

Brochure

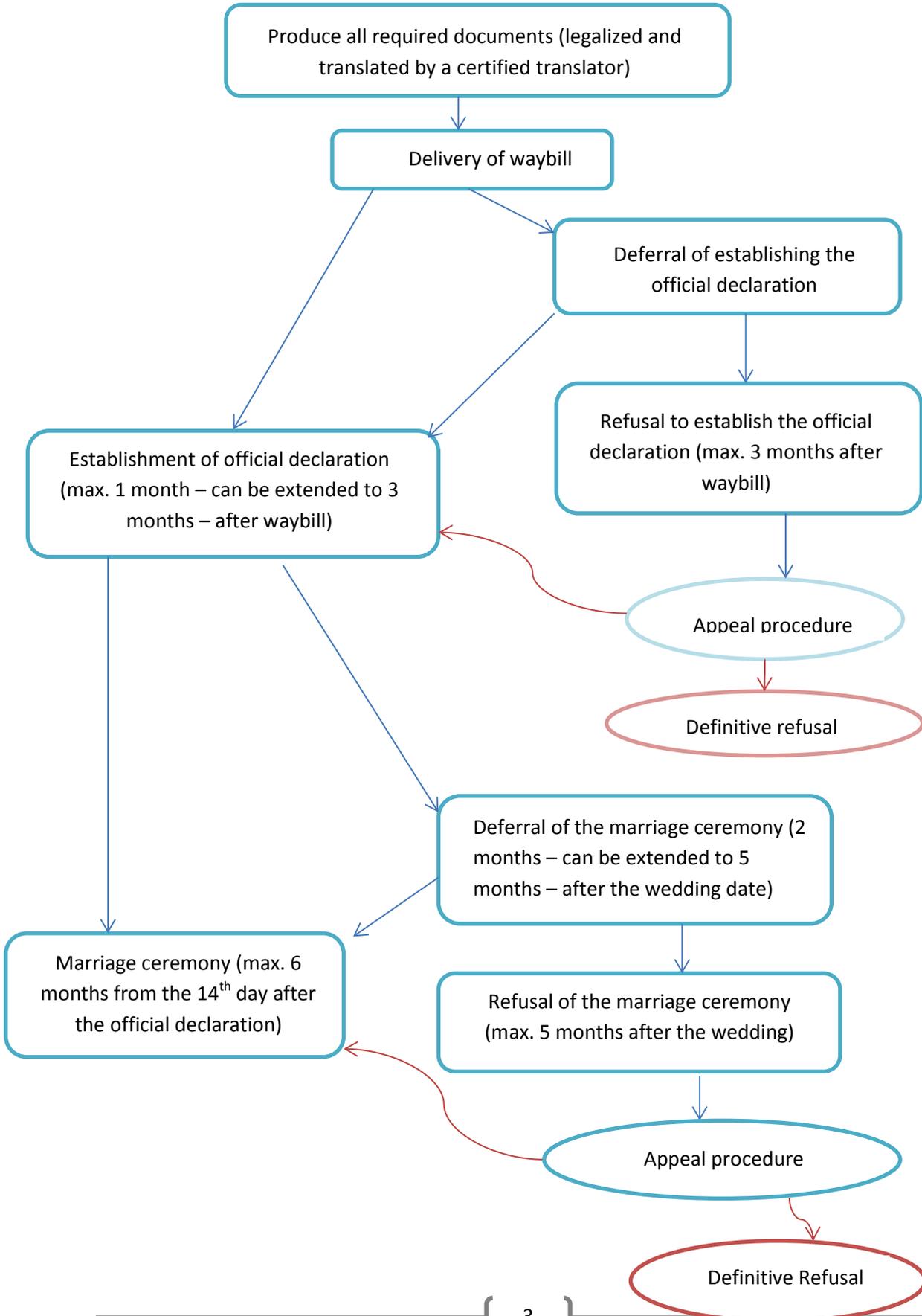
Marriage and Legal
Cohabitation in Belgium



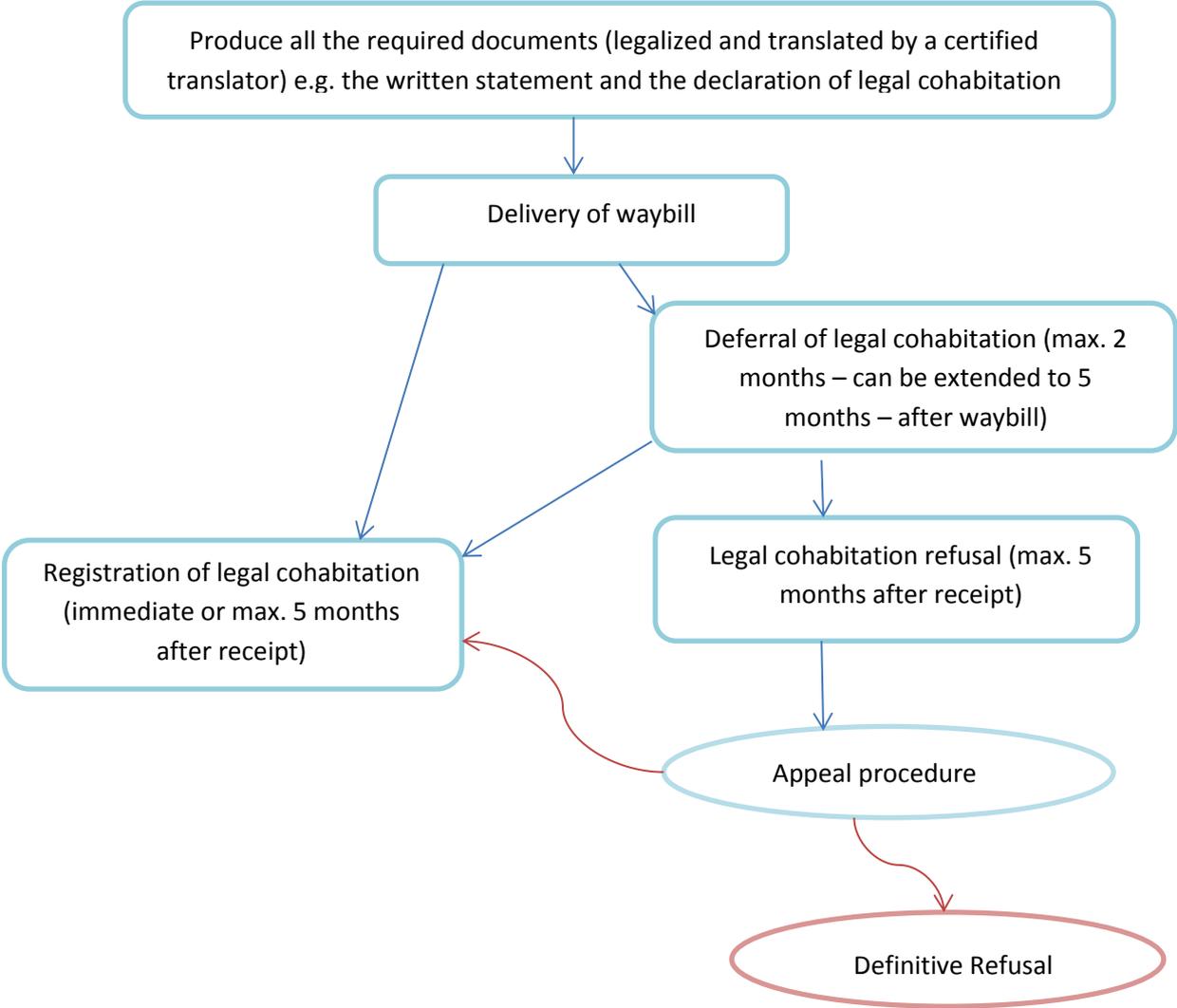
ENTERING INTO A MARRIAGE CONTRACT	3
ENTERING INTO A LEGAL COHABITATION CONTRACT	4
1.1. MARRIAGE	6
1.2. LEGAL COHABITATION	6
2.1. WHAT IS MEANT BY MARRIAGE OR LEGAL COHABITATION OF CONVENIENCE ?	6
2.1.1. DEFINITION	6
2.1.2. PENALTIES	7
SUMMARY – UNIONS OF CONVENIENCE.....	8
2.2. WHAT IS MEANT BY FORCED MARRIAGE OR FORCED LEGAL COHABITATION ?.....	8
2.2.1. DEFINITION	8
2.2.2. PENALTIES	8
3.1. GETTING MARRIED IN BELGIUM.....	9
3.1.1. WHERE TO GET MARRIED	9
3.1.2. MARRIAGE DECLARATION	9
3.1.3. OFFICIAL DECLARATION	11
SUMMARY – (OFFICIAL) MARRIAGE DECLARATION.....	13
3.1.4. THE MARRIAGE CEREMONY	14
3.1.5. DEFERRAL OF THE MARRIAGE CELEBRATION.....	14
SUMMARY – MARRIAGE CEREMONY	17
3.2. WHAT IF YOU GET MARRIED ABROAD?	17
3.3. LEGALLY COHABITING IN BELGIUM	18
3.3.1. WHERE CAN YOU ESTABLISH A LEGAL COHABITATION?.....	18
3.3.2. LODGING THE DECLARATION	19
3.3.3. REGISTRATION OF THE DECLARATION	20
3.3.4. DEFERRAL OF REGISTRATION	20
3.3.5. DECISION	21
SUMMARY – REGISTRATION OF THE LEGAL COHABITATION.....	22
4.1. PENALTY FOR (ESTABLISHING) UNIONS OF CONVENIENCE AND FORCED UNIONS	23
4.2. ANNULMENT OF THE MARRIAGE OR LEGAL COHABITATION.....	24
4.2.1. WHO CAN REQUEST ANNULMENT?	24
4.2.2. HOW DOES THE ANNULMENT PROCEDURE WORK?	24

Summary

Entering into a marriage contract



Entering into a legal cohabitation contract



Introduction

The Federal Migration Centre, a federal independent public organism, specializes in migratory flux, the protection of foreigners' human rights, and combatting human trafficking and smuggling. One of its notable aims is to provide the public authorities and citizens with a greater understanding of these matters. It also aims to approach these issues on the basis of respect for human rights and knowledge. This brochure has been written in part for the benefit of soon-to-be partners, of which either one or both does not have Belgian citizenship or is staying abroad. It is also written to inform others who advise these partners.

This brochure has four sections.

The first section defines marriage and legal cohabitation as well as the differences between the two procedures for establishing a legal bond between the couple.

The second section scrutinizes the prohibition of unions of convenience and provides a definition and analysis of a possible unions of convenience.

The third section presents different procedures for marriage or legal cohabitation and details the rights and duties of partners and public services concerned.

The fourth section, lastly, analyses the penalties incurred by a union of convenience from the point of view of criminal law, civil law, and residence.

This brochure does not go into the subject of family relations; we instead recommend that you read the brochure *Family without borders: 50 questions on international family law* that is edited by the Centre¹. The brochure also does not respond to questions about legal cohabitation, marriage, or de-facto cohabitation. If you are require further information, for example, on practical and juridical consequences of these unions (such as inheritance rights) or on family reunion requests relating to the newly formed family, we recommend that you consult a specialist in immigration and/or family law.

1. What are the types of legal unions ?

There are two possibilities for formalizing a legal bond within your relationship. According to your preferences and their legal and practical possibilities, you can either marry or enter into a legal cohabitation agreement.

By marrying, you show your willingness to start a long-term relationship as a couple. Legal cohabitation may or may not be established on the basis of a lasting relationship. The emotional or sexual connection is therefore not an essential factor in this type of union. A couple that is defined by a lasting relationship can therefore choose between marriage and legal cohabitation.

¹ You can consult this brochure on www.diversite.be, "Publications" section.

Legal cohabitation takes the form of a contract that you both sign and that sets down the rules of your cohabitation. These arrangements can take the shape of buying a house together, setting down terms and conditions, inheritance rights etc.

One of the biggest differences between marriage and legal cohabitation is their impact on your civil status. If you get married, your civil status will become “married”. If you enter into a legal cohabitation agreement, your civil status will not change.

Whether you are married or legal cohabitants, the obligations between partners differ greatly, as well as the process to end the marriage or legal cohabitation.

Warning : if one of the two partners does not have right of residence in Belgium, the marriage can (once recognized) form the basis of an application for family reunification. This is not always the case for people who have established a legal cohabitation: this can only form the basis of an application for family reunification if the couple has a stable and long-term relationship, as stipulated in the law of 15 December 1980 (law on residence).

1.1. Marriage

The Civil Code sets down the basic requirements for getting married. The two partners must be at least 18 years old and must freely consent to the marriage.

The partners cannot be married to another person. Third degree marriage with family members (parents, brothers, sisters, cousins, uncles, aunts) is also excluded.

Lastly, marriage between partners of opposite sex as of the same sex is considered equally.

1.2. Legal Cohabitation

The Civil Code also sets down certain basic conditions when legal cohabitation is established. You cannot, for example, either already be married nor legally cohabit with another person and you must both be at least 18 years old.

In addition, you must both freely consent to legal cohabitation. Lastly, legal cohabitation between partners of opposite sex as of the same sex are considered equally.

2. *Prohibition of marriage and legal cohabitation of convenience*

2.1. What is meant by marriage or legal cohabitation of convenience ?

2.1.1. Definition

The law declares the marriage void as soon as one of the partners is not willing to have a long-term relationship, even if they have agreed to it. This partner only has one aim: obtaining right of residence and the benefits associated with marriage. Provided that only one of these essential factors is missing – the intention to form a long-term relationship – the union is not valid and it is considered a marriage of convenience (or sham marriage).

The law will declare a legal cohabitation null and void if at least one of the partners only seeks to gain right of residence and the benefits associated with legal cohabitation, despite their agreement and willingness to legally cohabit. This is why the union is not valid and why it can be termed a legal cohabitation of convenience (or sham legal cohabitation).

In order to ascertain the intentions of each party, the registrar relies on a combination of factors, each a serious warning sign:

- The partners do not understand each other, can only communicate imperfectly with each other, or with the help of an interpreter.
- The candidates have never met before the declaration of marriage or before the declaration of legal cohabitation.
- One of the two candidates has been cohabiting long-term with another person.
- The candidates do not know each other's names or nationalities.
- One of the candidates does not know where the other works.
- Their explanations of the circumstances of their meeting vary substantially.
- A sum of money has been promised for the inauguration of marriage or legal cohabitation.
- One of the two potential partners works in prostitution.
- One of the two candidates has already given rise to a right to family reunification via marriage or legal cohabitation for one or more persons.
- One of the two candidates has already made one or more attempts to inaugurate a marriage or legal cohabitation of convenience in Belgium.
- One of the two candidates has already – unsuccessfully – exhausted all the legal possibilities to live in Belgium.
- An *intermediary* is broadly present (at the moment of the partners' meeting, the marriage proposal, or the legal cohabitation proposition etc.)
- There is a great age difference between the two potential partners.

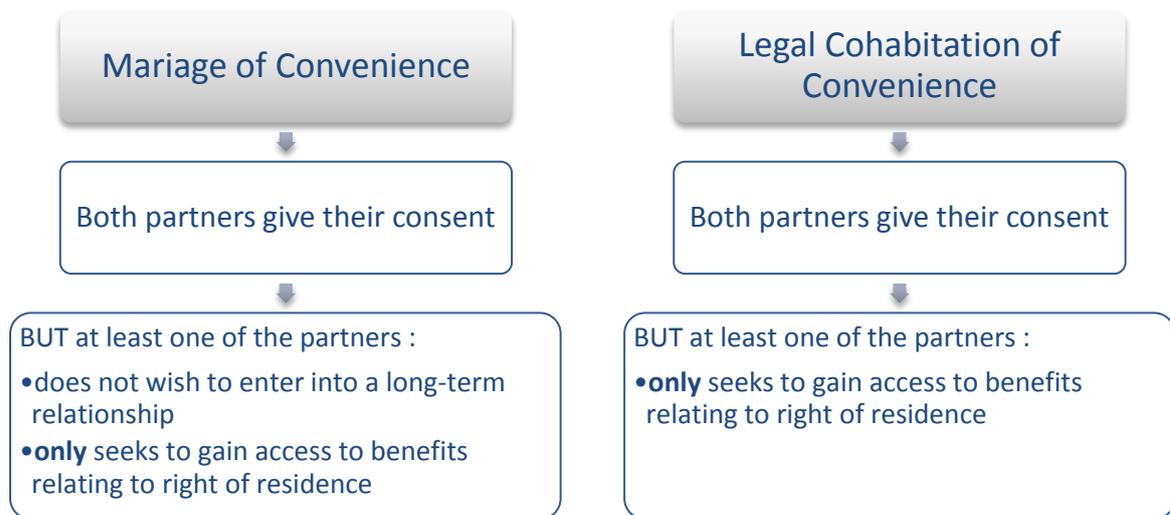
2.1.2. Penalties

The potential partners are liable to criminal prosecution (see point 4.1); the marriage or legal cohabitation can be declared null (see point 4.2).

According to the law, all benefits relating to a union of convenience must be annulled. Any pension rights or inheritance laws between the spouses or partners that arose from the union must cease to exist. The partner who gained their right of residence will in principal lose it.

Warning : the partner who acted in good faith is considered a victim of the union of convenience and will not face any penal sanction.

Summary – unions of convenience



2.2. What is meant by forced marriage or forced legal cohabitation ?

2.2.1. Definition

The law will declare the marriage null as soon as it is revealed that one of the partners consented due to coercion through violence or threats. Free consent without any form of constraint or violence is one of the essential elements of marriage. If it is missing, the union is not valid and it is a forced marriage.

The law will declare the legal cohabitation null as soon as it is revealed that one of the partners consented due to coercion through violence or threats. Free consent without any form of constraint or violence is one of the essential elements of legal cohabitation. If it is missing, the union is not valid and it is a forced legal cohabitation.

2.2.2. Penalties

The partners are liable to criminal prosecution (see point 4.1) ; the marriage or legal cohabitation can be declared null (see point 4.2).

According to the law, all benefits relating to a union of convenience must be annulled. Any pension rights or inheritance laws between the spouses or partners that arose from the union must cease to exist. The partner who gained their right of residence will in principal lose it.

Warning : the partner who acted in good faith is considered a victim of the union of convenience and will not face any penal sanction.

3. Getting married or legally cohabiting in Belgium

3.1. Getting married in Belgium

To be able to get married in Belgium, at least one of the candidates must live in Belgium or have Belgian nationality.

In other words, couples can get married in Belgium of which : (1) both partners are Belgian, (2) neither partner is Belgian, (3) one of the partners is Belgian. In cases (1) and (3), you can get married in Belgium if you live in the country (legal residence is not required) even if you currently live abroad and you are not on the national register (population register, foreign register, or waiting register). Warning : couples where neither partner is Belgian can only get married in Belgium if at least one of them lives there (legal residence is not required).

In order to get married in Belgium, two procedural steps are necessary: the declaration of marriage, followed by the marriage ceremony. These two procedures are put forward and carried out by the registrar of the commune where one of the partners lives.

The declaration of marriage essentially consists of presenting various documents to the registrar, which will be used in order to confirm that the conditions of marriage have been fulfilled, before preparing the marriage certificate. The marriage celebration is concretized by the ceremony, which will effectively seal your marriage.

During the first stage, that is to say at the declaration of marriage, at least one of the two partners must be present. The absent partner must give written consent to the marriage. This exemption to the rule is permitted only in two cases: if one of the partners is at the hospital at the time of the declaration, or if one of the partners lives abroad.

3.1.1. Where to get married

You can get married in the Belgian commune where at least one of you is officially registered.

If you live in Belgium without being officially registered there, you can get married in the commune of your current place of residence.

If you are Belgian, but you live abroad and you wish to get married in Belgium, you can do it either in the commune where you were born (if you were born in Belgium) or in the commune where your parents, grandparents, children, or siblings live at the time of the official marriage declaration. If you do not yet have Belgian nationality before your departure abroad, you can get married in the last commune where you were registered before your departure. If you do not fulfill any of these conditions, you can get married in the civil registry of Brussels City.

3.1.2. Marriage declaration

The law requires certain documents to be produced in order to validly establish a declaration of marriage.

Warning : documents produced abroad must have been legalized and translated by a certified translator before being given to the registrar. You will find more detailed information on the process of legalization in the brochure *Family without borders*, which is edited by the Centre.

3.1.2.1. Mandatory documents to hand in

Birth certificate or substitute document

You must each present a faithful certified copy of your birth certificate.

If you were born in Belgium or if you have transcribed your foreign birth certificate for entry into the Belgian registers, the registrar can search for the true certified copy of your birth certificate.

What to do if you and your partner are unable to retrieve your birth certificates or if you have difficulty in doing so?

- If you were born in Belgium, you can replace the certificate with an affidavit, issued by Belgian tribunals
- If you were not born in Belgium, you can produce an equivalent document issued by your ambassador or consulate. If you are unable to do this or it proves very difficult, you can replace the certificate with an affidavit, issued by Belgian tribunals
- If you are sincerely unable to obtain an affidavit, you can alternatively make a statement under oath it – with the permission of a tribunal.

Proof of identity

... this is a document that vouches for your identity (identity card or passport).

Proof of nationality

... this is a document that vouches for your nationality.

If you are Belgian, you will provide your identity card or your passport.

As a foreigner, you must provide a certificate issued by national authorities of your country of origin or by your ambassador in Belgium.

Proof that you are unmarried, divorced, or that your previous marriage has been annulled

... this is a document that proves that you are unmarried (for example : a declaration to the effect that you are unmarried, a divorce certificate, or a dissolution-of-marriage contract).

Proof of official registration in Belgium and/or proof of current residence

... this is evidence that reassures the registrar that they are the correct official to perform the marriage ceremony (see also point 3.1.1.).

Proof consists of a copy of your enrollment to the population register, foreign register, or the waiting register.

If you or your partner lives in Belgium without being officially registered there, you must provide proof of your current residence. Practically, this means that the registrar will ask the neighborhood police officer to carry out various unannounced residence controls. Altogether this constitutes proof of current residence.

If one of you is staying abroad, proof must be provided of their current residence, issued by local authorities abroad.

Any other authentic document proving that you both fulfill the conditions required by law to contract a marriage

This can be, for example, a customary certificate, that allows the registrar to verify whether you fulfill all legal conditions required by your national right to marry. If you are Belgian, the registrar will find this information in Belgian legislation. If one of you is not Belgian, they will ask you to provide a copy of your country's legislation on marriage. This is a document that you can acquire via the national authorities of your country of origin or via your ambassador in Belgium.

An authentic document can also be *any other document the registrar deems necessary*, for example, if you are less than 18 years old and you have received authorization from the juvenile court to get married.

Warning : if, when the official declaration is established, you are enrolled on the population register or the Belgian foreign register, the registrar will find the documents for your nationality, the declaration to the effect that you are unmarried, and your enrollment to registers, in your extract from the register, and will add them to your file. If they cannot find the necessary information, the registrar can still demand additional documents.

If you are not officially registered in Belgium, you must request all these documents from the national authorities yourself.

Written proof from the absent partner

... is only necessary if one of you is absent during the marriage declaration.

The absent partner demonstrates their consent to the declaration of marriage in the form of a document of their own writing. If the document has been produced abroad, the document must be legalized and translated by a certified translator.

3.1.2.2. The waybill

Once you and your partner have submitted **all** documents requested by the registrar, you will receive an acknowledgement of receipt. This is the *waybill*.

Warning : if your documents have neither been legalized nor translated by a certified translator, you will not receive a waybill.

3.1.3. Official Declaration

The registrar will establish the official declaration in the month after the documents have been received.

Warning : the registrar can delay establishing the official declaration (see point 3.1.3.1.).

3.1.3.1. Deferral of the establishment of the Official Declaration

In case of doubt over the legitimacy or authenticity of documents produced throughout the declaration of marriage, the registrar can prolong the time period for establishing the official marriage declaration by two months.

The registrar is obliged to inform the two candidates of this decision in writing.

3.1.3.2. Decision on the declaration

The registrar is obliged to record the declaration within a month after both partners' documents have been received. This time period increases to three months if the registrar decides to postpone the official declaration.

Decision to establish the official declaration

If the registrar confirms, during the timeframe of one (or three) months, that all documents have been produced and there is no doubt over their content, they will establish the official declaration.

Lack of response within the given time period

If the registrar has not established the official declaration in this timeframe of one (or three) months and they have not indicated any objection to approving the declaration, the registrar is obliged to approve it immediately.

Refusal to record the declaration

In the timeframe of one (or three) months, the registrar can decide not to record the declaration.

They could be doing it for several motives : (1) they do not believe the documents produced are authentic or valid, and/or (2) the partners were unable to produce all requested documents or they did not have the documents sufficiently legalized or translated.

The registrar must justify their refusal in writing and send it to the partners. The royal prosecutor will also receive a copy of this decision.

If the registrar refuses to approve the declaration, you can appeal against this decision to the lower court within a month of receiving the refusal. For this procedure, you can request advice from a family law specialist and be accompanied by a lawyer. Before beginning this, you can still resolve these document-related problems, for example, by properly legalizing them and then submitting a new request. If you object to the lower court ruling, you can make a new appeal to the Court of Appeal. Other parties concerned (the attorney or registrar) can also make an appeal.

3.1.3.3. Wedding date

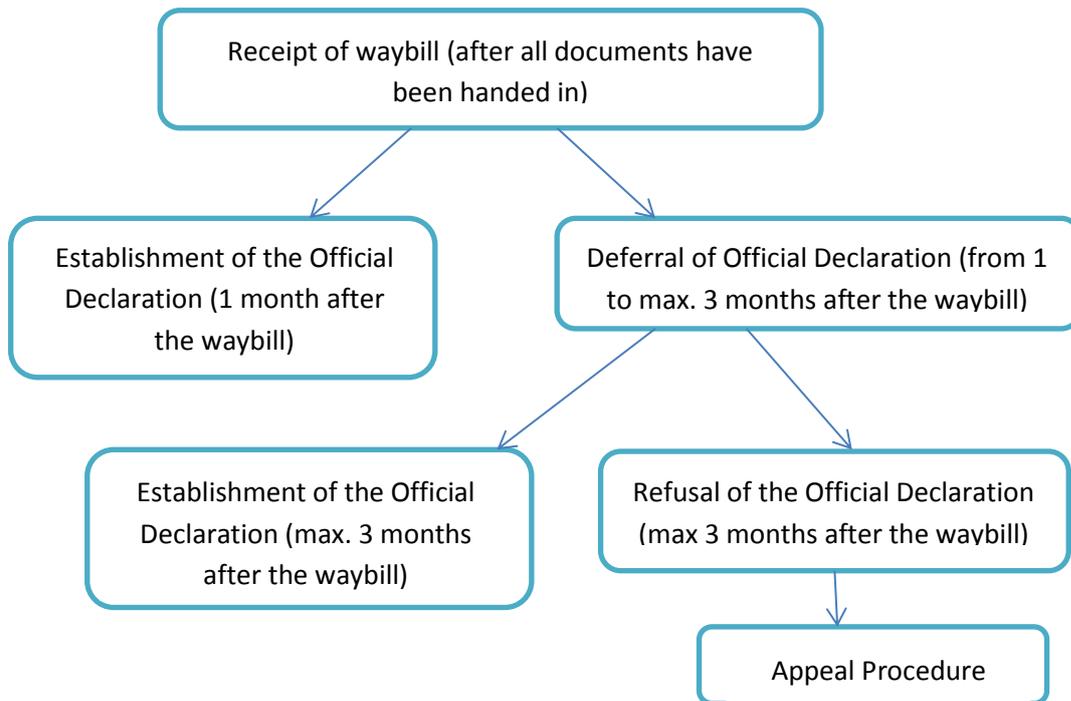
The wedding must take place within six months and fourteen days **after** the official declaration has been established. You and your partner can set the wedding date yourselves.

You can even enter the wedding date in the official marriage declaration.

Warning : you and your partner can set the wedding date yourselves, but you must bear in mind the practicalities of the commune or city where you will get married.

Warning : if you are not obligated to choose a wedding date, it is nonetheless advised to decide quickly on the date and to have it set by the commune.

Summary – (Official) Marriage Declaration



3.1.4. The marriage ceremony

The wedding must take place within six months and fourteen days **after** the official declaration has been established.

The fourteen days after the official declaration has been established are considered to be the minimum time period before being able to get married. The six months following these fourteen days represent the maximum time period.

If your wedding has not taken place by the end of the maximum time period, you must submit a new request to the commune in view of recording the declaration of your marriage. This means you must also, once again, request and present the necessary limited-validity documents.

This maximum timeframe is subject to several exceptions :

- If the registrar decides to postpone your marriage celebration (see point 3.1.5), there are two possibilities that enable you to get married after the maximum time period:
 - If the registrar authorizes you to get married within the timeframe,
 - If the registrar does not make a decision within the timeframe.
- If you decide to appeal against the registrar's refusal to celebrate the marriage (see point 3.1.5.3.), you can, in your appeal to the judge, ask for an extension of the maximum delay. You can therefore get married without needing to ask for a new official declaration if the judge decides that your wedding can still be performed.

3.1.5. Deferral of the marriage celebration

If the registrar has reason to suspect that you do not fulfill the substantive and procedural conditions, they will delay the marriage ceremony. These suspicions may, notably, concern the intentions of at least one of the two partners.

The registrar will carry out (themselves or by a third party) a survey to ascertain whether the marriage is forced or a marriage of convenience (more information in point 2°).

3.1.5.1. Inquiry

The registrar will reassure themselves that all conditions required to be able to get married have been met and will verify (themselves or by a third party) your intentions and those of your partner. They can, to that effect, request advice from the royal prosecutor.

During this investigation, the two applicants are questioned by the registrar and/or the police. They are generally not questioned together. If they so wish, they can be assisted by an interpreter during the interview. However, it is not possible to ask for assistance from a lawyer during the interview.

The investigation strictly speaking does not have any other implications for the partners.

Warning : if one of the partners does not have a legal residency permit for Belgium and has been issued with a removal order, the bulletin of 17 September 2013 provides that in the case of your

marriage request, you are protected against forced removal from the moment that you receive the waybill from the registrar, until:

- the day the registrar refuses to celebrate the marriage;
- the end of the six month timeframe fixed for the date of your marriage celebration (see point 3.1.3.3.);
- the day after your marriage ceremony.

Protection cannot be given to foreigners:

- who are deemed a threat to public order or to national security
- whom the relevant minister considers, following advice from the Advisory Committee on Foreigners, potentially harmful to international relations with Belgium or with a Member State of the Schengen Treaty;
- whom have been reported to the Schengen Information System for public order offenses or national security offenses, or have received a removal order with an entry ban that has not been suspended or annulled;
- who work off the books as an employee or independently;
- who have been deported to Belgium by other Member States in accordance with international conventions or agreements;
- whom have been forced to leave Belgium by Royal Order or Ministerial Repatriation or Expulsion Order in the last ten years, unless this order has been suspended or annulled;
- who are constrained by an entry ban that has not been suspended or lifted;
- who have previously been refused a marriage or legal cohabitation.

3.1.5.2. Timeframe

The registrar can postpone the marriage ceremony up to a maximum of two months after the date set for the marriage. The registrar is obliged to inform you of the postponement without delay.

If they have been consulted, the prosecutor can further prolong this time to a maximum of three months. In this case, they will inform the registrar, who will in turn advise the two partners.

This means that the wedding can be postponed by a maximum of five months after the wedding date you have set.

What happens if you and your partner have not set a date for the wedding?

It is important to set a date for the wedding within the commune. This date will in effect be the starting point to calculate the maximum time period that it is possible to postpone the wedding.

If you have not yet set a wedding date within the commune, you and your partner can still do it with the registrar. They will therefore be obliged to set a processing time for the postponement of the wedding based on your chosen wedding date. When you set the marriage date, you must ensure that you get married within the legal period (six months and fourteen days after the official declaration).

3.1.5.3. Decision

The registrar is obliged to make a decision on the marriage ceremony in the two (or five) months following on from the wedding date.

Decision to celebrate the marriage

If, during this time period, the registrar concludes that all the marriage conditions have been fulfilled, they will celebrate the marriage, either on the proposed wedding date, or at a new date convened with the two partners.

Lack of response within the timeframe

If they have not made a decision – positive or negative – during this time, the registrar is obliged to celebrate the marriage. The wedding will take place on a new date convened with the two partners.

Refusal to celebrate the marriage

If, before the time period has ended, the registrar concludes that the marriage conditions have not been fulfilled, they will refuse to celebrate your marriage.

They must provide you with reasons for their decision in writing. The royal prosecutor will receive a copy of this decision.

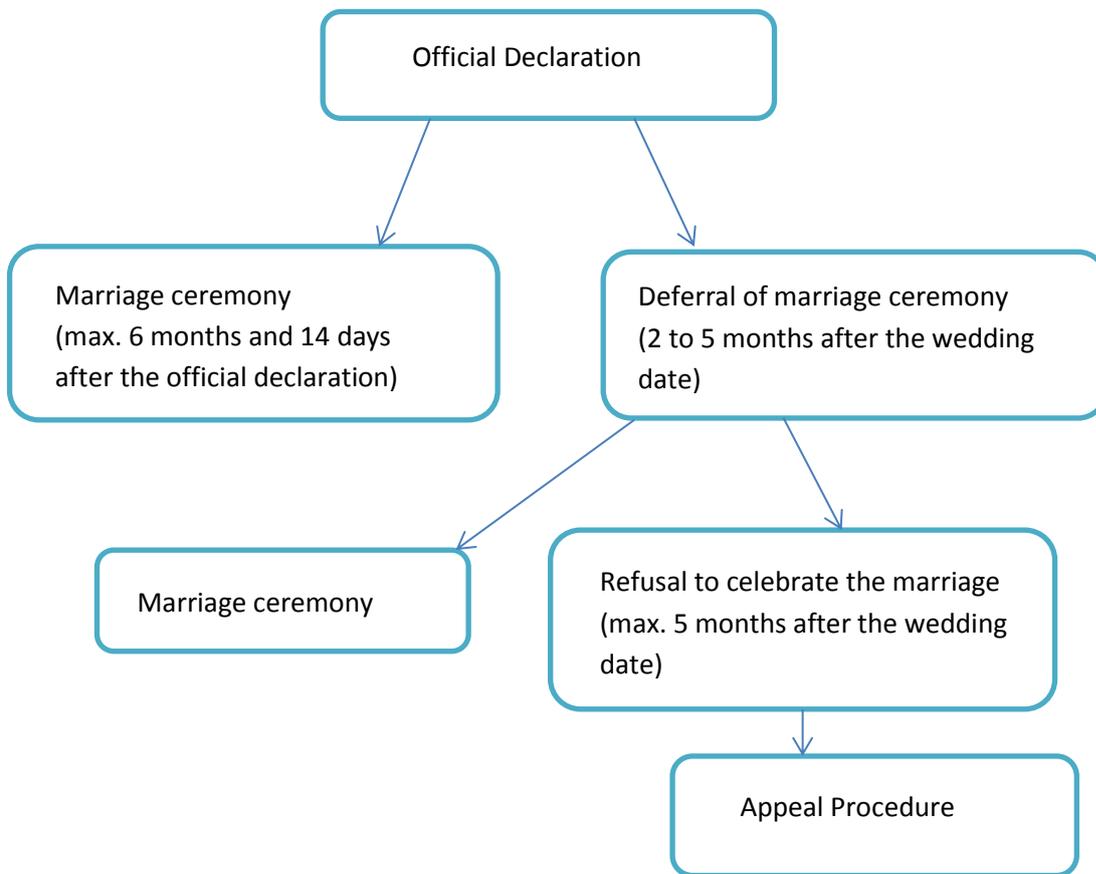
Warning : it is up to the registrar to make the decision. They can ask the prosecutor for advice, but their opinion is not binding. If at least one of the two partners does not have Belgian nationality and does not have a legal residency permit or is in a precarious living situation in Belgium, they must seek information from the Immigration Office².

When you receive the marriage refusal decision to refuse the wedding, you have one month to make an appeal against this decision to the lower court. For this procedure, you can ask advice from a specialist in family law and you must be accompanied by a lawyer. The lawyer will then ask the court to allow you to celebrate your marriage.

If you do not agree with the lower court decision, you can appeal to the Court of Appeal. The other parties concerned (the prosecutor or the registrar) can also make an appeal.

² Voir: www.dofi.fgov.be

Summary – Marriage ceremony



3.2. What if you get married abroad?

If you get married abroad and you are officially enrolled in Belgium, you must notify the municipal civil registrar of the change to your civil status. They will verify whether or not they can recognize your foreign marriage.

To do this, you must present your foreign marriage certificate to the registrar. Before recognizing the certificate, they must reassure themselves that all the conditions have been met. They can carry out (themselves or by a third party) an inquiry to this effect. If inquiry is not subject to any legal deadline, they cannot give you any indication of its duration.

If they recognize your foreign marriage certificate, the registrar will enter your new civil status into the national register. If you have Belgian nationality, you can also ask to have your foreign marriage certificate entered into the civil register.

If the registrar does not recognize your foreign marriage certificate, your civil status will not change in Belgium. You can at any moment appeal against this refusal decision to the lower court. For this procedure, you must ask advice from a specialist in international private law and you must be accompanied by a lawyer, who will ask the court to recognize the marriage certificate.

If you do not agree with the lower court decision, you can appeal to the Court of Appeal. The other concerned parties (the prosecutor or the registrar) can also make an appeal.

Warning : all foreign documents and certificates that you present must have been translated and legalised by a certified translator.

For more information on the formalities of the procedure if you are married abroad, you can consult the *Families without Borders* brochure, which is edited by the centre. You can similarly ask advice from a specialist in immigration law and in international private law.

3.3. Legally cohabiting in Belgium

In order to register a legal cohabitation in Belgium, at least one of you must be enrolled in Belgium. Couples of Belgian nationality, couples that do not have Belgian nationality, and couples of which one has Belgian nationality can legally cohabit in Belgium.

In order to do this in Belgium, you and your partner must submit a declaration of legal cohabitation to the registrar, in which you confirm that you “live” together.

3.3.1. Where can you establish a legal cohabitation?

You can establish a legal cohabitation with the municipal civil registrar or in the town where you and your partner have your common residence.

The registrar will ascertain whether you have a common residence and whether you are officially enrolled. If you are not enrolled, the registrar will reassure themselves that you have your current residence in the municipality.

Which documents?

The law does not state which documents you must present in order to make a declaration of legal cohabitation. The registrar must nevertheless be able to confirm that you and your partner fulfill the conditions required to make this declaration (see point 2.2.).

Warning : all foreign documents and certificates must have been translated and legalized by a certified translator before you submit them to the registrar.

In order to determine whether you can become legal cohabitants, the registrar will ask for you to provide at least the following documents:

Birth certificate

You must each produce one certified and faithful copy of your birth certificate.

If you were born in Belgium or your foreign birth certificate has been registered on the Belgian population register, the registrar can look for the certified and faithful copy of your birth certificate themselves.

Proof that you are unmarried, proof of divorce, or marriage annulment

This can be a document that proves you are single (for example a declaration to the effect that you are unmarried, a divorce certificate, a marriage annulment, or proof that neither of you legally cohabits with another person).

Proof of official inscription in Belgium and/or proof of current residence

A copy of your enrollment to the population register, to the register of foreigners, or to the waiting register will allow the registrar to ascertain where or not you have a common residence.

If you or your partner lives in Belgium with being officially enrolled there, you must provide proof of your current residence. In real terms, this means that the registrar will ask the neighbourhood police officer to carry out various unannounced occupancy inspections. Altogether this constitutes proof of current residence.

Warning : if you are enrolled in the population register or the register of foreigners at the time of the declaration, the registrar will find the documents proving that you are unmarried and your enrollments to registers, in your section of the register, and will add them to your application file. If they cannot find the necessary information in the registers, the registrar can still demand additional documents.

If you are not officially enrolled in Belgium, you must ask for the documents from your national authorities yourself.

3.3.2. Lodging the declaration

To lodge the declaration of legal cohabitation, you must give written proof to the registrar : a *written* statement.

3.3.2.1. The statement

The statement you give to the registrar must contain the following information:

- *The date of the declaration ;*
- *Your names, family names, place and date of birth and signatures, as well as those of your partner;*
- *Your shared home address;*
- *Confirmation of you and your partner's willingness to legally cohabit;*
- *Confirmation whereby you and your partner have read articles 1475 to 1479 of the Civil Code in advance, which explain all the provisions relating to legal cohabitation;*
- *If you and your partner have had a notary act established relating to your cohabitation, you must mention it.*

3.3.2.2. The waybill

The registrar gives both of you a waybill in exchange for your written statement.

Warning : this waybill does not constitute proof of your legal cohabitation.

3.3.3. Registration of the declaration

If it turns out that you and your partner fulfill all necessary requirements, the registrar will enter the declaration of legal cohabitation into the Population Register. From this moment on, your legal cohabitation is official.

3.3.4. Deferral of registration

In case of doubt over your intentions and whether your legal cohabitation is potentially forced, the registrar will delay making the entry in the register and will carry out (either themselves or by a third party) an inquiry to verify whether your relationship is fake or forced.

3.3.4.1. Inquiry

The registrar will ascertain the intentions of the two partners in order to determine whether your legal cohabitation is potentially fake or forced (see point 2.). In doing so, they may ask advice from the royal prosecutor.

During this inquiry, the applicants are questioned by the registrar and/or the police. They are generally not questioned together. If they so wish, they can be assisted by an interpreter during the interview. However, requesting assistance from a lawyer during the interview is not an option.

The inquiry does not, strictly speaking, have any other implications for the partners.

Warning : if one of the two partners does not have a legal residency permit for Belgium and has been issued with a removal order, the bulletin of 17 September 2013 provides that for the duration of your legal cohabitation request, you are protected against forced removal following the receipt of the waybill from the registrar, until:

- the day the registrar refuses to register your legal cohabitation;
- the day after the entry of your legal cohabitation.

Protection cannot be given to foreigners:

- who are deemed a threat to public order or to national security
- whom the relevant minister considers, following advice from the Advisory Committee on Foreigners, potentially harmful to international relations with Belgium or with a Member State of the Schengen Treaty;
- who have been reported to the Schengen Information System for public order offenses or national security offenses, or has been the subject of a removal order with an entry ban that has not been suspended or annulled;
- who work off the books as an employee or independently;
- whom have been deported to Belgium by other Member States in accordance with international conventions or agreements;
- whom have been forced to leave Belgium by Royal Order or Ministerial Repatriation or Expulsion Order in the last ten years, unless this order has been suspended or annulled;
- who are constrained by an entry ban that has not been suspended or lifted;
- who have previously been refused a marriage or legal cohabitation.

3.3.4.2. Deferral

The entry of the declaration of legal cohabitation can be postponed up to a maximum of two months after the waybill has been received by the applicants. The registrar is obliged to inform them of the postponement in writing without delay.

If they have been consulted, the prosecutor can still prolong the delay to a maximum of three months. In this case, they will inform the registrar, who will in turn advise the two partners in writing.

This means that the entry of your declaration of legal cohabitation can be postponed by a maximum of five months following the receipt of the waybill.

3.3.5. Decision

The registrar is obliged to make a decision on the entry of your declaration of legal cohabitation in the two (or five) months following the receipt of the waybill.

3.3.5.1. Registration Decision

If, during this time frame, the registrar concludes that all the conditions have been fulfilled, they will enter your declaration of legal cohabitation into the registers.

3.3.5.2. Lack of response within the given time

If no decision (positive or negative) has been taken during the given time, the registrar is obliged to enter the declaration of legal cohabitation into the registers.

3.3.5.3. Registration refusal

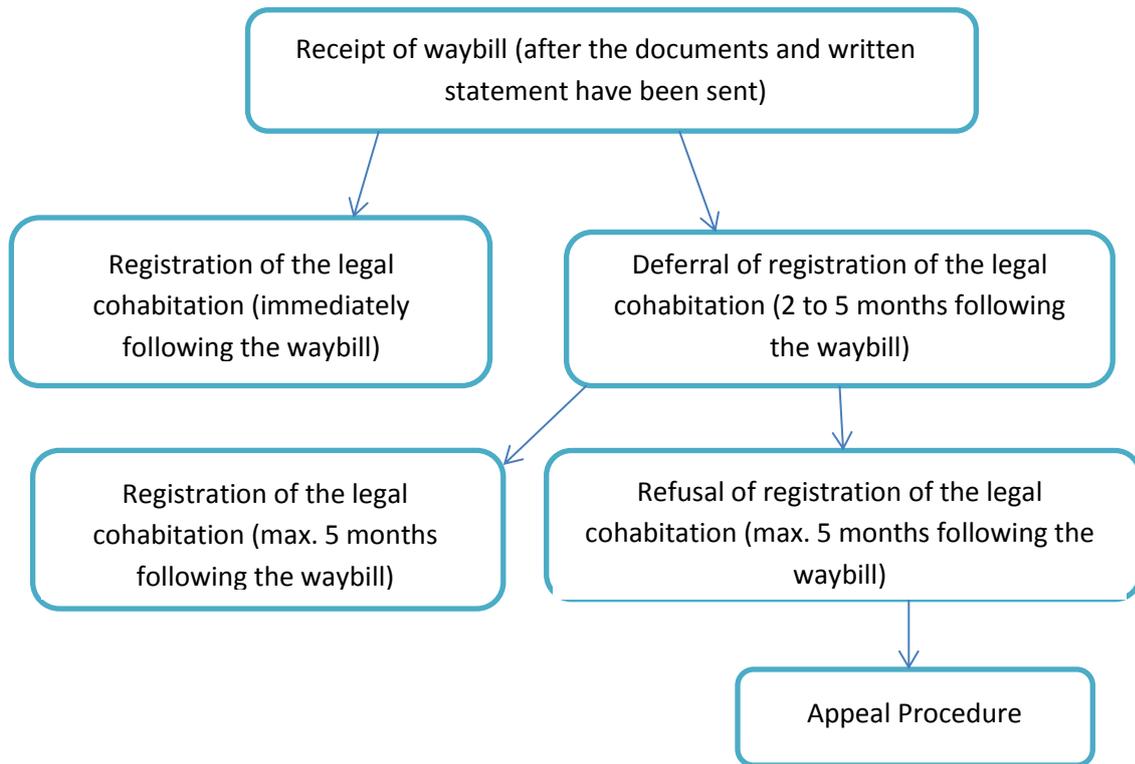
If, before the end of the time period, the registrar concludes that the conditions for establishing the legal cohabitation have not been fulfilled, they will refuse to enter the declaration of legal cohabitation into the registers.

Warning : It is up to the registrar to make the decision. They can take advice from the procurer, but this opinion is not binding. If at least one of the applicants does not have Belgian citizenship and does not have a residence permit or is in a precarious living situation in Belgium, they must seek information from the Immigration Office.

When the refusal decision has been received, you have a month to appeal to the lower court. For this procedure, you can ask advice from a specialist in family law and be accompanied by a lawyer. The lawyer will then ask the lower court to make an entry for the declaration of legal cohabitation.

If you disagree with the lower court decision, you can appeal to the Appeal Court. Other parties concerned (the procurer or the registrar) can also make an appeal.

Summary – Registration of the legal cohabitation



4. Implications of prohibition on unions of convenience and forced unions

4.1. Penalty for (establishing) unions of convenience and forced unions

Marriage of convenience, forced marriage, legal cohabitation of convenience, and forced legal cohabitation are punishable offenses. Those who commit (or attempt to commit) these acts risk prosecution and penal sanctions. Likewise, those who force either one or both partners to establish this type of union face prosecution and penal sanctions, in the form of imprisonment and a fine.

Penalties differ according to three situations :

(1) General penalties for the partners:

- a. 1 month to 3 years in prison and 50 to 500 euros fine if the union of convenience has been carried out.
- b. 15 days to 1 year of prison and 26 to 250 euros fine in case of an attempt to establish a union of convenience.

(2) Penalties are heavier for the partners if they have received or been offered a sum of money:

- a. 2 months to 4 months in prison and 100 to 2.500 euros fine if the sum of money was received in order to establish the union of convenience.
- b. 1 month to 2 years in prison and 50 to 1.250 euros of fines if the sum of money was offered in order to establish the union of convenience.

(3) Penalties are further increased for those who may have used violence or threats to coerce others into committing these acts:

- a. 3 months to 5 years in prison and 250 to 5.000 euros of fines for any person who coerces another by violence or threats to establish a union of convenience.
- b. 2 months to 3 years in prison and 125 to 2.500 euros of fines for any person who attempts to coerce another person by violence or threats to establish a union of convenience.

4.2. Annulment of the marriage or legal cohabitation

If, **after** the marriage celebration or **after** the registration of the legal cohabitation, it comes to light that the union is one of convenience or is forced, an annulment can be requested.

The annulment means that the marriage or legal cohabitation no longer exists and has never existed. All benefits attached to the union or that ensued from it cease to exist. Notably this concerns inheritance rights.

The foreign partner loses the right to stay that they were granted as part of the marriage or the legal cohabitation, and their right of residence is taken from them. The law of 15 December 1980 provides that any person who loses their right of residence for this reason will be banned from entry (prohibition to enter EU territory) for five years.

Sanctions of annulment do not apply to the partner who acted in good faith. They can continue to invoke the inheritance rights that were set.

Finally, the children keep their relationship with their parents.

4.2.1. Who can request annulment?

Annulment of the union of convenience or forced union can be requested by the spouses themselves, by any justified person of interest, and by the public prosecutor. This means that even the registrar can request an annulment.

4.2.2. How does the annulment procedure work?

You must submit a request for annulment to the municipal lower court where at least one of you lives.

If the parties concerned do not agree with the lower court decision, an appeal can be put forward to the municipal Appeal Court. The parties concerned can be the partners themselves, the prosecutor, the registrar, or other persons.

Warning: For this procedure, it is advised to be accompanied by a lawyer.