address passive euthanasia. Assisted suicide is the act of assisting a person in ending their life to prevent further suffering.

It appears that while all the surveyed jurisdictions require the patient to have a serious and incurable disease among the eligibility criteria for assisted dying, none of them included specific diseases as part of the rationale for passing their laws. However, the question whether specific diseases qualify a person for assisted suicide was mentioned in Belgium and the Netherlands. In Belgium, the report accompanying the proposed euthanasia law submitted by the Belgian Senate referred to "muscular diseases" and to people "suffering from a physical handicap" as potentially satisfying the "severity of the condition" criterion to benefit from the proposed law. In the Netherlands, in response to questions from two parliamentary committees, the government stated that "hopeless and unbearable suffering" (Schoonheim criteria) is a case-by-case assessment that does not apply to a specific disease or category of diseases. It added that this principle "applies to Alzheimer's disease, but also to Parkinson's disease, Huntington's disease or MS" and that the bill did not intend to link the Schoonheim criteria to Alzheimer's disease or a specific clinical picture.

The jurisdictional surveys below provide an overview of the legal framework on assisted dying and indicate whether specific diseases were discussed as the relevant laws were being debated. Diagrams addressing certain aspects of the legal frameworks follow the jurisdictional surveys. A table of primary sources is also provided.

II. Jurisdictional Surveys

A. Belgium

1. *Legalization of Euthanasia and Assisted Suicide*

a. The 2002 Euthanasia Law

Euthanasia is allowed under the law of May 28, 2002, governing euthanasia.¹ The 2002 Euthanasia Law was modified by the law of February 28, 2014, to extend eligibility for euthanasia to minors.²

To be eligible for euthanasia in Belgium, article 3 of the Euthanasia Law lists several conditions that a requesting patient must meet.

- The person must be a legally competent adult, a legally competent emancipated minor, or a minor capable of discernment, at the time of the request. The 2014 Euthanasia Law also added that, if the patient is an unemancipated minor, it is necessary for them to seek guidance from a child psychiatrist or psychologist, and it is necessary for the treating physician to determine if the minor's legal representatives agree with the request.³
- The request must be made voluntarily, carefully thought out, and repeated, and must not result from external pressure.
- The requester must be in a hopeless medical situation and be experiencing constant and unbearable physical or psychological suffering that cannot be alleviated and that results from a serious and incurable accidental or pathological condition.⁴

b. Euthanasia Proceedings

The patient's request for euthanasia must be made in writing. All the 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 file.⁵

The doctor who performs euthanasia must first inform the patient about their health status and life expectancy, discuss the request for euthanasia, exploring therapeutic options and the implications of palliative care, and collaborate with the patient to ensure there are no reasonable alternatives and that the request is voluntary.⁶ The doctor must verify the persistence of the

¹ Loi relative a l'euthanasie (Euthanasia Law), Moniteur Belge [M. B.] [Official Gazette of Belgium] June 22, 2002, 28515, <https://perma.cc/BF75-ECZ6>.

² Loi modifiant la loi du 28 mai 2002 relative à l'euthanasie, en vue d'étendre l'euthanasie aux mineurs (2014 Euthanasia Law), M. B. Mar. 12, 2014, 21053, <https://perma.cc/WPQ3-WMQ7>.

³ 2014 Euthanasia Law art. 2.

⁴ Id. art. 3(1).

⁵ Id. art. 3(5).

⁶ Id. art. 3(2), para. 1.

patient's suffering through multiple interviews spaced over a reasonable period, considering the evolving condition.⁷

The doctor must then seek consultation with another physician who assesses the serious and incurable nature of the condition, documenting their examination and findings in a report.⁸ If the doctor is of the opinion that the death will clearly not occur within a short period of time, the doctor must consult a second doctor, psychiatrist or specialist in the pathology concerned.⁹ At least one month must elapse between the patient's written request and euthanasia.¹⁰

Within four working days of performing the euthanasia, the doctor must forward the declaration of euthanasia to the Federal Commission for the Evaluation and Control of the Euthanasia Law (*Commission fédérale de contrôle et d'évaluation, CFCEE*). The CFCEE examines the declaration submitted by the doctor.¹¹ In the event of a breach of the essential conditions for legal euthanasia, it must, after a 2/3 majority vote, refer the case to the Public Prosecutor's Office.¹²

No doctor is obliged to perform euthanasia.¹³

c. Early Declaration of Euthanasia

Any individual has the right to express in writing their desire for a doctor to perform euthanasia in the event of a serious and incurable accidental or pathological condition, particularly when unconsciousness is coupled with an irreversible situation.¹⁴

2. Diseases

The Euthanasia Law defines "a serious and incurable condition" as "a medical situation with no way out and involves constant and unbearable physical or psychological suffering which cannot be alleviated, and which results from a serious and incurable accidental or pathological condition."¹⁵

We were unable to find any specific reference to Parkinson's Disease in Belgium's Euthanasia Law, the legislative debates, or the proposed legislation leading to its adoption.

⁷ Id. art. 3(2), para. 2.

⁸ Id. art. 3(2), para. 3.

⁹ Id. art. 3(3), para 1.

¹⁰ Id. art. 3(3), para 2.

¹¹ Id. art. 8.

¹² Id.

¹³ Id. art. 14.

¹⁴ Id. art. 4(1), para. 1.

¹⁵ Id. art. 3(1).

In 1997, the Belgian Bioethics Advisory Committee published an opinion titled *On the Advisability of Legal Regulation of Euthanasia*.¹⁶ The committee examined the legislative proposals that were pending on this subject at the time, proposed a definition of euthanasia, examined the ethical and political debates surrounding euthanasia, and discussed the government's reasons for legislating on the issue.¹⁷ The document makes no mention of Parkinson's disease.

No mention of Parkinson's disease is made in the report accompanying the proposed euthanasia law submitted by the Belgian Senate in 2001.¹⁸ While this report does not directly mention Parkinson's disease, it does refer to "muscular diseases" and to people "suffering from a physical handicap" as potentially satisfying the "severity of the condition" criterion to benefit from the proposed law.¹⁹

B. Luxembourg

1. Legalization of Euthanasia and Assisted Suicide

a. The 2009 Euthanasia Law

Euthanasia in Luxembourg is allowed under the Law of March 16, 2009, on euthanasia.²⁰

The 2009 Euthanasia Law was modified in 2014 to give patients and healthcare providers more rights when dealing with euthanasia.²¹ The 2009 Euthanasia Law was further modified in 2021 to add minor provisions.²²

The conditions for a doctor to legally assist a person in the process of euthanasia include the following:

- The patient must be an adult, capable, and conscious at the time of the request.
- The request must be voluntary, careful, and, if necessary, repeated, without external pressure.

¹⁶ Comité consultatif belge de bioéthique, *Avis n° 1 du 12 mai 1997 concernant l'opportunité d'un règlement légal de l'euthanasie* (May 12 1997), <https://perma.cc/AB7T-LWAR>.

¹⁷ Id. at 1-3.

¹⁸ Sénat de Belgique, Document parlementaire n° 2-244/22, *Proposition de loi relative à l'euthanasie, Rapport Fait au Nom des Commissions Réunies de la Justice et des Affaires Sociales par Mmes Laloy et Van Riet*, (July 9, 2001), <https://perma.cc/X2HT-E5B3>.

¹⁹ Id. at 847.

²⁰ Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide (Euthanasia Law), J. O. Mar. 16, 2009, N° 46, p.615, <https://perma.cc/8BZJ-RA8B>.

²¹ Loi du 24 juillet 2014 relative aux droits et obligations du patient (2014 Euthanasia Law), J. O. July 31, 2014, N° 140, <https://perma.cc/Y67Z-8RSE>.

²² Loi du 2 mars 2021 modifiant : 1° la loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide ; 2° la loi modifiée du 24 juillet 2014 relative aux droits et obligations du patient, J. O. Mar. 3, 2021, N° 167, <https://perma.cc/GQ99-JX5F>.

- The patient should be in a medically hopeless situation, enduring constant and unbearable physical or psychological pain with no chance of improvement, stemming from an accidental or pathological condition.
- The patient's request for euthanasia or assisted suicide must be documented in writing.²³

The Euthanasia law amended the Luxembourg Penal Code by introducing article 397-1, which specifies that euthanasia does not fall within the scope of the section of the Penal Code that deals with murder.²⁴

b. Euthanasia Proceedings

Formal and procedural conditions must be adhered to by physicians before proceeding with euthanasia or assisted suicide.

Firstly, the physician must inform patients of their health status, life expectancy, and engage in thorough discussions about the patient's request. The physician must discuss with the patient the therapeutic options still available, as well as the possibilities offered by palliative care and its consequences. They must be convinced that the patient's request is voluntary and that, in the patient's eyes, there is no other acceptable solution to their situation.²⁵ All discussions are recorded in the patient's medical file, serving as evidence of the information provided.²⁶

Subsequently, the physicians assess the persistence of the patient's physical or mental suffering through multiple interviews over a reasonable period.²⁷ The physician must then obtain a second opinion from an impartial physician to validate the serious and incurable nature of the patient's condition. The consulting physician's detailed report is communicated to the patient.²⁸

In addition, unless the patient objects, the physician should discuss the patient's request with the health-care team regularly in contact with the patient.²⁹ Physicians are also required to discuss the euthanasia or assisted suicide request with the trusted support person designated by the patient.³⁰

Finally, physicians must verify with the National Control and Evaluation Commission whether any end-of-life arrangements on behalf of the patient have been registered.³¹ The Commission draws up an official declaration document which must be completed by the doctor and sent to

²³ Euthanasia Law, art. 2(1).

²⁴ Code Penal [C. pen] [Penal Code], art. 397-1, <https://perma.cc/W6K2-3VSH>.

²⁵ Euthanasia Law, art 2(2)(1).

²⁶ Id. art. 2.

²⁷ Id. art 2(2)(2).

²⁸ Id. art 2(2)(3).

²⁹ Id. art 2(2)(4).

³⁰ Id. art 2(2)(5).

³¹ Id. art 2(2)(7).

the Commission each time euthanasia is performed.³² The Commission goes through all the stages of the euthanasia procedure to certify that it has been carried out in compliance with the legal requirements.³³

No doctor is obliged to perform euthanasia or assisted suicide.³⁴

c. Early Declaration of Euthanasia

If an individual of full age and capacity becomes unable to articulate their wishes, they may, through an end-of-life provision, document the circumstances and conditions under which they desire euthanasia. This provision comes into effect if the physician determines the following:

- The requesting patient must have drawn up an advance declaration containing the request.
- The patient must be suffering from a serious and incurable disease.
- The patient must be unconscious and in an irreversible situation.³⁵

2. *Diseases*

The Euthanasia Law defines “a serious and incurable condition” as

a medical situation with no end in sight, involving constant and unbearable physical or psychological suffering with no prospect of improvement, resulting from an accidental or pathological condition.³⁶

We were unable to find any specific reference to Parkinson’s Disease in Luxembourg’s Euthanasia Law, nor did we find any explicit mention in the legislative debates leading to its adoption.

In 1998 the National Consultative Ethics Commission for Life Sciences and Health in Luxembourg published an opinion on assisted suicide and euthanasia.³⁷ The commission gave its opinion on the terminology around euthanasia,³⁸ as well as the social context,³⁹ the function of assistance at the end of life,⁴⁰ and the value of palliative care.⁴¹ The Commission offered a political and

³² Id. art. 7.

³³ Id. art. 8.

³⁴ Id. art. 15.

³⁵ Id. art. 4.

³⁶ Id. art. 2(1)(3).

³⁷ Commission Consultative Nationale d’Ethique pour les Sciences de la Vie et de la Santé, Avis 1/1998 L’aide au suicide et l’euthanasie, C.N.E., 1998, <https://perma.cc/WU65-BLP8>.

³⁸ Id. at 3.

³⁹ Id. at 13.

⁴⁰ Id. at 35.

⁴¹ Id. at 19.

historical perspective of the debate,⁴² and finally concluded with a proposed law.⁴³ Parkinson's disease was not mentioned in this opinion, nor in any of the summaries of debates about a possible law.

C. The Netherlands

Assisted dying in the Netherlands is regulated in the Termination of Life on Request and Assisted Suicide Act.⁴⁴ The law entered into force on April 1, 2002.⁴⁵

The law covers euthanasia, meaning cases where physicians administer a fatal dose of a suitable drug to the patients at their express request, and physician-assisted suicide, meaning cases where the physicians supply the drug to the patients who administer it themselves. Euthanasia and assisted suicide are only legal if the physician fulfills the due care criteria of the Termination of Life on Request and Assisted Suicide Act and informs the municipal coroner in accordance with the Funeral Act.⁴⁶

A physician exercised due care if he or she held the conviction that the request by the patient was voluntary and well-considered and that the patient's suffering was lasting and unbearable; if he informed the patient about the situation he or she was in and about the prospects; if the physician and the patient held the conviction that there was no other reasonable solution for the situation the patient was in; if the physician consulted at least one other, independent physician who has seen the patient and had given a written opinion on the requirements of due care; and if the physician carried out the termination of life or assisted suicide with medical care.⁴⁷

The explanatory memorandum to the draft law states that the intention of the bill was to codify the existing policy, which exempted doctors who acted in accordance with due care requirements from punishment for termination of life on request and assisted suicide. In addition, it provides a legal basis for the regional euthanasia review committees already established by ministerial regulation in 1998.⁴⁸

The euthanasia reporting procedure was introduced on June 1, 1994, and codified in the Funeral Act. It provided that physicians performing a termination of life on request or assisted suicide

⁴² Id. at 38 et seq.

⁴³ Id. at 67.

⁴⁴ Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding, Apr. 12, 2001, Staatsblad van het Koninkrijk der Nederlanden [Stb.] 2001, no. 194, as amended, <https://perma.cc/KHV5-UAQB>.

⁴⁵ Besluit houdende vaststelling van het tijdstip van inwerkingtreding van de Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding, Mar. 15, 2002, Stb. 2002, no. 165, <https://perma.cc/QPM7-7J74>.

⁴⁶ Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding, art. 2; Wetboek van Strafrecht, Mar. 3, 1881, Stb. 1881, no. 35, as amended, art. 293, <https://perma.cc/5QQP-TJKW>.

⁴⁷ Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding art. 3.

⁴⁸ Memorie van toelichting, Kamerdossier 1998-199, 26691, no. 3, at 2, <https://perma.cc/8H3D-3ASB>; Regeling regionale toetsingscommissies euthanasie, May 27, 1998, Staatscourant [Strt.] 1998, no. 101, <https://perma.cc/M6NV-ZP73>.

did not prepare a death certificate but reported it to the municipal coroner and submitted a reasoned report explaining the due care requirements they observed. The coroner in turn informed the civil registry and the public prosecutor. The public prosecutor assessed the death under criminal law.

The procedure was amended in 1998. The amendment provided that the review of termination of life on request and assisted suicide would be performed by regional euthanasia review committees that assessed whether the doctor had acted with due care. The committees then forwarded their assessment to the public prosecutor. The codification of the due care requirements in the Termination of Life on Request and Assisted Suicide Act was intended to give legal certainty to physicians and increase the willingness to report cases.⁴⁹ Likewise, the discussions at the time the euthanasia reporting procedure was introduced mention legal certainty for physicians.⁵⁰

However, the government expanded on the reasons for proposing the law when it responded to questions from two parliamentary committees.⁵¹ Some parliamentarians inquired whether euthanasia could be applied to elderly patients suffering from dementia, such as Alzheimer's disease. The government stated that the same criteria apply to Alzheimer's as to any other disease.⁵² Furthermore, parliamentarians requested clarification on what constitutes "hopeless and unbearable suffering" (Schoonheim criteria), in particular to what diseases it applies. The Dutch government stated that it occurs in situations in which the doctor cannot heal the patient and the patient fears further deprivation or not being able to live in a dignified manner.⁵³ It is a case-by-case decision by the attending physician and does not apply to a specific disease or categories of diseases. The government added that this principle "applies to Alzheimer's disease, but also to Parkinson's disease, Huntington's disease or MS."⁵⁴

The government also pointed out that the bill does not intend to link the Schoonheim criteria to Alzheimer's disease or a specific clinical picture, because the case law also did not do this, and emphasized, again, that it is a case-by-case assessment.⁵⁵ Neither the legal text nor the explanatory memorandum is supposed to offer starting points for categorizing certain diseases.⁵⁶

⁴⁹ Memorie van toelichting, *supra*, at 2.

⁵⁰ Memorie van toelichting, Kamerdossier 1991-1992, 22572, no. 3, at 1, <https://perma.cc/4NEM-CJBA>.

⁵¹ Memorie van antwoord, Kamerdossier 2000-2001, 26691, no. 137b, <https://perma.cc/5X8Y-3JXQ>.

⁵² *Id.* at 19.

⁵³ *Id.* at 24.

⁵⁴ *Id.* at 24, 32, 48.

⁵⁵ *Id.* at 35, 36; Hoge Raad [HR], Nov. 27, 1984, ECLI:NL:PHR:1984:AC8615, Nederlandse Jurisprudentie (NJ) 1985, 106 (Schoonheim), <https://perma.cc/ZLZ8-NKPN>.

⁵⁶ Memorie van antwoord, *supra*, at 46.

D. Portugal

On May 25, 2023, euthanasia and assisted suicide were legalized in Portugal with the passing of Law No. 22 of 2023, which regulates the conditions under which medically assisted death is not punishable and amends the Penal Code.⁵⁷

According to article 3 of Law No. 22, a non-punishable medically assisted death is one that occurs by the decision of the person himself, an adult, whose will is current and reiterated, serious, free, and informed, in a situation of suffering of great intensity, with definitive injury of extreme severity, or serious and incurable disease, when practiced or assisted by health professionals.⁵⁸

Medically assisted death occurs in accordance with the will and decision of the person himself, who is in one of the following situations: (a) permanent injury of extreme severity, or (b) serious and incurable disease.⁵⁹

Medically assisted death can occur due to (a) medically assisted suicide, or (b) euthanasia.⁶⁰

Article 2 of Law No 22 provides the following definitions:

- Suffering of great intensity – suffering resulting from a serious and incurable illness or definitive injury of extreme severity, with great intensity, persistent, continuous, or permanent and considered intolerable by the person himself.⁶¹
- Definitive injury of extreme severity – a serious, definitive, and largely disabling injury that places the person in a situation of dependence on third parties or technological support to carry out elementary activities of daily life, with certainty or a very high probability that such limitations persist over time without the possibility of cure or significant improvement.⁶²
- Serious and incurable disease – a disease that threatens life, in an advanced and progressive phase, incurable and irreversible, which causes great suffering.⁶³

The legislative proposals that were combined in developing the final text of Law No. 22 did not provide examples of particular diseases or injuries in explaining the rationale for the law, only referring to serious and incurable disease and definitive injury of extreme severity.⁶⁴

⁵⁷ Lei No. 22/2023, de 25 de Maio, <https://perma.cc/LF6L-F3GX>.

⁵⁸ Id. art. 3(1).

⁵⁹ Id. art. 3(3).

⁶⁰ Id. art. 3(4).

⁶¹ Id. art. 2(f).

⁶² Id. art. 2(e).

⁶³ Id. art. 2(d).

⁶⁴ Assembleia da República, Ordem do Dia, Morte medicamente assistida, <https://perma.cc/UAD8-SM8H>; Projeto de Lei 5/XV/I.^a, <https://perma.cc/4V7N-V6UK>; Projeto de Lei 74/XV, <https://perma.cc/M28F-SJU9>; Projeto de Lei 83/XV/1.^a, <https://perma.cc/U9WP-NKL5>; Projeto de Lei 111/XV/1.^a, <https://perma.cc/ZW8V-7T55>.

E. Spain

1. *Legalization of Euthanasia and Assisted Suicide*

Euthanasia is allowed under Organic Law No. 3 of March 24, 2021, on the Regulation of Euthanasia (Euthanasia Law).⁶⁵ Among other things, that law amended Spain's Penal Code by adding fourth and fifth sections⁶⁶ to article 143 of the Organic Law No. 10 of November 23, 1995:

Article 143.

1. Anyone who induces the suicide of another shall be punished by imprisonment for a term of four to eight years.

2. A term of imprisonment of two to five years shall be imposed on anyone who cooperates with acts necessary to the suicide of a person.

3. He shall be punished by imprisonment for a term of six to 10 years if the cooperation goes so far as to execute death.

4. Any person who causes or actively cooperates with acts necessary and direct to the death of a person suffering from a serious, chronic and disabling illness or a serious and incurable disease, with constant and unbearable physical or mental suffering, at the express, serious and unequivocal request of the latter, shall be punished by a penalty one or two degrees lower than those referred to in paragraphs 2 and 3.

5. Notwithstanding the provisions of the preceding paragraph, any person who causes or actively cooperates in the death of another person in compliance with the provisions of the organic law regulating euthanasia shall not incur criminal liability.⁶⁷

The Euthanasia Law regulates the right of any person to request and receive the necessary assistance to die, the procedure leading to death, the guarantees to be observed, the duties of the health personnel involved in the death, and the obligations of the institutions involved in euthanasia procedures.⁶⁸

The law contains definitions of certain key concepts: "Informed Consent," "Serious, Chronic and Disabling Condition," "Serious and Incurable Disease," "Responsible Physician," "Consultant Physician," "Conscientious Health Objection," "Provision of Assistance in Dying," and "Situation of de facto Incapacity."⁶⁹

The decision to die must be autonomous, that is, based on knowledge about one's medical situation, after receiving adequate medical information, and a medical record must be kept of these facts.⁷⁰ Disabled persons must receive special support in fulfilling their wish to die.⁷¹

⁶⁵ Ley Orgánica 3/2021, de 24 de marzo, de regulación de la eutanasia, <https://perma.cc/Z3RA-UCDZ>.

⁶⁶ Id. disposición final primera.

⁶⁷ Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, <https://perma.cc/U7X8-4HMK> (consolidated text last modified Apr. 28, 2023, unofficial translation).

⁶⁸ Euthanasia Law art. 1.

⁶⁹ Id. art. 3.

⁷⁰ Id. art. 4(2).

⁷¹ Id. art. 4(5).

The National Health System must include public financing and support for euthanasia requestors and guarantee that such requests are heeded.⁷² Euthanasia requests are to be carried out in public, private or subsidized health centers, or at home.⁷³

To request assistance to die, a requestor must

- a) be an adult,
- b) have Spanish nationality or Spanish legal residence or stay in Spain for at least 12 months,
- c) receive written information about medical alternatives, including palliative care,
- d) make two written requests to receive assistance to die, with at least 15 calendar days between each request (euthanasia physicians may waive this requirement based on clinical circumstances),
- e) suffer from a serious and incurable illness or a serious, chronic, and disabling condition, and
- f) give informed consent prior to receiving aid in dying.⁷⁴

2. *Conditions and Diseases*

The Euthanasia Law defines “Serious, Chronic and Disabling Condition” as

a situation that refers to limitations that directly affect physical autonomy and activities of daily living, such that it does not allow one to take care of oneself, as well as the ability to express and relate, and that are associated with constant and intolerable physical or mental suffering for those who suffer from it, when there is certainty or great probability that such limitations will persist over time without the possibility of cure or appreciable improvement. On certain occasions, the condition may involve absolute dependence on technological support.⁷⁵

The Euthanasia Law also defines “Serious and Incurable Disease” as “one that, by its nature, causes constant and unbearable physical or mental suffering without the possibility of a relief that the person considers tolerable, with a limited life prognosis, in a context of progressive fragility.”⁷⁶

No specific reference is made to any diseases, such as Parkinson’s Disease, in Spain’s Euthanasia Law. We also did not locate any references to particular diseases in the justifications and discussions regarding the law.

⁷² Id. art. 13(1) and (2).

⁷³ Id. art. 14.

⁷⁴ Id. art. 5(1).

⁷⁵ Id. art. 3(b).

⁷⁶ Id. art. 3(c).

F. Switzerland

Switzerland does not have a specific law that allows assisted suicide; the general legal framework is determined by the rights codified in the Swiss Constitution (Bundesverfassung, BV) and the limits set by the Swiss Criminal Code (Schweizerisches Strafgesetzbuch, StGB). In particular, end-of-life decisions concern the right to life codified in article 10, paragraph 1 and the right to self-determination enshrined in article 7 (derived from human dignity) and article 10, paragraph 2 of the Swiss Constitution.⁷⁷

The Swiss Federal Supreme Court has further stated that the right to personal liberty (now codified in article 10, paragraph 2 of the Swiss Constitution) awards patients a right to be fully informed and to decide whether they want to undergo medical treatment.⁷⁸ In addition, article 13, paragraph 1 of the Swiss Constitution guarantees the right to private life. It is modeled after article 8 of the European Convention on Human Rights (ECHR), which encompasses a person's physical and psychological integrity, including the right to make medical treatment choices.⁷⁹

Regarding criminal law, article 114 (active euthanasia) and article 115 (assisted suicide) of the Swiss Criminal Code are of importance.⁸⁰ Active euthanasia is prohibited in Switzerland. According to article 114 of the Criminal Code, homicide at the "genuine and insistent request" of the victim "out of commendable motives," such as compassion for the victim, is punishable by a custodial sentence not exceeding three years or a monetary fine. However, according to a district court in the canton of Neuchâtel, a homicide at the request of the victim may be justified, and this will exempt the defendant from liability, if there was a state of necessity.⁸¹

Nevertheless, this justification must be used restrictively and be reserved for "extreme and dramatic situations."⁸² The court said that a state of necessity requires that

a person is terminally ill of an incurable disease, that this disease causes unbearable suffering which is impossible to relieve by palliative measures, that this person, capable of discernment, expresses a firm, clear, and enlightened will to put an end to his or her life, and that his or her physical condition does not allow him or her to commit suicide by him or herself.⁸³

⁷⁷ Bundesverfassung [BV], Apr. 18, 1999, Systematische Rechtssammlung [SR] 101, as amended, <https://perma.cc/UCC2-CQJU> (original), <https://perma.cc/7FX5-6PMF> (English translation).

⁷⁸ BGE 118 Ia, 427 (434), <https://perma.cc/A2Q7-LMRK>.

⁷⁹ Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] [ECHR], Nov. 4, 1950, 213 U.N.T.S. 222, <https://perma.cc/3PAD-46RJ>; European Court of Human Rights (ECtHR), *Storck v. Germany*, application no. 61603/00, June 16, 2005, para. 143, <https://perma.cc/NW95-BANM>.

⁸⁰ Schweizerisches Strafgesetzbuch [StGB], Dec. 21, 1937, SR 311.0, as amended, <https://perma.cc/YWC8-78T2> (original), <https://perma.cc/WX67-E67P> (English translation).

⁸¹ Tribunal Régional du Littoral et du Val-de-Travers, Tribunal de Police de Boudry (POL), Dec. 6, 2010, docket no. POL.2010.19, at 3.d), <https://perma.cc/5JNC-4TJT>; StGB, art. 17.

⁸² POL, *supra* n. 81, at 3.d).

⁸³ Id. (translation by author).

The legal literature is divided on whether general grounds of justification such as a state of necessity should be applied to article 114.⁸⁴

Assisted suicide, codified in article 115 of the Criminal Code, is legal in Switzerland unless it is done out of selfish motives. If it is done out of selfish motives, it is punishable by a custodial sentence not exceeding five years or a monetary fine. According to the Swiss Federal Supreme Court, selfish motives are present when the perpetrator acts to gain a personal advantage, particularly a material one.⁸⁵

In general, assisted suicide is accomplished with the help of associations that provide assisted or accompanied suicide to their members, such as Dignitas and EXIT. So far, no court has held that assisted-suicide associations act out of selfish motives.⁸⁶ Convictions for assisted suicide out of selfish motives in general have been rare; for example, there have only been eight convictions from 1960 to 1998.⁸⁷

In its 2006 landmark decision, the Swiss Federal Supreme Court held that every human being, even someone with a mental disorder, has a legal “right to die.”⁸⁸ The applicant in the case suffered from severe bipolar affective disorder. The “right to die” is derived from the Swiss Constitution and the ECHR, in particular from article 10, paragraph 2 (right to personal freedom) and article 13, paragraph 1 (right to privacy) of the Swiss Constitution, as well as article 8 of the ECHR (right to private life).⁸⁹ However, that this right exists does not mean that the state has a duty to provide the means for it; it does not have to provide the lethal drug without a prescription directly to an assisted-suicide association.⁹⁰

The content of article 115 of the Criminal Code on assisted suicide has not been amended since it was inserted into the Criminal Code at the time a new federal Swiss Criminal Code was adopted in 1937.⁹¹ Regarding the reasons for inserting the provision into the Criminal Code, the message from the Swiss Federal Council (Bundesrat) accompanying the draft for a Criminal Code stated,

[s]uicide is not a crime under modern criminal law and there are no reasons, such as demographic reasons, to revert back to the old law. But inciting or aiding someone’s suicide could also be an act of friendship; therefore, only inciting and aiding a suicide out

⁸⁴ See the discussion explained by E. Gian, *Vorbemerkungen zu Art. 111 ff.*, in: *StGB Annotierter Kommentar* (D.K. Graf (ed.), 2020), at 730, paras. 7–9, bibliographical information at <https://lcn.loc.gov/2021374729>.

⁸⁵ Bundesgericht (BG), Nov. 17, 2011, docket no. 1B_516/2011, para. E. 2.4, <https://perma.cc/6R6Z-2Z2M>.

⁸⁶ EJPD, *Sterbehilfe und Palliativmedizin – Handlungsbedarf für den Bund?*, Apr. 24, 2006, at 38, <https://perma.cc/Q56D-9DVH>.

⁸⁷ *Id.* at 38 fn. 89.

⁸⁸ BGE 133 I 58, <https://perma.cc/Y8TG-SK7J>.

⁸⁹ *Id.* paras. 6.1 and 6.2.

⁹⁰ *Id.* paras 6.2.3 and 6.3.3.

⁹¹ Bundesblatt [BBl.] 1937 III 625, <https://perma.cc/8WEG-DL5Q>.

Regulation of Assisted Dying

of selfish motives should be punishable, for example convincing a person whom the perpetrator has to support or that he or she will inherit from to commit suicide.⁹²

It appears that no specific diseases or conditions were discussed.

⁹² BBl. 1918, IV 1 (32) (translation by author), <https://perma.cc/9KBX-366S>. This 1918 message by the Federal Council concerned the draft Criminal Code that was eventually enacted in 1937. The language enacted as article 115 appeared in the 1918 draft as article 102.

Figure 1: Jurisdictions Permitting Euthanasia

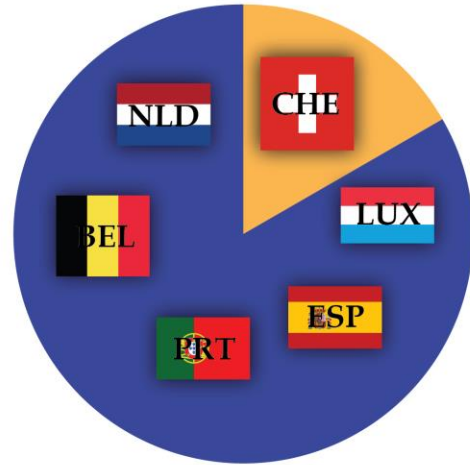


Figure 2: Jurisdictions Permitting Assisted Suicide

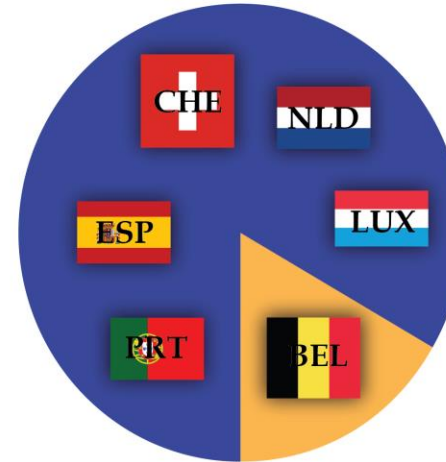
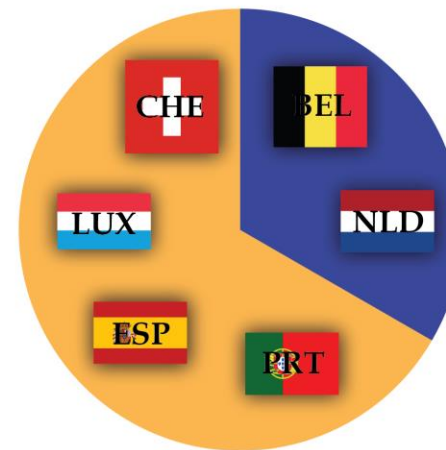


Figure 3: Jurisdictions with Assisted Dying Procedures Available to Minors

■ Yes
■ No



Regulation of Assisted Dying

Table of Primary Sources

Jurisdiction	Type of Law	Citation	URL
Belgium	Statute	28 Mai 2002, Loi relative a l'euthanasie, Moniteur Belge (M. B.) June 22, 2002, p. 28515	https://perma.cc/BF75-ECZ6
		28 Fevrier 2014, Loi modifiant la loi du 28 mai 2002 relative à l'euthanasie, en vue d'étendre l'euthanasie aux mineurs, M. B. Mar. 12, 2014, p. 21053	https://perma.cc/WPQ3-WMQ7
		15 Mars 2020, Loi visant à modifier la législation relative à l'euthanasie, M. B. Mar. 23, 2020, p. 16623	https://perma.cc/P2LQ-UANS
	Proposed Legislation	Sénat de Belgique, Proposition de loi relative à l'euthanasie, Rapport Fait au Nom des Commissions Réunies de la Justice et des Affaires Sociales par Mmes Laloy et Van Riet, Document parlementaire n° 2-244/22, July 9, 2001	https://perma.cc/X2HT-E5B3
Luxembourg	Statute	Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide, J. O. Mar. 16, 2009, N° 46, p.615	https://perma.cc/8BZJ-RA8B
		Loi du 24 juillet 2014 relative aux droits et obligations du patient, J. O. July 31, 2014, N° 140	https://perma.cc/Y67Z-8RSE
		Loi du 2 mars 2021 modifiant : 1° la loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide ; 2° la loi modifiée du 24 juillet 2014 relative aux droits et obligations du patient, J. O. Mar. 3, 2021, N° 167	https://perma.cc/GQ99-JX5F
Netherlands	Statute	Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding, Apr. 12, 2001, Staatsblad van het Koninkrijk der Nederlanden [Stb.] 2001, no. 194, as amended	https://perma.cc/KHV5-UAQB
		Wetboek van Strafrecht, Mar. 3, 1881, Stb. 1881, no. 35, as amended	https://perma.cc/5QQP-TJKW

Regulation of Assisted Dying: Table of Primary Sources

Jurisdiction	Type of Law	Citation	URL
	Regulation	Regeling regionale toetsingscommissies euthanasie, May 27, 1998, Staatscourant 1998, no. 101	https://perma.cc/M6NV-ZP73
Portugal	Statute	Lei No. 22/2023, de 25 de Maio	https://perma.cc/LF6L-F3GX
Spain	Statute	Ley Orgánica 3/2021, de 24 de marzo, de regulación de la Eutanasia	https://perma.cc/Z3RA-UCDZ
Switzerland	Treaty	Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222	https://perma.cc/3PAD-46RJ
	Constitution	Bundesverfassung, Apr. 18, 1999, Systematische Rechtssammlung [SR] 101, as amended	https://perma.cc/UCC2-CQJU (original), https://perma.cc/7FX5-6PMF (English translation)
	Statute	Schweizerisches Strafgesetzbuch, Dec. 21, 1937, SR 311.0, as amended	https://perma.cc/YWC8-78T2 (original), https://perma.cc/WX67-E67P (English translation)