



Ministère de la Santé
Ministère de la Sécurité sociale

Euthanasia and assisted suicide

Law of 16 March 2009

english

25 questions

25 answers



Euthanasia and assisted suicide

Law of 16 March 2009

In partnership with

the Ministry of Social Security (Ministère de la Sécurité sociale),

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(Commission Nationale de Contrôle et d'Evaluation),

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Preface

Mars Di Bartolomeo

Minister of Health

Minister of Social Security



With the unanimous passing of the Law relating to palliative care, advance instructions and end-of-life accompaniment, Luxembourg has a global, coherent and robust legislative framework in favour of palliative care. At the same time it adopted the so-called “Err-Huss” Law. In line with the Belgian model, under the strictest conditions this Law governs euthanasia or assisted suicide performed by a doctor on the request of a patient in a terminal situation.

The new legal framework applicable to the end of life is the outcome of a long process of reflection within our society. Those reflections began in the Chamber of Deputies in 1996. In 1999 a special report was filed on palliative medicine, the use of intensive medication and euthanasia. The undersigned was involved at that time as a Deputy sitting on the special ethical committee established by Parliament.

The debate in relation to the end-of-life framework affected the very meaning of our existence, and speeches were sometimes impassioned. In the last analysis, the answers given to these questions are necessarily as varied and personal as each person’s most intimate beliefs.

The Law of 16 March 2009 endeavours on the one hand to respect the freedom of conscience of the doctor who is free to respond or not to a request for euthanasia or assisted suicide. On the other hand, the legislator considered that this necessary respect for the freedom of conscience of the doctor and of care staff should not justify forcing a patient in a terminal situation to continue to live in anguish and suffering which they deem unbearable.

With the adoption of the two Laws of 16 March 2009, Luxembourg is now one of the European countries doing all it can to guarantee their citizens access to first-class palliative care whilst preserving their right to decide on the end of their life in accordance with their beliefs. It is a matter of giving additional legislative answers aimed at providing a framework for medical practices with regard to the end of life, respecting everyone’s dignity and choice.



The aim of this information brochure is to explain the legal framework resulting from the provisions of the Law of 16 March 2009 on euthanasia and assisted suicide. Without being exhaustive, it endeavours to give the necessary orientations in the form of questions and answers.

I dare to hope that the new legal framework will enable people at the end of their lives and those around them to overcome this ultimate and, unfortunately, sometimes extremely difficult phase in all dignity.



25 questions 25 answers on the Law of 16 March 2009 on euthanasia and assisted suicide

1

What legal texts apply at the end of life ?

These days, thanks to medical progress, the circumstances of death have changed and resulted in an increase of life expectancy. However, medicine cannot always fight it, because the end of life is just one part of the full life cycle.

When illness occurs and obliges us to approach death, this is more frequently within a context of medical intervention. At present, medicine enables us to maintain or to shorten life artificially. In view of such realities, questions relating to the end of life have been of great concern to public opinion.

After in-depth debate, the legislator acted on 16 March 2009 with two important Laws: the Law relating to palliative care, advance instructions and end-of-life accompaniment, and the Law on euthanasia and assisted suicide. These two texts reinforce and clarify the rights of people at the end of their lives.

This publication aims to explain the provisions of the Law of 16 March 2009 relating to euthanasia and assisted suicide.

If you would like more information on palliative care and end-of-life accompaniment, a “Guide to Palliative Care” is available to answer your questions.

2

Why is there a Law on euthanasia and assisted suicide ?

By simultaneously passing the Law relating to palliative care and the Law on euthanasia and assisted suicide, the legislator wanted on the one hand to emphasise his wish to do everything possible to continue developing palliative care. On the other hand, he wanted to permit patients to have freedom of choice regarding the conditions of the end of their life, whilst protecting doctors who agree to accede to their request for euthanasia or assisted suicide in respecting the provisions of the Law, whilst removing the risk of criminal action against doctors.

The Law of 16 March 2009 on euthanasia and assisted suicide thus opens up a possibility of dying in the case where suffering is deemed unbearable by the patient. That possibility constitutes an answer to the wish expressed by a portion of public opinion, as well as by a number of health and legal professionals.

Strict legal conditions guarantee transparency and the supervision of medical acts associated with the voluntary interruption of life within the context of euthanasia or assisted suicide.

3

Does the Law decriminalise euthanasia and assisted suicide ?

The Law makes a conditional decriminalisation which aims to protect the doctor who proves to have shown all the stringency required by the Law. The Law decriminalises provided the euthanasia or assisted suicide is performed by the patient's doctor within the conditions of the Law. Only in that case is the act not subject to criminal sanction and may not give rise to a civil action for damages. A specific ground for the exclusion of criminal proceedings was thus inserted to that end in the Criminal Code.

Given that the Law does not provide for pure and simple decriminalisation, euthanasia and assisted suicide remain punishable outside the legal framework of the Law of 16 March 2009. The existence of this Law does not mean that anybody can help to kill another person who might have made such a request of them.

Pure and simple decriminalisation would in fact permit all sorts of abuse. The Law of 16 March 2009 enables such abuse to be avoided by prescribing precise and strict conditions with the aim of providing a framework for euthanasia and assisted suicide.

Observance of the conditions of the Law is checked in each case by the Commission for Control and Assessment. If the Commission thinks that the basic conditions have not been met, it forwards the file to the Public Prosecutor, who decides on criminal proceedings. If formal conditions have not been met, the Commission may submit the file to the Medical Council with a view to possible disciplinary proceedings.

4

What are the illnesses or disorders for which euthanasia or assisted suicide may be possible ?

The origin of the terminal state of health referred to in the Law of 16 March 2009 is not important. The patient's health problems may result from any disorder which gives rise to unbearable physical or mental suffering.

Foreign experience shows that the majority of cases involve advanced cancers or neuro-muscular illnesses with terminal paralysis, but it could be any severe, incurable and irreversible disorder which meets the legal conditions.

5

In what cases may a patient make a direct request for euthanasia or assisted suicide ?

The direct request for euthanasia by the patient is the normal case. It is a request expressed by an adult capable and conscious patient in a medical situation where the conditions of the Law are met for the performance of euthanasia.

_____ The Law requires the following conditions, associated with the patient's situation, to be met:

1. the patient must be an adult, capable and conscious at the time of the request;
2. the request must be made voluntarily, after reflection and if necessary repeated, and it must not result from external pressure;
3. the patient is:
 - in a severe and incurable terminal medical situation, and
 - have constant and unbearable physical or mental suffering without prospects of improvement.

The direct request from the patient is recorded in writing. The document is drafted, dated and signed by the patient themselves. If the patient is physically unable to draft and sign their request (for example by virtue of paralysis), it may be transcribed and signed by an adult person chosen by the patient, in the presence of the doctor whose name will also appear on the document. The reasons for which the patient is not able to write with their own hand must be indicated.

The direct request made by the adult capable and conscious patient remains valid for as long as necessary to perform the euthanasia, even if the patient becomes unconscious during that period.

NB: any adult and capable person may also, in their end-of-life provisions, express the circumstances and conditions in which they wish to undergo euthanasia. These end-of-life provisions relate to patients who can no longer express their wishes and are in a state of unconsciousness (on this subject, please refer to the answers 8 to 14).

6

How do you define unbearable suffering without prospects of improvement ?

Although several objective factors can contribute to assessing the unbearable nature of the suffering, the assessment of the unbearable suffering is to a large extent a subjective and personal question from the patient and depends on their personality, their pain perception threshold, their conceptions and their values.

The question of prospects of improvement of the suffering is one of a medical nature, but account should be taken of the fact that the patient is entitled to refuse the treatment of suffering, or even a palliative treatment, above all when such treatment involves side effects or modes of application which they deem unbearable. An in-depth discussion between the doctor and the patient is necessary in this regard.

In view of the variability of these notions, depending upon the person concerned, the opinion of an independent doctor is required together with that of the treating doctor.

7

What must the doctor do before performing euthanasia or assisted suicide ?

When a request for euthanasia or assisted suicide is made directly by a patient who is conscious and capable of expressing their wishes, the doctor who receives such a request must:

- **inform the patient of their state of health** and life expectancy, consult with the patient on their request for euthanasia or assisted suicide and deal with the therapeutic possibilities still to be envisaged as well as the possibilities offered by palliative care and their consequences;
- **be convinced that the request from the patient is voluntary** and that in the patient's eyes there is no other acceptable solution in their situation;
- **have several interviews with the patient**, at reasonable intervals having regard to the evolution of the patient's condition, in order to be assured of the persistence of the physical or mental suffering of the patient and their recently expressed or reiterated wish;
- **consult another doctor** as to the severe and incurable nature of the disorder, specifying the reasons for the consultation;
- unless the patient objects, **discuss the latter's request with the care team** in regular contact with the patient or its members;
- unless the patient objects, **discuss the latter's request with the person of trust they have appointed** in their end-of-life provisions or at the time of their request for euthanasia or assisted suicide;
- **ensure that the patient has had the opportunity to discuss their request** with the people they wish to meet;
- **obtain information from the Commission** as to whether any end-of-life provisions have been registered in the name of the patient.

Of course the patient may change their mind at any time and withdraw their request.

If the doctor performs euthanasia or assisted suicide, he must within eight days submit a registration document to the National Commission for Control and Assessment, which checks whether the conditions and procedures provided by the Law have been met and followed.

8

Can you express your wishes regarding euthanasia in advance ?

End-of-life provisions are a request for euthanasia made in advance for cases where the patient, at a later time in their life, is in an irreversible state of unconsciousness according to science at that time and might suffer from a severe and incurable accidental or pathological disorder and that situation might be irreversible according to science at that time.

Any adult and capable person may, for the case where they might no longer express their wishes, set out in writing in their end-of-life provisions the circumstances and conditions in which they wish to undergo euthanasia.

The end-of-life provisions may moreover include a specific section in which the declarant fixes the provisions to be taken as to the mode of burial and the form of the funeral ceremony.

In the end-of-life provisions, the declarant may also appoint an adult person of trust, who keeps the treating doctor up to date on the declarant's wishes in accordance with their latest statements in that regard.

9

How do you draft and register end-of-life provisions ?

End-of-life provisions must be in writing, dated and signed by the person concerned, unless that person is permanently physically unable to draft and sign them. The end-of-life provisions must be registered.

If the person concerned is permanently physically unable to draft and sign their end-of-life provisions, their wishes may be recorded in the presence of two witnesses by an adult person of their choice. The end-of-life provisions must then specify that the declarant cannot draft and sign them and indicate the reasons. The end-of-life provisions must be dated and signed by the person who records the declaration in writing, by the witnesses and, if necessary, by the person of trust. A medical certificate confirming the permanent physical impediment is appended to the end-of-life provisions.

The end-of-life provisions may be reiterated, withdrawn or adapted at any time. Such changes must be registered. Nevertheless, the last wish of the sick person always prevails and there may be no euthanasia if the doctor obtains knowledge of an expression of the wishes of the patient after the end-of-life provisions have been duly registered, by means of which they withdraw their wish to undergo euthanasia.

The end-of-life provisions, as well as any possible change, must be registered with the National Commission for Control and Assessment:

National Control and Assessment Commission
of the Law of 16 March 2009 on euthanasia and assisted suicide

Ministry of Health
L – 2935 Luxembourg

In appendix 2 you will find a model for end-of-life provisions.
Use of this model is recommended.

10

What is the validity period for end-of-life provisions ?

The Law does not specify the validity period, but the Commission for Control and Assessment is obliged, at least once every five years from the date of registration of the end-of-life provisions, to request confirmation of the declarant's wishes.

The end-of-life provisions may be reiterated, withdrawn or adapted at any time.

Any possible change must be declared and registered with the Commission for Control and Assessment.

We also recall that there may be no euthanasia if, following the procedures the doctor is led to make, he obtains knowledge of an expression of the wishes of the patient after the end-of-life provisions have been duly registered, by means of which they withdraw their wish to undergo euthanasia.

11

How is the doctor informed of the existence of end-of-life provisions ?

Any doctor treating a patient at the end of their life or a patient in a terminal medical situation is obliged, before performing euthanasia, to obtain information from the Commission for Control and Assessment as to whether end-of-life provisions have been registered in the name of the patient.

After registration of the end-of-life provisions, the Commission for Control and Assessment sends an acknowledgement of receipt to the person registering them. It is recommended that a copy of the end-of-life provisions and the acknowledgement of receipt be submitted to the treating doctor or, if necessary, to the person of trust.

12

What is the role of the person of trust ?

At the time when their end-of-life provisions are drafted, any person may appoint an adult person of trust.

The person of trust is the patient's spokesperson if they are no long able to express themselves. They do not express a personal opinion, but keep the treating doctor updated on the patient's wishes according to their latest statements in that regard.

13

In what cases must the doctor take account of the end-of-life provisions ?

When the doctor is informed of the end-of-life provisions, he must take account of them after assuring himself that:

1. the circumstances and conditions envisaged in the end-of-life provisions are met;
2. the provisions are valid and have been duly registered: the doctor checks on this with the Commission for Control and Assessment;
3. the basic conditions associated with the patient's situation have been met:
 - the patient is **afflicted by a severe and incurable accidental or pathological disorder**,
 - the patient is **unconscious**, and
 - this **situation** is **irreversible** according to science at that time.

The doctor may refuse to perform an act of euthanasia but he is obliged to inform his patient and/or the person of trust of this within 24 hours and to submit the file to a colleague appointed by the patient or by the person of trust (on this subject, please refer to the answer to question 21).

14

What must the doctor do before taking account of the end-of-life provisions ?

When the conditions are met, the doctor, unless to raise his conscientious objection, must in all cases and before performing euthanasia:

1. **consult a colleague** in order to confirm the irreversible nature of the patient's serious and incurable situation;
2. if there is a care team in regular contact with the patient, **discuss the contents of the end-of-life provisions** with the care team or its members;
3. if the end-of-life provisions appoint a person of trust, **discuss the patient's wishes with them** and **discuss the patient's wishes with close relatives** of the patient and with the appointed person of trust.

The end-of-life provisions as well as all the procedures followed by the treating doctor and their result, including the report from the doctor consulted, are entered in the patient's medical file.

The last wish of the sick person always prevails and there may be no euthanasia if the doctor obtains knowledge of an expression of the wishes of the patient after the end-of-life provisions have been duly registered, by means of which they withdraw their wish to undergo euthanasia.

If the doctor performs euthanasia, he must submit a registration document within eight days to the Commission for Control and Assessment, which checks whether the conditions and procedures provided by the Law have been met and followed.

15

What is the position regarding minor children and patients under guardianship or trusteeship ?

The Law provides that the doctor may only aid death by euthanasia or assisted suicide if the request is made by an adult patient who is capable and conscious at the time of the request or at the time they drafted their end-of-life provisions.

Neither a minor nor an adult person under guardianship or trusteeship nor an incapable person may validly request euthanasia or assisted suicide.

This means that parents cannot decide on behalf and instead of their minor child that they undergo euthanasia because they deem the pain to be unbearable for the latter. Similarly, guardians or trustees cannot decide on behalf of an adult person under guardianship or trusteeship.

16

May the non-resident patient request euthanasia or assisted suicide in Luxembourg, and if so under what conditions ?

A patient residing abroad and with a treating doctor in Luxembourg may make end-of-life provisions and register them because no clause regarding residence or nationality is attached to such registration, or other fundamental and formal conditions of the Law of 16 March 2009.

However, the Law requires a close relationship between the patient and their doctor: the doctor must know the patient well since he must confirm that the request is made freely and without force, he must interview the patient on several occasions, certify and check that the suffering is unbearable and without prospects of improvement and so on.

This provision means that the treating doctor must have treated the patient continuously and for a sufficiently long time.

17

What is the procedure for consulting an independent doctor ?

The colleague that the doctor in charge of the patient is obliged to consult before performing euthanasia has a task which is well defined by the Law. He does not have to make a judgement as to his position in principle vis-à-vis euthanasia.

This consultation is not subject to the conditions of precise form, but the Law requires that the doctor consulted is competent as to the pathology concerned. His task is to confirm that the fundamental conditions associated with the patient's medical situation are met.

In the case of a request for euthanasia made by a capable and conscious patient, the doctor consulted must confirm that the patient is in a severe, incurable and terminal medical situation, and that there is constant and unbearable physical or mental suffering without prospects of improvement.

When the patient is not in a position to express their wishes and the treating doctor considers complying with the end-of-life provisions, his task is to confirm that the patient is afflicted by a severe and incurable accidental or pathological disorder, that they are unconscious and that the situation is irreversible according to the science at the time.

The independent doctor will consult the medical file and examine the patient in order to ensure that the latter's condition meets the requirements of the Law.

The conclusions of the independent doctor will be put in writing in a report. It is the treating doctor who will inform the patient of it.

18

May the treating doctor consult another expert in addition to the independent doctor ?

The Law provides that on the request of the treating doctor an adviser or expert of his choice may be consulted. Their attestation may be added to the patient's file. If there is a medical report on the patient, it must be added.

Only the doctor may make such a request without any condition of precise form being required by the Law.

19

In addition to the patient, may somebody else decide on euthanasia or assisted suicide ?

Is the agreement of close relatives required ?

No close relative and no doctor can decide on euthanasia. Only the person personally at the origin of the request for euthanasia or assisted suicide may request a doctor to assist in a painless death insofar as the conditions of the Law are met.

No person may substitute themselves for another to request euthanasia or assisted suicide on their behalf. Neither a close person nor a treating doctor may therefore decide instead of their close relative or their patient.

Even when end-of-life provisions have been registered, the person concerned may change their opinion at any time. In all cases the doctor must respect the last wish of the patient.

If a person of trust has been appointed, they do not decide and do not speak personally, but must keep the doctor updated on the patient's wishes.

20

Is the doctor obliged to carry out a request in accordance with the Law ? What is the position regarding care staff ? What is the position regarding hospitals or other establishments caring for people at the end of life ?

The Law recognises the freedom of conscience of the doctor who is free to respond or not to a request for euthanasia or assisted suicide. The doctor may refuse to perform such an act in view of his personal beliefs. Similarly, no carer or other person is obliged to assist or to participate in euthanasia or assisted suicide.

Freedom of conscience is nonetheless an individual and not an institutional freedom. A hospital, a retirement home, a rehabilitation centre and so on cannot validly assert this freedom to refuse a doctor in its institution agreeing to perform euthanasia or assisted suicide, when the conditions provided by the Law are met.

21

What happens in the case where the conditions are met and the doctor raises his conscientious objection ?

When the doctor raises his conscientious objection, he is obliged to inform his patient and/or the person of trust of this within 24 hours and to submit the file to a colleague appointed by the patient or by the person of trust.

22

Does the doctor who agrees to perform euthanasia or assisted suicide breach the Code of Medical Ethics ? Can he be punished by the Medical Council ?

The Code of Medical Ethics, approved by Ministerial Order dated 7 July 2007, is earlier than the Law of 16 March 2009 and cannot anticipate the answer given by the legislator. At the present time, the Medical Council has not yet adapted the Code to take account of the Law on euthanasia and assisted suicide.

In any event, ethical questions may be the object of a Law which respects the freedom of conscience of each doctor (on this subject, please refer to the answer to question 21).

In a democratic state, the Law, which is hierarchically above legal norms, prevails over ethical rules. The pre-eminence of higher legal and regulatory provisions is also stressed by the last section of the Code of Ethics, which provides that the Code can only be observed subject to the legal and regulatory provisions in force now and in the future.

This means that no doctor may be punished on the base of sections of the Code of Ethics which have not yet been amended since he is strictly complying with the Law in force.

23

What are the competences of the National Commission for Control and Assessment ?

The role of the Commission for Control and Assessment is to guarantee the proper application of the Law of 16 March 2009 on euthanasia and assisted suicide.

The Commission deals with the systematic registration of end-of-life provisions. On request, it informs the doctor taking charge of a patient at the end of life whether end-of-life provisions have been registered and if so it gives him access to them so that he can check whether the end-of-life provisions are properly registered and what is their exact content.

The Commission establishes the registration form to be completed by the doctor each time he performs euthanasia, in order for it to examine and to verify that the euthanasia has been performed in accordance with the conditions and procedure provided by the Law.

It is obliged, at least once every five years from the date of registration of the end-of-life provisions, to request confirmation of the declarant's wishes.

Every two years the Commission draws up a report on the application of the Law for the Chamber of Deputies. If necessary, it may make recommendations (on this subject, please refer to the answer to question 25).

24

What is the composition of the National Commission for Control and Assessment ?

The Commission for Control and Assessment consists of nine members, appointed on the basis of their knowledge and experience of the matters falling within the competences of the Commission.

Three members are doctors of medicine. One member is proposed by the Medical Council. The organisation most representative of doctors and dentists proposes two members with specific qualification and experience in the treatment of pain.

Three members are lawyers, including a Barrister-at-Law proposed by the Bar Council, a magistrate proposed by the Supreme Court of Justice and a professor of the University of Luxembourg.

One member is from the health professions and proposed by the higher council of certain health professions.

Two members are representatives of an organisation with the object of defending the rights of the patient.

The capacity of members of the Commission is incompatible with the mandate of Deputy or member of the Government or the Council of State.

Members of the Commission are appointed by the Grand Duke for a term of three years. The mandate is renewable three times. The Commission elects a Chairman from among its members.

The Commission may only deliberate validly provided at least seven of its members are present. It takes its decisions by majority.

The members of the Commission, its administrative staff and the experts consulted are obliged to observe confidentiality regarding the data of which they gain knowledge in performing their tasks.

25

What are the mechanisms for assessing the application of the Law ?

Every two years, the Commission for Control and Assessment assesses the proper application of the Law in its assessment report to the Chamber of Deputies. This report contains:

- a statistical report;
- a report on the assessment of the application of the Law;
- if necessary, recommendations likely to lead to proposals to amend the Law or its terms of execution.

This report will be discussed in public within six months following its being lodged with the Chamber of Deputies and if necessary political conclusions will be drawn from it which might lead to amendments of the Law if the majority of the Chamber of Deputies so decides.

Furthermore, and on a substantiated request from a team of researchers, anonymous statistical and technical data may be provided by the Commission.



Appendix 1:

Law of 16 March 2009 on euthanasia and assisted suicide

Chapter I – General provisions

Article 1.- For application of the present Law, euthanasia should be understood as the act, performed by a doctor, intentionally ending the life of a person on the express and voluntary request of that person.

Assisted suicide should be understood as the fact that a doctor intentionally assists another person to commit suicide or provides another person with the means to that end, on the express and voluntary request of that person.

Chapter II – The request for euthanasia or assisted suicide, conditions and procedure

Article 2.- 1. The fact of a doctor responding to a request for euthanasia or assisted suicide shall not be punished as a criminal act and may not give rise to a civil action for damages if the following fundamental conditions are met:

- 1) the patient is a capable and conscious adult at the time of their request;
- 2) the request is made voluntarily, after reflection and, if necessary, repeated, and does not result from external pressure;
- 3) the patient is in a terminal medical situation and shows constant and unbearable physical or mental suffering without prospects of improvement, resulting

from an accidental or pathological disorder;

- 4) the patient's request for euthanasia or assisted suicide is made in writing.
2. In all cases, and before performing euthanasia or assisting suicide, the doctor must comply with the following formal and procedural conditions:
 - 1) inform the patient of their state of health and their life expectancy, discuss their request for euthanasia or assisted suicide with the patient and raise the therapeutic possibilities which might still be envisaged as well as the possibilities offered by palliative care and the consequences. He must reach a belief that the patient's request is voluntary and that in the patient's eyes there is no other acceptable solution to their situation. Such interviews shall be placed in the medical file as proof of the information;
 - 2) ensure the persistence of the patient's physical or mental suffering and their recently expressed or reiterated wish. To that end, he shall hold several interviews with the patient, at reasonable intervals having regard to the evolution of the patient's condition;
 - 3) consult another doctor as to the severe and incurable nature of the disorder, specifying the reasons for the consultation. The consulted doctor shall read

the medical file, examine the patient and satisfy himself as to the constant, unbearable physical or mental suffering and the lack of prospects of improvement. He shall draw up a report on his observations. The consulted doctor must be impartial, regarding both the patient and the treating doctor and be competent as to the pathology concerned. The treating doctor shall inform the patient of the results of this consultation;

- 4) unless the patient objects, on their request interview the care team in regular contact with the patient or members thereof;
- 5) unless the patient objects, on their request interview the person of trust they have appointed in their end-of-life provisions or at the time of their request for euthanasia or assisted suicide;
- 6) ensure that the patient has had the opportunity to discuss their request with the persons they wish to meet;
- 7) check with the National Commission for Control and Assessment whether end-of-life provisions have been registered in the patient's name.

The patient's request must be noted in writing. The document shall be drafted, dated and signed by the patient personally. If the patient is permanently physically unable to draft and sign their request, then it shall be noted in writing by an adult person of their choice.

That person shall mention the fact that the patient is unable to make their request in writing and indicate the reasons. In such a case, the request shall be noted in writing and signed by the patient or the person who drafted the request in the presence of the treating doctor whose name must also

be indicated in the document. The document must be placed in the medical file.

The patient may withdraw their request at any time, in which case the document shall be removed from the medical file and returned to the patient.

All the requests made by the patient, as well as the procedures of the treating doctor and their result, including the report(s) of the consulted doctor(s) shall be regularly placed in the patient's medical file.

Article 3.- If he finds it necessary, the treating doctor may be accompanied or advised by an expert of his choice and have the opinion or confirmation of the latter's intervention placed in the patient's file. If it is a medical report, the opinion or confirmation shall be placed in the patient's file.

Chapter III – End-of-life provisions

Article 4.- 1. For the case where they can no longer express their wishes, any adult and capable person may make end-of-life provisions in writing which shall contain the circumstances and conditions under which they wish to undergo euthanasia if the doctor observes:

- that they are afflicted by a severe and incurable accidental or pathological disorder,
- that they are unconscious,
- and that the situation is irreversible according to science at the time.

End-of-life provisions may moreover contain a specific section in which the declarant fixes the provisions to be taken as to the mode of burial and the form of the funeral ceremony.

In the end-of-life provisions, the declarant may appoint an adult person of trust, who

shall keep the treating doctor updated on the wishes of the declarant according to their latest statements in this regard.

End-of-life provisions may be made at any time. They must be noted in writing, dated and signed by the declarant.

2. If the person who wishes to draft end-of-life provisions is permanently physically unable to draft and sign them, their end-of-life provisions may be noted in writing by an adult person of their choice. The end-of-life provisions shall be signed in the presence of two adult witnesses. The end-of-life provisions must then specify that the declarant cannot draft and sign them, and indicate the reasons. The end-of-life provisions must be dated and signed by the person who notes the declaration in writing, by the witnesses and, if necessary, by the person of trust.

A medical certificate confirming permanent physical inability shall be appended to the end-of-life provisions.

The end-of-life provisions shall be registered, within the context of an official system for the systematic registration of end-of-life provisions with the National Commission for Control and Assessment.

The end-of-life provisions may be reiterated, withdrawn or adapted at any time. The National Commission for Control and Assessment shall be obliged, once every five years from the date of registration of the end-of-life provisions, to request confirmation of the declarant's wishes. All changes must be registered with the National Commission for Control and Assessment. Nevertheless, there may be no euthanasia if, following the procedures he is obliged to follow by virtue of paragraph 3 hereinafter, the doctor obtains knowledge of an expression of the wishes of the patient after the end-of-life provisions

have been duly registered, by means of which they withdraw their wish to undergo euthanasia.

Any doctor treating a patient at the end of their life or a patient in a terminal medical situation shall be obliged to obtain information from the Commission for Control and Assessment as to whether end-of-life provisions have been registered in the name of the patient.

The terms relating to the registration of end-of-life provisions as well as access to those provisions by the doctors in charge of a person at the end of their life may be determined by Grand Ducal Regulation.

That Regulation may propose a formula for end-of-life provisions which declarants may use.

3. The fact of a doctor responding to a request for euthanasia in accordance with the end-of-life provisions as provided in paragraphs 1 and 2 hereinbefore shall not be punished as a criminal act and may not give rise to a civil action for damages if the doctor observes:

- 1) that the patient is afflicted by a severe and incurable accidental or pathological disorder,
- 2) that they are unconscious,
- 3) and that the situation is irreversible according to science at the time.

In all cases and before performing euthanasia, the doctor must comply with the following formal and procedural conditions:

- 1) consult another doctor as to the irreversibility of the patient's medical situation, informing him of the reasons for the consultation. The consulted doctor must read the medical file and examine the patient. He shall draw up a report on his observations. If a person of trust is appointed in the end-of-life provisions, the

treating doctor shall keep that person of trust updated on the results of that consultation. The consulted doctor must be impartial regarding both the patient and the treating doctor and be competent as to the pathology concerned;

- 2) if there is a care team in regular contact with the patient, discuss the content of the end-of-life provisions with the care team or members thereof;
- 3) if the end-of-life provisions appoint a person of trust, discuss the patient's wishes with them;
- 4) if the end-of-life provisions appoint a person of trust, discuss the patient's wishes with close relatives of the patient whom the person of trust designates.

The end-of-life provisions as well as the procedures of the treating doctor and their result, including the report of the consulted doctor, shall be regularly placed in the patient's medical file.

Chapter IV – The official declaration

Article 5.- The doctor who performs euthanasia or assisted suicide must submit the registration document referred to in Article 7, duly completed, within eight days to National Commission for Control and Assessment referred to in Article 6 of the present Law.

Chapter V – The National Commission for Control and Assessment

Article 6.- 1. A National Commission for Control and Assessment of the application of the present Law shall be established, and hereinafter called “the Commission”.

2. The Commission for Control and Assessment shall consist of nine members, appointed on the basis of their knowledge

and experience of the matters falling within the competences of the Commission.

Three members shall be doctors of medicine. One member shall be proposed by the Medical Council. The organisation most representative of doctors and dentists shall propose two members with specific qualification and experience in the treatment of pain.

Three members shall be lawyers, including a Barrister-at-Law proposed by the Bar Council, a magistrate proposed by the Supreme Court of Justice and a professor of the University of Luxembourg.

One member shall be from the health professions and proposed by the higher council of certain health professions.

Two members shall be representatives of an organisation with the object of defending the rights of the patient.

If one of the aforementioned organisations fails to make a proposal within the required deadline, the Minister of Health shall make the defaulted proposal.

Members of the Commission shall be appointed by the Grand Duke for a term of three years. Their mandate shall be renewable three times.

The capacity of members of the Commission shall be incompatible with the mandate of Deputy or member of the Government or the Council of State. The Commission shall elect a Chairman from among its members. The Commission may only deliberate validly provided at least seven of its members are present. It shall take its decisions by simple majority.

3. The Commission shall establish its internal rules.

Article 7.- The Commission shall draw up an official declaration which must

be completed by the doctor and sent to the Commission each time he performs euthanasia.

This document shall contain two sections. The first section must be sealed by the doctor. It shall contain the following data:

- the name, forenames, domicile of the patient;
- the name, forenames, doctor code and domicile of the treating doctor;
- the name, forenames, doctor code and domicile of the doctor(s) consulted in relation to the request for euthanasia or assisted suicide;
- the name, forenames, domicile and capacity of all the persons consulted by the treating doctor, as well as the date of those consultations;
- if there are end-of-life provisions and they appoint of person of trust, the name and forenames of the person of trust who has intervened.

This first section shall be confidential. It shall be forwarded by the doctor to the Commission. It may only be consulted after a decision, as referred to in the following paragraph of the present Article. This section may in no case serve as the basis for the Commission's assessment task.

The second section shall also be confidential and contain the following data:

- if there are end-of-life provisions or a request for euthanasia or assisted suicide;
- the age and gender of the patient;
- the mention of severe and incurable accidental or pathological disorder from which the patient is suffering;
- the nature of the suffering which was constant and unbearable;
- the reasons why that suffering has been

described as without prospects of improvement;

- the factors providing an assurance that the request was made voluntarily, after reflection and repeated and without external pressure;
- the procedure followed by the doctor;
- the qualification of the doctor(s) consulted, the opinion and the dates of those consultations;
- the capacity of the persons and the expert possibly consulted by the doctor, and the dates of those consultations;
- the precise circumstances in which the treating doctor performed euthanasia or assisted suicide and by what means.

Article 8.- The Commission shall examine the official declaration duly completed and sent to it by the doctor. It shall check, on the basis of the second section of the registration document, if the conditions and procedure provided by the present Law have been met and followed.

If there is doubt, the Commission may decide, on a simple majority of at least seven members present, to lift the anonymity. It shall then read the first section of the document. It may request that the treating doctor send it all the elements of the medical file relating to euthanasia or assisted suicide.

It shall make a ruling within a deadline of two months.

When, by decision taken by a simple majority of at least seven members present, the Commission considers that the conditions provided in paragraph 2 of Article 2 of the present Law have not been met, it shall communicate its substantiated decision to the treating doctor and send the complete file as well as a copy of

the substantiated decision to the Medical Council. The latter shall make a ruling within a deadline of one month. The Medical Council shall decide by a majority of its members if disciplinary proceedings are necessary. If one of the conditions provided in paragraph 1 of Article 2 of the present Law has not been met, the Commission shall forward the file to the Public Prosecutor.

Article 9.- The Commission shall establish for the Chamber of Deputies, and on the first occasion within two years of the entry of the present Law into force, and then every two years:

- a) a statistical report based on the information gathered in the second section of the registration document which the doctors have completed by virtue of Article 8;
- b) a report containing a description and an assessment of the application of the present Law;
- c) if necessary, recommendations likely to result in a legislative initiative and/or other measures concerning the execution of the present Law.

In order to perform its tasks, the Commission may gather all useful information from the various authorities and institutions. The information gathered by the Commission shall be confidential.

None of these documents may contain the identity of any person referred to in the files submitted to the Commission within the context of the control provided in Article 8.

The Commission may decide to communicate statistical and purely technical information, excluding any personal data,

to research teams which have made a substantiated request for the same.

It may hear experts.

Article 10.- In order to perform its tasks, the Commission may use the administrative personnel provided to it by the government department.

Article 11.- The operating costs of the National Commission for Control and Assessment shall be borne from the State budget.

Article 12.- Whoever gives assistance, in whatsoever capacity, to the application of the present Law, shall be obliged to respect the confidentiality of the data entrusted to them in the performance of their task and processed in the performance thereof.

Article 13.- Within six months from the lodging of the first report and, if necessary, the recommendations of the Commission, as referred to in Article 9, the Chamber of Deputies shall organise a debate on this subject. This deadline of six months shall be suspended during a period of dissolution of the Chamber of Deputies and/or absence of government with the confidence of the Chamber of Deputies.

Chapter VI – Amending provision

Article 14.- A new Article 397-1 is introduced into the Criminal code with the wording:

“Article 397-1.- The fact of a doctor responding to a request for euthanasia or assisted suicide shall not fall within the scope of application of the present section if the fundamental conditions of the Law of 16 March 2009 on euthanasia and assisted suicide are met.”

Chapter VII – Specific provisions

Article 15.- No doctor shall be obliged to perform euthanasia or assisted suicide.

No other person may be obliged to participate in euthanasia or assisted suicide.

If the consulted doctor refuses to perform euthanasia or assisted suicide, he shall be obliged to inform the patient thereof and/or the person of trust, if there is one, within 24 hours specifying the reasons for his refusal.

The doctor who refuses to respond to a request for euthanasia or assisted suicide shall be obliged, on the request of the patient or of the person of trust, to send the patient's medical file to the doctor appointed by the latter or by the person of trust.

Chapter VIII – Interim provision

Article 16.- The Minister of Health may proceed, exceeding the numbers fixed in the Finance Law, to hire two agents for the requirements of application of the present Law.



Appendix 2:

Model for end-of-life provisions

End-of-life provisions for an adult person capable of drafting, dating and signing the document

In accordance with the law of 16 march 2009 on euthanasia and assisted suicide

End-of-life provisions are a request for euthanasia made in advance for cases where the patient, at a later time in their life, is in an irreversible state of unconsciousness according to science at that time and might suffer from a severe and incurable accidental or pathological disorder.

They must be sent to the address indicated below.

National Commission for Control and Assessment of the Law of 16 March 2009 on euthanasia and assisted suicide

Ministry of Health
L – 2935 LUXEMBOURG

End-of-life provisions must be registered within the context of an official system for the systematic registration of end-of-life provisions with the National Commission for Control and Assessment. The provisions may be reiterated, withdrawn or adapted at any time. The National Commission for Control and Assessment is obliged, at least once every five years from the date of registration of the end-of-life provisions, to request confirmation of the declarant's wishes. All changes must be registered with the National Commission for Control and Assessment. Nevertheless, there may be no euthanasia if, following the procedures he is obliged to follow, the doctor obtains knowledge of an expression of the wishes of the patient after the end-of-life provisions have been duly registered, by means of which they withdraw their wish to undergo euthanasia.

Section I.

Obligatory data

My personal data are as follows:

- name, forename: _____
- address: _____
- reference: _____
- date and place of birth: _____
- telephone: _____

Optional:

- GSM: _____
- e-mail address: _____

For the case where I can no longer manifest my wishes, I hereby record in writing in these end-of-life provisions that I wish to undergo euthanasia, if my doctor observes:

- that I am afflicted by a severe and incurable accidental or pathological disorder,
- that I am unconscious, and
- that this situation is irreversible according to science at the time.

Personal remarks concerning the circumstances and conditions in which I wish to undergo euthanasia:

This declaration has been made freely and consciously. I wish these end-of-life provisions to be observed.

Date and signature of the declarant

Section II.

Optional data

A. The adult person of trust who may be appointed to keep the doctor updated on the wishes of the declarant in accordance with their last declarations in this regard

- name and forename: _____
- address: _____
- reference: _____
- telephone number: _____
- date and place of birth: _____
- possible family link: _____

B. (Optional) provisions as to the mode of burial and the form of the funeral ceremony

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End-of-life provisions for a capable adult person who is permanently physically unable to draft and sign these provisions

in accordance with the Law of 16 March 2009 on euthanasia and assisted suicide

End-of-life provisions are a request for euthanasia made in advance for cases where the patient, at a later time in their life, is in an irreversible state of unconsciousness according to science at that time and might suffer from a severe and incurable accidental or pathological.

Any capable adult person who is permanently physically unable to draft and sign end-of-life provisions may have the end-of-life provisions recorded in writing for the case where they might no longer be able to manifest their wishes.

The end-of-life provisions must be sent to the address indicated below.

National Commission for Control and Assessment of the Law of 16 March 2009 on euthanasia and assisted suicide

Ministry of Health
L – 2935 LUXEMBOURG

End-of-life provisions must be registered within the context of an official system for the systematic registration of end-of-life provisions with the National Commission for Control and Assessment. The provisions may be reiterated, withdrawn or adapted at any time. The National Commission for Control and Assessment is obliged, at least once every five years from the date of registration of the end-of-life provisions, to request confirmation of the declarant's wishes. All changes must be registered with the National Commission for Control and Assessment. Nevertheless, there may be no euthanasia if, following the procedures he is obliged to follow, the doctor obtains knowledge of an expression of the wishes of the patient after the end-of-life provisions have been duly registered, by means of which they withdraw their wish to undergo euthanasia.

Section I.

Obligatory data

The personal data of the declarant are as follows:

- name, forename: _____
- address: _____
- reference: _____
- date and place of birth: _____
- telephone: _____

Optional:

- GSM: _____
- e-mail address: _____

The reasons why the declarant is permanently physically unable to draft and sign are as follows:

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As proof, I append a medical certificate.

*I have appointed the adult person (name, forename) _____
to record this declaration in writing.*

The personal data of that person are as follows:

- address: _____
- reference: _____
- telephone number: _____
- date and place of birth: _____
- possible family link: _____

The declarant requests that the following be recorded in writing:

“For the case where I can no longer manifest my wishes, I am having recorded in these end-of-life provisions that I wish to undergo euthanasia, if my doctor observes:

- that I am afflicted by a severe and incurable accidental or pathological disorder,
- that I am unconscious, and
- that this situation is irreversible according to science at the time.

Personal remarks concerning the circumstances and conditions in which I wish to undergo euthanasia:

This declaration has been made freely and consciously. I wish these end-of-life provisions to be observed.”

Date and signature of the person appointed to record this declaration as I am permanently physically unable to draft signer these end-of-life provisions:

Date et signature du requérant :

Section I.

Obligatory data

Witnesses

The adult witnesses present when this declaration was drafted are:

Witness 1

- name and forename: _____
- address: _____
- reference: _____
- telephone number: _____
- date and place of birth: _____
- possible family link: _____

Signature of witness 1

Témoïn 2

- name and forename: _____
- address: _____
- reference: _____
- telephone number: _____
- date and place of birth: _____
- possible family link: _____

Signature of witness 2

Section II.

Optional data

A. The adult person of trust who may be appointed to keep the doctor updated on the wishes of the declarant in accordance with their last declarations in this regard

- name and forename: _____
- address: _____
- reference: _____
- telephone number: _____
- date and place of birth: _____
- possible family link: _____

B. (Optional) provisions as to the mode of burial and the form of the funeral ceremony

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Useful addresses

National Commission for Control and Assessment

Ministry of Health

Allée Marconi / Villa Louvigny
L – 2935 Luxembourg
Tel. 247-85626
www.sante.lu

Association for the right to die with dignity - Lëtzebuerg a.s.b.l.

18, avenue Dr Klein
L-5630 Mondorf-les-Bains
Tel / Fax: (+352) 26 59 04 82
www.admdl.lu
e-mail: secretariat@admdl.lu

Patientevertriedung a. s. b. l.

18, rue Dicks
L-1417 Luxembourg
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