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# ACQUISITION AND LOSS OF NATIONALITY. POLICIES AND TRENDS IN 15 EUROPEAN STATES

## SUMMARY AND RECOMMENDATIONS

Results of the EU-project:

The Acquisition of Nationality in EU Member States: Rules,  
Practices and Quantitative Developments (NATAC)

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## EXECUTIVE SUMMARY

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### 1 Nationality and citizenship in Europe: a common concern for all Member States

Nationality or citizenship has been called upon to be all things to all people: civil rights, political participation, social welfare, identity and recognition, the common good and the consciousness of community (Liebich 1995: 27). Formally, nationality is defined as the legal bond between a person and a state. It is a guiding principle of international law that it is for each state to determine under its own law who are its nationals. However, with the development of human rights since the Second World War, the trend has been towards recognition of the right to a nationality as a human right and it has been accepted that, in matters of nationality, states shall also take individual interests into account. Nationality not only links an individual to a state, it also links individuals to international law; in the EU it also provides individuals with a specific set of rights within this supranational Union.

All fifteen EU Member States compared in this volume have experienced immigration as well as emigration and they face the same legitimate expectations from both immigrants and emigrants. However, their responses have been quite different. Some states have reacted to problems with immigrant integration by promoting naturalisation and by granting second and third generations of immigrant descent a right to their nationality, while others have made access to nationality more difficult for immigrants and their descendants. Some states have seen an interest in maintaining ties with their emigrants by allowing them to naturalise abroad without losing their nationality of origin, while others have refused to do so.

The nationality policy of each individual state determines who becomes a Union citizen with corresponding rights in all Member States. This might call for common European standards with regard to nationality. Internationally, the possibilities for adopting more uniform nationality rules have been discussed before (Rosenne 1972: 48). Thus, in 1924 the International Law Association prepared a draft regarding the uniform regulation of questions of nationality. One suggestion was to embody the relevant clauses in national legislation via a 'model statute', but the proposal was turned down by the experts preparing The Hague Codification Conference in 1930. The quest for uniformity was considered problematic in the absence of universal jurisdiction and common jurisprudence, so that the different countries' practical application and interpretation of the law could not be expected to be identical.

According to the EC Treaty, every person holding the nationality of a Member State is a citizen of the Union and, as such, has the right to move and reside freely within the Member States. The Court of Justice has held that it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing additional conditions for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the EC.<sup>1</sup> Thus, Member States with harsh naturalisation criteria are not entitled to withhold the benefits of fundamental freedoms under Community law from Union citizens who have naturalised on easier terms in other Member States.

In the EU, regulating access to nationality in a Member State and thereby access to Union citizenship has, however, been fully devolved to Member States. This is surprising, compared to the quite different solution arrived at when a Nordic Union was discussed after the Second World War (Larsen 1944). As in the EU, the national identity of each Nordic state was seen as an obstacle to introducing a common Nordic nationality. It was therefore

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<sup>1</sup> Case C-200/02 – Chen v. Secretary of State for the Home Department, ECR 2004, I-3887.

recommended that Nordic Union citizenship should complement rather than replace the nationality of a Member State. But, unlike in the EU, this led to a discussion of the consequences for the Member States' regulations on acquisition and loss of nationality and it was concluded that significant differences between the Member States' nationality legislation could not be maintained. For example, it would have been an odd situation if a foreigner born in Denmark could acquire Danish nationality at the age of nineteen and then move to Finland and enjoy equal rights there with native Finns in Nordic Union matters, while a foreigner born and raised in Finland would still be deprived of such rights. Since Nordic Union citizenship was meant to be attached to the nationality of each Member State, more uniform legislation on the acquisition and loss of nationality was found to be necessary.

This conclusion has not been drawn in the European Union. Harmonisation of nationality laws clearly falls outside the competence of the Union. However, the institutions of the Union have recently recognised the need to exchange information and to promote good practices in this area.<sup>2</sup> In this book we provide the necessary background for this goal. We examine and compare in depth the nationality laws of the fifteen old Member States, we identify trends and areas of special concern and we make recommendations for minimum standards and highlight good practices.

## 2 Terminology and research design

This volume summarises the results of the EU-funded project, 'The Acquisition of Nationality in EU Member States: Rules, Practices and Quantitative Developments (NATAC)'. Due to its stringent methodology and terminology, the research design of this project differed considerably from other comparative studies of nationality policies.<sup>3</sup> Frequently, such studies are mainly collections of country reports from which few, if any, comparative conclusions are drawn. In contrast, the ambition of this project was to be truly and more directly comparative by asking the same detailed and structured questions in all countries and by applying, as far as possible, the same terminology in this process. Below we give a short overview of the main parts of this publication, the project on which it is based and the methodology applied.

As a first step, a glossary of important terms in the area of acquisition and loss of nationality was drafted, which all project participants were urged to respect when writing their contributions for the project. Definitions concern different statuses (nationality, citizenship, special nationality status, multiple nationality, etc.) as well as types (by birth, naturalisation, declaration, etc.) and modes of acquisition (e.g. *ius sanguinis*, residence-based or affinity-based acquisition, transfer or extension of acquisition) and loss of nationality (lapse, withdrawal, renunciation, etc.). Most importantly, we use the term 'nationality' in this context, rather than 'citizenship', to denote the legal relationship between a person and a state as recognised in international law. We are aware that citizenship and nationality are often used synonymously and that some domestic laws use only the former concept. We are also aware of the ambiguities of 'nationality' which, in some contexts, refers to national identity or membership of a national minority. Public international law, however, interprets the term 'nationality' in the same sense as we do, i.e. as a legal relationship between individuals and states. The term 'citizenship', by contrast, is used for the sum of legal rights and duties of individuals attached to nationality under domestic law. The complete glossary can be found in the annex to this volume.

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<sup>2</sup> See the Presidency Conclusions of the Tampere European Council in October 1999 and the Communications by the Commission COM (2000) 757 and COM (2003) 336.

<sup>3</sup> e.g. Nascimbene (1996), Aleinikoff & Klusmeyer (2000, 2001), Hansen & Weil (2001).

As with most other projects, country reports were commissioned in which the history of nationality law and policy as well as the most important features of current nationality law and administrative practice in this area are described and analysed for each of the fifteen EU Member States before the latest round of accessions in May 2004. Project partners were given detailed guidelines concerning the required contents and structure of these reports. The country reports provided important input for most of the other sections of the project described below and they are published in Volume 2 of this publication.

In order to be able to compare different ways of acquiring and losing nationality more directly than would have been possible on the basis of a country report approach alone, typologies of 27 generally defined modes of acquisition and fifteen modes of loss were developed, which are outlined in Chapter 2. All the national regulations concerning acquisition and loss of nationality in the fifteen countries compared were then classified on the basis of these typologies and short descriptions of the most important conditions and procedural aspects were produced for all national modes in force at the end of 2004 or at the beginning of 2005, as well as for all important modes in force at some point since 1985. Additionally, we selected modes of acquisition and loss for in depth-analysis that we regarded as specifically important because of their numerical, political or normative salience. These were then described on the basis of detailed questionnaires, which covered basic technical information (legal basis, entry into force and expiry), procedural characteristics (type of procedure, responsible authorities, possibilities of appeal, etc.) and material conditions (residence requirements, integrity clauses, conditions of integration, reasons for loss of nationality, etc.) as well as major changes to procedural details and conditions since 1985. These descriptions were the main input for two extensive comparative reports on current rules as well as for the analysis of patterns, developments and regime types with respect to the acquisition and loss of nationality. The short versions of these reports are contained in this volume as Chapters 3 and 4, whereas the long versions are included on the CD-ROM attached to this volume. This CD-ROM also contains the collected short descriptions of all modes of acquisition and loss of nationality, as well as the completed questionnaires for the most important modes. We hope that this wealth of material will be useful for references purposes regarding specific countries or regulations, but also for further research and analysis by other scholars.

The project team considered it very important not just to use laws, decrees and other legal texts as sources of information in the analysis, but also to take into account administrative practice in the area of the acquisition of nationality. However, due to the limited time and resources available, it was impossible to conduct interviews with public officials responsible for administering acquisition procedures or even with persons undergoing naturalisation themselves. We decided therefore to ask NGOs providing counselling in this field about their experiences. The project coordinators developed a questionnaire covering various aspects of acquisition procedures (acquisition requirements, multiple nationality, fees, documents and other procedural aspects, preparatory courses and counselling) and nationality policy in general (legal and political trends, incentives for the acquisition of nationality, unintended consequences of nationality policy, naturalisation campaigns), which the Brussels-based Migration Policy Group (MPG) used to conduct a survey among NGOs in the fifteen countries covered. The comparative report by the MPG on NGOs' experiences, evaluations, recommendations and demands for policy change can be found in Chapter 5 of this volume.

Certain transversal questions could not be answered exhaustively on the basis of the aforementioned country reports and questionnaires. These questions concern issues of gender equality, the rights of multiple nationals and expatriates, and the statuses of three groups of persons – 1) denizens, 2) quasi-citizens and 3) nationals whose rights are restricted because of the short time they have held nationality, the way they acquired nationality or because of their

status as ‘special nationals’ (e.g. British Overseas Territories Citizenship in the United Kingdom). The rights of these groups are more extensive than those of newly immigrated foreign nationals, but still not on a par with those of ‘regular’ nationals residing in the country and enjoying all the rights of citizenship. To gather information on these issues, a separate ‘special questionnaire’ was developed, which was answered by each of the fifteen country correspondents. Gender equality issues are analysed in Chapter 7, concerning trends in nationality law and practice and summarised in section 3.2 below, while the other questions are dealt with in three separate chapters. The comparative chapters on quasi-citizens (Chapter 9) and denizens (Chapter 10) shed additional light on the intricate distinctions between the status of nationals and non-nationals and the rules of transition between them. The same is true for nationals with restricted citizenship, whose rights and obligations are analysed in Chapter 8, together with those of expatriates and multiple nationals.

Even though nationality law is one of the core areas of state sovereignty, public international law as well as European law nevertheless exert a certain influence on the nationality policies of EU Member States. The project, therefore, also included the drafting of a chapter on the legal frameworks of public international law and European law and their implications for the Member States’ nationality laws (Chapter 1). In this analysis, special emphasis was placed on the acquisition and loss of nationality, questions of multiple nationality, implications for the co-ordination of Member States’ nationality laws and the concept of European Union citizenship.

Existing comparative studies either concentrate mainly on rules and/or administrative practices in the area of the acquisition of nationality, or they primarily analyse statistics concerning nationality acquisitions. Studies of the first type thus mostly fail to make precise comparative statements about the quantitative importance of different modes of nationality acquisition, while those of the second type are frequently unable to provide exact information concerning which modes of acquisition are actually covered by the statistics and which are not. The significance of comparisons is seriously called into question in both cases. By contrast, the NATAC project was intended to bring these two strands of research together for the first time and to include statistics on loss of nationality at the same time. The ultimate aim was a complete account of all acquisitions and losses of nationality at birth and after birth that would allow general statements about the emphasis states put on different, broader types of acquisition and loss of nationality. The main result of the analysis of the statistics in Chapter 6 is, unfortunately, that the availability and quality of statistical data in this area leave a lot to be desired. In a few states, not even the most basic statistics on the acquisition of nationality are available, in most states, technical information on the actual content of statistics regarding the acquisition (and loss, if available at all) of nationality is very superficial and, in practically all states, certain modes of acquisition of nationality (even those after birth) are not covered by the available statistics.

Finally, all project sections described above were sources of information for two additional chapters that were drafted for this volume. On the one hand, Chapter 7 summarises the general trends in nationality law and practice in the EU15 states and thus complements the analysis of trends and developments with respect to specific modes of acquisition and loss of nationality in Chapters 3 and 4. On the other hand, in Chapter 11 we evaluate the policies described in the previous chapters and propose a number of detailed recommendations with respect to various aspects of nationality policy on the basis of a small number of general guiding principles (see section 4 below).

## **3 Main Trends**

### ***3.1 Sources of convergence and divergence***

The comparative and country reports in this book demonstrate a bewildering complexity of rules and regulations for the acquisition and loss of nationality. There is no overall 'European model' of citizenship legislation, nor is it immediately possible to group several countries into internally coherent clusters with similar citizenship regimes. For a number of reasons, this is not entirely surprising. First, nationality laws, and citizenship policies more broadly, have been shaped by particular histories of state and nation building and European history is probably more diverse in these respects than that of any other geographic region. Second, nationality law is still a policy domain within which the states in our sample have maintained almost unlimited national sovereignty. While emerging norms of international law, most importantly those codified in the 1997 European Convention on Nationality, have had a clear impact in setting minimum standards, political integration within the European Union has so far not been a major cause of convergence. Third, nationality laws tend to become more complex over time. Countries often start with fairly short laws that spell out fundamental principles for the initial determination of nationality after independence or regime change and for acquisition at birth, leaving naturalisation and loss of nationality within a broad area of discretion for the administrative authorities. Where significant political pressure has built up from domestic pro-immigrant and anti-immigrant forces, as well as from expatriates, European governments tend to respond by refining legal provisions and increasing the frequency of amendments. We can therefore discern a general trend towards more complex regulation which automatically increases the diversity of provisions we find across our sample.

Political scientists distinguish different sources of policy convergence across countries: enforcement, coordination, imitation and normative pressure. In the absence of Community competence in matters of nationality law, there is clearly no enforcement and even less coordination initiated from above. We find, however, growing evidence for imitation across borders. Imitation occurs, first, at the level of governments observing how others (often of similar party composition) respond to problems regarding immigrant integration or populist anti-immigrant pressure; second, within the judiciary, where lawyers and judges increasingly borrow normative arguments that have been successful in deciding a controversy over nationality law in another country; and, third, within civil society where NGOs and migrant organisations often spread or cooperate across borders (even if their influence on policy-making at state level is generally weak).

While these forces are too weak to generate overall convergence, we still find specific trends with regard to certain modes of acquisition or loss of nationality. These are extensively described in Chapters 3, 4 and 7 of this book. Here we will merely summarise the impact of international law and the most important tendencies we have found in domestic reforms in the fifteen countries we have examined.

### ***3.2 Trends in public international law and their impact***

Since the nineteenth century, states have cooperated on nationality issues. A number of bilateral conventions have been concluded between immigration and emigration countries, often with a view to solving problems relating to dual nationality and military service. In the twentieth century, a number of general international and regional conventions on nationality matters were concluded. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) was the first multilateral treaty concerning nationality law. With



the adoption of the Universal Declaration on Human Rights (1948), the right of everyone to a nationality was recognised.

Subsequently, international cooperation has focused especially on how to solve the problems of statelessness – *de jure* and *de facto*. The Conventions relating to the Status of Refugees (1951) and the Status of Stateless Persons (1954) prescribe that the contracting states shall as far as possible facilitate the naturalisation of refugees and stateless persons and the Convention on the Reduction of Statelessness (1961) bases the right to a nationality for persons who would otherwise be stateless on ties with the state in which they were born or in which a parent held nationality at the time of their birth.

Later, the rights of married women and children to a nationality were brought into focus by conventions including the Convention on the Nationality of Married Women (1957), the International Covenant on Civil and Political Rights (1966), the European Convention on the Adoption of Children (1967), the Convention on Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child (1989). Other international instruments dealing with the right to a nationality include the Convention on the Elimination of All Forms of Racial Discrimination (1966) and the European Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1963).

A number of general principles were reflected in these conventions: the individual right to a nationality, the avoidance of statelessness and multiple nationality, the unity of family, the elimination of discrimination (especially gender discrimination), and the principle that the attribution of nationality to a person should be based on a genuine link with the state whose nationality is acquired. Over the years, legal developments have changed the relative weight of these principles, which is especially true for the avoidance of multiple nationality, which has given way to widespread tolerance. Therefore, the Council of Europe considered it necessary to adopt a new comprehensive convention with modern solutions to issues relating to nationality, suitable for all European states and, in 1997, the European Convention on Nationality (ECN) was adopted.

The ECN is considered one of the most important conventions of the Council of Europe. It has further developed the right to a given nationality and has already had a considerable impact on the nationality laws of the states in our sample. Among the fifteen states, only five have not signed or ratified the ECN (Belgium, Ireland, Luxembourg, Spain and the UK). Thus, ten states shall refrain from acts which would defeat the object or purpose of the Convention and among these states, five have until now given their consent to be bound by ratification (Austria, Denmark, the Netherlands, Portugal and Sweden). As will be clear from Chapters 3, 4, 5 and 7, the Convention's influence in terms of relaxing the requirements for the acquisition of nationality is clear in matters of tolerance of multiple nationality, avoiding statelessness and gender equality with respect to the transfer of nationality to children. In terms of restrictive measures, it might be assumed that the ECN has been an incentive for recent amendments leading to a withdrawal of nationality in cases of fraud or conduct prejudicial to the vital interests of the state, but it seems more likely that the Convention has prevented more far reaching changes concerning the withdrawal of nationality, advocated by certain political parties.

### **3.3 Trends in domestic legislation**

Chapter 7 on trends in nationality law describes and analyses recent developments in nationality law and policy in the fifteen old Member States. In addition, Chapters 3 and 4 provide further insights into trends with respect to certain modes of acquisition and loss of nationality, especially over the past decade. The most important finding is a new trend in many Member States since 2000 towards more restrictive naturalisation policies (especially in

Denmark, France, Greece, the Netherlands, the United Kingdom and in Austria). However, countertrends were also observed in other states (Belgium, Finland, Germany, Luxembourg, Sweden and, most likely, in Portugal in the near future).

In the literature on nationality law, the assumption is of convergence towards more liberal naturalisation policies, with the aim of including large groups of permanently resident immigrants. Naturalisation has been perceived and used as an instrument supporting the integration of immigrants. Thus, the acquisition of nationality by second generation immigrants was facilitated, the requirements for naturalisation by first generation immigrants were reduced and multiple nationality was accepted. On these three issues, we observed recent developments in the opposite direction. Although almost all countries in our research have shown tendencies to facilitate the acquisition of nationality by second generation immigrants, this trend has been followed by a counter-tendency towards restricting the rights of the second generation. Access to naturalisation by first generation immigrants has become more difficult in several countries with the introduction of stricter language and integration requirements. There has been an even broader trend since the early 1990s to make acquisition for the spouses of nationals or the extension of naturalisation to spouses more difficult by lengthening residence and marriage duration requirements and by removing exemptions from other naturalisation requirements. The purpose of this seems to be to reduce the incidence of marriages of convenience. Finally, and contrary to the restrictive tendencies in other areas, multiple nationality has been accepted in most countries. Only five of the fifteen Member States still require renunciation upon naturalisation: Sweden and Finland abolished the ban on multiple nationality in the past five years, and Luxembourg is discussing doing so in 2006.

The convergence hypothesis also cannot account for two country-specific phenomena. One is that Southern European countries (particularly Greece and Italy), although faced with large scale immigration, have generally adopted highly restrictive attitudes towards naturalisation. However, Spain has experienced a considerable increase in the number of naturalisations over the past five years and the Portuguese government has recently proposed a new nationality law that would substantially liberalise naturalisation. The second phenomenon is that, since about 2000, several Western and Northern European countries have partly reversed their previous liberal policies. The concept of 'naturalisation as a means of integration' is apparently being replaced by another paradigm of naturalisation as the 'crowning of a completed integration process'. The implications of this policy shift are evident, for example, in the introduction of formal examinations of language skills and knowledge of society. Tests of knowledge about the country in naturalisation procedures were introduced in Denmark in 2002, in France and the Netherlands in 2003, in Greece in 2004 and in the United Kingdom in 2005 and their introduction is currently (end of 2005) on the political agenda in Austria and Luxembourg. As of November 2005, a bill is pending in the Dutch parliament that would even introduce mandatory language tests for persons who have already acquired Dutch nationality by naturalisation or by birth in the Netherlands Antilles.

However, several countries deviate from this trend towards more restrictive policies. The most obvious case in this respect is Belgium. It not only abolished the integration requirement for naturalisation and reduced the required residence period in 2000, but also introduced a new right to acquire nationality by simple declaration after seven years of residence. This change resulted in a substantial increase in acquisitions of nationality. However, the fear that naturalisation has become too easy has surfaced in this country as well. Other states that have considerably liberalised the rules for naturalisation since the beginning of the millennium are Germany (especially in reducing the required residence period from fifteen to eight years and in clearer conditions), Finland and Sweden (acceptance of multiple nationality) and Luxembourg (reduction of the required residence period from ten to five years, acceptance of multiple nationality is currently being discussed). As mentioned above, Portugal is likely to join this group in 2006.

### *3.3.1 Implementation of naturalisation policies*

Opportunities to acquire a country's nationality are determined not only by the formal conditions laid down in nationality laws, but also by their practical implementation and more general public policies of welcoming or deterring new citizens. Long procedures, broad discretion, regional differences in implementation and the lack of effective rights of appeal are hardly less relevant as obstacles to naturalisation than formal requirements. Several Member States have made efforts to reduce the duration of naturalisation procedures, e.g. by introducing legal maximum durations or by decentralising the procedure. Only in three countries (the Netherlands, Luxembourg and Germany) is the discretion of authorities responsible for deciding on applications for ordinary naturalisation severely limited. In addition, in Belgium the authorities' room for discretion in procedures involving the acquisition of nationality by declaration after seven years of residence is also strongly curtailed. In the other countries, applicants are either entitled to acquire nationality, but the conditions they have to meet leave much room for interpretation by the authorities (Spain), or the competent authorities have the power to deny applications, even if all the statutory requirements have been met (all other states). Reducing administrative discretion, however, may also lead to more restrictive policies, as demonstrated by the introduction of formal language and integration examinations in the Netherlands and Denmark. Empirical information on the implementation of naturalisation policies may provide a very different and more accurate picture of access to nationality, of the actual effects of naturalisation policies and of those countries operating a liberal or restrictive policy. We suggest that more empirical research on the implementation of naturalisation policies is needed. In our book, analyses of implementation are based on assessments by academic experts and NGOs that provide counselling immigrants. Future research should also involve interviews with civil servants and studies accompanying immigrants through the application process (see Wunderlich 2005).

Chapter 7 also discusses two subjects that receive less attention in most of the literature on citizenship and nationality law: gender discrimination and the position of emigrants.

### *3.3.2 Gender*

In general, gender inequality in nationality law is considered a thing of the past. However, our findings show that gender is still a topical issue in most countries, resulting in legislative activity in recent years. This activity relates mainly to the nationality of children. All fifteen countries have now gender-neutral *ius sanguinis* from both the father's and the mother's side. However, past gender discrimination in this respect has not been corrected consistently. Only Luxembourg introduced a fully retroactive option for nationality for these children in 1986, whereas in Austria and the Netherlands they could only make their claims within a transitional period.

The opposite kind of gender discrimination still persists in various forms for children born out of wedlock. In six of the countries covered by our study they do not automatically acquire their father's nationality at birth, even if the paternity has been established. Combating 'bogus recognitions' seems to be a concern that overrides gender equality in these cases.

### *3.3.3 Emigrants*

Most literature on nationality law focuses on naturalisation policies concerning immigrants and neglects the facilitated acquisition or reacquisition of nationality by nationals abroad. However, many of the liberalising legislative activities in recent years in Southern and Northern European countries have actually focused on emigrants more than on immigrants. In

some countries (especially in Sweden and Finland), tolerance of multiple nationality in naturalisations came about as a response to demands from expatriates.

Developments since 2000 could be qualified as a process of ‘re-ethnicisation’. With regard to emigrants, policies have generally become more liberal, whereas the inclination of Member States to be inclusive to immigrants living on their territory has declined. The former tendency is also evident in a growing number of states that grant their emigrants voting rights in general elections (see section 8.4.1). It is still uncertain whether the restrictive trend towards immigrants will result in convergence and whether it will be a lasting trend. Another question is whether the ECN and the institution of Union citizenship will impose limits on this trend.

### *3.3.4 Affinity-based acquisition of nationality*

Facilitating the reacquisition of nationality by former nationals is one element of the broader policies of promoting the acquisition of nationality by persons with an ethnic and/or cultural affinity to the country. Other groups of persons targeted by such affinity-based granting of nationality are descendants of former nationals, nationals of certain co-lingual or otherwise culturally related foreign states, ethnic diasporas in particular regions of the world and persons with the same ethno-cultural background as the majority population of the country in question. As Chapter 3 demonstrates, the EU15 Member States can be grouped into three clusters in this respect. The first cluster is made up of Austria, Finland, the Netherlands, Sweden and the United Kingdom, which all facilitate the reacquisition of nationality to a certain degree as well as the acquisition of nationality by nationals of certain foreign states in some cases, but do not make special rules for persons simply on the basis of their ethno-cultural background. Belgium, Denmark, France, Italy and Luxembourg go further, in that they also facilitate the acquisition of nationality by persons with a certain ethnic or cultural background or descendants of former nationals, but usually only once they have (again) taken up residence in the country. Due to its policy of very smooth nationality acquisition by former nationals and their descendants residing abroad throughout much of the 1990s, Italy has a lot in common with the third cluster of states, which comprises Germany, Greece, Ireland, Portugal and Spain. The main shared feature of these states is that they all have policies for granting nationality to ethnic diasporas or descendants of former nationals, even if these persons reside abroad. In addition, Germany and Greece also aim to ‘repatriate’ ethnic diasporas from the former Soviet Union, but in the late 1990s and early 2000s both states tightened the initially very liberal rules for the acquisition of nationality for such ethnic ‘repatriates’ to some degree. By contrast, Spain eased the conditions for descendants of former nationals (irrespective of where they reside) and both Spain and Portugal have recently liberalised their rules for reacquisition by former nationals residing abroad.

### *3.3.5 Loss of nationality*

Chapter 4 describes modes of loss of nationality and highlights a number of trends in this area. Two of the reasons for a loss of nationality have clearly become less commonplace in recent years. The first is the acquisition of a foreign nationality, which may now lead to the loss of nationality under certain circumstances in eleven states. Sweden and Finland abolished the corresponding provision within the past five years and Austria, the Netherlands and Spain have introduced extended possibilities for retention of nationality for certain groups of nationals in cases where naturalisation takes place abroad. The main counter-example is Germany which, in 2000, abolished the rule that nationality is not lost if a foreign nationality is acquired, but residence in Germany is maintained. This change has dramatic effects for tens of thousands of Germans of Turkish origin who reacquired Turkish nationality after naturalisation in Germany. The second reason for loss of nationality that has occurred less

frequently in recent years is serious criminal offences: the corresponding provisions have been abolished in France (1998) and the United Kingdom (2002).

On the other hand, laws have been toughened regarding a number of rules for the loss of nationality. Most importantly, this concerns the withdrawal of nationality because it was acquired by fraudulent means. Such rules have been introduced in the laws of Denmark, Finland and the Netherlands since 2002 and, in Belgium, new or tighter rules are currently on the political agenda. Secondly, in the aftermath of 11 September 2001, some states also facilitated the loss of nationality when crimes against the state, including terrorism, have been committed. The United Kingdom, Denmark and the Dutch government have tightened existing rules or introduced new ones since 2002, or are currently planning such provisions. The only counter-example is Spain, where crimes against the external security of the state ceased to be reasons for the withdrawal of nationality in 2002.

Finally, extended residence abroad as a reason for the loss of nationality does not receive much public or academic attention, even though it exists in some form or another in nine of the EU15 states. Such provisions should be of special interest to the EU since they may have the effect of depriving Union citizens of their status because they make use of their rights of free movement (see also section 4.2 below). The past few years have seen considerable legislative activity in this area, but there is no clear trend. Spain introduced its provisions only in 1990 and 2002, and Ireland (2001), Finland and the Netherlands (both 2003) extended the groups of persons affected by their regulations. With the exception of Ireland, however, all these states also made it easier to take action to avoid this loss. In addition, Denmark (1999) and Sweden (2001) limited the applicability of their rules to persons who also hold a foreign nationality. Most importantly, though, in 1998 Greece abolished the heavily-criticised rule that nationals who are not of Greek orthodox descent could be deprived of their nationality, even if this made them stateless, once they abandoned Greek territory 'with no intention of returning'.

### 3.3.6 *Quasi-citizens, denizens and nationals with restricted citizenship*

In Chapters 9 and 10 we discuss the status of two categories of immigrants closely related to nationality. Both statuses relate to non-citizens who are treated almost as citizens, but for some reason do not enjoy full citizenship of the country of residence: quasi-citizens and denizens. The term *denizen* describes the status of a person approximately halfway between a citizen and a non-citizen. It is often used for immigrants who are granted free access to the labour market, the same rights as nationals to social security, a form of protection against sudden expulsion from the country and, sometimes, some political rights as well. *Quasi-citizenship* is defined as a status of enhanced denizenship that entails almost identical rights as those enjoyed by resident nationals, including voting rights at some level (local or national) or access to public office, as well as full protection from expulsion.

From the survey in Chapter 9, it appears that the legislation of six old Member States (Denmark, Greece, France, the Netherlands, Portugal and the UK) provides for one or more forms of quasi-citizenship. Status is related to the process of decolonisation or to the integration of immigrants, or it is granted to descendants of emigrants who left the country many generations previously. It is a transitional status often governed by rules closely related to those of nationality law. In countries that do not grant *ius soli* nationality to the children of immigrants at birth, the status of quasi-citizenship provides equal treatment during childhood and paves the way for the acquisition of nationality upon reaching the age of majority.

In most Member States, the rights attached to permanent residence status granted under national law remained unchanged after 2000. However, the general tendency in recent years has been to make it more difficult to acquire and more easy to lose this status. So far, the adoption of Directive 2003/109/EC on the status of long-term resident third country nationals appears to have had the 'perverse' effect of making access to denizenship status

more difficult, with the introduction of a language and integration requirement or of longer residence requirements, as in France and the Netherlands. The UK, where the directive does not apply, has also adopted such conditions. Facilitation of access to this status occurred only in Spain. In Member States where this status has been easily accessible, once the residence requirement was met, very large numbers of non-nationals acquired this status. This is a clear indication that immigrants value access to denizenship, even if some of them might not yet consider naturalisation an attractive next step.

Alongside the growing numbers of non-nationals with nearly full citizenship, there are still several groups of nationals who do not enjoy full citizenship. In Chapter 8 we analyse such restrictions, including those affecting British nationals from overseas territories who are subject to immigration control, Danish nationals who must have held their nationality for 28 years in order to enjoy full rights to family reunification and a pending bill in the Dutch parliament that would impose integration tests on large numbers of naturalised citizens.

## **4 Main recommendations**

### ***4.1 General principles***

The concluding chapter of Volume 1 contains our evaluation of laws and policies in matters of nationality and recommendations directed towards Member State governments and the European Union. These are grounded in four basic principles, the first of which is democratic inclusion. Long-term immigrants and their descendants should have access to nationality in order to promote their overall integration into society and to reduce the deficit of representation in democracies where the right to vote in national elections is tied to nationality, but where large numbers of the resident population remain excluded because of their foreign nationality.

Secondly, we propose a principle of stakeholding that recognises that expatriates, as well as their countries of origin, have a legitimate interest in retaining legal and political ties across international borders. While first generation emigrants must be free to renounce their nationality, they should not be deprived of it against their will. States should recognise that most migrants are stakeholders in two different countries. Dual nationality should therefore be tolerated not merely when it begins at birth, but also through naturalisation. The principle of stakeholding does, however, restrict access to a nationality without any genuine link and leads to a recommendation that *ius sanguinis* acquisition of citizenship should generally expire with the third generation, i.e. for children born abroad, both of whose parents were also born abroad.

Thirdly, nationality laws should fully take into account human rights norms enshrined in the international conventions discussed in section 3.2 above. These entail facilitated access to nationality for refugees and stateless persons, as well as the principles of non-discrimination, including between men and women, between persons who have acquired nationality at birth or through naturalisation and between particular nationalities of origin. Finally, human rights principles also require that the rule of law and principles of due process be fully applied to naturalisation and loss of nationality.

Fourthly, states should adopt laws and policies that can be generalised and do not jeopardise friendly international relations. This would require states not to adopt policies towards their expatriates that they are not willing to accept as sending state policies towards foreign nationals on their own territory. The power of states to determine their own nationals must also be constrained when it subverts the legitimate interests of other states, which may

be the case when a Member State of the European Union creates large numbers of new nationals abroad who then enjoy the right to enter any other Member State of the Union.

#### ***4.2 Taking Union citizenship into account***

The fact that Union citizenship is derived from Member State nationality and cannot be directly accessed intensifies the responsibility of Member States to take the European effects of their nationality laws into account. The lack of coordination between Member States in this matter creates three types of problem for the Union: first, the problem of fairness if conditions for access to the rights of Union citizens are very imbalanced among the Member States; secondly, the problem of the adverse impact of actions by one Member State on all others; and, thirdly, the negative consequences of geographic mobility within the Union for acquisition and loss of nationality.

While the first two problems can be addressed through the general principles outlined so far, the third problem calls for specific action in the European arena. Exercising one's right of free movement under Community law should not imply disadvantages concerning the acquisition and loss of nationality in a Member State. Currently, this is the case when nationality is lost after a longer period of residence abroad. States with such provisions in their laws should either abolish them altogether or adopt the recent Dutch reform that residence in another Member State does not lead to a loss of nationality. A similar argument applies to residence conditions for the acquisition of nationality. Union citizens or long-term resident third country nationals will be at a disadvantage with regard to access to nationality in another Member State if they have used their mobility rights under Community law extensively and cannot meet a residence requirement for naturalisation in that state. This problem can be greatly alleviated by generally reducing residence requirements for naturalisation. However, we make an additional recommendation that residence periods spent in another Member State should be taken into account, even if they are less important or if a minimum time has to be spent in the country where nationality is being acquired.

Although all Member States face similar challenges to adapt their policies on nationality and citizenship to large-scale migration and European integration, variations between nationality laws partly reflect specific circumstances, such as immigration from former colonies or the existence of a large co-ethnic diaspora. We therefore do not suggest that the Union should strive for legal competence in matters of nationality that would enable it to harmonise legislation among Member States. Instead, we propose applying the open method of coordination in order to encourage mutual learning from good practices and convergence towards minimum standards, grounded in the principles suggested above. For this process, a better knowledge of the facts will be essential. As discussed in Chapter 6, many Member States do not even collect or publish essential statistical data that would allow a comparison of the exact rates of acquisition and loss of nationality among different migrant populations and different countries. Current attempts to harmonise statistical data on migration should include a requirement that all Member States must provide reliable, comparable and sufficiently differentiated data on all modes of acquisition and loss of nationality.

#### ***4.3 Main recommendations for acquisition and loss of nationality***

Our recommendations are based on a generational approach. Access to nationality should be automatic for the third generation whose parents were born in that country, entitlements to optional acquisition should be granted to the second generation and the 'generation 1.5' - those who were born abroad but raised in the country in question.

For first generation immigrants, naturalisation requirements should be clearly defined and implemented in ways that enable and encourage them to acquire the nationality of their country of long-term residence. We identify good practices along these lines in states that require a legal residence of no more than five years, do not require the renunciation of a previous nationality and do not exclude immigrants below a certain income threshold. The recent trend towards more extensive ‘integration tests’ should be evaluated by asking whether these provide positive incentives for immigrants or serve rather to exclude larger numbers from naturalisation. Expecting applicants for naturalisation to acquire basic language skills can promote their socio-economic integration and enable new citizens to participate in public political life. Written tests on language and knowledge of society, history and the constitution, however, do not provide sufficient flexibility in judging relevant skills and deter many poorly-skilled or elderly immigrants. On the other hand, vague criteria such as good character, level of integration or assimilation often give too much scope to arbitrary decisions or the discriminatory treatment of migrants of different origins.

Four categories of persons enjoy facilitated access to naturalisation in many countries. These are 1) refugees and stateless persons, 2) the spouses and minor children of nationals and of immigrants who are applying for naturalisation, 3) immigrants with historic ties or cultural affinity to the country of immigration and, 4) citizens of other EU Member States. We strongly advocate easier access to nationality for groups one and two because their claims are based on individual needs for protection through new citizenship or for family unity in matters of nationality. Facilitated naturalisation based on ascriptive grounds of national or ethnic origin may be justified in specific contexts, but will often become problematic over time when immigration by people of many different origins increases, since easier access for some nationals will then be experienced as discriminatory by other immigrants with longer periods of previous residence.

Emigrants, although they will not be able to enjoy most of the citizenship rights of nationals residing in their country of nationality, still have a general claim to retention of that nationality. When they acquire the nationality of their country of residence, they must be free to renounce their previous nationality, but we suggest that they should not be forced to do so. Our recommendation for tolerating dual nationality among migrants who are stakeholders in two countries applies to immigrants as well as to emigrants. Several states in our sample also make specific provisions for the reacquisition of nationality by emigrants who have lost it under prior legislation, especially through marriage or because of a former renunciation requirement. We generally support these provisions but criticise the fact that some countries allow reacquisition only if the nationality was acquired by birth rather than through naturalisation.

Our final set of recommendations concerns the institutional arrangements and procedures for naturalisation. Even where the law itself does not create difficult hurdles, access to nationality may be blocked by administrative practices and implementation procedures. We recommend that applicants for naturalisation should not be burdened by high fees and excessive demands for official documents. There should be a maximum period within which applications have to be decided. Civil servants dealing with naturalisation should be trained and supervised, negative decisions should always have to be justified in writing and applicants should have the opportunity to complain and the right of appeal. Public administrations ought to provide assistance and cooperate with migrant organisations in helping immigrants prepare their applications and meet language requirements. In countries where the implementation of nationality laws is delegated to regional or local authorities, it is important to ensure uniform standards in applying the law.

Democratic countries of immigration should not only grant immigrants the opportunity to acquire nationality, but they also have a vital interest in encouraging them to do so. Common citizenship provides a reference point for solidarity in societies made up of



people of diverse origins. Public campaigns promoting naturalisation and public nationality award ceremonies can be useful instruments. Such campaigns have been rare in Europe; not only would they raise the numbers of applications, they would also contribute to a more positive perception of immigrants as new citizens within the general population.

# EVALUATION AND RECOMMENDATIONS

## RAINER BAUBÖCK AND BERNHARD PERCHINIG

### 1 Introduction

In this book we have documented the diversity of legal regulations and policies concerning the acquisition and loss of nationality in the fifteen old Member States of the EU. We also asked whether any trends towards greater similarity are emerging from international and European law or from parallel domestic developments in the Member States. The final chapter evaluates the policies and practices analysed in this book and makes specific recommendations aimed at legislators, executives and EU institutions.

The task we set ourselves does not include an overall evaluation of each country's citizenship regime. We therefore do not provide a ranking of countries with regard to how restrictive or how inclusive their citizenship regimes are. This task has been partly accomplished by earlier reports (Waldrauch 2001; British Council 2005). Rather than attempting to construct citizenship indices, our goal is to provide constructive guidelines for reforming specific elements of policies and legislation in this area. We also do not base our evaluations and recommendations on a single overarching norm such as maximising inclusion, but try to take into account several, sometimes conflicting, interests and principles. We do not confine ourselves to questions of compliance with positive international or domestic law, but will refer more broadly to principles of democracy, social and political inclusion, friendly international relations and others that are widely shared but not always consistently applied to matters of nationality. Most importantly, our evaluations and recommendations are not derived from an underlying goal of promoting convergence among nationality law across all Member States. We will discuss in section 2 why we still think that European integration has important implications for national policies in this area. However, we do not advocate either a uniform regime for acquisition or loss of nationality in all Member States or a transfer of sovereignty in this matter from the Member States to European institutions. Such goals might eventually become feasible and desirable at a different stage of the European integration process but they are currently highly controversial and we do not think that affirming them is necessary for arguing the policy reforms that we advocate under current conditions.

Our report will instead try to do two things: on the one hand, we will advocate normative minimum standards that each country should adopt and, on the other hand, we will identify what we regard as good practices, i.e. policies or legal provisions that effectively resolve a particular problem or meet a normative target and which could provide examples for cross-national policy learning and imitation. Between minimum standards and best practices, much room for legitimate variation exists. Such variations in nationality policies are also often necessary in order to respond flexibly to particular circumstances. For example, a country that has many immigrants from former colonies may have good reasons to adopt rules for preferential naturalisation that would be regarded as discriminatory in the context of another state.

The final caveat is that our evaluations and recommendations do not cover the full range of issues in nationality law and citizenship policies. Firstly, we focus here on those concerns that are widely shared among the countries covered in our study. For this reason, we do not address here issues of state succession<sup>1</sup> or of citizenship relations with co-ethnic minorities in neighbouring states, both of which are of great importance for the ten new

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<sup>1</sup> International law norms concerning nationality in cases of state succession are, however, discussed in Chapter 1.

Member States, but much less so for the fifteen old ones. Secondly, we focus on rules for the acquisition and loss of the status of nationality rather than on the citizenship rights and obligations attached to it.<sup>2</sup> Thirdly, our evaluations and recommendations will be selective, according to the same criteria that we applied in Chapter 2 for selecting modes of acquisition and loss for detailed analysis, i.e., statistical, political and normative salience. This report therefore focuses on provisions in nationality law that affect large numbers of persons, that have been at the centre of political debates in several countries and that concern the more fundamental interests and claims to rights of both individuals and states.<sup>3</sup>

The principles for evaluation and general recommendations proposed in this report are not entirely novel. They overlap with some earlier reports (Aleinikoff & Klusmeyer 2002; Bauböck 2005; British Council 2005; de Groot 2003; Groenendijk, Guild & Barzilay 2001). The specific achievement of our study is that never before have these ideas been grounded in or applied to such a comprehensive and systematic international comparison of European nationality laws and policies.

## **2 General principles for acquisition and loss of nationality**

A number of principles have traditionally been applied to nationality law in domestic legislation and international law. Among these are the principle that every person should have a nationality, with its corollary that statelessness should be avoided; the principle of equality, which has been applied specifically to eliminate gender discrimination; the principle of avoiding multiple nationality, which has been abandoned by a growing number of states; the family unity principle, which has been partly superseded by gender equality but could still be sustained where multiple nationality is tolerated; and the principle of a genuine link to the respective country as a condition for the attribution of nationality by a state. The interpretation and weight of these principles has changed over time and they partly conflict with one another. They must therefore be specified and balanced against one another. We will take them into account but will structure our discussion slightly differently. We suggest that normative standards in nationality law and policies can be derived from recognising the following fundamental interests and concerns of individuals and states: (1) enhancing democratic inclusion through the political integration of immigrants and their children; (2) encouraging ties between emigrants and source countries; (3) promoting human rights and the rule of law in matters of nationality; and (4) ensuring mutual compatibility between national policies.

### **2.1 Democratic inclusion of immigrants**

All fifteen of the states in our sample have been the targets of substantial immigration that has fundamentally changed the composition of the general population. Apart from the more recent immigration in countries in the Mediterranean region, large cohorts of second and third generations of immigrant descent are present in all the Member States that have experienced immigration in recent decades. States that make access to naturalisation difficult and do not provide for elements of *ius soli* are generating growing percentages of foreign nationals among their permanent resident population. This must be regarded as problematic from two perspectives.

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<sup>2</sup> The rights and obligations of nationals, quasi-citizens and denizens are discussed to a certain extent in Chapters 1, 8, 9 and 10.

<sup>3</sup> Evaluations and recommendations on other issues can be found in many of the other chapters in this volume as well as in the country reports, published separately in volume 2.

Firstly, blocked access to nationality often reinforces social and economic integration deficits. With effect from January 2006, the EU directive on long-term resident third country nationals (2003/109 EC) will ensure a certain level of free movement, access to employment and to social welfare benefits for this group, but they still face various disadvantages, relating to security of residence or political rights, compared to nationals of the country of residence. Research in several immigration countries shows that naturalised immigrants tend to be more upwardly mobile than foreign nationals in the same immigration cohort (Rallu 2004; De Voretz & Pivnenko 2004). This is partly due to self-selection (upwardly mobile migrants tend to naturalise more often), but also to other factors such as employers' preferences for naturalised immigrants.

Secondly, democratic legitimacy may be undermined by a large and growing discrepancy between the general resident population subjected to the laws of the land and the citizens who are represented in the making of these laws. This is less problematic if the cause of such discrepancy is reluctance by foreign nationals to adopt the nationality of their host country. Persistently low naturalisation rates among foreign nationals eligible for naturalisation may be regrettable for the same reasons as low voter participation rates, but they cannot be taken as an indication of a structural democratic deficit, especially if those who qualify do not apply because they already enjoy most of the rights attached to national citizenship, as is generally the case for EU citizens living in other Member States. Our evaluation must be different when access to nationality is blocked by conditions that are difficult to meet. The status of permanent resident foreign nationals then becomes almost like that of women, unpropertied citizens or disenfranchised racial and indigenous groups before the introduction of universal suffrage. The fact that foreign nationals have another state that is responsible for taking them back does not compensate for their exclusion from democratic representation in their country of permanent residence. Along with most contemporary theorists of democracy who have addressed the problem (e.g. Walzer 1983; Carens 1989; Dahl 1989; Habermas 1990), we therefore support the right to naturalisation for long-term foreign nationals under conditions that should be sufficiently clear and easy to meet for ordinary immigrants. Since democratic states should also be interested in promoting naturalisation, we further advocate outreach policies and public campaigns encouraging immigrants who meet the conditions to apply.

The claims of second and third generations of immigrant descent to the nationality of their country of birth or socialisation are considerably stronger than those derived from long-term residence. For these children, a foreign nationality acquired by descent no longer indicates a link to another country of origin and the rights attached to this external nationality will be much less relevant than for first generation immigrants. Going beyond the provision of the European Convention of Nationality that foresees facilitated naturalisation for these groups (ECN 1997, Art. 6(4)), we recommend that, for children born and raised in the country in question, an unconditional option of acquisition of nationality *iure soli* should be offered at birth or until the age of 23.<sup>4</sup> We do not, however, suggest a uniform policy of automatic acquisition at birth in the territory for all groups.<sup>5</sup> A combination of optional *ius soli* for children with a parent who is a legal resident and of automatic 'double *ius soli*' for the third generation will generally be sufficiently inclusive.

In other respects, however, *ius soli* itself is not sufficiently inclusive in immigration contexts where many children arrive at an early age in the process of family reunification. From the perspective of the state, *ius soli* provides a simple solution that is easy to administer.

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<sup>4</sup> Identity formation is not necessarily completed by the age of majority, so we suggest that young adults should still be given some time to decide after reaching this age.

<sup>5</sup> Strict *ius soli* in the U.S. is a historic by-product of the abolition of slavery and was originally not related to immigration. In the United Kingdom before 1981 and in the Irish Republic before 2005 strict *ius soli* was not a response to immigration either.

From the perspective of individual attachments, however, the mere fact of birth in a country is more accidental than residence during childhood. Nationality policies should therefore adopt a generational approach and provide access to nationality not merely based on birth in the territory, but alternatively also based on socialisation, i.e. the years spent there during early childhood and compulsory schooling (Aleinikoff & Klusmeyer 2003: 20-21).

## **2.2 Maintaining ties with expatriates**

International migration is an activity that creates legal and political relations between individuals and two or more states. Migrants have therefore relevant interests not only regarding receiving states, but also regarding countries of origin. The latter are not always interested in active involvement and citizenship. Sometimes the primary claim migrants have towards their state of origin is to be released from its nationality. This is especially true for refugees who are outside their state of nationality and do not enjoy protection by that state, but it may also apply to other migrants for whom emigration is primarily an exit option from undesirable economic or political conditions and who want to cut all ties with their country of birth. This group is, however, a rapidly shrinking minority among international migrants. Most remain attached to their country of origin because they have close or extended family there, because they frequently visit this country or consider returning there for good. Even those who have fled civil wars or political persecution often want to remain politically involved as citizens in exile. Finally, migrants often also refer to their origins when constructing their identities in the receiving country even when they stay for good. All these different motives make the nationality of origin important. For those who have not fled, it implies the status of external citizenship with a right to return, to diplomatic protection and sometimes also to absentee voting rights and it serves, for many, as a symbolic marker of identities.

Sending states also have interests in maintaining ties with voluntary expatriates. These interests may be economic, in remittances or in human capital among returning migrants, cultural in promoting the use of national languages abroad, or political in involving migrants in the political process back home or in mobilising them as a foreign policy lobby in the receiving country (Bauböck 2003). Encouraging expatriates to retain their nationality of origin and enhancing the rights of external citizenship are means in the pursuit of these legitimate goals. It has often been pointed out that migration ought to be managed so that it benefits both receiving and sending states. Recognising external ties of nationality contributes to economic growth by encouraging emigrants to send remittances or to invest in their countries of origin. Migrants often also accumulate democratic experiences in receiving states that influence their political activities towards the sending country and contribute to democratic transition or consolidation there. Promoting such mutual benefits requires a change in the prevailing notions of integration in receiving states, where such emphasis on external ties is often interpreted as a lack of commitment to the host society that disqualifies immigrants from access to nationality.

The most important recommendation that follows from these considerations is that immigrant receiving states should generally accept dual nationality among first and second generation migrants who have genuine links to both countries concerned. While all states in our sample accept dual nationality acquired at birth *iure sanguinis*, Germany is unique in that it limits dual nationality acquired at birth through a combination of *ius soli* and *ius sanguinis* by demanding that one nationality be renounced by the age of 23. Five countries, however, still require the renunciation of former nationality as a condition for ordinary naturalisation.

All the countries we studied are also sending states with provisions in their nationality laws aimed at expatriates and their descendants. Most states do not limit the extraterritorial transmission of nationality by *ius sanguinis* to the first generation born abroad (only Belgium,

Germany, Ireland and the UK do so). Many states have recently also strengthened their political ties with expatriates by allowing them to naturalise abroad without losing their nationality of origin (Sweden, Finland and the Netherlands), or by introducing preferential (re)acquisition of nationality for former nationals (Austria, Italy, the Netherlands, Portugal and Spain) or for immigrants whom they consider as sharing a dominant national language, culture and/or ethnic identity (Greece, Portugal and Spain). These tendencies have been interpreted as indicating a new trend towards the ‘re-ethnicisation’ of citizenship in liberal democracies that counterbalances a more general trend towards de-ethnicisation in the admission of immigrants (Joppke 2003, 2004). It is, however, important to distinguish between policies that pursue legitimate sending state interests in transnational migration and those that negatively affect major interests of other groups and states. As we will discuss in section 3 below, ethnic preferences in naturalisation may be justified in particular circumstances. They are, however, problematic in the context of immigration from diverse origins, where they may violate the principles of non-discrimination, and in the context of European integration, where acquisition of nationality entails Union citizenship and the right to settle in other Member States. The latter objection is especially salient when states permit large groups of former nationals or co-ethnic populations to acquire nationality abroad without requiring a certain period of residence in the state (as in Greece, Portugal, Spain, Germany and Ireland).

As a general normative principle that ought to guide policies with regard to both acquisition and loss of nationality, we suggest the idea of stakeholding in a political community. Individuals whose objective living conditions durably link their interests to the common good of a particular polity should have a *prima facie* claim to the status of membership in that community. This principle builds on the concept of a ‘genuine and effective link’ used by the International Court of Justice in the *Nottebohm* case (ICJ Reports 1955, 23). On the one hand, it supports the inclusion of immigrants and the maintenance of external ties with expatriates but, on the other hand, it restricts the claims to nationality and full citizenship rights of temporary migrants, of subsequent generations born abroad of more distant emigrant origin<sup>6</sup> and of those in search of a ‘nationality of convenience’ for the sake of easier travel, economic investment or tax evasion. Although, as explained in Chapter 1, the genuine link criterion has been applied very cautiously in international public law (mainly to restrict the conferring of nationality where it impacts on claims of personal or territorial jurisdiction by other states), we suggest that stakeholding should be considered more broadly as also determining the scope of claims made by individuals vis-à-vis states.

### **2.3 Human rights standards**

Chapter 1 discusses at length how international public law tries to balance the basic principle that the determination of nationality falls within a reserved domain of state sovereignty, with human rights and with the fact that ‘nationality by its very nature affects international relations’ (ICJ Reports 1995, 23). From a human rights perspective, four major guidelines for minimum standards ought to be respected by all states:

- 1 The basic human right of every person to a nationality according to Art. 15 of the Universal Declaration of Human Rights (UDHR) has generally been interpreted as an injunction against policies generating statelessness rather than as the individual entitlement of a person to a specific nationality. Art. 15 (2) UDHR goes beyond this by proclaiming the right to change one’s nationality and protection against arbitrary

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<sup>6</sup> We suggest below in section 3.7.3. that the automatic transmission of citizenship *iure sanguinis* outside the state territory should end with the emigrants’ grandchildren. This would also limit the proliferation of multiple nationality among persons without genuine links.

deprivation. The same principle underlying the general human right to a nationality also informs Art. 34 of the Geneva Refugee Convention and Art. 32 of the Convention relating to the Status of Stateless Persons, that require contracting states to facilitate the naturalisation of refugees and stateless persons respectively. This expectation is based on the understanding that stateless persons and persons who have lost the protection of their nationality of origin and who are, in this sense, similar to stateless persons have stronger claims to the nationality of their host state than other migrants. The Netherlands, Portugal and the UK, however, have no special provisions for the naturalisation of refugees. Several Member States also have provisions regarding loss of nationality that can create statelessness and prevent their ratification of the ECN. We strongly recommend that all Member States should accede to the ECN and revise their laws accordingly;

- 2 The rights of children to a nationality have generally been regarded as more important than access to nationality for adults. Thus, in contrast to Art. 15 UDHR, Art. 24(3) of the International Covenant on Civil and Political Rights only affirms the right of every child to acquire a nationality. An effective implementation of this right requires that states that otherwise do not apply *ius soli* still transmit their nationality not only to foundlings (a requirement that is met by the nationality laws of all fifteen states), but also to children born on their territory to parents who are stateless or of unknown nationality, which is currently not the case in Denmark, Germany, the Netherlands, Sweden or the UK. Art. 7 of the 1989 Convention on the Rights of the Child and Art. 6(2) of the ECN affirm this particular obligation towards any child who does not acquire another nationality at birth. Another problem that still has not been fully resolved in some countries in our study concerns children born out of wedlock for whom *ius sanguinis* is applied only from the mother's side, but not from the father's, even if the father has custody of the child. This appears to violate both children's rights and the principles of gender equality;
- 3 Applying the general prohibition of discrimination to nationality law means that rules for acquisition and loss of nationality should not include arbitrary distinctions between different categories of persons. Article 5 (2) of the ECN more specifically prohibits discrimination between nationals by birth and those who have acquired a nationality after birth. Among European states, this kind of discrimination was quite common until the 1980s and we have found instances of it in our study. These mainly concern loss of nationality, but also discrimination with regard to family reunification depending on how long someone has held Danish nationality or restricted access to public service for naturalised persons of non-Greek origin in Greece. Another example where different treatment appears *prima facie* hard to justify is the current German policy of fully accepting dual nationality at birth when it is the result of *ius sanguinis* among parents of different nationality, but requiring that one nationality must be renounced before the age of 23 when German nationality has been acquired *iure soli*;
- 4 The specific concern to eliminate gender discrimination has led to important reforms in all the nationality laws of the countries we have studied, mostly by making *ius sanguinis* gender neutral (*a patre et a matre*) for births in wedlock and by ensuring that the conditions for acquisition through marriage to a national apply equally to male and female spouses. As discussed in Chapter 7, however, transitional provisions for correcting past gender discrimination have failed to provide a remedy for past discrimination for all persons concerned.

Apart from these human rights concerns, democratic states should fully apply rule-of-law principles to the acquisition and loss of nationality. They must guarantee procedural minimum standards, which include reasonably low fees that do not create financial deterrents for applicants, clearly stated requirements that do not allow for arbitrarily dismissing applications and that limit administrative discretion in judging substantive questions, limits on the time within which applications have to be decided, written justifications for rejections and a

judicial review of decisions with individual rights of appeal (which may be difficult where decisions are taken by the legislature). Chapters 2, 3 and 5 of our study provide evidence that, in several countries, shortcomings with regard to these procedural standards are among the most important obstacles effectively preventing individuals from acquiring or renouncing a nationality, even when they meet all the conditions specified by law.

## **2.4 Mutually compatible national policies**

As our discussion of immigrants' and emigrants' claims to nationality above shows, a human rights perspective defines certain minimum requirements but cannot fully cover more comprehensive guidelines for democratically inclusive policies. A similar differentiation applies to international relations.

The traditional concern of international law is to promote peaceful relations between sovereign states. This requires that sending countries respect the territorial jurisdiction of host states over their nationals abroad. The state of residence must have the right to grant foreign nationals refugee status or its own nationality even without the consent of the country of origin. On the other hand, immigration countries must also accept that sending states may grant their nationals abroad not merely diplomatic protection and the right to return, but also political and other rights that they can exercise with regard to their country of nationality and that do not interfere with the territorial jurisdiction of the host state. In matters of nationality law, the principle of non-interference with the domestic affairs of other states must therefore be applied in a way that reconciles territorial jurisdiction with external citizenship rights and obligations.

Multiple nationality makes separating these two claims a more complex task. However, the Council of Europe's 1963 Convention on Multiple Nationality, its subsequent protocols and the 1997 ECN provide principles for how to avoid conflicts between the states concerned by combining priority for legal rights and obligations in the country of habitual residence with the reasonable exercise of free choice for the individuals concerned.

Given the lack of agreement on principles among states and widely diverging state practices, current international public law cannot, however, be taken as a sufficient standard for resolving conflicts over nationality and promoting friendly relations among states that are linked to one another by migration flows. From a normative perspective, we argue for more comprehensive guidelines for international relations and progressive reform of international law.

An initial guideline is that state policies should be able to be generalised in the sense that they do not inherently conflict with similar laws and policies adopted by other states. This would require states not to adopt policies towards their expatriates that they are not also willing to accept as sending state policies towards foreign nationals on their own territory. This principle is different from bilateral reciprocity, which requires granting nationals of certain states special rights or privileged access to nationality provided that the state's own nationals enjoy similar rights in these other states. It is also different from multilaterally agreed norms that apply within a particular community of states, such as the European Union. While reciprocity and supranational union generate different rules for nationals of different countries, generalisability provides a normative test for rules that apply to all foreign nationals.

For example, a state that refuses to release its own nationals when they naturalise abroad, or permits them to retain their nationality when acquiring another one, should not require that immigrants who obtain its nationality must abandon a nationality they have previously held. In Sweden and Finland, recent reforms aimed at broader tolerance of dual nationality have been supported by public statements that symmetrical rules ought to be applied in both cases. Making international generalisability thus an explicit criterion for



nationality reform, even in the absence of an obligation under public international law, is an example of good practices in nationality reform. Another application of this principle concerns provisions for the loss of nationality as a result of permanent residence abroad. Belgium, Denmark, Luxembourg and Sweden are countries which have applied the 'genuine link' principle in such a way that their second generation emigrants lose their nationality at a certain age after majority unless they have special links to their country of nationality. Consequently, they should also provide a corresponding right for the second generation of immigrant origin to acquire their nationality based on the assumption that these persons' links to their country of nationality are just as tenuous as those of their own nationals born abroad.

A second guideline that can be derived from the goal of friendly international relations is the avoidance of negative side effects or perverse incentives for other states. Chapter 1 discusses several examples of state policies whose adverse impact on other countries can be regarded as violating the principles of international law. For example, a state must not deprive expatriates of their nationality with the intention of avoiding its obligation to readmit them in case of expulsion. States may also harm the interests of other states when they offer their nationality to minorities living abroad whom they consider as co-ethnics, since turning a native minority into citizens of an external protector state may undermine the internal accommodation of minorities in the country of residence. This is currently not a problem in the fifteen countries we have examined, but it is a major issue in some of the new EU Member States (for example in relations between Hungary, Slovakia and Romania).

For prudential reasons, states should also refrain from adopting policies that can be easily circumvented by other states and for ethical reasons they should not adopt laws that provide incentives for other states to maintain or introduce illiberal provisions in their own nationality laws. Both guidelines can be illustrated by the perverse effects of restrictions on dual nationality in naturalisation cases. In order to circumvent Germany's prohibition of dual nationality, in the mid-1990s Turkey adopted a policy of guaranteeing its expatriates readmission to nationality after renunciation in order to naturalise. In 1999, Germany changed its Basic Law that did not previously allow the denationalisation of German nationals residing in the country. In 2005, a considerable number of dual nationals who had reacquired Turkish citizenship lost their German citizenship *ex lege* and thereby also their voting rights in the 2005 German national elections. All the countries in our sample do, however, permit applicants to retain a previous nationality if the state concerned refuses to release its citizens or if the conditions for renunciation are deemed unacceptable. These exceptions create perverse incentives for maintaining the illiberal restrictions on voluntary renunciation in countries of origin, since liberal reforms would deprive migrants of access to multiple nationality and sending states of nationality ties to their expatriates. A broader tolerance of dual nationality emerging from naturalisation is thus not merely supported by respecting the dual attachments of migrants discussed above, but also by taking into account how state policies impact each other. Good policies in this area must start from the basic understanding that dual nationality is produced jointly by two different states and that the rules for regulating it must take into account the interests and policy options of the other party.

### **3 The impact of European integration on Member State nationality**

The Maastricht and Amsterdam Treaties have clearly stated that only nationals of a Member State are Union citizens and that Union citizenship shall complement not replace Member State nationality. Under current Community law this rules out any separate means of becoming a citizen of the Union without acquiring the nationality of one of its Member

States.<sup>7</sup> In the *Micheletti* case, the European Court of Justice further clarified that the status of Union citizenship cannot be denied to multiple nationals who possess the nationality of a third country alongside that of a Member States (Case C-369/90 *Micheletti* [1992] ECR I-4239). It is, however, less obvious that *all* nationals of Member States are also Union citizens, since some states have made reservations in this respect with regard to citizens living in offshore territories. Legal scholars have also suggested that the principle of solidarity between Member States might constrain national legislation (mainly in Southern European states) that would turn offshore populations into nationals within the meaning of the EU Treaties and thereby also into citizens of the Union with the right of admission and residence in any of the Member States (de Groot 2003: 21, see also Chapter 1).

While the regulation of access to Union citizenship has thus been fully devolved to Member States, the Commission has nevertheless emphasised that it regards citizenship of the Union as a source of legitimation of European integration and for creating a genuine European identity (*ibid.*). The European Court of Justice has indicated in several decisions that Union citizenship places constraints on a Member State's sovereignty in matters of nationality. In *Micheletti*, the ECJ stated that the competence of each Member State to define the conditions for acquisition and loss of nationality is to be exercised with 'due regard to Community law'. In *Grzelczyk*, the Court of Justice seems to have gone further by stating that citizenship of the Union is 'destined to be the fundamental status of nationals of the Member States' (Grzelczyk (2001) ECR I-619). This statement could be misinterpreted as indicating a tendency towards a federal conception of multilevel citizenship in which nationality in Member States will be derived from Union citizenship rather than the other way round. The emerging agenda initiated by the Tampere European Council in October 1999 is much more modest. The presidency conclusions of this meeting endorsed 'the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident'.<sup>8</sup> In its communications, the Commission has since gone further. It has proposed a status of 'civic citizenship' for long-term resident third country nationals as 'a first step in the process of acquiring the nationality of a Member State concerned' (COM (2000) 757: 20). In 2003, the Commission welcomed 'the relaxation of conditions to be fulfilled by applicants for nationality' and advocated a reinforced coordination process to 'promote the exchange of information and of best practices concerning the implementation of nationality laws of Member States' (COM (2003) 336: 30). We recommend that the Commission should clarify in a further communication how it expects Member States to take into account Community law in their legislation on acquisition and loss of nationality.

In our view, these goals should be strengthened and defined more broadly by applying the 'open method of coordination' to the nationality laws of Member States. The reasons for doing so can be stated as follows: alternative models of separate access to Union citizenship or of reversing the relation between Union citizenship and Member State nationality are currently ruled out by Community law and by a lack of political will within all Member States for these more radical reforms. Nevertheless, even the present architecture of Union citizenship creates a strong link with Member State nationality that can serve as a point of departure for reforming access to nationality. In addition to the normative arguments in section 1 for minimum standards and guidelines for good policies in all democratic states, there are even stronger arguments for promoting normative convergence within the European Union. Since the status of Union citizenship is shared by all Member States and since its rights apply throughout the territory of the Union, regulating the acquisition and loss of this status through 25 non-coordinated national laws creates problems of three kinds: firstly, the problem of fairness if conditions for access to the rights of Union citizens are extremely

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<sup>7</sup> Third Report from the Commission on Citizenship of the Union, COM (2001) 506: 7.

<sup>8</sup> Tampere European Council – Presidency Conclusions, para. 21, last sentence.

unequal among the Member States, secondly, the problem of the adverse impact of actions by one Member State on all others and, thirdly, the negative consequences of geographical mobility within the Union on the acquisition and loss of nationality. These three problems are not grave enough to justify the full harmonisation or 'Communitarisation' of nationality law, because Union citizenship is not in any way comparable with nationality and because the most fundamental rights are primarily guaranteed under national legislation in each Member State. Yet they add general weight and some specific reasons to the case for minimum standards and the promotion of good policies in this area.

Specific reasons for European coordination in matters of nationality can be derived from the third problem mentioned above, i.e. contradictions between current nationality laws and the rights of free movement and residence associated with Union citizenship as well as with long-term resident status for third country nationals. These rights have been recently specified and expanded in two Council Directives (2003/109/EC and 2004/38/EC respectively). The general principle that we suggest is that exercising one's right of free movement under Community law should not create disadvantages concerning the acquisition and loss of nationality in a Member State. This principle can be applied to resolve three problems:

- 1 Nine of the fifteen states have provisions in their nationality laws stating that, under certain circumstances, nationality may be lost after a certain period of residence abroad; five of these countries also apply such provisions to first generation expatriates (Finland, Greece, Ireland, the Netherlands and Spain). When applied to residence in other Member States, this would have the paradoxical consequence that using one's right of free movement as a Union citizen may result in the loss of that very status (de Groot 2003, see also Chapter 1). The Netherlands has therefore modified its law so that residence in another Member State does not count towards an absence that may lead to a loss of Dutch nationality after ten years. Another solution to this problem is, of course, to reform the provisions for loss of nationality more generally so that mere residence abroad does not lead to a withdrawal of nationality from first generation emigrants.
- 2 A similar argument can be made with regard to the acquisition of nationality. When it comes to meeting the residence requirements for naturalisation, Union citizens who frequently assert their mobility rights by moving between Member States are at a disadvantage compared to others who reside permanently in another Member State. This claim is somewhat less strong than the claim to protection against loss, since a lack of access to another Member State's nationality does not deprive the person concerned of his or her Union citizenship. It is, however, still a relevant consideration that exercising one's right to freedom of movement within the Union should not diminish a person's opportunities to acquire the nationality of another Member State where he or she takes up residence for a longer period.
- 3 This argument applies even more forcefully to long-term resident third country nationals who, with effect from January 2006, also enjoy the right to free movement within the Union, which allows them to transfer their status to another Member State after five years of legal residence.<sup>9</sup> Their case is stronger than that of nationals of Member States since third country nationals might never obtain access to Union citizenship if they make extensive use of their free movement rights and if they never stay long enough in any Member States to qualify for naturalisation there.

One possible response to the second problem would be to introduce shorter residence periods for the naturalisation of Union citizens in all Member States. Currently, only Austria, Germany and Italy provide for such facilitated naturalisation for nationals of other Member States. In our view, this is not a desirable solution. It would have hardly any significant

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<sup>9</sup> See Council Directive concerning the status of third country nationals who are long-term residents (EC 2003/109, 25.11.2003).

impact on the naturalisation rates of Union citizen in other Member States. Union citizens naturalise in lower numbers than other nationalities because they generally have more rights to lose in their country of origin than to gain in their country of residence. A general tolerance of dual nationality in naturalisation cases would therefore be a much more effective incentive for naturalisation.

We recommend an alternative approach involving counting years spent in other Member States towards a residence requirement for naturalisation.<sup>10</sup> There are various ways in which Member States could still emphasise the importance of residence in the state whose nationality is acquired. They could give less weight to years spent in other Member States (for example, by counting only half the time) or they could require that a certain time must have been spent in the country immediately before naturalisation. One major advantage of this proposal is that it would also address the third problem by providing third country nationals with the same opportunities for facilitated naturalisation if they have resided for some time in other Member States. This model would thus be non-discriminatory, it would highlight the Union as a common space of freedom and remove obstacles to enhanced mobility, but would still preserve the importance of residential attachment to the state whose nationality is acquired.

If this proposal does not find sufficient support, the next best policy for minimising the conflict between free movement rights and access to nationality is to encourage those Member States with excessively long residence requirements for naturalisation to reduce these<sup>11</sup> and to abandon the condition of uninterrupted residence. For example, in the Irish Republic, only the final year before the application must be without interruption while the rest of the required four years of residence can be accumulated over the previous eight years. Irish law thus makes it quite easy for mobile Union citizens or third country nationals to fulfil a reasonable residence condition.

Initiating an open method of coordination in matters of nationality law will require much greater knowledge, not merely about laws and their implementation, but also about statistical developments. Chapter 6 documents the inconsistent state of statistics on nationality, which are currently scarcely comparable across Member States, and makes detailed recommendations on how to improve them. We have therefore been unable to supplement our systematic comparison of modes of acquisition and loss with the corresponding statistical data. Nationality statistics in several countries do not even allow a calculation of overall rates of acquisition and loss among migrant origin populations. Having sufficiently differentiated, reliable and publicly available statistics on nationality is a precondition for well-informed public policies in countries with large-scale emigration or immigration. Without good data on acquisition and loss of nationality, it is also impossible to estimate the size of migration stocks and flows. Official statistics in many countries still wrongly identify migrants with foreign nationals and vice versa. As part of the current efforts to generate harmonised statistics on migration in Europe, sufficient attention should therefore be paid to statistics on nationality.

#### **4 Legal rules for the acquisition and loss of nationality**

In Chapters 3 and 4, we have categorised the wide variety of legal rules for the acquisition and loss of nationality into a limited number of modes that can be compared among countries. In this section, we build on the results of this comparison, as well as on Chapters 7, 9 and 10,

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<sup>10</sup> An example for this kind of rule is provided by the Nordic countries, where residence spent in another Nordic state is, under certain conditions, equivalent to residence in the country granting nationality.

<sup>11</sup> Eight countries in our sample require five years or less for ordinary naturalisations.

in order to evaluate nationality laws and to propose guidelines for reforming them. We do this not so much from a legal perspective, but from a sociological and political view that considers how legal regulations affect the interests and rights of individuals. We have therefore subdivided the section into aspects that concern specific groups of migrants: first generation immigrants and subsequent generations, gender inequalities, refugees and stateless persons, co-ethnic immigrants and Union citizens, denizens and quasi-citizens, and emigrants.

#### **4.1 First generation immigrants**

For first generation immigrants, naturalisation based on residence is generally the most important mode of acquisition of nationality. The main conditions imposed by the Member States for this type of naturalisation concern minimum age, residence status and duration of residence, renunciation of previous nationality, clean criminal record, 'good character', the financial situation of the applicant, language skills and societal knowledge, and proof of integration or assimilation. Procedural conditions, such as fees, will be discussed in section 4 of this chapter.

##### **4.1.1 Minimum age**

In most states the minimum age for residence-based naturalisation is the age of majority. No minimum age is required by law in Austria, Spain or Ireland; in Germany there is no age threshold for naturalisation based on entitlement.

Minimum age requirements may be serious obstacles for the naturalisation of 'generation 1.5', i.e. the children of immigrants who immigrate while below the age of majority either with their family or through subsequent family reunification in the country of destination. Age thresholds of this kind are historical relics from a conception that regards only nationals of voting age as full citizens and that requires informed consent from immigrants in all naturalisations. Both considerations are, however, inadequate for children who have spent a substantial amount of their childhood in the country of residence. For them, the acquisition of nationality expresses a genuine link and protects them from expulsion to their parents' homeland. Age thresholds can even exclude many from naturalisation although their parents might already be naturalised. We recommend that all minimum age requirements be waived for minor children of immigrants who meet a residence requirement. They should have the opportunity to naturalise either through extension, i.e. together with one of their parents, or independently at a parent's request (see section 3.2.3. below).

##### **4.1.2 Residence requirements**

Member States require a minimum residence period of between three years (Belgium, for acquisition by naturalisation) and ten years (Austria, Greece, Italy, Portugal and Spain). Eight states require five years or less. In most countries, residence must have been legal and the applicant's place of habitual residence must have been in the state concerned. Generally, residence must have been uninterrupted immediately before the application.

Short residence requirements are preferable for the sake of security of residence, social inclusion and political integration. Since full protection against expulsion, legal equality and political participation generally still depend on nationality, lower residence requirements reduce the risk of creating a large and relatively stable group of second-class citizens. With the implementation of Council Directive EC/2003/109 in 2006, third country nationals will acquire a common long-term resident status after five years of residence in a Member State. The same time period could also serve as the normal residence requirement for regular naturalisation. At this point, immigrants would then choose between European denizenship

and full membership of the Union and one of its Member States. Five years is long enough to acquire genuine links to and practical knowledge of the country of naturalisation. Applicants for naturalisation should then be given the choice between permanent resident status and full citizenship.

We also suggest that all periods of legal residence should be counted and that states should accept interruptions. States where immigrants are entitled to permanent residence permits on the basis of a prior legal residence of five years or less may therefore require that immigrants hold such a permit when they apply for naturalisation. Where access to permanent residence status is blocked for certain groups or where it depends on criteria such as language skills or financial means, we advocate reforming access to this status. As explained in section 2, we also propose that periods spent in other Member States should count towards the overall residence requirement.

In order to take into account the existing variety, Member States should move towards a common threshold of five years for most naturalisations, but either maintain shorter residence requirements for applicants who meet additional criteria or introduce slightly longer residence requirements for naturalisation by entitlement rather than by discretionary decision, which would reduce the pressure on the naturalisation system. For example, in Belgium, seven years is the requirement for the former, whereas three is sufficient for the latter. Austria grants naturalisation by entitlement after fifteen years in the case of proven and sustained integration, or after thirty years without further conditions, which is clearly too long.

#### *4.1.3 Renunciation of previous nationality*

At present, only five states in our sample effectively prohibit retention of a previous nationality in ordinary naturalisations. However, Dutch and German laws allow for more frequent exceptions to this rule than those in Austria, Denmark or Luxembourg. The request that one's previous nationality be renounced is a major obstacle to naturalisation among many first generation immigrants. Reasons for this reluctance are manifold: in most countries, expatriates who have renounced their nationality are treated as foreigners and might thus have only limited rights of entry and residence or might need a visa; several countries restrict the right to inheritance or landed property to their citizens. For many immigrants, their nationality of origin also has symbolic value as an element of their personal identity.

Traditional objections to multiple nationality have focused on three reasons: conflicts between states over personal jurisdiction, conflicts of loyalty and the burdens arising from multiple obligations for individuals, and unjustified privileges from the accumulation of rights. We believe that all three objections can be overcome. Recent developments in international law have provided guidelines on how to resolve possible conflicts, mainly by giving priority to the relationship with the state of habitual residence (see Chapter 1). As suggested in section 1 of this chapter, the principle of stakeholding can also overcome objections to the accumulation of rights through multiple nationality. This also applies to conflicts of loyalty. The idea that individuals can only be loyal to one state relies, on the one hand, on a Hobbesian theory of international relations as a state of nature and potential war that is at odds with the emerging regimes of international law and institutions and, on the other hand, ignores the fact of multiple stakeholding by migrants in several states.

Since all the countries in our study accept the emergence of dual nationality through *ius sanguinis* from parents of different nationalities, it is also inconsistent to claim that multiple nationality must be avoided in naturalisations in order to prevent conflicts between states, rights and obligations. The specific argument that multiple nationality should be tolerated only when it arises at birth suggests that immigrants must provide stronger proof of loyalty than persons born as nationals since only the former have prior obligations of loyalty towards another state. It is, however, hardly plausible that a person born abroad to a national will have a stronger sense of loyalty towards his or her parents' country than an immigrant

who chooses to apply for naturalisation after long-term residence in that country. States that defend this distinction would therefore have to resort to the problematic idea that loyalty is a matter of descent rather than of choice.

Reasonable objections about cumulative rights concern voting rights and access to public office in different states. Holders of high public office may be asked to renounce a second nationality if the office in question entails a special duty of loyalty towards the state. This is, however, no justification for making renunciation a condition at the time of naturalisation. Cumulative voting rights emerge only in those cases where the state of external nationality allows expatriates to cast absentee ballots. All countries in our sample except Ireland and Greece have introduced voting rights for expatriates at least under certain conditions or for certain categories. The objection is then that multiple voting is an unfair privilege irreconcilable with the democratic principle ‘one person – one vote’. This principle is, however, not violated if these votes are not aggregated because they are cast in separate elections in sovereign states. The ‘voting privilege’ argument may, however, apply to Union citizens who are nationals of several Member States. Although it may be difficult to prevent, multiple voting in European Parliament elections is in principle not allowed for either Union citizens residing in another Member State or those holding several Member State nationalities. Preventing multiple representation in the Council, where composition depends on national election results, presents a more difficult problem since it would require that states abolish absentee voting rights for multiple Union citizens. In our view, this would be not only difficult to implement, but also unjustified given the indirect nature of citizens’ representation in the Council. The problem of multiple voting would become serious only if the Union moved towards a fully federal constitution, in which case it would also have to grant voting rights in national elections to Union citizens living in other Member States.

We recommend therefore that Member States abandon renunciation requirements as a condition for naturalisation or at least allow for more, clearly stated exceptions.

#### *4.1.4 Personal integrity clauses*

All states either apply criteria of ‘good character’, ‘good moral character’, ‘good civic conduct’ or ‘respectable life’ or explicitly exclude persons with a criminal record from naturalisation. Some states, however, do not define this provision clearly (Ireland, Italy, Portugal and Spain). The other states either apply a scheme of graded waiting periods when certain offences have been committed (Denmark, Finland, Sweden, the United Kingdom), or count offences only above a certain threshold (determined in Austria, France and Greece by the length of a prison sentence) or offences qualified as grave in different ways (Germany, Luxembourg, the Netherlands).

The vague definitions of ‘good character’ create considerable uncertainty for the applicants. We recommend a clear definition of personal integrity clauses that regards only serious criminal convictions as obstacles for naturalisation. To prevent double jeopardy, convictions deleted from a criminal registry should no longer be counted. As we have argued above, children born or raised in the country should have unconditional rights of residence and access to nationality. For this reason, they should no longer be barred from naturalisation after they have served a sentence for a crime.

#### *4.1.5 Financial situation*

The financial situation of the applicant is completely irrelevant to naturalisation in only Belgium and the Netherlands. While states may select economic immigrants according to their skills or financial means and while they may limit the right to stay for recent immigrants who fail to sustain themselves and become a public burden, applying such criteria to naturalisation is problematic from a democratic perspective. In a liberal democracy, voting

rights must not depend on social class. Once immigrants have become permanent residents, denying them access to nationality on the grounds of a lack of income creates economic barriers to the franchise similar to those that existed in many European states in the nineteenth century. Furthermore, financial obstacles to naturalisation do not serve any reasonable public policy purpose if the persons excluded have a right to stay and to social welfare benefits. Income barriers to naturalisation will also hardly serve as an incentive for immigrants to become economically self-supporting. We recommend therefore that other states should follow the Dutch and Belgian examples and abolish ‘sufficient income’ as a condition for naturalisation. Where this is politically not feasible, states should at least accept that social insurance-based payments (for unemployment or sickness) are never an obstacle and that past reliance on supplementary income or other public sources of income support do not rule out naturalisation if the person has sufficient means at the time of application. As a minimum, all states should accept that income from contributory social insurance schemes will not count as welfare dependency that rules out access to nationality.

#### *4.1.6 Language skills*

All but four of the fifteen states now demand a certain level of knowledge of the official language(s) that has to be demonstrated by a certificate from a recognised training institution, by attending a specific course or by an interview during the procedure. Knowledge of the main language(s) of the country is an important factor in the integration process. Without sufficient knowledge, most immigrants remain confined to unskilled jobs and may have problems participating adequately in society and in the democratic process. Unlike other conditions such as personal integrity clauses or sufficient income, language tests for naturalisation may also provide effective incentives for immigrants. Requiring a minimum ability to communicate with other citizens in the dominant language is therefore a common and reasonable condition for naturalisation. Language skill requirements should, however, be handled flexibly so that they work as an incentive rather than a deterrent and so that they do not exclude certain groups altogether. Mental capacity for learning a new language depends on prior education in foreign languages and decreases with age. Elderly persons whose jobs or family circumstances have provided them with few opportunities to acquire the local language, or elderly family members joining their children, are often unable to learn a new language.

To prevent language skills becoming a serious hurdle for long-term immigrants, states should generally either set requirements at a low level, e.g. simple conversational skills, or should make the level dependent on the education and general living circumstances of the applicant. Elderly or illiterate persons should generally be exempted from language tests. For example, in the Netherlands, applicants over the age of 65 do not have to pass a language test. Language requirements could also be waived for specific modes of acquisition by declaration or entitlement based on the presumption of a stronger link (e.g. because of birth, primary socialisation or very long residence in the country) than in cases of ordinary naturalisation. The reason for these exemptions is to avoid deterring persons who are seen as having a subjective claim to nationality without further conditions. In multilingual countries, knowledge of one of the official languages should be sufficient.

In terms of good practice in this area, we recommend that immigrants should not be obliged to attend specific language courses, but should have the choice of proving their knowledge by different means, such as by recognised certificate or in an interview. In order to strengthen the incentives to acquire language skills, states may reduce the general residence requirements for naturalisation for immigrants who are either native speakers or who pass such tests.



#### *4.1.7 Societal knowledge*

Knowledge of society, its history, constitution or political institutions is a prerequisite for naturalisation in a growing number of states. Whereas language skills are an important resource for integration into the wider society, this is less obvious for societal knowledge, which is often not even shared among native citizens. While practical information about public institutions, as well as general facts about society and the political system, may be included in preparatory courses for naturalisation, we do not think that these are appropriate subjects for knowledge tests that will lead to the exclusion of applicants.

Where such tests have already been introduced, they should be standardised and cover a clearly defined scope of basic knowledge that must be publicly accessible. So far, this has only been carried out in Denmark and the UK. Reference material should be provided free of charge. The lack of a standardised system of certification for societal knowledge leaves room for discriminatory action and a lack of administrative transparency. Negative examples in this respect are France and the Netherlands, which both plan to keep the content of the tests secret.

#### *4.1.8 Proof of integration or assimilation*

Only a minority of states explicitly require applicants for naturalisation to prove their integration or assimilation. In most countries, adequate integration is assessed indirectly using personal integrity conditions or language and societal knowledge tests. In Austria, France, the Netherlands, Portugal and Spain the authorities have a certain leeway to judge if language and societal knowledge alone fulfil the criterion. In Belgium, this clause was abolished in 2000 because it was inconsistently applied; since then, willingness to integrate has been proven by the mere fact that the person has applied for naturalisation.

As with ‘good character clauses’, general integration and assimilation requirements lead to uncertainty for the applicants and wide discretion for public administrations. We recommend replacing such criteria with clearly defined and defensible conditions.

### **4.2 Second and third generations**

#### *4.2.1 Ius sanguinis acquisition*

Ius soli and ius sanguinis are not two opposing principles, but can and should be combined. The nationality laws of all existing states include the acquisition of nationality by descent from citizen parents, but many states simultaneously apply birth in the territory as a relevant criterion.

In Austria, Denmark, Finland, Greece, Italy, Luxembourg and Sweden ius sanguinis is the only way of acquiring nationality at birth (apart from ius soli acquisition for foundlings and stateless children). This excludes not just second generation children from automatic access to nationality, but even third generation children whose parents have not been naturalised. In societies where larger numbers of immigrants have settled permanently, ius sanguinis ought to be supplemented with elements of ius soli. Otherwise, citizenship will come to be seen as an ethnic privilege derived from descent. Facilitated naturalisation of children born in the country is no substitute for ius soli, since it still relies on the implicit assumption that these children are sufficiently protected by the nationality of another state and should merely be granted an opportunity to change their nationality. Only entitlements based on birth in the country or residence during childhood draw the important distinction between first generation migrants and their descendants whose genuine link to that society can no longer be questioned.

Among the states we have studied, only France, Greece, Italy, Luxembourg, the Netherlands and Spain apply *ius sanguinis* without further conditions, such as parents having been born in the country or marriage status.

Granting nationality *iure sanguinis* independently of the place of birth creates a potentially endless proliferation of nationality across generations born abroad, even if the persons holding it will never reside in the country concerned. Transferring nationality from generation to generation without any residence qualification is problematic since it makes nationality over-inclusive, just as the absence of *ius soli* in an immigrant receiving country makes it under-inclusive. While a second generation may need return options and will usually acquire the parents' mother tongue, the subsequent generation will only retain a genuine link to the grandparents' country in a few cases. If they wish to return to that state, they will face the same challenges and problems as any other immigrant and thus should not be treated more favourably.

Unlimited *ius sanguinis* becomes most problematic when external citizenship includes absentee voting rights, since this will allow individuals with no substantive ties to the polity to influence the composition of legislatures whose decisions do not affect them. In the context of the European Union, over-inclusive *ius sanguinis* also creates Union citizens born outside the territory of the Union but endowed with immigration rights in any Member State. The Union should therefore take an interest in limiting the application of *ius sanguinis* to the first generation born abroad.

In contrast to territorial limitations, making the acquisition of nationality by descent conditional upon the marriage status of the parents or the sex of the parent who is a national may violate the principles of gender equality and non-discrimination between children born in and out of wedlock. We propose the following guidelines: if a child is born out of wedlock in the country to a foreign mother and a father who is a national, then either *ius soli* or *ius sanguinis a patre* should secure access to the country's nationality for the child. *Ius sanguinis* should apply in any case automatically and retroactively if the father legitimates the child after marriage with the mother.

We therefore urge Member States to consider abolishing all qualifying criteria for *ius sanguinis* except country of birth. Outside the state's territory, nationality should be inherited automatically only if one parent is a first generation emigrant or resides abroad temporarily. Grandchildren of expatriates whose parents have not themselves resided in the country concerned for a longer period should no longer inherit their parents' nationality unless they would otherwise find themselves stateless.

#### 4.2.2 *Ius soli acquisition*

Eight of the fifteen Member States apply methods of nationality acquisition derived from birth in that country. At birth or immediately thereafter, *ius soli* can apply *ex lege* (as in Germany and the UK for the second generation and in Belgium, France, the Netherlands and Spain for the third generation). Alternatively, it may require a declaration or specific act by a parent (such as for the second generation in Belgium, Ireland and Portugal). Finally, acquisition of nationality after birth can also be based on *ius soli* (within certain age brackets, such as for the second generation in France or without age limits).

Common qualifying criteria for *ius soli* are that a parent either must have resided in the country for a certain time or with a certain type of residence permit (Germany, Ireland, Portugal, the United Kingdom) or that a parent must also have been born in the country (in Belgium, France, the Netherlands and Spain). In the period under investigation (i.e. after 1985), unqualified *ius soli* existed only in the Irish Republic until 2004; since 2005 certain residence requirements for parent(s) have applied there as well.

Most countries have parental residence requirements or impose age limits for *ius soli*. Even after the reform of 2004, Ireland has the most liberal provisions with no time limit for

using the right to apply for an Irish passport if at least one parent is either a permanent resident or has been resident in Ireland for three of the four years prior to the child's birth. Germany represents a singular case where dual nationals who have acquired German nationality at birth by *ius soli* must renounce one of their nationalities before the age of 23. This rule is discriminatory since it does not apply to dual nationality acquired by *ius sanguinis* from parents, one of whom is a German national.<sup>12</sup> The underlying idea seems to be that the loyalty of dual nationals is questionable and needs to be tested. Yet, the assumption that a certain class of nationals born in the territory cannot be trusted to be loyal is contrary to the principle of birthright citizenship.

We advocate a generational approach to the acquisition of nationality. While first generation migrants need to apply for naturalisation, the second generation of immigrant descent should have an *ius soli*-based entitlement to the nationality of their country of birth. Unconditional *ius soli* is, however, both over-inclusive (by giving nationality to children of parents whose stay in the country is purely accidental or temporary) and under-inclusive (by not covering the 'generation 1.5' children born abroad who join their parents while they are minors). We therefore recommend strong naturalisation entitlements for children who have grown up in the country since early childhood and a conditional *ius soli* for the second generation if one parent has resided legally in the country for a period that should not exceed the requirements for permanent resident status. From our perspective, it is preferable that this conditional *ius soli* for the second generation apply *ex lege* immediately at birth and it should not need to be confirmed later by a requirement that another nationality acquired at birth be renounced. One argument for applying *ius soli* only at the age of majority is that it gives young adults a choice. This option should, however, be semi-automatic, i.e. it should not require an application or active declaration, but should merely involve a negative option of rejecting a nationality that is otherwise acquired automatically, as is now the case in France. If *ius soli* is applied only at the age of majority, then there should be additional strong entitlements to the acquisition of nationality while the person is still a minor and absolute security of residence for those whose parents do not make use of this option. As mentioned above, we further recommend that children should have a right to be heard in decisions that affect their nationality well before the age of majority.

#### 4.2.3 Facilitated naturalisation of minor children

Minor children can acquire nationality either independently from their parents or via extension of their parents' naturalisation. As pointed out above, an entitlement to naturalisation based on residence can be more inclusive than pure *ius soli*, provided the residence period is sufficiently short and there are no further conditions attached. The Swedish case where minor children are entitled to naturalisation after five years of residence can be mentioned as an example of good practice.

Provisions for the extension of naturalisation to minor children are unknown only in Ireland, Portugal and Spain. In eight states (Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg and Sweden)<sup>13</sup> minor children become nationals *ex lege* under certain conditions when their parents acquire nationality. Other conditions concern residence in the country, the custody of the parent acquiring nationality, or that their child is not yet married. Many Member States also apply further conditions, such as a certain period of residence, the absence of recent criminal convictions and language skills, or demand the explicit consent of children above a certain age.

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<sup>12</sup> Germany therefore had to make a reservation to the European Convention on Nationality that explicitly prohibits depriving dual nationals of any nationality acquired at birth.

<sup>13</sup> In Sweden and Denmark, *ex lege* extension depends in certain cases on how the child's parents acquire nationality.

Consent of the child is an important consideration in decisions about the child's nationality. The Convention on the Rights of the Child recognises the child as a subject with his or her own needs and a right to be heard and to have his or her views taken into consideration increasingly until full autonomy is achieved at the age of eighteen. Several states have provisions that strengthen the child's position vis-à-vis the parents by requiring that the child be heard in the naturalisation procedure or must apply himself or herself (with parental consent). Age thresholds for involving minor children in this way range from twelve years in Nordic countries to fourteen in Austria and sixteen in Germany. We suggest that hearing the child should be a general requirement based on Art. 12 of the Convention on the Rights of the Child, which states that children have the right to express their views in all matters affecting them and that these views shall be given due weight 'in accordance with the age and maturity of the child'. After the age of twelve or fourteen, children should have the right to apply themselves with parental consent or be given the right to challenge a parental decision about their nationality.

The naturalisation of minor children should be determined by two principles. The primary principle is a socialisation-based right to nationality, the secondary principle is family unity. The former consideration implies that they ought to have access to nationality independently of their parents, the latter suggests that naturalisation of one of their parents should be extended to them *ex lege* without further qualifying conditions. Since family unity is a secondary concern, it should not overrule a child's interest in nationality. Even if parents themselves do not qualify for naturalisation they should be able to apply for their minor children who have grown up in the country.

Minor children who have already lived in the country for some time when a parent is naturalised should not face higher obstacles for the acquisition of nationality than those who join a parent who already is a national. For both groups we advocate a greatly simplified naturalisation procedure without residence requirements or acquisition by declaration. Adopted children should be treated identically to natural children, if their adoption was valid under national law.

#### **4.3 Family-based naturalisation: eliminating gender discrimination**

By the mid 1980s, all the states in our sample had abolished gender-specific rules for naturalisation and all have introduced specific rules to facilitate the naturalisation of spouses of nationals. In seven states, this is achieved by strengthening their claim to acquisition compared to other applicants, e.g. by making it a declaration, option or entitlement instead of a discretionary grant. In the remaining states, spouses of nationals find more favourable conditions but there is no difference with regard to the type of acquisition. As a condition for spousal transfer or nationality, most countries apply one or both of the following criteria: a minimum duration of marriage or living in a common household (ranging from six months to three years) and a certain time of residence in the country by the spouse (which is longest in Denmark, at six to eight years, conditional upon the duration of the marriage). In special cases (e.g. spouses of nationals living abroad) the duration of required marriage or cohabitation may even be five to ten years and some states then also demand that the spouse who is a national should already have held nationality for up to ten years. Apart from facilitating the acquisition of nationality for spouses of nationals, Austria, Belgium, France, Germany and Luxembourg extend naturalisation from a main applicant to a spouse and to minor children living in the same household by strengthening their legal claims or reducing their residence requirements.

Six countries (Austria, France, Italy, the Netherlands, Portugal and Sweden) under certain conditions also allow the acquisition of nationality by spouses of nationals who live permanently abroad; five more grant this right only to spouses of nationals who work in the public service abroad (Denmark, Germany, Ireland, Luxembourg and the UK). Marital

transfer of a nationality abroad corresponds to a relevant interest by the national concerned only if he or she plans to return to the country of origin and wants to secure full legal rights for his or her spouse for that purpose. Such extraterritorial acquisitions should therefore be limited to the spouses of first generation expatriates for the same reasons as those applicable to extraterritorial *ius sanguinis*.

The main argument for facilitated naturalisation of spouses is the principle of family unity in matters of nationality. Another important consideration concerns the security of residence attached to the status, which gives the spouse the necessary independence to leave his or her partner and to remain in the country after a divorce or the partner's death. Facilitated naturalisation of spouses is a major element in securing women's rights in migration; the qualifying requirements should therefore be low and the procedure simple. Many Member States have introduced minimum duration of marriage requirements mainly to combat fraudulent marriages. Nevertheless, for this purpose a period of one or two years seems to be sufficient. Instead of imposing longer waiting periods, states could require some documentary evidence that the partners share a common household. To secure equal treatment of heterosexual and homosexual partnerships, the status of 'civil marriage', which is granted in many Member States as an alternative legal relationship, should be recognised in the same way as marriage. Member States are encouraged also to grant facilitated naturalisation to unmarried partners if they have lived in a common household for a certain period of time. In cases of extension of naturalisation to spouses, the requirements should be the same as for facilitated naturalisation of the spouses of nationals. Currently only Finland, the Netherlands and Sweden grant this right to unmarried heterosexual couples as well as to registered or married homosexual ones. Four more states (Belgium, Denmark, Germany and Spain), however, also recognise the latter in matters of nationality.

In recent years, gender discrimination in the transfer of nationality to children by descent from the mother's side has been abolished, but problems have occurred in many countries due to the limited transitional period, during which a maternal nationality could be passed to the child retroactively (see Chapter 10). The result is to exclude an *ex post* maternal transfer of nationality to children born before a certain date. This lack of full retroactive effect for legislation perpetuates past gender discrimination. This should be rectified.

#### ***4.4 Facilitated naturalisation for co-ethnics, co-linguals and Union citizens***

With the exception of Belgium, Ireland, Luxembourg, the Netherlands and the UK<sup>14</sup> all Member States facilitate naturalisation for nationals of certain countries or origins, such as for Nordic citizens in the Nordic states, for EU citizens in Austria, Germany and Italy or for citizens from former colonial territories, co-lingual or co-ethnic groups in France, Germany, Greece, Portugal and Spain. A distinct group of countries (Germany, Greece, Ireland, Portugal and Spain)<sup>15</sup> grant their nationality on the grounds of cultural affinity, even to persons residing abroad. As discussed in section 3.2.7.5, affinity-based privileged access to nationality is usually grounded in ethnic conceptions of nationality and sustained by traditions of emigration and recent histories of immigration, pressure from expatriate communities and state policies to support or repatriate ethnic diasporas.

Privileged access to nationality based on a person's nationality or ethnicity should generally be regarded as a suspicious classification that conflicts with the principles of non-discrimination. There are, however, several arguments in favour of such distinctions that need to be taken into account. Firstly, in the process of nation-building shortly after independence,

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<sup>14</sup> The UK, however, has special rules for access to full citizenship by certain categories of overseas nationals with restricted citizenship.

<sup>15</sup> Italy was part of this group until 1997 but now generally requires residence in Italy.

a state may give preferential access to its nationality to diaspora communities. Secondly, a state may accept special duties towards nationals of former colonies whose economic and cultural lives have been shaped by the colonial power and who have in the past held a status of imperial subjection. Thirdly, a state may also accept that it has special duties to admit co-ethnic individuals from countries where they are persecuted because of their minority identity. Fourthly, states may give preferential access to nationality to immigrants from co-lingual countries because these will integrate more easily. Lastly, states may grant facilitated access to nationality on the basis of reciprocity or for a group of states with which they are linked by multilateral agreements, alliances or unions.

The first three arguments are reasonable only if the qualifying conditions are clearly present, i.e. if states are still in the initial stages of national consolidation, if postcolonial ties are very strong or if a co-ethnic minority abroad actually faces persecution. Even where this is the case, the legitimacy of preferential access to nationality will depend on the overall demographic pattern of immigration. In countries with large-scale immigration from diverse countries of origin, picking out some of these for preferential treatment will inevitably create a sense of discrimination among immigrants when they see that later arrivals, who are in many ways less integrated, can ‘jump the queue’.

The fourth argument about the easier cultural integration of co-linguals applies more plausibly to admission to immigrant status than to nationality. In order to facilitate integration, a country of immigration may give preference in immigration to those who speak a major language<sup>16</sup> and it should promote shared knowledge of such language(s) among all immigrants. The additional importance of language skills for full participation in the political process can be easily taken into account through language tests for naturalisation that do not discriminate by national origin. Countries that attach high value to language skills may reduce the general residence requirements for naturalisation for immigrants who are either native speakers or who pass such tests. In order to avoid indirect discrimination, these tests should, however, be set at a level of simple conversational skills where adult newcomers have a fair chance of passing.

The final argument has already been addressed in section 2, where we recommended that instead of reducing residence requirements for the naturalisation of Union citizens, residence periods spent in other Member States should count for both Union citizens and for third country nationals. In our view, reciprocity is a relevant principle in international relations, but it should not determine differentiation in domestic rights and legal statuses for migrants of different national origins (Bauböck 2005). This would be different if the European Union moved towards a federal constitution. In a federation, citizenship of a constituent state or province is acquired automatically through residence rather than naturalisation and includes full voting rights in regional elections. Facilitated naturalisation could be an intermediate step if the Union decided to move in this direction. This would, however, entail a complete overhaul of the architecture of Union citizenship with a shift of competences in matters of nationality from the Member States to the Union. In the foreseeable future, we do not expect such a fundamental change.

While we therefore do not recommend generalising current regulations in Austria, Germany, Italy or the Nordic states for all EU citizens residing in other EU states, these provisions are useful domestic benchmarks for assessing the conditions for naturalisation of immigrants of other origins. If Union citizens can meet the conditions for naturalisation after four years in Austria or Italy, then the long residence requirement of ten years for third country nationals in these countries appears all the more difficult to justify.

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<sup>16</sup> For example, in the Canadian immigration system, immigrants who speak English or French are given extra points.

#### **4.5 Denizens, quasi-citizens and citizens with restricted rights**

The status and rights of denizens and quasi-citizens in the Member States has been described in Chapter 10. Denizenship is characterised by a high level of security of residence, free access to the labour market, generally equal civil liberties and social welfare rights and, in some Member States, local voting rights as well. Compared to citizens, denizens generally lack absolute protection from expulsion, national voting rights, unrestricted access to public office and the right to Union citizenship. Directive 2003/109/EC on the status of long-term resident third country nationals, that has been implemented with effect from January 2006, paves the way for common European denizenship (but is not applicable in Denmark, Ireland or the UK). Member States remain, however, free to impose specific requirements such as integration and language tests on access to this status and the status can also be quite easily lost following longer periods of absence.

Denizenship has an important impact on naturalisation. The more access to employment, to welfare benefits or to family reunification is restricted for long term resident foreign nationals and the more insecure their legal status, the stronger the incentives to naturalise for purely instrumental reasons. For denizens with a strong set of rights, there are few reasons for naturalisation apart from a subjective identification with their country of residence and the desire to participate fully in the democratic process. This may reduce the number of naturalisations but it also makes an application for naturalisation a voluntary decision to join the political community. The other factor that will reduce the propensity to naturalise is when states impose further conditions for access to nationality that are difficult to meet. In our view, denizens already enjoy a recognised status of permanent membership in society. Instead of deterring them from naturalisation through additional requirements such as income tests and longer residence periods, they should be encouraged to naturalise.

As discussed in Chapter 9, in some countries we have observed the status of enhanced denizenship that we have called quasi-citizenship. This status is characterised by nearly identical rights to those of nationals of the country of residence, including voting rights or access to public office at local or national levels, and full protection from expulsion. This is a status for a certain group of persons who are singled out by the state as deserving enhanced security of residence and other rights of citizenship without naturalisation. Often these are groups with special relationships with the state because of former colonial ties or ethnic affinities.

Where the status of quasi-citizenship exists for large groups of immigrants, it may provide a benchmark for enhancing denizenship rights for other immigrants with a weaker legal status. Quasi-citizenship should, however, never be interpreted as a status that makes access to full citizenship redundant. This would devalue the meaning of citizenship as a status of full membership of a democratic polity that includes all permanent residents. Granting denizens and quasi-citizens almost full citizenship rights while making it difficult for them to naturalise would contribute to sustaining exclusionary ethno-cultural concepts of national community. Instead, both denizens and quasi-citizens should be encouraged to naturalise and they should be granted the same conditions for facilitated access.

The fifteen states examined include not merely non-nationals with nearly equal rights, but also nationals with less than equal rights. In Chapter 8 we have documented various restrictions of rights and additional duties imposed on multiple nationals and on naturalised citizens. The latter type of restriction conflicts with the principle of non-discrimination between nationals by birth and by naturalisation asserted in ECN Art. 5 (2). This principle makes any differentiation of rights between persons who have acquired nationality in different ways *prima facie* suspect. We may, nevertheless, evaluate the social impact of restricted rights for naturalised persons by asking whether exclusion is permanent or temporary and whether the range of liberties and opportunities affected is broad or rather narrow. Using these criteria,

we identify several specifically problematic examples of unequal citizenship, among them restrictions on family reunification in Denmark for persons who have held nationality for less than 28 years, limitations on the employment of naturalised persons in the public sector in Greece, and the several categories of British nationals – British Overseas Citizens, British Subjects, British Protected Persons and British Nationals (Overseas) – who are subject to immigration control. Since these persons also cannot pass on their nationality to their children, these categories will, however, disappear in the next generation.

#### **4.6 Refugees and stateless persons**

Refugees are persons who have been deprived of protection by the state of which they are nationals. Their need for access to the nationality of their host country is therefore more urgent than that of other immigrants. This is acknowledged by the Geneva Convention as well as by the European Convention of Nationality, which both demand facilitated naturalisation for refugees (see also Chapter 1). All states in our study except Portugal and the United Kingdom have special clauses for easier naturalisation of recognised refugees or facilitate their access in practice. This is mainly achieved by a reduction of the required residence period. Those states that require proof of the loss of a previous nationality make exceptions for refugees. In a few countries (France, Luxembourg and Ireland), refugees are also exempt from the fulfilment of several material conditions, such as language knowledge, by law or by discretionary decision. France currently has the most liberal policy since it does not require any minimum period of residence for the naturalisation of refugees.

In order to ensure the fast and easy naturalisation of refugees, Member States should abolish waiting periods or reduce them to a minimum; furthermore, language or societal knowledge, income or integration criteria that refugees might find hard to fulfil should be abolished or reduced. If Member States choose to set minimum residence requirements, these should not exceed two years and the time spent in the country during the recognition procedure should be counted.

The international conventions on statelessness and the ECN also contain provisions for facilitated naturalisation of stateless persons and limit the possibility for excluding such persons from access to nationality on the grounds of criminal convictions. All countries except Luxembourg, Portugal and Spain have rules facilitating the acquisition of nationality by stateless persons after birth. Eight countries apply the same rules as for refugees. Austria and the United Kingdom, however, only give stateless persons born in the country (or the children of UK nationals) privileged access to nationality. Further conditions in other countries include a minimum time of residence or age.

Stateless persons have an even stronger claim to naturalisation than refugees. They should be granted access after a shorter period of residence and should be exempt from other conditions for naturalisation. For stateless children born in the country, the same regulations should apply as for foundlings, which is currently not the case in Denmark, Germany, the Netherlands, Sweden or the UK.

#### **4.7 Emigrants**

All the states in our sample are not only destinations for recent immigration, but also sending countries. Often, their nationality laws have been shaped by a historic tradition of emigration much more than by receiving immigrants. Attitudes towards expatriates do, however, vary strongly. While some countries consider those who have resided abroad for some time as no longer having a genuine link to their country of origin, others encourage even their



descendants to retain their citizenship of origin and facilitate reacquisition by former citizens and their offspring.

#### 4.7.1 Renunciation

According to Art. 15 UDHR, no-one shall be arbitrarily denied the right to change his or her nationality. Art. 8 of the ECN obliges all states to permit renunciation unless the person becomes stateless, but also allows a refusal of renunciation unless the person is habitually resident abroad. Currently, residence abroad is a precondition for renunciation only in Ireland, Italy and Spain. In ten states in our sample, renunciation becomes effective *ex lege* if all the formal conditions are met. Only in Denmark, Finland, France, Greece and Sweden have the authorities at least some discretion to refuse a release from nationality. In Greece, the authorities do not even have to justify a negative decision. Apart from requiring that the person renouncing a nationality must have access to another one, renunciation may depend on other conditions such as age, completed military service, or the absence of criminal investigations. In five Member States (Austria, Finland, Germany, Portugal and the United Kingdom) a renunciation fee ranging from € 51 to € 400 has to be paid.

Two considerations are relevant in determining nationality renunciation policies in liberal democracies. The first is securing individual liberty by allowing citizens to opt out of their membership. Denying this right of exit is a hallmark of authoritarian states. Renunciation should therefore never be a matter of discretion by the authorities and should not be deterred by the charging of fees. We recommend therefore that release from nationality should be granted automatically if the formal criteria are met and the applicant has fulfilled all his or her citizenship duties. The second consideration is that a democratic state has a legitimate interest in preventing nationals living within its territory from choosing another nationality for the sake of escaping from citizenship duties, while freeloading on the protection and rights provided by the state to its residents. States may therefore make renunciation conditional upon prior emigration. Liberal democratic principles regarding nationality are thus characterised by a double asymmetry between immigrants and emigrants and between acquisition and loss. In the state territory, immigrants have a claim to naturalisation but are not included automatically without their consent, whereas those who already possess nationality are similarly not free to renounce it. Outside the territory, emigrants have an unconditional right to renounce their nationality whereas those who want to acquire it must have special reasons for being admitted.

#### 4.7.2 Retention and reacquisition

First generation emigrants should generally have the right to retain their nationality of origin unless they themselves decide to renounce it when they acquire the nationality of their host state or subsequently. This right is frequently restricted in two ways: firstly, by depriving expatriates of their nationality when they naturalise in their host country and, secondly, by withdrawing nationality on the grounds of length of residence abroad or other indicators of a loss of attachment. Currently, nine Member States provide for an automatic loss of nationality when their expatriates acquire a foreign nationality, while only five require that immigrants renounce their nationality when naturalising. Emigrants of Dutch, Finnish, Irish or Spanish nationality may also lose that nationality due to longer residence abroad provided they would not then become stateless. This amounts to an expiry date for dual nationality acquired by naturalisation abroad. We believe that Member States should generally accept dual nationality among first generation immigrants as well as emigrants. As a minimum standard, we suggest that persons born and raised in the country should never lose their nationality *ex lege* merely because of long residence abroad. If there is a provision that nationality can be lost when there is no longer a presumption of a genuine link, the persons affected should always have the

possibility of fighting a withdrawal of nationality by proving their attachment to the country of birth.

First generation emigrants may also have the need to return to their countries of birth at some stage in their lives, even if they have naturalised in another country. Facilitating the reacquisition of nationality is often an important part of a state's policy of maintaining ties with its emigrants or their descendants.

In this area, nationality laws are extremely different and heavily influenced by particular histories and concerns that overlap with those of affinity-based access to nationality for immigrants of certain origins (see Chapter 3). Some states offer very generous reacquisition, especially for former citizens who return to the country. In Italy, former nationals reacquire nationality after one year of residence in the country or even earlier, if they declare their will to take up residence and do so within a year thereafter. Reacquisition is also fairly easy in Austria, Belgium, the Netherlands, Finland, Portugal and Sweden. In Denmark, Ireland, Luxembourg and Spain the rules of reacquisition depend on whether former nationals originally acquired nationality by birth or by naturalisation.

We suggest that the reacquisition of nationality should be made as easy as possible for first generation emigrants, particularly if the loss of nationality was the result of marriage or the prohibition of dual nationality, if it occurred under specific historic circumstances, such as a period of authoritarian government, or if nationality was lost while the person was a minor. In these cases, there should be no residence requirements. If reacquisition leads to dual nationality, states should, however, make sure that this will also be accepted by the other state concerned. In other cases, the conditions for reacquisition should focus on time of residence in the country. Rules making reacquisition dependent on whether nationality had previously been acquired at birth or by naturalisation discriminate between former citizens and should be abolished.

#### *4.7.3 Rights and duties of emigrants*

Most rights associated with citizenship depend on presence or residence in the country. The quintessential external citizenship rights of emigrants are diplomatic protection and the right to be (re)admitted to their country of nationality. Thirteen of the fifteen countries, however, also grant their expatriates voting rights under certain conditions; of the six states where there is still general conscription, only Germany exempts long-term emigrants from military service. With regard to voting rights, the main objections are that emigrants are not exposed to election campaigns and will not be affected by the legislation in which they are represented. These arguments have been somewhat weakened by the growth of transnational activities and links. New communication and transportation technologies allow emigrants to be politically well-informed and family links, frequent travels or eventual return imply that they will be affected by legislation passed in their country of nationality. We still believe that the principle of stakeholding requires limiting absentee voting rights to the first generation of emigrants. Birth or prior residence in the country is therefore a reasonable condition for granting voting rights to expatriates.

#### *4.7.4 Descendants of former nationals*

Several states have rules for the acquisition of nationality for relatives of former or deceased nationals; this mainly affects only children or grandchildren. In Belgium, Denmark, Italy, Luxembourg and Spain, facilitated conditions for naturalisation apply; in other countries, preferential naturalisation based on cultural affinity overlaps with the provisions for descendants of former nationals. Germany, Ireland and Portugal even allow discretionary naturalisation of descendants of former nationals who have their habitual residence abroad.

As with other modes of acquiring nationality abroad, a test of genuine links ought to be applied both for domestic reasons (in order to prevent persons being given access to citizenship rights without being affected by political decisions in the country) and for supranational reasons (in order to limit the capacity of Member States to create Union citizens outside EU territory who can use their mobility rights to settle in any other Member State).

Children of first generation emigrants often maintain genuine ties with the country of origin of their parents and frequently learn their mother tongue at home, whereas this is rarely the case among subsequent generations. Grandchildren or more distant descendants of emigrants should therefore have to meet the same conditions for naturalisation as any other immigrant and should generally be given access to nationality only after establishing residence in the country.

## **5 Institutions and procedures for naturalisation**

In this section we focus only on naturalisation and renunciations. While institutional structures and procedures may also be relevant for determining nationality at birth or automatic loss and withdrawal, naturalisation and renunciation are those modes of acquisition and loss for which public authorities have to communicate with individual applicants in order to reach decisions. They therefore present many more opportunities for applying the law in different ways that will affect the outcome.

### **5.1 Institutional arrangements**

In several countries, regional and local authorities have substantial powers to implement nationality laws. This is particularly true in Austria and Germany, which are federal states, but also in unitary states such as France,<sup>17</sup> Italy and the Netherlands, where local or regional administrations are in charge of interviews, tests and gathering documents that are then passed on to central state authorities. In such countries, we also find that cases are often handled differently in urban and in rural areas, where civil servants have less experience with administrative routine in naturalisation procedures.

On the one hand, nationality concerns the relationship between an individual and the state, not a region or a municipality. States thus should guarantee equal treatment throughout their territory through uniform implementation of the law and final decisions should remain with central state authorities. On the other hand, decentralisation may reduce administrative overload when there are large numbers of applications. The processing of the application by local and regional authorities might improve the speed and quality of the decision, provided there are clear rules for interviewing and assessments and discretionary powers are limited.

Institutional approaches to naturalisation also differ widely with regard to the general degree of discretion of the authorities. Only in Germany, Luxembourg and the Netherlands does the fulfilment of all criteria lead automatically to naturalisation. In many countries, vague terms such as integration and good character requirements open up wide scope for discretion and allow policy considerations that have no relation to the merits of an individual case to determine decisions. Discretionary powers are exceptionally wide in Italy and Greece (for naturalisations of foreigners of non-Greek origin or ethnicity). In Portugal, the Ministry of the Interior can deny applications not in its own interest even when all the requirements are fulfilled. In Austria, France, Ireland and the UK there is also considerable room for discretion,

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<sup>17</sup> See Hagedorn (1998).

which in the former two countries is limited to a certain extent by judicial review. In Denmark, naturalisations are decided in parliament, which circumvents judicial constraints.

In order to guarantee equal treatment for applicants, Member States should aim to limit the discretionary powers of the authorities by converting more modes of acquisition and loss into entitlements and through clearly defined requirements. If applications are turned down, the authorities should be obliged to justify their decisions and applicants should also have the opportunity to complain to a higher administrative authority or an ombudsman. All decisions concerning the acquisition or loss of nationality should in principle be the subject of judicial review and a right of appeal by the person concerned. This right is jeopardised where decisions about naturalisations are formally taken not by the executive branch of government but by the legislature. Denmark and Greece currently have neither a requirement that negative decisions must be justified nor the right of appeal against them. In Belgium this is true for discretionary naturalisation after three years, but not for naturalisation by declaration after seven years. In Belgium, Finland, Luxembourg, Spain and Sweden, the appeal instances may also overturn the decision made by the initially responsible authority and grant nationality themselves, instead of referring the case back to the lower instance. The latter model can serve as example of good practice in this matter.

## **5.2 Preparing the application**

### *5.2.1 Provision of information*

Access to naturalisation depends not only on formal conditions and procedural hurdles, but also on informing potential applicants. Generally, Member States do not see it as their task to encourage naturalisation<sup>18</sup>. Thus, most countries only provide information on naturalisation legislation and procedures on the web sites of the relevant authorities or via booklets or brochures covering frequently asked questions, but they do not engage in outreach activities or systematic counselling. These materials are generally published in the national language only as well as, occasionally, in English but only rarely in the languages spoken by larger groups immigrants. Specific counselling services provided by the authorities only exist in five states (France, Germany, Luxembourg, Portugal and Sweden) In all the other countries, the applicant has to approach the relevant administration, a lawyer or an NGO to find out about the details of the procedure. In Greece and Portugal, NGOs report that the authorities tend to deter applicants from applying for naturalisation when contacted with requests for information.

The lack of systematic information and counselling in naturalisation matters is a serious challenge to the quality of public service. Preparing for naturalisation is considered a task only for the applicant, not for the administration. This reflects the lack of interest by Member States in their potential future nationals. Good administrative practice includes the provision of information geared to the needs of the target group. Based on this principle, foreign nationals who meet the basic residence criterion should be actively informed about naturalisation legislation and procedures.

While external counselling by other authorities or NGOs may be useful, it is no substitute for counselling services by the administration in charge of naturalisations, where all the expertise is available and may be used to find the best solution for the client. Information and counselling should cover the law and the procedures, need for specific action and the likelihood of success (as is currently the case in Austria, Finland, Germany and the Netherlands). These services should be free of charge and easily accessible (e.g. via a free

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<sup>18</sup> Only Germany has run an official naturalisation campaign, encouraging foreign residents to acquire German nationality, furthermore specific campaigns have been run in some German *Länder* (see Chapter 5).

phone number) and have a sufficient number of local outlets. If possible, they should employ personnel with good intercultural and communication skills.

### *5.2.2 Naturalisation campaigns*

As the data in Chapter 6 show, only a small percentage of immigrants eligible for naturalisation actually choose to apply. Reluctance is highest among Union citizens who have few additional benefits from acquiring the nationality of another Member State. Even among third country nationals, for whom the incentives are stronger, only a small proportion of potential Union citizens make use of the possibility of acquiring this status. One of the reasons for this restraint is a lack not only of information but also of public encouragement. Many immigrants will not bother to apply if they feel they would not be welcome as new citizens.

Information campaigns help to overcome this deficit. After the reform of 1999 in Germany, the federal government organised an official naturalisation campaign encouraging foreign residents to naturalise. Furthermore, some provinces took specific action. The state government of Hesse ran a campaign targeting children born before January 2000 but not yet older than ten years of age who, according to an interim ruling valid until 31 December 2000, could acquire German nationality until 31 December 2000. As a result, many more migrant parents took advantage of this opportunity in Hesse than in other provinces.

Such public campaigns will not merely have a significant impact on the number of naturalisations, but will also send important signals to the wider public that the authorities regard immigrants as future citizens. This can be a particularly effective way of combating hostility towards immigrants. Since naturalisation in a Member State is the only way to acquire Union citizenship after birth, European Union (co)funding for such campaigns should be considered a matter of course.

### *5.2.3 Preparatory training and testing*

As discussed in section 3, most states require some knowledge of the language(s) of the country before naturalisation and an increasing number also demand knowledge of its institutions and history. Where there are no state-organised courses for acquiring these skills, transparency and fairness require a clear definition of approved courses and diplomas offered by private companies, adult education centres or NGOs. This demand can easily be fulfilled with regard to language training, where standardised certificates exist for every language and exams can be taken in approved centres. In this case, the authorities should make sure that the relevant information and information about course providers is easily accessible to potential candidates. As general proof of language knowledge, applicants should have the choice of either providing a certificate from a registered course or of taking a test or an oral interview with the authority in question. Educational certificates that could not have been acquired without knowledge of the language at the highest level requested (e.g. vocational certificates or degrees from universities obtained in the country) should be accepted as proof of language knowledge. For interviews with a civil servant, there should be clear criteria, equal implementation throughout the country and appropriate training of the officials.

Not all language training centres and schools cater to the specific needs of immigrants and the fees charged are generally rather high. We recommend therefore that states should sponsor training courses organised by specialist training institutions, organise courses in public schools or support individuals through vouchers or tax deductions for attending courses. Providing child care facilities during course hours will remove further obstacles. Immigrant NGOs should be involved in disseminating information.

If Member States also decide to introduce societal knowledge tests, these should be standardised and cover a clearly defined and publicly accessible scope of basic knowledge.

For both language and societal knowledge tests, the authorities should not prescribe mandatory course attendance, since such knowledge may be acquired by different means.

### **5.3 The application procedure**

#### *5.3.1 Duration of procedure*

According to Article 10 of the European Convention on Nationality, ‘each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality are processed within a reasonable time.’ Long procedures may indicate that the public authorities are not interested in immigrant integration. Other reasons include administrative malfunctions, backlogs or the number and type of documents to be provided by applicants.

According to the NGO reports summarised in Chapter 5, the average duration is shorter than 12 months only in Austria, Belgium (for acquisition through declaration), Germany, the Netherlands and the United Kingdom. Delays of up to two years and longer are reported in France, Luxembourg, Finland, Italy and Spain. The worst practice can be found in Greece, where cases can be put on hold for years without giving reasons and may be never decided at all because naturalisation applications fall outside the scope of the Code of Administrative Practice and there is thus no maximum duration for the procedure.

In Denmark, delays are caused by the fact that naturalisations are decided in parliament only twice a year. The Netherlands abolished a similar procedure in 1985, which has led to a considerable acceleration of procedures. A parliamentary procedure may also trigger public debates about specific groups of applicants, which provides opportunities for xenophobic campaigns by populist parties. Since naturalisation involves decisions on individual cases rather than on general laws, we believe it more appropriate that it should be the competence of the executive rather than the legislative branch of government. We therefore suggest that countries where parliament makes decisions on individual naturalisations should consider introducing a purely administrative procedure instead.

The need to provide proof of renunciation of a former nationality can also prolong the procedure. Release procedures in the country of origin may take several months or years, particularly in countries with a defunct administration or in countries at war, and can be very costly. The problem could be mitigated if, as in Luxembourg, the authorities regard release procedures lasting longer than a year for reasons beyond the applicant’s control as proof that renunciation of the previous nationality is not possible and consequently grant naturalisation without requiring such renunciation.

#### *5.3.2 Principles of good administration*

Good administration is a cornerstone of the rule of law in Europe.<sup>19</sup> The right to be heard, access to information, assistance and representation, and an indication of remedies should be consistently applied to naturalisation procedures. In particular, applicants shall be given the opportunity to obtain clear information about their case at any stage of the procedure and to receive a statement of reasons if a decision is made. The administrative process has to be made transparent and binding guidelines should guide administrative practice, including in the case of discretionary decision-making. In order to provide remedies, applicants should be entitled to approach the courts or ombudsman institutions in cases of suspected administrative malpractice. A lack of transparency in the procedure is a sign of administrative malfunction.

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<sup>19</sup> See Draft European Constitutional Treaty, CONV 850/03, Art. II-41, as well as Council of Europe Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities, adopted by the Committee of Ministers on 28 September 1977.

As pointed out above, Greece provides a negative example, where the authorities neither have to inform applicants about the status of their case nor give reasons for their decisions.

Discrimination against certain third country nationals has been reported in countries other than Greece, where there is a verbal ministerial decree forbidding the naturalisation of Albanian citizens. Long waiting periods and complaints about the general behaviour of civil servants towards applicants from Muslim and African countries have been reported by NGOs counselling in this field, including in Spain and Portugal. In Greece, lawyers regularly advise Muslim clients to be baptised in order to overcome the difficulties.

Direct or indirect discrimination of this kind violates not only the principle of equal treatment of third country nationals, but also the prohibition of discrimination based on race, ethnic origin, religion and other grounds laid down in Art. 13 of the Treaty on the European Community. We propose amending the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43 EC) to include the administrative procedures regulating access to naturalisation within the scope of the Directive as defined in Art. 3, para. 1.<sup>20</sup> European anti-discrimination standards would then also fully comply with the relevant provisions of the International Convention for the Elimination of all Forms of Racism (Art. 1, para. 3). To prevent ethnic and racial discrimination, national anti-discrimination bodies should be given the authority to scrutinise naturalisation procedures regularly. Furthermore, staff should be trained in intercultural competence and communication and employment priority should be given to civil servants with an intercultural background.

### *5.3.3 Documents requested*

A long procedure can be further exacerbated by the time needed to collect the necessary documents for the application, which may require repeated travel to the country of origin or lengthy correspondence with the authorities there. Specific problems occur if the documents requested are unknown in the country of origin. Although in this case the law either provides for exceptions or the authorities exercise discretion in finding a solution, regional or other differences in practice exist in several Member States. There are also instances when it is impossible to obtain documents, e.g. in the case of war or defunct state administration. Most Member States allow these documents to be replaced by other kinds of proof, but administrative practices often vary greatly across regions.

In many Member States, documents have to be translated by publicly certified translators. Translation costs are a major factor in the overall costs of naturalisation. In order to keep them low, Member States should restrict the number of requested documents to the necessary minimum and make use of inter-authority document transfers whenever possible, without charging the applicant.

In order to develop a common practice with regard to requested documents, Member States ought to exchange experiences. In particular, a common European list of documents and enhanced cooperation between embassies in Member States could improve the processing of applications all over Europe.

### *5.3.4 Backlogs*

Backlogs have been reported in most countries. These are mainly due to a combination of increasing numbers of applications and a lack of personal and financial resources for administration. However, harsher security checks of applicants since the terrorist attacks of 2001 also seem to contribute to backlogs.

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<sup>20</sup> Although the Union has no direct competence in matters of nationality, the anti-discrimination directive covers general administrative procedures. Naturalisation could be explicitly mentioned in this context.

If a lack of resources or personnel is the problem, decentralisation of the procedure can speed up the process, as shown by the Netherlands and Greece. In Finland, procedural reforms introducing a priority for clearly well-founded applications and the simultaneous processing of similar cases has helped reduce the length of the procedure. We suggest that, where the average duration is more than a year, the authorities develop targeted programmes to shorten the procedure by decentralisation, procedural reforms or other means. Additionally, a maximum duration of twelve months could be fixed by law or in ministerial decrees in order to prevent unreasonable delays and to strengthen the position of applicants.

### *5.3.5 Fees and other costs*

Most countries charge fees for naturalisation. Only Belgium, France, Luxembourg and Spain make no charge for general residence-based acquisition. Total costs in other countries range from € 11 stamp duties in Italy to administrative fees of € 1,470 in Greece. In Austria, fees in some provinces and certain cases may even add up to € 1,878. In many Member States, fees vary with the mode of naturalisation, or additional costs apply to a naturalisation test, as in the Netherlands and the UK. In Austria and the Netherlands, fees depend on the income of the applicant. In Austria, Denmark, Finland, the Netherlands and Sweden, fees are charged not for the acquisition of nationality, but for the application – even if it is turned down. This is a particularly effective mechanism for screening applicants and deterring those whose success appears doubtful. If the naturalisation of the applicant is extended to other family members, the total amount of fees and costs may increase even more. Apart from fees, applicants often incur costs for the issue and translation of documents and of stamp duties for documents requested.

Given the fact that most applicants for naturalisation belong to lower income groups, fees will often be a deterrent to naturalisation, particularly in countries where they are set at unreasonably high levels, as in Austria and Greece.

Since the naturalisation of long-term immigrants is in the interest not only of the applicant, but also of the state, the best practice would be to abolish fees for naturalisation altogether. As a minimum standard, we recommend that fees should not be higher than those for issuing of a passport. In any case, the authorities should consider exempting applicants below a minimum income level from all fees.

### *5.3.6 Oaths and ceremonies*

Nine countries in our study request the swearing of an oath of loyalty or the signature of a comparable declaration when adults acquire nationality. Except in Germany, where the declaration contains a long list of pledges, the oaths or declaration are short and express loyalty to the state and its legal order. In Greece, Italy and Spain this oath has to be sworn within six months or one year of the acquisition of nationality, otherwise the decision will be revoked.

The United Kingdom has recently introduced a mandatory citizenship ceremony for naturalisations. Voluntary ceremonies are held in some provinces in Austria, e.g. in Vienna. Mandatory ceremonies are also planned in the Netherlands, where all naturalisations should take place on ‘naturalisation days’, held only twice a year, which will prolong the waiting period. Denmark plans to convene a ceremony in parliament to inform new citizens about their rights and duties.

We have no normative objections to a declaration or an oath of loyalty to the legal order of the state granting naturalisation. Although native-born citizens do not have to pledge such allegiance unless they are sworn in for high public office, a democracy may require that newcomers who have had previous commitments to another state should express their loyalty in this particular way. The content of such oaths or declarations should, however, be confined



to respect for the constitution and the legal order. It should include neither renouncing allegiances to other states (since this would implicitly rule out multiple nationality) nor a list of values that may support the democratic institutions but need not necessarily be shared by all citizens.

Citizenship ceremonies serve as a symbolic public event and may be recommended if they celebrate the immigrants' achievements and contributions and the society's diversity and are also used to inform the new citizens. They are problematic if they become occasions for nationalistic and assimilationist rhetoric. Making participation in such ceremonies mandatory is at odds with the expression of a genuinely voluntary commitment.

## **6 Concluding Remarks**

Our evaluations and recommendations are based on a set of principles that favour the political inclusion of long-term immigrants and their descendants in the political community of receiving societies, while at the same time respecting the external ties linking emigrants to their countries of origin. We have argued that these principles leave sufficient scope for taking into account relevant state interests and for variations in policy regarding nationality and citizenship across states, reflecting their particular histories and concerns about specific groups of migrants. Membership of the European Union does, however, add considerable weight to the call for common minimum standards, mutual adaptation and learning across international borders. Each state's nationality laws also regulate the acquisition and loss of Union citizenship and thereby impact the Union as a whole as well as other Member States by opening up or constraining access to mobility rights within Union territory.

We are only moderately optimistic that these principles will be adopted and fully respected by all Member States. As discussed in Chapter 7, our empirical study shows that the trend towards more liberal nationality laws, which has been postulated in much of the comparative literature, is at best uneven and may even have been reversed in a number of countries where concerns about irregular immigration, abuse of asylum, terrorist threats and social marginalisation and cultural alienation from the mainstream society among communities of long-term immigrants have recently prompted restrictions on access to denizenship as well as nationality. We believe that these policy developments generally exacerbate the problems they are meant to address instead of resolving them. They contribute to the marginalisation and alienation of migrant populations who will still remain in the country but are excluded from equal rights and full membership. They also send a signal to native populations that immigrants are not welcome as future citizens.

Our moderate optimism is based mainly on two arguments. Firstly, most Member States that are currently reluctant to admit immigrants to nationality and citizenship will experience sharp declines in their working age populations within the next ten years. In response, they may have to reconsider their policies in order to make their countries more attractive to long-term immigrants. Secondly, enlargement of the Union has included new countries whose traditions of citizenship and nationality have often been shaped by concerns very different from those of the old Member States. In several cases, nationality laws and policies directly affect historic minorities with strong cultural and political affinities to neighbouring states. Based on the Copenhagen criteria, minority rights and conflicts concerning minorities within and across state borders have already been an important issue in negotiations concerning accession. They may eventually be recognised as a permanent and common concern for the Union. If the Union wishes to address these conflicts, it will also need a more coherent set of guidelines for the acquisition and loss of nationality both within and outside a state territory. We are aware that our comprehensive survey of current laws and policies will have to be expanded to include the new Member States and accession countries,

but we are confident that we have provided an original methodology and a solid empirical basis on which future studies and empirically grounded policy recommendations can build.

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