

Belgian citizenship

June 11, 2019

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1. Belgian nationality code (BNC) Introduction and legal bases

1.1. For children born in Belgium (Article 11 and 11bis BNC)

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1.2. For adults by naturalisation (article 19 BNC)

1.4. For adults by declaration (article 12bis BNC)

1.1. For children born in Belgium

- * Art 11 BNC: If a biologic or an adoptive parent was born in Belgium, the child is Belgian
 - **Condition :**
 - **Main residence** of the parent in Belgium for five years during the ten years preceding
 - The birth of the child (biologic parent)
 - The date on which adoption has effect (adoptive parent)

- * Art 11bis BNC : If neither parent was born in Belgium, the child may become Belgian following a declaration made before the child is 12 years old
 - **Conditions:**
 - Main residence of the child in Belgium since his birth
 - Main residence of the parents in Belgium during the ten years preceding the declaration
 - At least one of the parents must have an indefinite residence permit in Belgium at the time of the declaration
 - Declaration must be made jointly by the parents with strict exceptions

1.2. For children whose parents acquire Belgian nationality : attribution of Belgian nationality by collective effect (article 12 BNC)

“In case of voluntary acquisition or recovery of Belgian nationality by a parent or adopter who exercises authority over the person of a child who has not attained the age of eighteen or is not emancipated before that age, the Belgian nationality is attributed to the latter, provided that he has his principal residence in Belgium”.

- Conditions :
 - Voluntary acquisition or recovery of Belgian nationality
 - Authority over the child
 - Minor child or not emancipated
 - Child having is main residence in Belgium

- Effect : Automatic attribution of Belgian nationality to the child

For adults by naturalisation (article 19 BNC)

CONDITIONS:

A. Exceptional merits :

- Over the age of 18 or emancipated before this age
- Legal residence in Belgium
- Have shown **exceptional merits** in the scientific, sports or socio-cultural fields which contribute to Belgium's influence in the world
- Demonstrate why it is near impossible to acquire the Belgian nationality by a declaration of nationality

B. Statelessness :

- Over the age of 18 or emancipated before this age
- Having the quality of stateless in Belgium
- Legal residence in Belgium since at least 2 years

1.2. For adults by declaration (article 12bis BNC)

- * **Born in Belgium + legal residence in Belgium since birth (art 12bis §1er, 1°)**
- * **Five years of legal residence in Belgium (art 12bis §1er, 2°)**
- * **Five years of legal residence in Belgium + being married with a Belgian or having a Belgian children (art 12bis §1er, 3°)**
- * **Five years of legal residence in Belgium + inability to work or pension (art 12bis §1er, 4°)**
- * **10 years of legal residence in Belgium (art 12bis §1, 5°)**

1.2. For adults by declaration (article 12bis BNC)

* **Born in Belgium (art 12bis §1er, 1°)**

➤ **CONDITIONS:**

- Over the age of 18 (birth certificate)
- Be born in Belgium and have fixed your main residence on the basis of legal residence since birth
- Having an indefinite residence permit at the time of the declaration

1.2. For adults by declaration (article 12bis BNC)

* Five years of legal residence (art 12bis §1er, 2°)

➤ **CONDITIONS:**

- Over the age of 18
- Has legally resided in Belgium for 5 years, without interruption (no interruption of stay in the registers)
- Have an indefinite residence permit at the time of application
- Demonstrate knowledge of at least one of the three national languages (level A2)
- Demonstrate social integration
- Demonstrate economic participation (468 days)

1.2. For adults by declaration (article 12bis BNC)

* Five years of legal residence and being married with a Belgian or having Belgian children (art 12bis §1er, 3° BNC)

➤ **CONDITIONS:**

- Over the age of 18
- Has legally resided in Belgium for 5 years, without interruption (no interruption of stay in the registers)
- Have an indefinite residence permit at the time of application
- Being married with a Belgian and having lived together in Belgium for at least three years in wedlock OR being the parent of a minor and not emancipated Belgian child
- Demonstrate knowledge of at least one of the three national languages (level A2)
- Demonstrate social integration
- **NB:** no requirement of economic participation

1.2. For adults by declaration (article 12bis BNC)

- * **Five years of legal residence + inability to work or pension (art. 12bis, §1, 4°)**
- **CONDITIONS :**
 - Over the age of 18
 - Has legally resided in Belgium for 5 years, without interruption (no interruption of stay in the registers)
 - Have an indefinite residence permit at the time of application
 - Prove the inability to work (handicap or invalidity) OR age of pension
 - **NB:** No requirement of work (economic participation), social integration and language

1.2. For adults by declaration (article 12bis BNC)

* 10 years of residence (art 12bis §1er, 5° BNC)

➤ CONDITIONS:

- Over the age of 18
- Has legally resided in Belgium for 5 years, without interruption (no interruption of stay in the registers)
- Have an indefinite residence permit at the time of application
- Demonstrate knowledge of at least one of the three national languages (level A2)
- Prove the participation in the life of their host community
- **NB:** Proof of participation in Belgian society by all means and no requirement of work (economic participation)

2. The condition of “uninterrupted legal residence” and “residence”

2.1. What BNC and Belgian legislation says

2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

2.3. Declarative effect for Europeans, members of their families and refugees

2.3. Interruptions of residence

2. 1. What BNC and Belgian legislation says (1/2)

Belgian nationality code, article 7bis

“§ 2. *Legal residence means:*

1 ° with regard to the moment of submitting his request or statement: *being admitted or authorised to stay indefinitely in the Kingdom or to settle there on the basis of the Aliens Act;*

2 ° with regard to the preceding period: *being allowed or authorised to reside in the Kingdom for more than three months or to settle there in accordance with the Aliens Act or the Regularization Act.*

There is a royal decree that determines the **residence permits** admitted as proof of the legal residence

2. 1. What BNC and Belgian legislation says (2/2)

* *At the time of the application (art. 3. R.D.) :*

Residence cards B, C, D, E, E+, F, F+

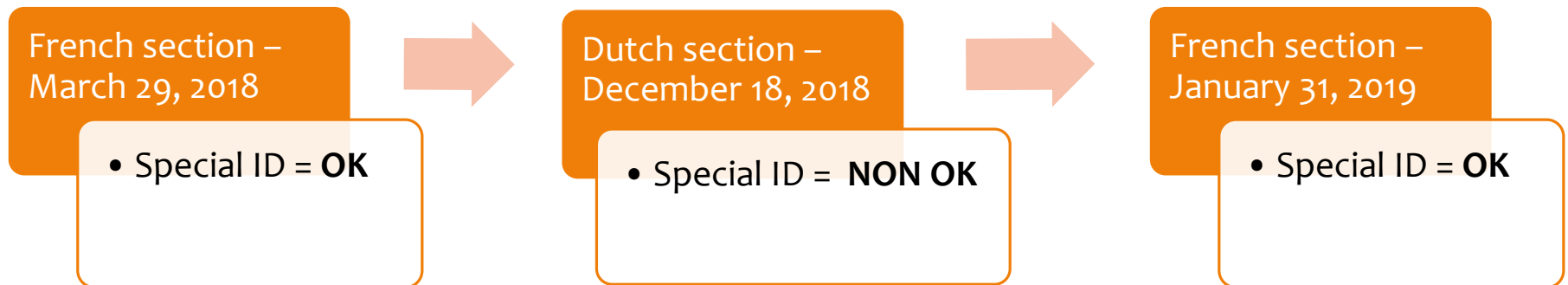
* *Before the application (art. 4. R.D.) :*

Residence cards A, B, H, C, D, E, E+, F, F+, Annexe 15

→ Not the special ID card

2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

- * The three leading cases of the Court of Appeal of Brussels




2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

* Decision of the French Court of Appeal of Brussels - March 29, 2018

*"Article 4 of the Royal Decree is **discriminatory**. It creates a **difference of treatment without justification** between the Europeans legally residing and holding a residence permit that appears on the list of the documents of Article 4 and the Europeans legally residing and holding a residence permit that does not appear on that list.*

*As Article 4 is not in conformity with the law, **it must be rejected**"*

 Argument of equality and non-discrimination based on the **right** to residence, not on the residence **permit**

2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

* Decision of the Dutch Court of Appeal of Brussels – December 18, 2018

“Overwegende evenwel dat opdat er van discriminatie sprake zou kunnen zijn, het moet gaan om een ongelijke behandeling van vergelijkbare categorieën personen zonder afdoende verantwoording;

*Dat enerzijds Europese burgers die in het bezit zijn van een wettelijk verblijfstitel die voorkomt op de in artikel 4 van KB van 14 januari 2013 bepaalde lijst van documenten, en anderzijds Europese burgers die een wettelijk verblijfstitel hebben in België enkel op basis van hun hoedanigheid van [echtgenoot van diplomatieke ambtenaar, consulaire ambtenaar, of ambtenaar van een internationale publiekrechtelijke instelling zoals de Europese Commissie, **manifest geen vergelijkbare categorieën personen zijn;***

Dat deze laatste categorie immers op Belgisch grondgebied verblijft op basis van internationale respectievelijk communautaire afspraken waardoor ons land daar weinig of geen zeggenschap over heeft”



Argument of non-comparability based on the **absence of control of Belgium** regarding the residence of European officials, which is based on an international convention

2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

* Decision of the French Court of Appeal of Brussels – January 31, 2019

"Article 4 of the Royal Decree is **discriminatory**. It creates a **difference of treatment without justification** between the foreigners legally residing and holding a residence permit that appears on the list of the documents of Article 4 and the foreigners legally residing and holding a residence permit that does not appear on that list.

As Article 4 is not in conformity with the law, **it must be rejected**"



Argument of equality and non-discrimination based on the **right** to residence, not on the residence **permit**

2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

- * The case law of the Dutch Court of Appeal of Brussels impacted the practice of the Office of the Prosecutor
- * The Office of the Prosecutor of Brussels is opposed to the acquisition of the Belgian nationality by Europeans officials holding a special ID
- * Refusals are not systematic

2.2. Divergent case law of the Courts of Appeal + impact on the practice of the Office of the Prosecutor

- * **Grounds of refusal from the Office of the Prosecutor of Brussels (examples) :**
 - *“ The position of my Office differs from the one, isolated, chosen by the Court of Appeal of Brussels in its decisions of 29.03.2018 and 14.06.2018” ;*
 - *“There cannot be inequality between foreigners on our territory, since these foreigners are dependent of different authorities (FPS and IO), and subject to different regimes :*
 - *The ones are granted residence permits by the Foreign Affairs Service (FPS), which are protocol cards conferring them certain rights, including the stay ;*
 - *The others are granted residence permit by the Immigration Office (IO), after examination of their application, which gives them another regime”*

2.3. Declarative effect for Europeans, members of their families and refugees

* Article 7bis of the BNC :

- ✓ “For the **citizens of the European Union and the members of their families** (...), the period between the date of submission of their application and the date on which the right of residence is granted to them shall be assimilated to an authorized stay within the meaning of paragraph 2, 2^o”
- ✓ “For **refugees recognized** under the International Convention relating to the Status of Refugees (...), the period between the date of submission of their application for international protection and the date of recognition of refugee status by the competent minister is assimilated to an authorized stay within the meaning of paragraph 2, 2^o”

2.3. Interruptions of residence

- Absences for periods of up to 6 months for personal, professional, and academic reasons: permitted
- Total of the all periods out of the country: $\frac{1}{5}$ of required time (1 year for the short procedure, and 2 years for the long procedure)
- Under obligation to inform the commune before temporary absence (registration in the registrar's under the code TI 026)
- Deregistering or removal from the registrar's is considered as an interruption
- The non-renewal of the residence permit in due time however, does not in itself affect the right of residence granted to the person concerned, and should therefore not be considered as an interruption of the stay

3. The other conditions

3.1. *Economic participation*

3.2. *Knowledge of a national language*

3.3 *Social integration*

3.4. *Participation in the host community*

3.1 . Economic participation

Requirement:

468 days of work time during the five years preceding the introduction of the application.

BUT : the duration of any **training** in the 5 years preceding the application is deducted from the duration of the required professional activity of 468 days.

How to prove it?

- * **Employees in private sector** : individual accounts delivered by the employer
- * **Employees in the public service** : attestation from the competent service of the public administration
- * **Self-employed**: attestation from the social contribution organism (payment of social contributions for at least six quarters in the last five years)
- * **Statutory servants**: attestation from the competent service of the public administration + proof of definitive nomination

3.2. Knowledge of national language

Level required? A2

Which language? The law requires only one of the 3 national languages

How to prove it?

- * *Diploma (obtained in one of the national languages, and delivered by an educational institution organised, recognised or subsidised by a community, level: at least secondary education) **OR***
- * *Diploma obtained in another EU country that proves the knowledge of one of the national languages (equivalence required) **OR***
- * *Professional training (400 hours) **OR***
- * *Integration course **OR***
- * *Uninterrupted work during the last 5 years **OR***
- * *Language test*

Advice: pass a language test (ACTIRIS, FOREM, VDAB, SELOR, Bruxelles Formation) or an integration course

3.3. Social integration

How to prove it?

➤ **Five years of legal residence + work (12bis, 2°) :**

- * *Diploma (obtained in one of the national languages, and delivered by an educational institution organised, recognised or subsidised by a community, level: at least secondary education) **OR***
- * *Professional training (400 hours) **OR***
- * *Integration course **OR***
- * *Uninterrupted work during the last 5 years*

3.3. Social integration

How to prove it?

- **Five years of legal residence + married to a Belgian or parent of a minor Belgian child (12bis, 3°) :**
- * *Diploma (obtained in one of the national languages, and delivered by an educational institution organised, recognised or subsidised by a community, level: at least secondary education)***OR**
- * *Professional training (400 hours) + 234 days of work during the five past years* **OR**
- * *Integration course* **OR**

3.4. Participation in the host community

How to prove it?

Not a legal requirement → this evidence can be provided by all legal means that contain evidence that the applicant is taking part in the economic and/or socio-cultural life of the host community

Examples:

- * Property deed
- * Testimonials of friends, relatives (with copy of the I.D)
- * Proof of socio-cultural activities in Belgium
- * Proof of involvement in NGOs, social projects
- * ...

4. EU officials

4.1. Difficulties for workers at European institutions

4.2. Strategy based on the current case law

4.1. Difficulties for workers at European institution

* *Legal residence*

Following the divergent case law of the French and Dutch sections of the Court of Appeal of Brussels :

- ⇒ Legal uncertainty
- ⇒ Risk of refusal of the Office of the Prosecutor
- ⇒ Risk that the French Tribunal of first instance of Brussels decides to depart from its previous case law

4.1. Difficulties for workers at European institutions

* ***Economic participation:***

Working at European institutions => not considered as a valid proof according to the Office of the Prosecutor.

BUT, for the **Family Tribunal of Brussels** (judgment of May 8, 2018), working at the European institutions proves the knowledge of the language, social integration and economic participation.

This has not yet been confirmed by the Court of Appeal.

Strategy based on the current case law

First step: ask for a card E or E+ to the Municipality.

On which legal basis apply?

Do you have 10 years of residence?

YES: apply on art.12bis§1, 5° (to avoid the condition of economic participation and social integration)→ advice: pass a language test (ACTIRIS, FOREM, VDAB, SELOR, Bruxelles Formation)

NO : Do you have a Belgian child or are you married to a Belgian (+legal residence for at least 5 years)?

YES: apply on art. 12bis§1, 3° (to avoid the condition of the economic participation)→ advice: pass the integration course (shows the language and the integration)

NO : Do you have 5 years of residence + work?

YES: apply on art. 12bis §1, 2°

NO: You will have to wait

→ In each cases, there are chances of success, but probably after a proceeding at the Tribunal

5. Procedures and appeals

5.1. How to apply and how long it will take?

5.2. Is it possible to insist on the registration of the nationality application at the commune if they refuse? How?

5.3. Judicial remedies and appeals

5.1. How to apply and how long it will take?

Where?

To the service « civil status » of the Municipality

Registration costs

150 euros

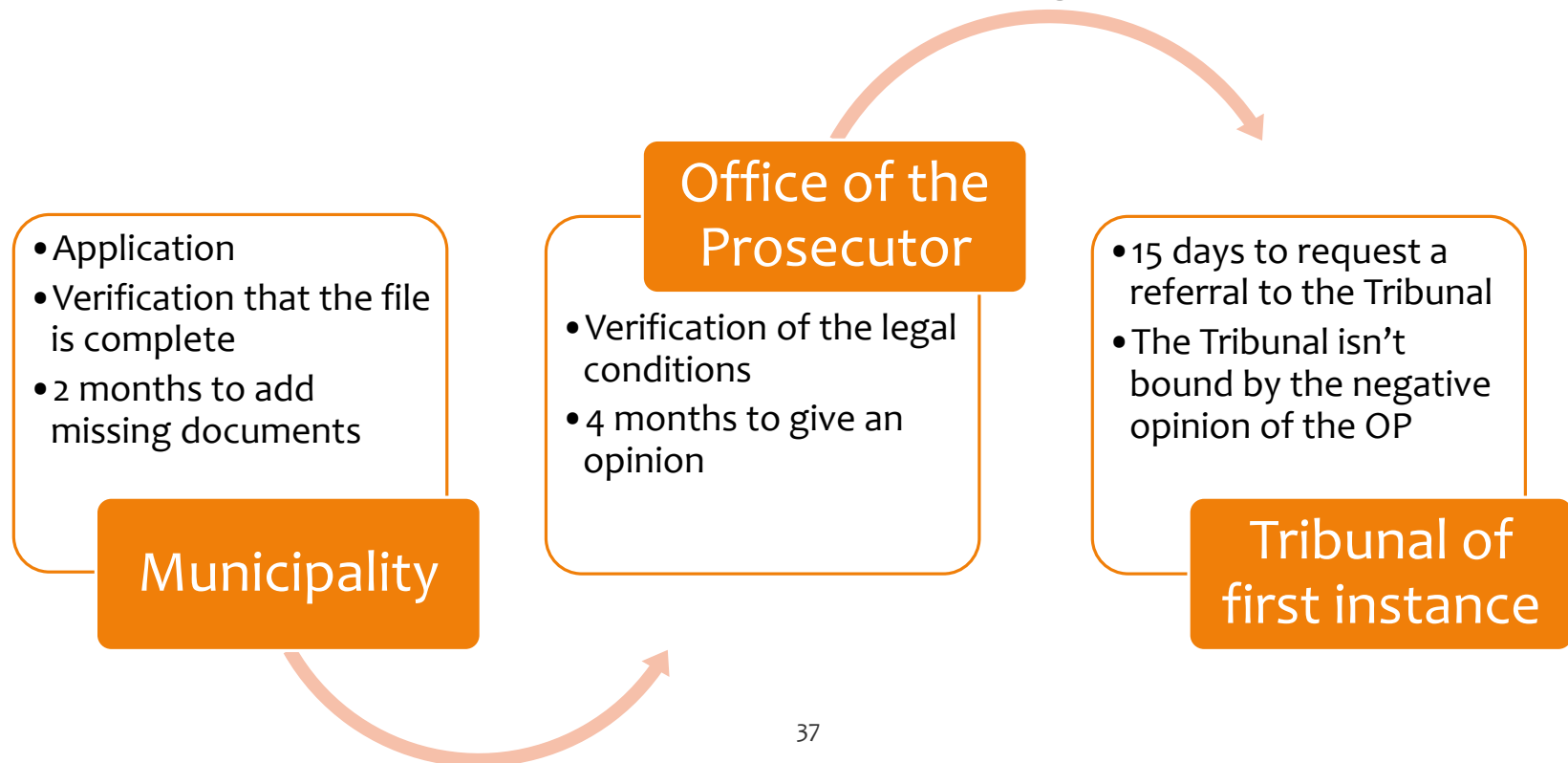
Duration

The commune verifies that the file is complete :

- * File not complete: 2 months to add the missing documents
- * File complete: the commune sends the file to the Office of the Prosecutor who has for 4 months to give an opinion
- * In case of negative opinion: 15 days to request a referral to the Tribunal

5.1. How to apply and how long it will take?

In case of negative opinion



5.2. Is it possible to insist on the registration of the nationality application at the commune if they refuse? How?

- The commune **can't** check the validity of the documents
- The validity of the document is the decision of the **Public Prosecutor**

If one considers that (by refusing to register an application) the commune is **exceeding its powers**, then there is a possibility of a civil procedure in front of the Court of First Instance:

- ❖ Formal notice (“mise en demeure”)
- ❖ No formal deadline for action but the sooner the better
- ❖ Request in front of the Civil Judge
- ❖ Decision in a few months

A judgment from the Tribunal of Brussels has already ordered the municipality of Ixelles to transfer the files of the persons holding a special card directly to the prosecutor

5.3. Judicial remedies and appeals

Against a decision of inadmissibility of the commune :

- * Conseil d'Etat - within 60 days after notification of the decision (registration costs 200 euros)
- * Civil court- See before (registration costs : 20 euros. In case of condemnation : 165 euros)

5.3. Judicial remedies and appeals

Against a negative opinion of the Public Prosecutor (opposition to the acquisition of the Belgian nationality) :

- * Civil Court : by “lettre recommandée” to the commune, asking to transfer the file to the Court
- * Within the 15 days of notification of the negative opinion
- * !! Keep your receipt!!
- * Payment of registration costs (20 euros)
- * Hearing within 6 months and 1 year in Brussels

5.3. Judicial remedies and appeals

Against a first instance Judgment :

- * Appeal within the 15 days of the notification of the Judgment
- * In front of Court of Appeal (civil Court)

Conclusion and strategy

- * Choose the right legal basis for your application!
- * Each situation is unique
- * The communes does not have the expertise to give advice as this is not in its power. Be wary!
- * In case of abusive refusal of registration of a file by a municipality: a judicial action is possible (there is one precedent)
- * For EU officials : risk of refusal based on the legal residence or economic participation => judicial procedure probably necessary

Questions?

Thank you for your attention

Cabinet d'avocats Altea

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