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A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union

Gerard-René de Groot and Maarten Peter Vink

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Abstract

This paper deals with loss of citizenship of the European Union (EU) due to the loss of nationality of an EU member state. Only the nationals of a member state possess European citizenship; the loss of nationality of a member state thus also implies the loss of European citizenship. Member states are in principle autonomous in nationality matters, which means that their rules on loss of nationality, and loss of EU citizenship, differ considerably. But member states must respect international law and the general principles of European law when dealing with loss of nationality. This report aims to provide a comprehensive and systematic comparative analysis of existing regulations and procedures in EU member states with regard to the involuntary loss of nationality. These rules are also assessed in light of international and European standards, in particular with regard to the prevention of arbitrary deprivation of nationality, the principle of proportionality and procedural guarantees. The report offers recommendations for policy-makers, judges and other authorities dealing with this issue.

This paper was prepared in the context of the ILEC project (Involuntary Loss of European Citizenship: Exchanging Knowledge and Identifying Guidelines for Europe), which aims to establish a framework for debate on international norms on involuntary loss of nationality. For more information visit: www.ilecproject.eu

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Contents

List of Boxes and Tables

Note from the author

Terminology

In this paper we use the term 'citizenship' to refer to the legal relation between a person and a state, as recognised in international law. This status is often also referred to as 'nationality', particularly in international legal documents, and whenever citing directly from such documents, or from national laws, we cite the term as used in the original document. The terms 'citizenship' and 'nationality' are thus generally used as synonyms (see also EUDO Citizenship Glossary). We also refer to State, State Party, Contracting Party, or Member State, with capital letters, only when citing directly from international or national legal documents. In all other cases we use 'state', 'contracting state', 'member state', or 'country', without capital letters.

In this paper we use the expression "loss of nationality" in order to describe withdrawal of nationality which is automatic, by operation of law ("*ex lege*"). The term "deprivation" indicates situations where the withdrawal is initiated by the authorities of the state. We follow the terminology of the 1961 Convention on the reduction of statelessness. The UDHR Article 15 forbids "arbitrary deprivation" and makes no mention of loss of nationality. However, resolutions of the UN Human Rights Council clearly establish that "deprivation" in the UDHR also includes arbitrary *ex lege* loss of nationality.[1] The 1997 European Convention on Nationality Article 7 uses "loss" of nationality for both automatic loss and for deprivation on the initiative of the state.

Reference system

In this paper we use short-hand references when referring to relevant articles from national legislation. First, in line with the European Bulletin on Nationality of the Council of Europe (English edition), we use abbreviations when referring to the 28 member states of the European Union included in this comparative study:

AUT = Austria;[2] BEL = Belgium; BUL = Bulgaria; CRO = Croatia; CYP = Cyprus; CZE = Czech Republic; DEN = Denmark; EST = Estonia; FIN = Finland; FRA = France; GER = Germany; GRE = Greece; HUN = Hungary; IRE = Ireland; ITA = Italy; LAT = Latvia; LIT = Lithuania; LUX = Luxembourg; MAL = Malta; NET = Netherlands; POL = Poland; POR = Portugal; ROM = Romania; SLK = Slovakia; SLN = Slovenia; SPA = Spain; SWE = Sweden; UK = United Kingdom.

Second, in line with the reference system used in the online legislative databases on modes of acquisition and modes of loss of citizenship, which can be found at the website of the EUDO Citizenship Observatory,[3] we only include the articles of the citizenship law currently in force in a specific country. For example 'NET 15(1)(b)' refers to Article 15, paragraph 1, lit. b of the Netherlands Nationality Act, as currently in force. The consolidated version of the citizenship law of each country can be found at the 'Country Profile' page at the website of the EUDO Citizenship Observatory. We include occasional references to old legislative provisions in footnotes, with specific mention of the year of enactment of the statute involved.

We apply a similar system for references to articles from the European Convention on Nationality. For example, 'ECN 7(2)' refers to Article 7, paragraph 2 of the European Convention on Nationality.

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[1] Compare the manner in which Article 15 of the UDHR is viewed by the UN Human Rights Council in its Resolutions on Human Rights and Arbitrary Deprivation of Nationality, the most recent of which is A/HRC/RES/20/5 of 2012.

[2] The European Bulletin on Nationality uses the abbreviation AUS for Austria. We prefer the more common abbreviation of AUT.

[3] www.eudo-citizenship.eu

Acknowledgement
This report is a comprehensive update of:

De Groot, G.R. and M. Vink (2010). Loss of Citizenship: Trends and Regulations in Europe. Comparative Report RSCAS/EUDO-CIT-Comp. 2010/4. Florence: EUDO Citizenship Observatory, pp. 52. Available at http://eudo-citizenship.eu/docs/Loss.pdf.

In contrast with this previous report, the current report only focuses on *involuntary* loss of citizenship and does not focus on voluntary renunciation of citizenship. The current report only includes information on 28 Member States of the European Union and not of associated states or candidate member states.

This report could not have been written without the detailed information provided in the questionnaires commissioned by the ILEC project, by academic experts, persons working in national administrations and legal practitioners. We also relied to a significant degree on the information previously provided by country experts involved in the EUDO Citizenship Observatory. We thank the members of the ILEC consortium for their feedback on earlier outlines and drafts of this paper.

A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union

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1. The ECN as *tertium comparationis*

Citizenship should indicate a genuine link between a state and a person. This doctrine was famously formulated by the International Court of Justice in its 1955 Nottebohm decision:

> According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties (ICJ Reports 1955 (4), p. 23).

The citizenship law of a state provides rules determining under which conditions the citizenship of the state involved is attributed to a person who is deemed to have a genuine link with this state. Furthermore, citizenship laws provide rules that set out under which conditions the citizenship of the state can be acquired when a person has built up a link with this state, which legitimates the possession of the citizenship. Finally, citizenship laws provide rules on the loss of citizenship. In certain cases a person may be deemed to have lost her or his genuine link with a state. In other cases the state may deprive a person of her or his citizenship because of a lack of a genuine link with the person, for example as manifested by continuous residence abroad, or a person may divest herself or himself of the citizenship of a state with which she or he no longer has a serious link. Most national citizenship laws also include some rules on the loss of citizenship as a result of irregularities during the acquisition procedure of a citizenship by naturalisation, registration or declaration of option. Some jurisdictions provide for rules that allow deprivation of citizenship in cases where certain manifestations of disloyalty of a person towards her or his state are discovered, for example by service in the army of a foreign state.

The object of this study is a comparative analysis of the rules on the loss of citizenship across 28 European countries. The rules on the loss of citizenship vary remarkably across these states, at least as much as the rules on the acquisition of citizenship (Vink & De Groot 2010b, Goodman 2010), probably because very few international documents exist with concrete rules on the loss of citizenship.

The Universal Declaration of Human Rights (Article 15(2)) states that nobody may be deprived arbitrarily of her or his nationality. This is an important principle, particularly in the light of the right to a nationality (Article 15(1)), even if the Universal Declaration does not specify the circumstances under which one would have to conclude that there is an arbitrary withdrawal of a nationality (Marescaux 1984). The same paragraph of the Universal Declaration guarantees the right of a person to change her or his nationality, again without specifying the conditions under which such a change of nationality would have to occur (De Groot 2013).

More concrete obligations under international law, with consequences for the regulation of the grounds of loss of citizenship, can be found in documents dealing with more specific issues: emancipation of women, statelessness and multiple citizenship. First, the 1957 Convention on the Nationality of Married Women provides some rules in respect of the non-loss of citizenship by marriage or as a consequence of being

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married: the sole fact of marriage shall not cause loss of citizenship and loss of citizenship by the husband shall not automatically cause the loss of citizenship by his wife.[4] Second, the 1961 Convention on the Reduction of Statelessness forbids loss of citizenship, in some cases, if the consequence of such loss would be statelessness.[5] Thirdly, with a more specific focus on member states of the Council of Europe, the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, prescribes voluntary acquisition of a citizenship of another state as a ground for loss of the previous citizenship between the contracting states. The latter two documents in some ways represent mirror-images of the international state system as a world constituted by states, whereby all individuals should belong to a state, and one state only. The first document, however, represents a clear caveat to that view and arguably undermined in particular the 1963 Convention before it was even adopted. This can be explained as follows. Whereas in former days the *systéme unitaire*[6] of unity of citizenship within the marriage was used as a tool to enforce a world of mono-nationality, nowadays such a view is seen as outdated and no longer acceptable (Dutoit 1973; De Groot 2012a). Mixed-citizenship marriages and the effect of multiple citizenship on children born from such relationships are generally seen as an inevitable result of the dual processes of emancipation and migration. As a result, whereas the norm of statelessness prevention is still very much at the core of the international rules on loss of citizenship, the norm of preventing multiple citizenship is becoming of ever decreasing importance, certainly among the 28 countries of this study, where since 1985 we observe a clear trend of abolishing the rule of automatic loss of citizenship as a result of the voluntary acquisition of the citizenship of another country.

That being said, voluntary acquisition of another citizenship is a symbolically important, but certainly not the only ground for loss. In the comprehensive typology that we use as a comparative grid for this project we distinguish 15 modes of loss of citizenship (Box 1).

One very important development in citizenship law, in particular for the grounds of loss, is the 1997 European Convention on Nationality (ECN), which came into force on 1 March 2000. The ECN provides, for the first time in an international legal document, an exhaustive list of acceptable grounds for loss (see Box 2). In this paper we use articles 7 and 8 from the European Convention on Nationality as *tertium comparationis* for the analysis and comparison of the different grounds of loss of citizenship. In other words, we analyse the relevant regulations in the 28 countries with regard to the 15 modes of loss of citizenship in light of these norms provided by the European Convention on Nationality. We do so in the order of which the grounds for loss are mentioned in Articles 7 and 8 of the ECN.

[4] Compare the 1930 Hague Convention on Nationality (Articles 8-11) and the 1979 New York Convention on the Elimination of all Discrimination of Women (Article 9(1)(2)).

[5] See on the loss provisions of the 1961 Convention the Summary Conclusions of the expert-meeting convened by the UNHCR in Tunis in 2013 (hereinafter: Tunis Conclusions), available on http://www.refworld.org/docid/533a754b4.html.

[6] This unitary system provided that women lost their nationality upon marriage because of the automatic acquisition of their husband's nationality. Change of nationality by the husband during the marriage also caused loss of this nationality by his wife and children.

Box 1. Modes of loss of citizenship

ID	Grounds for loss	ID	Grounds for loss
L01	Renunciation of citizenship	L09	False information or fraud in the procedure of acquisition of citizenship
L02	Permanent residence abroad	L10	Retention of a foreign citizenship by persons acquiring citizenship of C1 by declaration or naturalisation
L03	Service in a foreign army	L11	Loss of citizenship by parent(s)
L04	Employment in non-military public service of a foreign country	L12	Loss of citizenship by spouse or registered partner
L05	Acquisition of a foreign citizenship	L13a	Loss due to annulment of maternity/paternity
L06	Retention of a foreign citizenship by persons who have acquired citizenship of C1 by birth	L13b	Loss due to adoption
L07	Disloyalty, treason, violation of 'duties as a national' or similar grounds	L14	Establishment of foreign citizenship of a person who acquired citizenship of C1 as a foundling or as a presumptively stateless person
L08	Other (criminal) offences	L15	Loss for other reasons

Source: EUDO http://eudo-citizenship.eu

The only ground for loss of citizenship that universally exists in all EU member states is loss of citizenship due to voluntary renunciation by the individual concerned (De Groot 1989: 287-290). As this form of loss occurs at the initiative of the individual, it is a fundamentally different ground for loss, in principle, from those modes of loss discussed until now and for that reason also mentioned in a separate article of the European Convention on Nationality. Although the Convention explicitly states that State Parties shall permit their citizens to renounce their citizenship, provided that they do not thereby become stateless (ECN 8(1)), states have discretion to grant this permission only to citizens habitually residing abroad (ECN 8(2)). We do not discuss this ground for loss of citizenship further in this report because the focus in this report is on involuntary loss (see De Groot & Vink 2010: 40 - 45 for a discussion and comparative analysis). Neither does this report deal with those cases where authorities of a state conclude that an individual never acquired the nationality of the country involved (see De Groot and Wautelet, 2014 for a discussion of those situations).[7]

By structuring our analysis along the lines of the international norms on the loss of citizenship that are most relevant for European states, our exercise clearly not only has a descriptive empirical interest, but also a normative underpinning. We are interested in evaluating which national grounds for loss conform to the rules of the ECN and which provisions do not. Yet, we do so with at least two explicit reservations. First, not all of the 28 states have signed and ratified the ECN. In fact, only 11 out of our 28 have done so (but note that eight more have signed the ECN, see Pilgram, 2010), and moreover quite a few of those countries have made specific reservations for Articles 7 and 8 of the ECN. When relevant we mention those reservations in the text. At the same time, with regard to such reservations, by signing and ratifying the ECN contracting states have explicitly committed themselves to periodically reviewing any national reservations (ECN 29(3)). Second, even though the ECN is without doubt the best available catalogue of international norms with regard to the loss of citizenship, it is not the final word. Attention will also be paid the standards of the 1961 Convention on the reduction of statelessness, in particular as interpreted by the Tunis Conclusions.[8] The

[7] Gerard-René de Groot/ Patrick Wautelet, *Reflections on quasi-loss of nationality in comparative, international and European perspective*, Background paper ILEC-project (project on Involuntary Loss of European Citizenship), CEPS Paper in Liberty and Security in Europe No. 66 (August 2014).

[8] The 1961 Convention is ratified by 18 member states of the European Union. However, the EU pledged that it will encourage the ratification by all Member States. See *Note verbale* of the Delegation of the European Union to the

rules that can be derived from the ECJ landmark decision in the Janko Rottmann case are equally of paramount importance.[9]

We will also make some critical remarks on the provisions of the ECN and other international instruments. The *tertium valutationis* of these critical remarks is the question, whether, in specific cases, a connection between a person and the state of her or his citizenship exists, which can be classified as a genuine link (on the distinction between *tertium comparationis* and *tertium valutationis*, see De Groot & Schneider 1994: 53-68). We conclude this paper with some reflections on the use of this 'genuine link' criterion for evaluating provisions on the loss of citizenship in contemporary Europe.

Box 2. European Convention on Nationality

Article 7

Loss of nationality *ex lege* or at the initiative of a State Party

1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

a. voluntary acquisition of another nationality;

b. acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;

c. voluntary service in a foreign military force;

d. conduct seriously prejudicial to the vital interests of the State Party;

e. lack of a genuine link between the State Party and a national habitually residing abroad;

f. where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;

g. adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

2. A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

Article 8

Loss of nationality at the initiative of the individual

1. Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.

2. However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.

The European Convention on Nationality was initiated by the Council of Europe and concluded in Strasbourg on 6 November 1997 (ETS 166).

United Nations of 19 September 2012, par. A4, available on: http://www.unrol.org/files/Pledges%20by%20the%20European%20Union.pdf.

[9] ECJ 2 March 2010, C135/08.

2. Voluntary acquisition of a foreign citizenship

The first ground for loss that is allowed by the European Convention, mentioned in ECN 7(1)(a), is the voluntary acquisition of another nationality (see De Groot 1989: 282-287 for an older comparative overview of this ground for loss). The fact that this ground for loss is mentioned first clearly indicates the importance as a classical ground for loss of citizenship. Whereas the ECN does not provide a further specification of the conditions for loss under this ground, some other international instruments provide further guidelines. In particular, the 1961 Convention on the Reduction of Statelessness underlines that loss due to voluntary acquisition is only acceptable if the foreign citizenship is really acquired. In other words, the mere *application* for foreign citizenship should not automatically cause the loss of the original citizenship:

> A national of a Contracting State who seeks naturalisation in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country (Article 7(2)).[10]

Voluntary acquisition is also the core rule of the 1963 Convention on Reduction of Cases of Multiple Nationality, which also very specifically deals with the *acquisition* of a foreign citizenship:

> Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality (Article 1(1)).

Important to note is that the loss of citizenship in line with this contractual provisions is assumed to take place automatically, by way of a 'lapse' of citizenship, and without requiring a specific administrative procedure. Furthermore, it should be noted that even in those countries, such as France, or Italy after 1992, where voluntary acquisition of another citizenship is no longer a regular ground for loss according to national citizenship law, the fact that these countries were party to the 1963 Convention until, respectively, 2009 and 2010, for a long time implied at least a ban on multiple citizenship for citizens from these states aiming to acquire the citizenship of another contracting state. However, on 2 February 1993 a Second Protocol to the 1963 Convention was opened for signature, allowing exceptions to be made to the main principle of article 1 of the 1963 Convention. For the contracting states party to the Second Protocol voluntary acquisition of a foreign citizenship does not necessarily cause the loss of the previous nationality, if a) a national acquires the nationality of another contracting party on whose territory she or he was either born and is resident, or has been ordinarily resident for a period of time beginning before the age of 18; b) a spouse acquires of his or her own free will the nationality of the other spouse; c) a minor whose parents are nationals of different contracting parties acquires the nationality of one of its parents.

Italy ratified the Second Protocol on 27 January 1995, France on 23 February 1995 and the Netherlands on 19 July 1996. The Second Protocol came into force between Italy and France on 24 March 1995. The Netherlands is bound by the Protocol since 20 August 1996. Between these countries Article 1 of the 1963 Convention was no longer operative for the categories mentioned in the protocol. However, as France and Italy denounced the nationality chapter of the 1963 Convention and – therefore – also the Second Protocol, France is no longer bound to the Convention since 5 March 2009 and Italy no longer since 4 June 2010. As stated above, particularly given the general acceptance of multiple citizenship in both countries (for France since 1973 and for Italy since 1992), their continued participation in the 1963 Convention was already somewhat at odds with the general principles of the citizenship policies in these countries. *Anno* 2014, Chapter 1 of the 1963 Convention is only relevant for Austria, Denmark[11], the Netherlands and Norway, whereas the 1993 Second Protocol has exclusive relevance only for the national law of the Netherlands (see also Pilgram 2010). The exceptions mentioned in the Protocol continue to inspire national citizenship law in the Netherlands (see in particular NET 15(2)).

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[10] See on that provision the Tunis Conclusions, Par. 42.

[11] However, it should be noted that Denmark denounced the nationality chapter of the 1963 Convention on 25 August 2014 and will not be bound by the rules of this chapter from 26 August 2015 on.

Table 1. Loss due to voluntary acquisition of a foreign citizenship

EUDO CITIZENSHIP Mode of Loss of Citizenship: L05, ILEC Questionnaire: Q4.1, Special provisions for minors are excluded

Country	**Article in law**	**Introduction / Abolition**	**Procedure**	**Interpretation 'voluntary'**	**Exceptions (including changes after 1985)**	**1963 Strasbourg Convention Chapter 1 (+ 1993 Second Protocol) (Ratification / Denunciation)**
AUT	27, 28	–	Lapse	Person acquires citizenship of other country on the basis of an application, a declaration or an explicit expression of consent, and has not obtained permission to retain citizenship.	Permission to retain citizenship may be granted if the person has acquired citizenship by descent and special reasons exist that are related to the person's private or family life (since **1999**), or -in case the person is a minor- if this is in the interests of the child (since 2005). Retention citizenship is in the interest of Austria, or (since **2005**) benefits the well-being of a minor child; person has acquired citizenship of Austria by descent or there are special reasons related to the person's private or family life (**1999**).	R 1975
BEL	–	A 2007	–	–	–	R 1991 / D 2008
BUL	–	A 1948	–	–	–	–
CRO	–	–	–	–	–	–
CYP	–	–	–	–	–	–
CZE	–	I 1993 A 2014	-	–	–	–
DEN	7(1), 7(2)	–	Lapse	Person acquires citizenship of another country by application or explicit consent. Does not include non-rejection of automatic acquisition.	–	R 1972
EST	EST 29	I 1992	Lapse		Person has acquired citizenship of C1 by birth (since 1993).	–
FIN	–	A 2003	–	–	–	–
FRA	–	A 1973	–	–	–	R 1965 (SP 1995) / D 2009

GER	25	–	Lapse	Person acquires citizenship of another country by application. Whether this includes non-rejection of automatic acquisition is unclear.	Person obtains permission to retain German citizenship (discretionary) or (since 2007) acquires citizenship of an EU member state or Switzerland or could not have knowledge about possession of German citizenship.	R 1969 / D 2002
GRE	–	–	–	–	–	–
HUN	–	A 1957	–	–	–	–
IRE	19(1)(e)	A 1956	Withdrawal	Person acquires citizenship of another country other than by marriage.	Person acquired Irish citizenship other than by naturalisation.	–
ITA	–	A 1992	–	–	–	R 1968 (SP 1995) / D 2010
LAT	9(1); 24(1)(1)	I 1994	Withdrawal	Person acquires other citizenship on application (non-automatically). Does not include cases where another nationality is acquired automatically, but could be rejected.	Person can register as Latvian citizen on the basis of descent from a Latvian. (since 2013) Persons who have acquired citizenship of member state of the EU, EFTA or NATO, or Australia, New Zealand or Brazil or another country with which Latvia has signed an agreement on dual citizenship, or has received an authorisation of the Cabinet to retain Latvian citizenship in compliance with important State interests. Citizens of Latvia, residing abroad, who were deported or left Latvia as a result of the Soviet Union or Nazi Germany occupations, or those that were deported and up to May 4, 1990 had not returned to Latvia permanently, qualify for and will be able to apply for dual citizenship.	–
LIT	24(2); 26(2)	I 1991	Lapse	Person acquires other citizenship other than by birth or adoption. Does not include cases where another nationality is acquired automatically, but could be rejected.	Person was exiled or fled from Lithuania before 11 March 1990, including their descendants.	–
LUX	–	A 2009	–	–	–	R 1971 / D 2009

MAL	–	A 2000	–	–	–	–
NET	15(1)(a)	–	Lapse	Person acquires citizenship of another country by application. Whether this includes non-rejection of automatic acquisition is unclear.	Person is born and resides in the other country, or resided in the other country for 5 years before majority, or is married to a citizen of the other country (adults), or his/her parent is citizen of the Netherlands (minors), or acquired citizenship by birth in the Netherlands. No exception to main rule if Article 1 of 1963 Strasbourg Convention applies.	R 1985 (SP 1996)
POL	–	A 1951	–	–	–	–
POR	–	A 1981	–	–	–	–
ROM	–	A 1948	–	–	–	–
SLK	9(1)(b), 9(16), 9(17)	I 2010	Lapse	Explicit expression of one's will (declaration, application)	Person acquires citizenship of another country by birth or during marriage.	–
SLN	–	–	–	–	–	–
SPA	24(1)	–	Lapse	Person 'exclusively uses' citizenship of another country that was acquired before the age of majority. Lapse of Spanish citizenship three years after age of majority.	Person submits a declaration to retain citizenship within three years, or is a citizen of Latin American countries, Andorra, the Philippines, Equatorial Guinea or Portugal. Provision does not apply in time of war.	–
SWE	–	A 2001	–	–	–	R 1969 / D 2002
UK	–	–	–	–	–	–

As mentioned in the introduction, there are a decreasing number of countries where the citizenship law provides for the loss of citizenship as a result of voluntary acquisition of a foreign citizenship. Nineteen out of the 28 countries of this study allow for the voluntary acquisition of another citizenship, without consequences in terms of loss of the original citizenship. In many of these countries, relevant loss provisions were abolished relatively recently. Voluntary acquisition is *not* a ground for loss in Belgium (since 2007), Bulgaria (1948), Croatia, Cyprus, Czech Republic (since 2014), Finland (since 2003), France (since 1973, 2009), Greece (1914), Hungary (1957), Ireland (1956, but see below), Italy (1992, 2010),[12] Luxembourg (2009), Malta (2000), Poland (1951), Portugal (1981), Romania (1948), Sweden (2001), the United Kingdom (1949).[13] It is expected that Denmark will abolish voluntary acquisition as a ground for loss of Danish nationality in the course of 2015.

Nine out of the 28 countries of this study (see Table 1) still maintain voluntary acquisition as a ground for loss. Strikingly, only one member state, Denmark, always provides for loss if a foreign citizenship is acquired voluntarily, without exception.[14] All other member states provide for some or even many exceptions on this rule. And it is precisely Denmark that is about to abolish this ground for loss completely.

The different types of exceptions, which other countries provide to the principle of automatic loss of citizenship by voluntary acquisition of a foreign citizenship, are listed below:

a) The citizen obtains permission to retain her or his citizenship before acquiring a foreign citizenship

This is the case in Austria, for example. Obtaining permission to maintain Austrian citizenship depends on whether that is in the interest of Austria, whether retention of Austrian citizenship is dealt with reciprocity in the third country, and whether there is no harm to the interests or reputation of Austria. For minors also the best interests of the child are taken into account (AUT 28). However, the first condition gives the Austrian authorities a wide discretion. It has to be stressed that until 1999 the permission was only granted if an interest of the Austrian Republic required it to do so; a special interest of the individual involved to retain Austrian nationality was not sufficient (Mussger & Fessler 1996: 99-101, Zeyringer: nr. 77). Since 1999 a person who has acquired Austrian citizenship by descent can also successfully apply for a permission to retain Austrian citizenship on grounds of special relevant reason in her or his family life.

Germany provides for the possibility of written consent from the German authorities to retain citizenship (GER 25(2)). If the applicant has her or his habitual residence abroad, the question is whether continuous ties with Germany are likely or not. Before 1 January 2000 this consent was seldom granted (Hailbronner et al: comments 36-39, Sturm: nr. 122). However, since 1 January 2000, not only public but also private interests are taken into account (GER 25(2)(2)). The number of granted permissions to retain German citizenship *(Beibehaltungsgenehmigungen)* for German citizens acquiring the citizenship of another state increased from 1,295 in 2000 to 5,159 in 2013, with around half of these permissions granted to Germans acquiring US citizenship.[15] Since 28 August 2007 granted permission is no longer required for German citizens acquiring the

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[12] Italy obliges an Italian citizen who acquires or regains or chooses a foreign citizenship to communicate this to the registrar of the place of residence or, if he resides abroad, to the competent consular authority, within three months from the acquisition, recovery or option (ITA 24). If he does not fulfil this obligation, he is subject to a fine of between 200,000 and 2,000,000 Lire [about 100 until 1000) euro]. This provision should be understood in light of the fact that Italy, even after the abolishment of voluntary acquisition as a ground for loss, in 1992, was still (until 4 June 2010) a contracting state of the 1963 Strasbourg Convention.

[13] Between 1870 and 1949 voluntary acquisition of a foreign citizenship was a ground for loss of citizenship of the UK. Between 1870 and 1914 citizenship could be retained by making a declaration. See UK 6 (Act 1870) and UK 13 (Act 1914).

[14] A Danish citizen who is of full age loses her or his Danish citizenship by acquiring another citizenship by application or explicit consent (DEN 7(1)). Danish citizenship is also lost automatically when the acquisition of foreign citizenship is the result of public service in another country (DEN 7(2)).

[15] Bundesverwaltungsamt der zentrale Dienstleister des Bundes. *Staatsangehörigkeitsangelegenheiten in Bundeszuständigkeit Einbürgerungen / Beibehaltung*. Statistics refer to "Beibehaltung der deutschenStaatsangehörigkeit nach § 25 StAG - Antragseingang und ausgestellte Urkunden in Personen 2000 - 2013". Available at http://www.nz2go.de/wp-content/uploads/2014/11/BBH-2000-2013-Überblick.pdf (last visited at 24 November 2014).

citizenship of another EU member state or Switzerland (see below under c).

b) the citizen does not live abroad

In Spain, persons of full age *(emancipados)* who have their habitual residence abroad lose Spanish citizenship, if they voluntarily acquire the citizenship of another state, which was attributed to them before they reached full age (SPA 24(1)). The loss happens three years after the acquisition of the foreign citizenship (respectively reaching the age of majority) but can be avoided by a declaration to retain Spanish citizenship. *A fortiori* a Spanish citizen who resides in Spain does not lose her or his citizenship by voluntary acquisition of another citizenship.

Until 1 January 2000 the German Nationality Act also provided that a German living in Germany would not lose her or his citizenship by a voluntary acquisition of a foreign nationality (GER 25(1) old). This provision was abolished (Waldrauch 2006: 196). Italy also provided for an exception in case of residence in the country (ITA 8(1) old) until it abolished voluntary acquisition of a foreign citizenship as a ground for loss in 1992.

c) the citizen acquires the citizenship of a specific country

This exception is of paramount importance in Spain. In accordance with the Spanish constitution (Article 11(3)), and based on a number of bilateral treaties, the acquisition of the citizenship of Latin-American countries, Andorra, Philippines, Equatorial Guinea or Portugal is not sufficient ground for the loss of Spanish citizenship (SPA 24(2)(2)) (Aznar Sanchez 1977). However, it should be stressed that this exception only applies to persons who are Spanish citizens by origin *(españoles de origin).*

Since August 2007 German citizenship is no longer lost in the case of voluntary acquisition of the citizenship of another member state of the European Union, of Switzerland, or of a country which concluded a treaty with Germany on the acceptance of dual citizenship. However, there are currently no countries with which Germany has concluded such a treaty. Inspired by the German example, since 2013 Latvia has provided that the voluntary acquisition of the nationality of other countries of the European Union, the European Free Trade Area, the NATO, Australia, New Zealand or Brazil does not cause the loss of Latvian citizenship.

d) in case of war

Spanish citizenship is not lost by voluntary acquisition of another citizenship when Spain is at war (SPA 24(4)). The background of this provision is that people should not be able to avoid military conscription in times of war by acquiring another citizenship (and thereby losing Spanish citizenship). Spanish citizenship can also not be renounced in times of war.

e) the citizen is covered by one of the exceptions mentioned in the 1993 Second Protocol

In the Netherlands, Dutch citizenship is lost by voluntary acquisition of a foreign citizenship, unless target persons a) are born in the foreign country whose citizenship they acquire and they have habitual residence in that country; b) were living as a minor for continuous period of at least five years in the country whose citizenship they wish to acquire; c) acquire the citizenship of a spouse or registered partner (NET 15). Remarkably, also the Slovak provision (SLO 9 (16) and (17)) enacted in 2010 provides that Slovak citizenship is not lost in the case of acquisition of another citizenship by or during the marriage to a spouse who already possesses this other citizenship.

f) the citizen did not know that she or he possessed the citizenship of the state in question

This exception exists in Germany, according to a decision by the Federal Administrative Court.[16] This court concluded that the loss of citizenship according to GER 25 only occurs if the person involved had knowledge or should have had knowledge about her or his German citizenship. If she or he had been unaware of his German citizenship when applying for a foreign citizenship, the loss of German citizenship does not occur (Hailbronner et al.2010, 687). However, if target persons were aware of their German citizenship, but not of the consequences of voluntary acquisition when they applied for foreign citizenship, they would lose their

[16] *Bundesverwaltungsgericht* 10.04.2008 (5 C 28.07), NJW 2008, 2729.

German citizenship (Hailbronner et al. 2010, 686).

g) the foreign nationality is acquired by birth or marriage

Slovak citizenship is lost by acquisition of another citizenship, except when this citizenship was acquired by birth or marriage (SLK 9(1)(b)). This ground for loss was introduced in Slovakia in July 2010, in response to the facilitated access to Hungarian citizenship for ethnic Hungarians from January 2011. A similar rule existed in the Czech Republic until January 2014.

h) the person concerned is a citizen by birth

All the above-mentioned exceptions are allowed by ECN 7(1)(a), if only because this article in a general way *allows* for voluntary acquisition of a foreign citizenship as a ground for loss, but it does not *oblige* states to provide for provisions based on this ground for loss. The only, but serious problems relate to provisions in Austria, Estonia,[17] Ireland and Spain, where citizens who have acquired citizenship otherwise than by descent are treated differently from so-called citizens 'of origin'. Discrimination of persons who have acquired citizenship by naturalisation violates ECN 5(2).

A note on procedures is appropriate. Whereas in most cases the procedure for loss of citizenship is an automatic loss, or lapse, of citizenship, in Ireland and Latvia the authorities have a degree of discretion with regard to the *withdrawal* of citizenship. According to Irish law, the Irish citizenship of a naturalised citizen can be revoked when the target person voluntarily acquires a foreign citizenship (IRE 19(1)(e)). The loss does not happen *ex lege.* This approach is also followed by Latvia. Latvian citizenship may be revoked by a court decision of a Regional Court, if a citizen has acquired the citizenship of another state without submitting an application regarding renunciation of Latvian citizenship (LAT 24(1)(1)). This approach of withdrawal of citizenship could also be observed previously in the legislation of Greece (De Groot 2003: 212).

Moreover, in those countries where voluntary acquisition is, under certain circumstances, a ground for loss of citizenship, the notion of 'voluntary' needs further specification. In cases where the target person acquires another citizenship without any application and without any possibility to avoid the acquisition, the provisions in question certainly do not apply. In cases of obvious coercion they do not apply either. However, a more difficult situation arises when possession of citizenship is a requirement for economic activity, and persons are thus 'forced' to apply for a foreign citizenship because of economic circumstances. Whereas in the latter case Spain does not consider the acquisition of a foreign citizenship to be voluntary, Germany and Netherlands do consider this a legitimate ground for loss (see on Spain: Alvarez Rodríguez 1996: 86, on Germany: Hailbronner et al 2010, 685, on the Netherlands: De Groot 2014b: comments 1.1.1-1.1.3 on art. 15).

Furthermore, with regard to the notion of 'acquisition', a related question is whether voluntary 'acquisition' also covers cases where the foreign citizenship is acquired *ex lege* but could be rejected. Whereas the answer is affirmative in the Netherlands, in line with a judgement by the Supreme Court,[18] in countries such as Austria and Germany the answer is negative.[19] Other, slightly different, cases are where the target person acquires another citizenship by accepting a public office in another country, without the possibility to avoid this acquisition (for example until 2008 by accepting an appointment as professor at an Austrian university). The Netherlands nowadays does not consider such acquisition as voluntary, but in the past another interpretation was defended and applied by the Ministry of Justice (see, against such an interpretation, De Groot 1984: 284-286). Denmark has a special provision dealing with this type of acquisition (DEN 7) and shows that from a Danish perspective this type of acquisition is not covered by their general provision on loss due to voluntary

[17] The 1992 Estonian Citizenship Act included a loss provision for voluntary acquisition. However, it was decided in a separate legal act not to apply the provisions of the Citizenship Act regarding loss due to voluntary acquisition of another citizenship. In 1993 this separate act was changed and it was decided that only citizens by birth would see no consequences after acquisition of another citizenship. The 1995 Citizenship Act continues this practice (EST 29).

[18] *Hoge Raad* 3 September 2004, RV 2004, Nr. 35 (at least under application of the Nationality Act of 1892, which was in force until 1985).

[19] Austria: *Zeyringer*, nr. 73; Germany: *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* of 18 October 2000, Nr. 25.1.3.

acquisition.

To conclude, an analysis of changes across the 28 of this study shows a clear tendency to abolish voluntary acquisition as a ground for loss. By abolishing this loss provision these countries accept that a person may have such close ties with more than one country that the possession of more than one citizenship is justified. These countries accept that the voluntary acquisition of a foreign citizenship does not automatically mean that the genuine link with the state of one's original citizenship ceases immediately.

Other countries did not abolish voluntary acquisition as a general ground for loss of their citizenship, but introduced more exceptions to the main rule. An example is the Netherlands, where we find exceptions that are inspired by the 1993 Second Protocol to the 1963 Strasbourg Convention. In 1999 Austria introduced the possibility to allow Austrians by birth to retain Austrian citizenship in the case of voluntary acquisition of a foreign citizenship for special personal or family circumstance reasons. Another example is Germany, which since 1 January 2000 has increasingly consented to retain German citizenship in the case of voluntary acquisition of a foreign citizenship, particularly when this concerns German citizens residing in another EU member state. Since 2007 it is no longer required to obtain this permission as German citizenship is never lost in the case of voluntary acquisition of the citizenship of another member state of the European Union or of Switzerland. Since 2013, Latvia has also accepted the voluntary acquisition of the nationality of other member states of the European Union, EFTA, NATO, Australia, New Zealand and Brazil without providing for loss of Latvian citizenship.

The following observations and recommendations can be made:

In the case of a deprivation procedure a proportionality test is necessary, in view of international standards. However, proportionality should also play a role in the case of automatic loss, via a restrictive interpretation of the loss provision as such. This means that, if a member state provides for the loss of nationality due to the voluntary acquisition of another nationality, it should not conclude that a person has lost her or his nationality (or decide to deprive a person of her or his nationality, if the loss provision is not automatic):

- If the acquisition was automatically (not on application), but could have been rejected;
- If no acquisition of nationality took place, but was merely a confirmation of the possession of another nationality;
- If the application for the foreign nationality was made by another person (e.g. parent of an already adult child);
- If there are serious doubts exist about whether the application of the foreign nationality happened voluntarily.

3. Loss due to fraud

ECN 7(1)(b) provides for the possible loss or deprivation of citizenship by revocation of a naturalisation decree or of an acquisition by declaration of option because of fraud, false information or concealment of any material fact attributable to the naturalised national, even if the consequence would be statelessness (Art. 7 (3) ECN). A similar provision could already be found in the 1961 Convention on the Reduction of Statelessness (Art. 8):

1. A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.
2. Notwithstanding the provisions of paragraph 1 of this Article, a person may be deprived of the nationality of a Contracting State:
    a. (...)

b. where the nationality has been obtained by misrepresentation or fraud.[20]

In this section and in section 4 we deal with two distinct, though related modes of loss, which are arguably both covered by ECN 7(1)(b). These are the loss of citizenship due to fraud, false information or concealment of any material fact (L09). In the next section, we discuss specific provisions on the loss of citizenship due to the non-renunciation, or retention, of a foreign citizenship by persons acquiring citizenship by declaration or naturalisation (L10).

We first discuss the more general provisions related to loss of citizenship due to fraud and subsequently present a more detailed analysis of the specific considerations that may be taken into account by national authorities when deciding in individual cases about the consequences of the detection of fraudulous acquisition of citizenship.

Table 2 summarises the relevant provisions for both modes of loss in the 28 countries of this study.

3.1 General provisions

Twenty-five of our 28 countries provide in their legislation that fraud in the procedure of the acquisition of citizenship may be a reason for the revocation of the acquisition. Only three countries (CRO, POL, SWE) have no relevant provisions in this regard. Of the countries that do have loss provisions due to fraud, 21 allow for the revocation of citizenship due to fraud, even when this leads to statelessness. Only three member states (BUL, FRA and LUX) provide expressly that even in the case of discovery of fraud no deprivation will take place if statelessness would be caused. As stated above, although causing statelessness in the case of deprivation of citizenship due to fraud is as such not contrary to international norms, the overarching norm of statelessness prevention cannot be dismissed in an automatic manner, as underlined by Recommendation 99(18):

> In order to avoid, as far as possible, situations of statelessness, a state should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account (Part C sub c).[21]

The existence of a genuine and effective link between the target person and the respective state means an important limitation to the automatic application by states of a revocation of citizenship as a result of fraud. Whenever the target person has developed a genuine and effective link with the state in question, this implies that a limitation period has to be taken into consideration. The last column of Table 2 indicates, firstly, that by far not all states use such a time limit. Moreover, in the member states that provide so, these time limitations vary greatly, from 1 or 2 years (FRA) to 15 years (SPA). In Portugal, where there is no time limit provided in the Nationality Act, a limitation of 20 years is developed in case law.[22] The Netherlands has a limitation of 12 years, but provides for an exception to that general rule if the person involved was sentenced for crimes that could be prosecuted by the International Criminal Court in The Hague (crimes of war, torture or genocide). In the latter case revocation is possible without any time limit[23] (De Groot 1999: 13-22). The United Kingdom applies in practice a limitation period of 14 years, but exceptionally the withdrawal may happen after that time.[24]

An example of a country where no time limits are set is the UK, where the Secretary of State may deprive a

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[20] See on that provision the Tunis Conclusions, par. 56-64.

[21] Compare also *Janko Rottmann vs. Freistaat Bayern*. Case C-135/08 [2010] and the Tunis Conclusions, par. 20, 21.

[22] The Appeals Court decided in a case about a declaration of nullity initiated after 20 years from the entry in the register that when the false registration is due to an error of the authorities, the principles of legal security and the prohibition of law abuse prevent the declaration of nullity (*Acórdão do Tribunal da Relação de Lisboa*, 29-01-2004, Case 8640/2003-6).

[23] The same exception applies for the Latvian limitation of 10 years (24 LAT).

[24] See Nationality Instructions, chapter 55.7.2.5 and 55.7.2.6.

British national of her or his citizenship status "if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of a) fraud, b) false representation or c) concealment of a material fact" (UK 40(3)). The deprivation is possible even when it leads to statelessness. For a long time, this provision has been used very rarely: from 1951 until 1973 only ten persons have been deprived of citizenship and in only two cases on the ground of false representation (Blake 1996: 708). Between 1973 and 2000 no person at all was deprived of her or his citizenship.[25] Moreover, persons who told significant lies as to their identity are deemed never to have been granted certificates of naturalisation at all (De Groot & Wautelet 2014). This means that, in those cases, although the formal procedure for this mode of loss is withdrawal in the terms of this comparative project (see Table 2), in practice the procedure strongly resembles a nullification procedure (Blake 1996: 706).

A provision very similar to the British regulation can be found in Ireland (IRE 19(1)(a)). De Patoul et al. (1984, nr. 74) note that since 1956 no revocation of a naturalisation decree had taken place.

A different, court-based approach can be found in Denmark where the naturalisation could be annulled by court judgment since 2002 if it is discovered that the target person has intentionally provided false or misleading information or held back information, and if such behaviour was a deciding factor for the acquisition of citizenship (DEN 8A). The court will weigh the evidence as in other court cases and is not obliged to order the loss of citizenship even if fraudulent conduct is proven, but may take all circumstances into consideration before making a decision as to the proportionality of the loss.[26] Finland introduced a loss provision for fraud in 2003, which allows the Finnish Immigration Service to deprive a person of her or his Finnish citizenship if she or he provided false or misleading information on her person, or withheld relevant information, and the knowledge of these facts would have resulted in a refusal of the application for Finnish citizenship (FIN 33). A decision is based on an overall consideration of the situation of the person involved and account is taken of culpability of the act, circumstances in which it is committed, and the existing ties with Finland. Moreover, in contrast with Denmark, for example, the procedure that may result in the deprivation of citizenship must be initiated within five years after the acquisition of Finnish citizenship (see also a similar five-year limit introduced in Belgium in 2007 and in Germany in 2009).

In Luxembourg a withdrawal of citizenship is possible by ministerial decree, if this citizenship was acquired by false information, fraud or concealment of important facts (LUX 15(1)(a)). Deprivation of citizenship is also possible in the case of citizenship acquisition by forgery, or use of forgery, or else on the basis of the appropriation of a name and insofar as the target person has been found guilty of one of these offences in a final court judgment. As mentioned earlier, an important difference with the countries mentioned above is that in Luxembourg withdrawal of citizenship is not possible if this would lead to statelessness. Bulgaria and France apply a similar statelessness prevention rule, since 1998 (BUL 22; FRA 27-3(2)).

Most countries apply a withdrawal procedure. However, an alternative construction is a nullification procedure whereby a citizenship acquisition by naturalisation is declared null and void if it is discovered that the decree was based on fraudulent information, concealment of relevant facts or an inexistent fact. This is, for example, the case in Austria, Germany, the Netherlands, Portugal, Slovakia, Slovenia and Spain. One important difference with the withdrawal procedure is that nullification normally applies retroactively: the citizenship is never assumed never to have been acquired (see e.g. POR 16, 18). In Greece, Italy and in Germany until 2009, the citizenship law itself does not provide expressly for loss of citizenship due to fraud, but this mode of loss can be applied on the basis of general principles of administrative law. In Austria, apart from the nullification procedure mentioned in the Nationality Act (AUT 24), it is also possible to 'reopen' the naturalisation procedure (*Wiederaufnahme*) on the basis of administrative law in the case of fraud, new facts, new pieces of

[25] Police Section of the Immigration and Nationality Directorate of the Home Office. Personal communication by Andrew Hirst, 7 September 2000.

[26] The district court of Aabenraa on 3 December 2002, upheld by the Western High Court on 10 April 2003 (see *Ugeskrift for Retsvæsen* 2003.1600V). The target person had been sentenced in 1988 to imprisonment and permanent expulsion but had re-entered Denmark in 1991 under a false name and date of birth and subsequently acquired Danish citizenship in 1999. He was deprived of his citizenship by retroactive effect of the new law in spite of the fact that he became stateless.

evidence or new decisions on relevant preliminary questions. In the case of fraud the revocation of a naturalisation decree is possible even if statelessness would be the consequence.[27] In other cases, reopening is only possible if the revocation would not cause statelessness.[28]The Austrian approach of reopening the procedure obviously inspired the newly enacted rule in neighbouring Czech Republic, where after discovery of fraud during the procedure within three years after the naturalisation a 'renewal' of the procedure can be initiated.

Another procedural difference that can be observed across countries is the moment where the loss of nationality due to the withdrawal or nullification becomes effective. Does the loss take place at the moment the competent authority communicates the deprivation decision to the person involved or only after all judicial remedies are exhausted by this person? It is remarkable that in Bulgaria no judicial appeal is possible against a (presidential) decision to withdraw nationality due to fraudulent acquisition. This is at odds with Art. 12 ECN, which prescribes that a "State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law". On the occasion of the ratification of the ECN Bulgaria made a reservation regarding this provision, but this reservation became problematic in view of the 2010 Rottmann ruling of the ECJ. If a deprivation of nationality only happens after a proportionality test, a logical consequence is that a judicial control of the correct application of that test must be possible. In all other member states such judicial control is possible. However, in quite a number of member states the decision of the authorities has direct effect (CYP, EST, FRA, GRE, MAL, NET, ROM, SPA and UK). Consequently, during the judicial procedure the person involved is already treated as a non-national. We would like to submit that such approach is highly problematic.[29]

A special difficulty is whether the naturalisation of a person under a false name is valid and can under certain circumstances be revoked. Of course it is obvious that in such a case it is almost always the naturalised person him/herself who provided false information as to his or her identity. In the Netherlands, the Supreme Court decided in several cases that the naturalisation of a person under a false name is void in respect of the person who applied under this false name: it was not she or he but another who was naturalised.[30] A similar line of argument is followed by the authorities of the United Kingdom. In Finland, however, authorities came to the opposite conclusion: naturalisation is regarded as valid (Rozas & Suksi 1996, note 56). In Germany the false identity, as such, also does not make the naturalisation decree null and void (Von Klüchtzer 1998: 131; De Groot & Wautelet 2014). [31]

[27] Par. 69 (1) *Allgemeines Verwaltungsverfahrensgesetz. Bundesgesetzblatt 1991*, 51.

[28] AUT 24. See Mussger & Fessler 1996, 90, 91

[29] Tunis Conclusions, par. 27.

[30] HR 11 November 2005, rek.nr. R04/127; compare HR 30 June 2006, rek. Nr. 05/095 where this approach was exclusively endorsed for naturalisations which took place before 1 April 2003.

[31] Verwaltungsgerichthof Baden-Württemberg 3 December 2013, 1 S 49/13, available on http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&GerichtAuswahl=Verwaltungsgerichte&Art=en&sid=70f8887a6471f8840902a4af8ac79cf3&nr=17560&pos=0&anz=171.

Table 2b. Loss due to fraud – general provisions

EUDO CITIZENSHIP Mode of Loss of Citizenship: L09, ILEC Questionnaire: Q2.1, 2.5, 2.7, 2.10-2.13

	Article in law	**Procedure**	**Definition of 'fraud'**	**Scope of application**	**Loss effective only after exhausting judicial remedies?**	**Can result in statelessness?**	**Time limit (years)**
AUT	24* + *GPAL*	Nullification	Person acquired citizenship based on a faked document or wrong information, criminal activity, or by fraud in some other way.	Person has acquired citizenship by naturalization.	Unclear.	Yes	–
BEL	23(1), 23(9), 23/1	Withdrawal	Person has acquired citizenship by means of false representation, use of forged documents or concealment of facts which would have precluded the granting of citizenship.	Person has acquired citizenship other than by birth.	Yes	Yes	5
BUL	22	Withdrawal	Person has acquired citizenship by naturalisation based on false data and facts, or has concealed facts that could have justified a negative decision	Person has acquired citizenship by naturalisation	No judicial appeal	No	10
CRO	–	–	–	–	–	–	–
CYP	113(2)	Withdrawal	Person has intentionally provided false or misleading information or held back information which was decisive for the acquisition of citizenship.	Person acquired citizenship by registration or naturalisation	No	Yes	–
CZE	39	Withdrawal ('renewal of the procedure')	Person has acquired citizenship based on false evidence provided that this could justify different outcome of the proceedings.	Person has acquired citizenship by naturalisation or by declaration	Yes^	Yes	3 years
DEN	8A	Withdrawal*	Person has intentionally provided false or misleading information or held back information which was decisive for the acquisition of citizenship.	All non-automatic acquisition procedures	Yes	Yes	–
EST	28(1)(4)	Withdrawal	Person acquired	Person	No	Yes	–

			citizenship based on false information and thereby conceals facts which would have precluded the grant or reacquisition of citizenship.	acquired citizenship by naturalisation or reacquisition			
FIN	33	Withdrawal	Person acquired citizenship by declaration or naturalisation by providing false or misleading information, or withholding relevant information decisive for the acquisition of citizenship.	Person acquired citizenship by declaration or naturalisation	Yes	Yes	5
FRA	27-2	Withdrawal	Person has acquired citizenship while failing to meet statutory requirements or based on misrepresentation or fraud	Person has acquired citizenship by declaration, naturalisation or reacquisition	No	No	1 / 2*
GER	35	Nullification	Person acquired, or has been allowed to retain, citizenship by wilful deceit, threat, bribe or by giving wilfully wrong or incomplete information.	All non-automatic acquisition procedures. * + prevention of loss	Yes	Yes	5
GRE	*GPAL*	Withdrawal	Person acquired citizenship based on false information or fraud.	All acquisition procedures.	No	Yes	–
HUN	9	Withdrawal	Person acquired citizenship due to false information or fraud in the acquisition procedure	Person acquired citizenship other than by birth	Yes	Yes	10
IRE	19(1)(a)	Withdrawal	Person acquired citizenship based on fraud, misrepresentation or concealment of material facts or circumstances.	Person acquired citizenship by naturalisation	No	Yes	–
ITA	GPAL	Withdrawal	Person acquired citizenship based on fraud (void marriage, void adoption, false documents etc).	Person acquired citizenship by naturalisation or by recognition of paternity or by adoption.	Yes	Yes	–
LAT	24(1)(1), 24(1)(3),	Withdrawal	Person has intentionally provided	Person has acquired	Yes	No	10 years

	24(3), 24(4)		false information or concealed the facts that apply to the conditions for the acquisition or restoration of Latvian citizenship	citizenship by verifying a right to hold citizenship of Latvia, or by naturalisation			
LIT	24(5)	Withdrawal	Person acquired citizenship by means of forged documents or any other fraud	All types of citizenship acquisition	Yes	Yes	–
LUX	15	Withdrawal	Person acquired citizenship by providing false information, dissimulation or fraud in the acquisition procedure	Person acquired citizenship, otherwise than by descent	Yes	No	–
MAL	14(1)	Withdrawal	Person acquired citizenship by means of fraud, false representation or concealment of any material fact	Person acquired citizenship by registration or naturalisation	No#	Yes	–
NET	14(1)	Nullification	Person acquired citizenship based on false information or fraud in procedure (since 2003: incl. identity fraud)	Person acquired citizenship by registration or naturalisation	No	Yes	12***
POL	–	–	–	–	–	–	–
POR	16, 18 + artt. 87-88 Civil Registry Code	Nullification	Persons acquired citizenship based on false information or a non-existent fact	Person acquired citizenship by registration or naturalisation	Yes	Yes	20
ROM	25(1)(c)	Withdrawal	Person acquired citizenship due to fraud	Person acquired citizenship by naturalisation	No	Yes	–
SLK	8(b)(1)	Nullification	Person acquired citizenship with falsified documents or documents that did not belong to him/her, or the person failed to inform the authorities of facts that could have substantial influence on the decision, or citizenship was acquired as a result of a crime, or the documents to acquire citizenship were	Person acquired citizenship by naturalisation	Unclear	Yes	–

			obtained through criminal action.				
SLN	16(1)	Nullification	Person acquired citizenship by naturalisation based on false declarations or deliberate concealment of essential facts or circumstances	Person acquired citizenship by naturalisation	Yes	Yes	–
SPA	25(2) 25(1)(a)	Nullification	Person acquired citizenship by fraud, falsity, or concealment of information	Person acquired citizenship, other than by birth	No	Yes	15
SWE	–	–	–	–	–	–	–
UK	40(3)	Withdrawal	Person acquired citizenship as a result of fraud, false representation or concealment of relevant facts	Person acquired citizenship by declaration or naturalisation	No	Yes	–

GPAL = General Principle of Administrative Law

^CZE: the decision-making authority may under certain circumstances (public interest) exclude the suspensive effects of an appeal (Section 85, Paragraph 2 of the Code of Administrative Conduct).

* FRA: Time limit = 1 year after acquisition, if failure to meet statutory requirements, or 2 years after discovering lie or fraud

** GRE: Based on general principle administrative law.

*** NET: unless the person is convicted for one of the offences referred to in articles 6, 7 or 8 of the Rome Statute of the International Criminal Court.

MAL: Following the Minister's decision to deprive the person of his Maltese citizenship, the person is given notice of the right to appeal. The case is reviewed by a Committee, which following the relative procedures submits its recommendations to the Minister. The deprivation becomes effective when the Order is issued. Although administrative and/or judicial review is not possible following the issue of an order, nonetheless, there were instances when the individuals instituted constitutional redress proceedings.

3.2 Specific considerations

3.2.1 Introductory remarks

It follows from the ECJ ruling in Rottmann that a member state may deprive a national of the citizenship acquired via naturalisation in case of the discovery of fraud during the procedure even if statelessness would be caused. However, the Court prescribes the application of a proportionality test and gives some guidelines regarding the elements of a case which may play a role:

a) The consequences that the decision entails for the person concerned;

b) The consequences for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union;

c) The gravity of the offence committed by that person;

d) The lapse of time between the naturalisation decision and the withdrawal decision and

e) Whether it is possible for that person to recover his original nationality.

Hereinafter we will assess to what extent the member states of the European Union pay attention to these special considerations if they are confronted with cases in which fraud took place during the naturalisation procedures.[32] We subsequently discuss the need to consider the causal link between the committed fraud and

[32] Compare the Latvian Supreme Court Senate of 22 June 2011 (No.SKC215/2011) which noted that during deprivation

the original acquisition of citizenship, followed by the issue of the culpability of the person involved; the person's situation; thereafter, attention will be paid to the consequences of the loss of citizenship of the person involved for the family members; finally, some remarks on procedural issues are appropriate (see Table 2b for a detailed overview).

Table 2c. Loss due to fraud: due consideration to…
EUDO CITIZENSHIP Mode of Loss of Citizenship: L09, ILEC Questionnaire: Q2.4, 2.6, 2.8, 2.9

	Causal link between fraud & acquisition	**Culpability**	**Person's situation**	**Consequences for family members**
AUT	No	Unclear	No	No
BEL	No	Yes	No	Unclear
BUL	Yes	Yes	No	No
CRO	n.a.	n.a.	n.a.	n.a.
CYP	Yes	No	No	No
CZE	Yes	Yes	Unclear	No
DEN	Yes	Yes	Yes	No
EST	Yes	Yes	No	No
FIN	Yes	Yes	Yes	Yes
FRA	Yes	Yes	Yes	No
GER	Yes	Yes	Yes	Yes
GRE	Yes	No	Yes	No
HUN	Unclear	Yes	No	No
IRE	Yes	No	No	No
ITA	No	Yes	No	No
LAT	Yes	Yes	Yes	No
LIT	Yes	Yes	No	Yes
LUX	Yes	Yes	No	No
MAL	Yes	Yes	No	Yes
NET	Unclear	Yes	Yes	Yes
POL	n.a.	n.a.	n.a.	n.a.
POR	Yes	Yes	Yes	Yes
ROM	No	Yes	No	No
SLK	No	No	No	No
SLN	Yes	No	No	No
SPA	Yes	Unclear	Unclear	Yes
SWE	n.a.	n.a.	n.a.	n.a.
UK	Yes (but: see s40)	Yes	Yes (residence: 14 years)	No

3.2.2 Causal link between the fraud and the naturalisation

In several member states the relevant legal provisions expressly mention that the fraud committed must have been decisive for the acquisition of nationality; in other words, there must be a 'causal link' between the fraud and the grant of nationality. Only for two countries (ROM and SLK)[33] did experts indicate that causality between fraud and acquisition is not relevant. In some member states the situation is not completely

proceedings it is necessary to verify proportionality of such decision, as well as that the obligation of verification lies with the court.

[33] However, SLK 8b(1)(c) suggests that causality may be relevant.

clear. An example constitutes a case recently decided by a court in the Netherlands.[34] The court concluded that the naturalisation of a person could be nullified because she submitted her application for naturalisation using partially false personal data. The fact that the person did so was considered to be serious enough to justify the nullification, because if the authorities had been aware of the fact that the applicant for naturalisation was using false personal data, they would not have naturalised her. This is, however, a wrongful assessment of causality in the context of a proportionality test. The court should have assessed whether or not the naturalisation would have been granted if the authorities had known the correct personal data. In other words, the act of fraud must be material to the acquisition of nationality. Deprivation of nationality is not permissible if the naturalisation would have been granted, even if the fraud had not occurred.[35]

3.2.3 Culpability

In the context of a proportionality test the degree of culpability regarding the fraud evidently matters. In several member states due consideration is given to the culpability of the person concerned in the act and the circumstances in which the fraud is committed. However, in five member states experts indicate that the (degree) of culpability is not relevant. This is evidently at odds with the aim of any proportionality test.

3.2.4 Personal situation

States should also give due consideration to the person's situation, including whether the person who committed the fraud has developed a genuine and effective link with the state in question.[36] But of particular importance is whether or not in the case of deprivation of nationality the continuation of residence in the country is still guaranteed. A huge variation of approaches can be observed across countries. Only in respect of eight countries did experts indicate that the personal situation was relevant during the proportionality assessment. However, in some countries, there is only a limited control of the personal situation. In France, for example, the administrative judge will only review whether there has been a manifest mistake in the assessment by the authorities of the consequences of the decision on the individual situation of the person concerned.[37] In some other countries a limitation period exists that can be classified as a formalised and standardised assessment of the above-mentioned genuine link element.

3.2.5 Consequences for family members

The Rottmann ruling prescribes also that due consideration is given to the consequences of the loss of nationality for family members of the person involved. On this element of the Rottmann guidelines some confusion exists. Evidently, some experts interpret this criterion as related to the extension or non-extension of the loss of nationality due to fraud to family members. However, if one takes the proportionality test seriously it has to apply to all persons who acquired the nationality by a certain act of naturalisation individually. If a man was naturalised together with his wife and children, this implies that in the case of discovery of fraud committed by this man, a separate, individual assessment of the proportionality of a nullification of naturalisation has to take place for the wife and for each of the children. Consequently, the Court in Rottmann cannot have meant to refer to the issue of extension of loss. However, what should be assessed in the context of the proportionality test is whether or not family members lose rights, e.g. residence rights as a dependent third-country national, due to the fact that their spouse or parent would lose European citizenship.[38]

3.2.6 Recovery of original nationality possible?

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[34] Raad van State 13 december 2013, ECLI:NL:RVS:2013:2401, Jurisprudentie Vreemdelingenrecht 2014, No. 66, 338-342 (with comment of De Groot).

[35] Tunis Conclusions, par. 58.

[36] Tunis Conclusions, par. 22.

[37] See e.g. Council of State 22 Feb. 2008, Nr. 303709.

[38] Tunis Conclusions, par. 23.

It follows from Rottmann that deprivation of nationality due to fraud may – under circumstances – cause statelessness. However, whether or not this consequence should be accepted in the concrete case must be part of the mandatory proportionality test.[39] In that context it may also be relevant to assess whether a previous nationality lost by the naturalisation can be recovered.

3.3 Loss due to non-renunciation of previous citizenship

The answer to the question, whether non-renunciation is a ground for loss that is covered by ECN 7(b), is by no means straightforward. After all, not fulfilling a promise cannot be classified as fraud, false information or concealment of any relevant fact. Nevertheless, the explanatory memorandum on the ECN gives, as an example of cases covered by ECN 7(1)(b), "a person acquires the nationality of the State Party on condition that the nationality of origin would subsequently be renounced and the person voluntarily did not do so". In other words, in line with the explanatory report, contracting parties would be entitled to provide for the loss of citizenship based on the ground of non-renunciation of previous citizenship (see also Kreuzer 1997: 128). To be on the safe side, Austria has made a reservation to this article of the ECN indicating that it retains the right to deprive persons of Austrian citizenship based on the ground of non-renunciation.

In nine out of twenty-eight countries, it is possible to revoke the naturalisation, because a naturalised citizen did not divest herself or himself of her or his previous citizenship. This is a relatively small, and decreasing, group of countries, which clearly results from the – growing – acceptance of multiple citizenship (cf. Vink, De Groot and Luk 2014). This ground for loss is only relevant in those countries where the renunciation of the previous citizenship is a requirement for naturalisation. A renunciation requirement reflects the attitude of a state towards multiple nationality. It is therefore remarkable that Bulgaria does have a renunciation requirement and a corresponding practice of deprivation of nationality in case of non-renunciation. As we saw, Bulgaria does not provide for loss of Bulgarian nationality in the case of voluntary acquisition of another nationality. Consequently, the question of what happens if a naturalised Bulgarian did renounce the original nationality, but later reacquires it has to be raised. The Slovakian position contrasts with the Bulgarian one, as Slovakia does not have a renunciation requirement for naturalisation and a corresponding possibility of deprivation due to non-renunciation, but since 2010 the voluntary acquisition of a foreign nationality is a ground for loss. The fact that no renunciation requirement exists can be explained by the fact that until 2010 Slovakia did not provide for loss of nationality due to voluntary acquisition of another nationality, but only introduced this ground for loss to avoid that members of the Hungarian minority in Slovakia would *en masse* acquire Hungarian nationality in addition to their Slovak nationality.

Germany is the only case where such a ground is not specified in the citizenship act, although given the renunciation requirement for naturalisation one would expect a mirroring ground for loss due to non-renunciation. This discrepancy must be viewed in line with the German Basic Law, which forbids deprivation of citizenship (Article 16).[40] The other countries that have a renunciation requirement all maintain a ground for loss due to non-renunciation. In Austria, for example, a person shall be deprived of her or his Austrian nationality if she or he had acquired the nationality more than two years previously, either through naturalisation or extension of the naturalisation; and retained a foreign nationality, despite the acquisition of Austrian nationality, for reasons under her or his responsibility (AUT 34(1)). The target person shall be informed about the intended withdrawal of her or his Austrian citizenship at least six months prior to the intended deprivation. After expiry of this period the deprivation shall be decreed without undue delay. Deprivation is no longer admissible after six years following the granting, or extension of granting, of Austrian citizenship. In the Netherlands and Slovenia non-renunciation is a ground for nullification of the acquisition, whereas in Spain it may cause the lapse of Spanish citizenship (however, this is of little practical relevance because of a lack of administrative control). In Latvia and Lithuania the possibility of deprivation of

[39] Tunis Conclusions, par. 23.

[40] Under certain circumstances Germany applies the sanction of a financial penalty if a naturalised citizen does not renounce her or his previous citizenship although he committed to this obligation during the naturalisation procedure. See *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* of 18 October 2000, Par. 8.1.2.6.2.

nationality because of non-renunciation of a previous citizenship is based on the general provision on fraud during the naturalisation procedure (see also BUL 12(6), DEN 8A[41], EST 28(1)(5)).

Table 3. Loss due to non-renunciation

EUDO CITIZENSHIP Mode of loss of citizenship: L10, ILEC Questionnaire: Q2.1

	Article in law	**Procedure**	**Time limit**
AUT	34	Withdrawal	6 years
BEL			
BUL	12(6)	Withdrawal	–
CRO	–	–	–
CYP			
CZE	–	–	–
DEN	8A	Withdrawal	–
EST	28(1)(5)	Withdrawal	–
FIN	–	–	–
FRA	–	–	–
GER	–	–	–
GRE	–	–	–
HUN	–	–	–
IRE	–	–	–
ITA	–	–	–
LAT	24(1)(3), 24(3), 24(4)	Withdrawal	10 years
LIT	21(1)	Withdrawal	–
LUX	–	–	–
MAL	–	–	–
NET	15(1)(d)	Nullification	–
POL	–	–	–
POR	–	–	–
ROM	–	–	–
SLK	–	–	–
SLN	16(2)	Nullification	–
SPA	25(1)(a)	Lapse	–
SWE	–	–	–
UK	–	–	–

[41] It is expected that Denmark will abolish the renunciation requirement in the course of the year 2015.

Concluding observations

To conclude, we observe a general trend across European countries – manifested by the European Convention on Nationality – that the revocation of a naturalisation decree is restricted to cases of fraud, misrepresentation and concealment of relevant facts. In recent years several states introduced the possibility to deprive persons of their citizenship in such cases, even if this leads to statelessness. Furthermore, although the ECN does not explicitly prescribe time limits, the 'genuine connection' principle calls for some limits as to the time period after which states can deprive persons of their citizenship, even if that citizenship is acquired by fraud. Although a number of countries provide such time limits, the majority of countries do not.

The following observations and recommendations can be made:

- A proportionality test must always be applied when deciding on the deprivation of nationality on the grounds of fraudulent acquisition of the nationality concerned. Such a test must also be applied in cases where no potential statelessness is at stake. In the context of the proportionality test the issues mentioned above in par. 4 deserve particular attention.
- A deprivation of nationality based on fraudulent behaviour should never extend to other persons but be based on a decision for each concerned person individually, taking into account all individual circumstances. For that reason an extension of such deprivation to children is unacceptable.
- A proportionality test should also be applied in deprivation procedures that result from the non-renunciation of another nationality, in those member states where such renunciation is a requirement for naturalisation and the non-renunciation is a ground for deprivation of nationality.

Box 3. The German option provision

When Germany adopted a new citizenship act in 2000 under the new red-green government, one of the landmark innovations was the introduction of a new ius soli provision which extents automatic acquisition of German citizenship to persons born in Germany, independent of the citizenship of their parents (GER 4(3). However, and importantly, this *ius soli* access to German citizenship is far from unconditional, and apart –mainly – from the resident status of the parents, one crucial aspect of the automatic acquisition is a so-called option provision implying a citizenship choice between the age of 18 and 23.

In particular, target persons are required to submit a written declaration to the German authorities, whether they wants to retain German nationality within five years of reaching the age of 18 years (GER 29). If the target person chooses foreign citizenship, German citizenship is lost. If no declaration is made before the 23rd birthday, German citizenship is lost as well. Before the 21st birthday an application can be made to receive a permit of retention of the foreign citizenship alongside German citizenship. This permission must be granted if the renunciation or loss of the foreign citizenship is impossible or unreasonable, or if the other citizenship is of a member state of the European Union or Switzerland (GER 12).

This German construction, which is both a conditional acquisition and a loss provision, is unique in Europe and also not covered by any of the exclusive grounds for loss of citizenship mentioned in the European Convention on Nationality (Article 7). For that reason Germany made a reservation at the occasion of the ratification of the European Convention on Nationality:

> Germany declares that loss of German nationality *ex lege* may, on the basis of the 'option provision' under Section 29 of the Nationality Act [*Staatsangehörigkeitsgesetz*-StAG] (opting for either German or a foreign nationality upon coming of age), be effected in the case of a person having acquired German nationality by virtue of having been born within Germany (*ius soli*) in addition to a foreign nationality.

With regard to the practical implications of this new rule, a difference needs to be made between persons who fall under the main provision of the new rule, or rather the transitory provision. Minors born in Germany before 2000, who were younger than 10 years old, could acquire German citizenship through an entitlement to naturalisation under a transitory provision (GER 40b). These persons are required to opt for German citizenship from 2008 onwards, depending on their age in the year 2000. They will lose German citizenship automatically at the earliest at their 23rd anniversary, if they fail to renounce, or do not obtain permission to retain, their citizenship by descent. Due to transitory rules, these cases of loss occurred from

2013 on and were heavily criticised in the literature (Lämmermann 2012: 75-79). Persons born in Germany to foreign parents, after 2000, who automatically acquired German citizenship *iure soli*, are at the earliest required to opt for German citizenship in 2018.
The new German government, which came into power after the 2013 elections, agreed on a modification of the option obligation. In April 2014 the German cabinet approved a draft bill that exempts young people from the obligation to opt if, at the age of 21, they can prove they have lived in Germany for at least eight years, gone to school in the country for six years, gained school-leaving qualifications there or completed vocational training in Germany.[42] However, it is still doubtful whether these conditions for being exempted are in conformity with EU law, if the person concerned did not fulfil these conditions because (s)he was living and going to school in another member state of the European Union due to the fact, that (s)he was accompanying parent(s) who were using free movement rights guaranteed by European law.[43] However, Hailbronner argues that the proposed rules are in conformity with EU law.[44]

4. Voluntary foreign military service and non-military public service

Citizenship is a status that not only endows individuals with rights and privileges, but also requires a degree of loyalty from citizens towards the community that grants those rights and privileges. Classically, the loyalty of citizens is expressed in the willingness to fight and – *in extremis* – to die for one's country, but also in the duty to fulfil political functions, when called upon. An important aspect of such a classical attitude is that this kind of citizen loyalty, towards her or his state, should be undivided. In other words, citizens should not serve in the army of a foreign state or perform other, non-military services for another state. Although the abolition of mandatory military service in many European states, and the construction of an integrated Europe, have made issues of war and military service less pertinent, the citizenship of laws of several states still express this loyalty requirement in the form of provisions for the loss of citizenship due to voluntary foreign military service (L03) and non-military public service (L04). These provisions can partly be seen as remnants of the past, and as expressions of state-building exercises, but partly they also express an ongoing concern that citizenship – even in times of increasing occurrence of multiple citizenship – is ultimately more than just a legal status and requires from individuals at least some minimal form of loyalty towards the state.

The European Convention on Nationality (ECN 7(1)(c)) allows for loss of citizenship because of voluntary service in a foreign military force. The Explanatory Memorandum explains that it does not matter whether the person involved served in the official army of another state or not. The provision covers every voluntary military service in any foreign military force, irrespective of whether it is part of the armed forces of a foreign state. Although the 1961 Convention on the reduction of statelessness does not contain a corresponding provision, it does contain some relevant provisions:

> Notwithstanding the provisions of paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:
>
> a. that, inconsistently with his duty of loyalty to the Contracting State, the person
>
> (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
>
> (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;
>
> b. that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State

[42] The amendment has been published as Act of 13 November 2014 in *Bundesgesetzblatt* I, 1714 and came into force on 20 December 2014.

[43] Drucksache (BT) 18/1312. See also Reuters 8 April 2014, available on http://uk.reuters.com/article/2014/04/08/uk-germany-citizenship-idUKBREA3715220140408.

[44] Presentation during the ILEC midterm conference (April 2014).

(1961 Convention, Article 8(3)).[45]

> A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this Article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body (1961 Convention, Article 8(4)).

The ECN stipulates that voluntary military service may not cause statelessness, but does not contain a special procedural guarantee such as Article 8(4) of the 1961 Convention. As it is not difficult to imagine that interpretative difficulties may arise, in particular with regard to military service other than in the armed forces of a foreign state, such a specific procedural clause would have been a welcome addition to ECN 7(1)(c). However, the general procedural guarantees of Articles 11 and 12 ECN do apply (reasons in writing and judicial review). For that reason it is worrying that two member states (Bulgaria and Hungary) made a reservation on Article 11 ECN and three member states on Article 12 (Bulgaria, Denmark and Hungary). Obviously the absence of judicial control is contrary to the rules that can be derived from the Rottmann ruling of the ECJ.

4.1 Foreign military service

When looking at the relevant provisions in citizenship laws across European countries, we find that nine countries provide for loss of citizenship in the case of voluntary foreign military service (see Table 4). In six countries the loss may occur after a withdrawal procedure (AUT, EST, FRA, LAT, LIT, ROM). In three member states foreign military service may cause an *ex lege* lapse of nationality (GER, NET, SPA). However, it is precisely in these three countries that the provisions concerned deal with voluntary military service *of another state*, not with service in other non-state military forces.

In the Netherlands, until 1985, voluntary foreign military service (or state service) without the permission of the King [read: the government] automatically caused the loss of Dutch citizenship (NET 7(4) 1892). However, the flipside of this ground for loss became apparent when several persons who went into German military service during the 1930s or 1940s faced charges after the end of WWII. These persons rejected the jurisdiction of the Netherlands in respect of crimes possibly committed by them during that period on the grounds that, if they had committed such crimes, they would have committed them as non-Dutch citizens in a foreign country. This legal loophole was the reason to abolish this ground for loss in 1985. Nevertheless, in response to the participation by (naturalised) Dutch citizens as soldiers in the armed conflicts in former Yugoslavia, foreign military service as a ground for loss was reintroduced in 2003 (NET 15(1)(e)). For the same reason a similar provision was introduced in Germany in 2000 (GER 28). In the past Germany had corresponding provisions (GER 22 (1870), GER 28 (1913)) but it was generally accepted that this ground for loss was 'forbidden territory' since the 1949 constitutional ban on deprivation of citizenship (Basic Law 16(1)). Whereas the old provisions left the German authorities with a margin of appreciation (Massfeller 1995: 65, Hailbronner et al. 2010, 719), in the new construction the loss occurs automatically. Nevertheless, due to the fact that the provision focuses on voluntary foreign military service, no statelessness is caused and the authorities still have the possibility to avoid the loss by granting consent according to the German statute on military service, this loss provision is in accordance with the constitutional ban on deprivation of citizenship (Hailbronner et al. 2010, 720).

Table 4. Loss due to serious prejudicial behaviour, foreign military service or state service

EUDO CITIZENSHIP Mode of Loss of Citizenship: L03, L04, L07, ILEC Questionnaire: Q2.15

	Article in law	Procedure	Grounds	**Special target group?**	**Can lead to statelessness?**	**Procedural guarantees?**
AUT	32 33	Withdrawal Withdrawal	Military service of a foreign state Foreign service and damage to national interests and	–	Yes Yes	Judicial appeal possible with suspensive

[45] Tunis Conclusions, par. 65-68.

			reputation			effects.
BEL	23(1)(2), 23/1	Withdrawal	Person has violated his/her duties as a national or has been convicted for committing a serious crime against Belgium.	Acquired citizenship other than by birth	Yes	Judicial appeal possible with suspensive effects.
BUL	24	Withdrawal	Person has been convicted for committing a serious crime against Bulgaria	Acquired citizenship by naturalisation	No	Unclear
CRO	–	–	–	–	–	–
CYP	113(3)	Withdrawal	Lack of loyalty to laws of Cyprus; illegal contact with or support to the enemy; convicted in any country for a crime carrying a sentence of one year or more within five years of naturalisation	Acquired citizenship by registration or naturalisation	Yes	Judicial appeal possible but without suspensive effect.
CZE	–	–	–	–	–	–
DEN	7(2) 8B	Lapse Withdrawal	Foreign service, when this leads to acquisition of foreign citizenship Offences against national independence and safety or against the national constitution and the supreme authorities	–	No No	Judicial appeal possible with suspensive effects.
EST	28(1)(1), (2) 28(1)(3)	Withdrawal	State public or military service without governmental permission; intelligence or security service of a foreign state or foreign (para)military organisation; Forcible attempt to change national constitutional order	Acquired citizenship other than by birth	Yes	Judicial appeal possible and person can apply for suspensive effect (not automatic).
FIN	–	–	–	–	–	–
FRA	23-8 23-7, 25(1), (4)	Withdrawal Withdrawal	Military service of a foreign state, or public service against express government prohibition Behaviour as foreigner; crime or offence against the basic national interests; terrorist act; refusal of military duties, or because of service to France.	– Acquired citizenship by declaration, naturalisation or reacquisition (time limit: 10 years)	No No	Judicial appeal possible (unclear whether this has suspensive effect).
GER	28	Lapse	Voluntarily military service of a foreign state without government permission	–	No	Judicial appeal possible with suspensive effects.
GRE	17	Withdrawal	Public service position abroad against express government prohibition	–	Yes	Judicial appeal possible with suspensive effects.
HUN	–	–	–	–	–	–
IRE	19 (1)	Withdrawal	Failure in duty of fidelity	Acquired	Yes	Judicial

			and loyalty to Ireland.	citizenship by naturalisation		appeal possible without suspensive effects.
ITA	12	Withdrawal (in time of war: lapse)	Public service position abroad against express government prohibition	–	Yes	Judicial appeal possible (unclear whether this has suspensive effect).
LAT	24(1)(2)	Withdrawal	Military service of a foreign state or security services without government permission	–	Yes	Judicial appeal possible (unclear whether this has suspensive effect).
LIT	18(1)(4), (5) 21(2)	Withdrawal	Military service of a foreign state or public service position without government permission and with prejudice of national interest Actions directed against national independence and territorial integrity	– Acquired citizenship by declaration of naturalisation	Yes Yes	Withdrawal decision requires confirmation by court (unclear whether further judicial appeal is possible and whether this has suspensive effect).
LUX	–	–	–	–	–	–
MAL	14(2)(a), 14(2)b	Withdrawal	Disloyalty or disaffectedness towards nation or, in wartime, unlawful trading or communication or business with enemy carried on in such a manner as to assist an enemy in that war	Acquired citizenship by registration of naturalisation (time limit: 7 years)	Yes	Minister takes decision to which person can appeal and case is reviewed by a Committee. No further appeal possible.
NET	14(2) 15(1)(e)	Withdrawal Lapse	Person is convicted for crimes against the security of the Dutch state, the royal dignity, the heads of befriended states, or against the exercise of certain rights and duties affecting the (democratic) organisation of the state (crimes which carry a prison sentence of 8 years	– –	No No	Judicial appeal possible without suspensive effects

			or more), or the person committed a terrorist crime, or the person committed certain crimes as described in the Statute of Rome. Voluntary service in an army of a hostile state			
POL	–	–	–	–	–	–
POR	–	–	–	–	–	–
ROM	25(1)(a), 25(1)(d) 25(1)(b)	Withdrawal Withdrawal	Person resides abroad and acts against the interests of Romania, or person supports a terrorist organization and puts at risk the Romanian national security. Person serves in the army of a country with which Romania has broken diplomatic relations or is at war.	Acquired citizenship other than by birth	No	Judicial appeal possible without suspensive effects.
SLK	–	–	–	–	–	–
SLN	26	Withdrawal	Person is a citizen of another country, resides abroad and acts contrary to the international and other interests of Slovenia. Activities considered harmful: member of an organisation engaged in activities to overthrow the constitutional order, or a member of a foreign intelligence service and as such harming the interests of the country or harming such interests by serving under any government authority or organisation of a foreign state, or a persistent perpetrator of criminal offences prosecuted ex officio and of offences against public order, or the person refuses to carry out the duty of a citizen as prescribed by the constitution and the law, despite the appeal of the competent authority.	–	No	Judicial appeal possible with suspensive effects.
SPA	25(1)(b)	Lapse	Voluntary military service of a foreign state or exercises of foreign political office against express government prohibition	Acquired citizenship other than 'by origin'	Yes	Unclear
SWE	–	–	–	–	–	–
UK	40(2)	Withdrawal	Acts which are seriously prejudicial to vital national interests.	–	No	Judicial appeal possible without

						suspensive effects.

In most countries the loss of citizenship is not automatic, but only occurs after an order of the government, which makes it possible to confirm whether voluntary service is indeed an indication of the intent of the person involved to give up his nationality and to apply a proportionality test. In the three Baltic states, for example, citizens do not automatically lose their citizenship as a result of foreign military service, but this is a ground for deprivation of citizenship (EST 21(1)(1), LAT 24(1)(2), LIT 18(1)(4)). In those states where this ground for loss operates *ex lege*, it is also essential that an appeal to an independent court is provided, which can assess the proportionality. Moreover, only after the court decision can no longer be challenged should the loss become effective. During the procedure, the person concerned should still be treated as a national.

4.2 Foreign service

Eight countries provide for the withdrawal of citizenship in cases of foreign state service (AUT, EST, FRA, GRE, ITA, LAT, LIT, SLN, SPA). Three of these states do not make a clear distinction between military service and civil service (GRE, ITA, SLN) (see Table 4). Latvia only provides for withdrawal due to foreign state service, in the case of working for a foreign secret service (LAT 24(1)(2)).

In France citizens can be deprived of their citizenship if they do not resign from service in a foreign army or foreign public service or service of an international organisation in which France does not participate (FRA 23-28). The same applies to general support of a foreign state or international organisation *(ou plus généralement leur apportant son concours)*, if the French government requests the citizen to abstain from such support. The intended deprivation has to be communicated to the person involved and a term no less than 15 days and no longer than two months has to be given to stop the foreign employment. Since 1998 this ground for loss may not cause statelessness. In Greece, where the provisions are less detailed, citizens may be declared to have forfeited Greek citizenship, if they accept a public office in another country and remain there even after the order by the Minister of the Interior to abstain from this service within a defined time limit (GRE 17, Grammaticaki-Alexiou 1996: 400). Greek citizens may also lose Greek citizenship after accepting a public service in another country, if this acceptance leads to the acquisition of the citizenship of this country (GRE 16).

A comparable regulation can be found in Italy, where citizens lose their citizenship if they accept a public office from a foreign state or a foreign public body, or an international body to which Italy does not belong, or if they are in a foreign army, unless they obey, within a fixed term, an order of the government to leave the office or the military service (ITA 12(1)). Different rules apply in wartime. In that case citizens shall lose their Italian citizenship when the state of war ceases, if, during the state of war against a foreign state they either accept or did not leave a public office of that foreign state, or they were in the army of this state without being obliged to be (ITA 12(2)1).[46] In Spain, voluntary foreign military or civil service is not a general ground for automatic loss, but applies exclusively to naturalised citizens, and only to political functions, if the government has expressly forbidden the involved service (SPA 25(1)(b)).[47] The fact that Italy – in the case of war – and Spain do not provide for a deprivation possibility, but an *ex lege* loss, is very problematic, because it excludes

[46] Bariatti (no. 84, 85) underscores that this ground for loss corresponds with of the Italian nationality act of 1912 (Article 8(3)), which was never applied in practice. Furthermore she argues that this regulation could violate Article 22 of the Italian constitution, which forbids depriving somebody of Italian nationality for political reasons. Nevertheless, this ground was again included in the nationality act of 1992. Obviously, the Italian legislator concluded that Article 54 of the Constitution (regarding the obligation of loyalty to the republic) prevails in this context above Article 22. Cf. Bariatti 1996: 484.

[47] Perez Vera and Espinar Vicente (nr. 90) underscore that this ground for loss is interpreted restrictively, although a Decree of 28 December 1967 forbids all Spaniards to volunteer for foreign military service. Cf. Fernandez Rozas & Alvarez Rodrigues (1996: 239) and Alvarez Rodrigues (2008: 123), who are of the opinion that this Decree is no longer in force.

an immediate proportionality test.

In Austria, nationals in the service of a foreign country shall be deprived of nationality if they, through their behaviour, severely harm the interests or the reputation of the Republic (AUT 33). In Denmark taking up a foreign position is only a ground for loss if this leads to the acquisition of a foreign citizenship (DEN 7(2)). Almost identical provisions could be found until recently in the other Scandinavian countries, but they are now deleted from the laws in Finland, Iceland, Norway and Sweden (De Groot 2003: 231). Only the Danish provision remains in existence, but as foreign service rarely leads directly to the acquisition of a foreign citizenship (see e.g. ITA 4(1) and, until recently, AUT 25), the Danish provision has little relevance (De Groot 1989: 213-215).

Some countries do not provide for foreign (military) service as a ground for loss of their citizenship, but include in their legislation provisions that create the possibility of deprivation of citizenship in case of behaviour seriously prejudicial to the state. Foreign (military) service is sometimes classified as such behaviour, as has been the case in Belgium (on 'active collaboration with the enemy', see Verwilghen 1985: 415).[48]

To conclude, notwithstanding the rather broad formulation of ECN 7(1)(c), only some states under consideration use foreign military service as a ground for loss, but only allow deprivation of citizenship because of joining a foreign *state* military force and not in the case of joining a non-state military force (an exception is ROM 25(1)(d)). Apart from the difficulty of defining 'voluntary', which is a problematic concept when the alternative to foreign service would be to leave the foreign country of residence,[49] a further question relates to the relevance of the European Union. If 'foreign service' does not imply, as such, the exercise of public political authority, loss of citizenship because of foreign service in another member state could – under certain circumstances – violate European Union law (Schneider 1995: 367-370).

Moreover, one could argue that even if a national accepts a political position in another member state, deprivation of nationality would not pass the European proportionality test.

5. Seriously prejudicial behaviour

Apart from foreign military service and non-military public service, some states also maintain a more general ground for loss of citizenship due to disloyalty, treason, violation of 'duties as a national', or similar behaviour that is considered to be seriously prejudicial to the interests of the involved state (De Groot 1989: 301, 295-298). The European Convention also mentions conduct in a manner seriously prejudicial to the vital interests of the State Party as a separate ground for loss (ECN 7(1)(d)).[50] The explanatory report on the ECN stresses that the conduct involved includes notably treason and other activities directed against the vital interests of the state concerned, for example work for a foreign secret service, but does not include criminal offences of a general nature, however serious they may be.

We only find this ground for loss in around half of the twenty-eight Member States of this study. In many countries that do not apply this ground for loss, based on historical experiences with authoritarian regimes, the Constitution contains explicit provisions that citizens should not be deprived of their citizenship unless they renounce their citizenship voluntarily (see for example German Basic Law: Article 16(1), Polish Constitution: Article 34(2)).

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[48] Until 1909 Article 17(2) and 22 of the Belgian Civil Code included more specific provisions.

[49] The government of the Netherlands decided in 1988-89, that the nearly automatic acquisition of South African citizenship by persons aged between 15 and 25 years who possess a permanent residence permit and live for a period of five years in South Africa could not be classified as voluntary, even though a possibility to opt out existed, because lodging such an opt- out declaration had as consequence that one had to leave the country.

[50] The wording of ECN 7(1)(d) is drawn from Article 8(3)(a)(ii) of the 1961 Convention on the Reduction of Statelessness. Because the related provisions from Article 8(3)(a)(i) and 8(3)(b) are not included in the ECN, it should be concluded that rendering services to a foreign state or receiving emoluments from another state are not classified as behaviour seriously prejudicial to the vital interests of a state. The same applies for taking an oath, making a formal declaration of allegiance to another state or behaviour, which evidently shows the determination to repudiate the link with the state involved.

Most of the regulations that have loss of citizenship as a consequence based on individual behaviour seriously prejudicial to state interests are drafted in rather general and sometimes vague terms (see Table 4). For example, a Greek citizen may be declared as having forfeited Greek citizenship if she or he, while residing in another country, committed acts incompatible with Greek citizenship and against the interest of Greece (GRE 17(1)(b)). In France citizens who conduct themselves properly as citizens of a foreign state can be deprived of their French nationality by a decree with the consent of the *Conseil d'État* if they also possess the citizenship of that foreign country (FRA 23-7). In practice this provision is not applied if a person, for example, fulfils an (elected) public function in a foreign country, but only if she or he damages the interests of France, for example by committing certain crimes punishable with at least five years of prison, or commits hostile acts (Fulchiron & Dumoulin: No. 219, Lagarde 1996: 323; Mantu 2014: 201-2018). Luxembourg abolished a similar provision in 2008. In Belgium, the main reason for deprivation based on this ground for loss is a threat to the security of the state and to national independence by active collaboration with the enemy in time of war. This provision was introduced in 1934 and included in the 1985 Nationality Act, with some modifications (Verwilghen 1985: 412-419).

The United Kingdom traditionally had a very elaborate regulation of deprivation of British nationality for naturalised citizens. Until 2006, deprivation by order of the Secretary of State was possible if the target person: a) had shown himself by act or speech to be disloyal or disaffected towards Her Majesty; or b) had, during any war in which Her Majesty was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to her or his knowledge carried on in such a manner as to assist an enemy in that war; or c) had, within the period of five years from the relevant date, been sentenced in any country to imprisonment for a term of not less than twelve months (UK 40(3) old). Since 2006, the regulations are more concise and deprivation of citizenship is possible if the Secretary of State is satisfied that this is "conducive to the public good" (UK 40(2)). Although the Secretary of State also had a large degree of discretion before 2006, the revision seems to imply a greater degree of administrative discretion (Mantu 2014: 153-182). The Cypriot (CYP 113(3)), Irish (IRE 19(1)) and Maltese (MAL 14(2)) provisions are very close to the pre-2006 regulations in the UK.

From an international law perspective, two basic problems can with observed in a number of countries. First, ten countries apply these rules only to naturalised citizens. Second, in some countries this ground for loss can lead to statelessness. First, in Estonia, for example, the loss regulations for seriously prejudicial behaviour apply to naturalised citizens who forcibly attempt to change the constitutional order of Estonia (EST 28(1)(3)), whereas in Lithuania they apply to naturalised citizens who attempted to commit, or committed, criminal acts against the Republic of Lithuania (LIT 21(2)). The exclusive application to naturalised citizens is problematic and in violation of the European Convention (ECN 5(2)). We observe a similarly problematic restriction to naturalised citizens also in Belgium (BEL 23(1(2)), Bulgaria (BUL 24), Cyprus (CYP 113(3)), France (FRA 23-27), Ireland (IRE 19(1)), Malta (MAL 14(2)), Romania (ROM 15) and Spain (SPA 25(1)(b)).

The second problematic aspect is whether a state may deprive a citizen of her or his citizenship, even if this leads to statelessness. Most states either explicitly apply these loss regulations only to dual citizens, or they state that loss of citizenship may not occur if this leads to statelessness, which in practice amounts to the same, i.e. applying these regulations only to dual citizens (see last column of table 3). In Denmark, where a violation of the Danish Penal Code Chapters 12 and 13 can lead to a withdrawal of Danish citizenship, by court judgment, loss cannot occur if this would lead to statelessness (DEN 8B). Similar safeguards are found in Bulgaria, France, Slovenia, Netherlands and the UK.[51] In Austria, Belgium, Estonia, Ireland, Lithuania and Malta it is unclear whether protection against statelessness exists for this ground of loss of citizenship.

Although loss provisions on this ground exist in about half of the 28 member states of the European Union, many of these provisions are old and were until recently not often applied in practice (though systematic evidence on this is lacking due to the absence of reliable and comparable statistics on the loss of citizenship). However, due to the participation of a significant number of Europeans participating in the jihadist aggression

[51] In the UK a pending bill proposes to abolish this safeguard. However, the House of Lords is skeptical about this. See website BBC of 7 April 2014, available on http://www.bbc.com/news/uk-politics-26930341.

in Iraq and Syria, in several countries the desirability of introducing, respectively enforcing this ground for loss is subject of political debates.[52] The provisions that arise from these debates are problematic, especially with regard to the unequal treatment of citizens (for example, if only naturalised citizens – but not 'natural born' citizens – can be deprived of nationality) and the occurrence of statelessness. The fact that many provisions are also rather general in scope makes this ground for loss a potential source of legal insecurity.

The following observations and recommendations can be made on withdrawal of nationality due to undesirable behaviour (foreign (military) service or other behaviour seriously prejudicial to vital interests of the State:

- Loss of nationality due to undesirable behaviour should never cause statelessness (Art. 7 European Convention on Nationality);
- Due to the paramount importance of the proportionality principle, loss of nationality due to undesirable behaviour should never occur automatically, but always by deprivation through means of an explicit decision by competent authorities;
- The unacceptable character of the undesirable behaviour of the person involved should be proven beyond any reasonable doubt. Such behaviour should constitute a crime and a criminal court should have imposed a sanction;
- Foreign military service in the army of another member state of the EU should never by a ground for deprivation of nationality;
- Foreign state service should not be a ground for deprivation, except in cases where this service can be classified as behaviour seriously prejudicial to the vital interests of the state.

6. Permanent residence abroad

The idea that citizenship should express a genuine link between a person and a state and that the loss of this link should also imply the loss of the status is arguably expressed most clearly in provisions in citizenship laws that provide for the loss of citizenship for those citizens who permanently reside in another state (De Groot 1989: 290-295). The European Convention also explicitly allows for the loss of citizenship because of a "lack of a genuine link between the State Party and a national habitually residing abroad" (ECN 7(1)(e)). The explanatory report on the ECN underscores that:

> Possible evidence of the lack of a genuine link may in particular be the omission of one of the following steps taken with the competent authorities of the State Party concerned:
>
> (i) registration;
>
> (ii) application for identity or travel documents
>
> (iii) declaration expressing the desire to conserve the nationality of the State Party.

The explanatory report stresses that "[i]t is presumed that the state concerned will have taken all reasonable measures to ensure that this information is communicated to the persons concerned." The right to an administrative or judicial review (ECN 12) is underlined with regard to this ground for loss. Arguably this also implies that a judge could come to the conclusion that, although formal criteria for the loss of citizenship may be fulfilled, there still is a genuine link between the respective state and the target person.

Statelessness is obviously one of the issues that may arise in such a case and the European Convention indicates that loss of citizenship based on continued residence abroad, failure to register or similar grounds may not occur if this would lead to statelessness. Whereas the 1961 Convention originally accepted that these loss provisions may, exceptionally, cause statelessness, the Tunis Conclusions underscore that nowadays a more

[52] See also the discussion on EUDO CITIZENSHIP on "The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?", available on http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship.

restrictive interpretation of the proportionality test is necessary:

> There was a consensus that loss of nationality under Article 7(3) will generally not be permissible if the individual concerned is left stateless. Increasing international migration means that the character of the bond between the individual and the State has considerably evolved and often involves only sporadic contact with the authorities and visits to the country of nationality. As a result, the objective of ensuring strong links between the individual and the State is less relevant than at the time of drafting of the 1961 Convention. Consequently, such provisions have become increasingly rare in nationality laws. In most cases, loss of nationality resulting in statelessness will not meet the proportionality test because the impact on the individual far outweighs the objective sought by the State.

The 1961 Convention indicates, moreover, that a naturalised person may not lose her or his citizenship based on this ground on account of residence abroad for a period of less than seven consecutive years (Article 7(4)). The European Convention does not specify such a minimum period of residence abroad and also does not restrict this ground to naturalised persons.

In ten of the twenty-eight member states of the European Union persons may lose citizenship of a country due to continuous residence abroad (see Table 5). The details of these regulations vary considerably and important differences between regulations across these countries relate to the procedure of loss (lapse versus withdrawal), the personal scope (only applicable to persons born abroad versus applicable to all citizens), statelessness (only applicable to dual citizens versus applicable to all citizens), age (whether or not there is an age limit), and the actions that target persons can undertake to prevent the loss of citizenship.

Danish law provides that any person who is born abroad and has never lived in Denmark, nor stayed there under conditions indicating a special tie with Denmark, shall lose her or his Danish citizenship on reaching the age of 22 (DEN 8(1)). The Minister of the Interior, or anyone authorised by the Minister, may on application submitted before this time, permit the citizenship to be retained. One year of residence is sufficient to establish the special tie or *samhørighed* (Zahle 1996: 194), but it can also be manifested by a long-term study program in Denmark, frequent vacations, or military service. Since 1999 this mode of loss only becomes effective if the target person does not become stateless.

Table 5. Loss due to permanent residence abroad

EUDO CITIZENSHIP Mode of Loss of Citizenship: L02, ILEC Questionnaire: Q4.2

	Article in law	**Procedure**	**Scope of application***	**Residence abroad**	**Age**	**Preventive action**
AUT	–	–		–	–	–
BEL	22(1)(5), 22(3)	Lapse	Person is born abroad and also a citizen of another state.	Person has resided uninterruptedly abroad from the age of 18 until 28.	28	Special declaration
BUL	–	–		–	–	–
CRO	–	–		–	–	–
CYP	113(4)	Withdrawal	Person acquired citizenship by naturalisation and is also a citizen of another state.	Seven years since naturalisation	–	Appeal to public interest
CZE	–	–		–	–	–
DEN	8(1)	Lapse	Person is born abroad and also a citizen of another state.	Person has never resided in Denmark and never stayed in Denmark under circumstances indicating a special tie Denmark, nor has he/she resided more than 7 years in a different Nordic state.	22	Request to retain citizenship before age of 22 (discretionary)
EST	–	–		–	–	–
FIN	34	Lapse	Person is born abroad and also a citizen of another state.	Person is currently residing abroad and has not resided at least 7 years in Finland or in other Nordic states.	22	Request to retain citizenship between age of 18 and 22, issue of a passport, or completion of military or civil service
FRA	23-6	Withdrawal	Person has never possessed the status of French national (i.e. has never applied for a passport, registered at the consulate or for French elections) and his/her ancestors also did not have the status of French national.	Person has never had habitual residence in France and his/her ancestors also have not resided in France for 50 years.	–	Application for a passport, registration at consulate or for elections in France
GER	–	–		–	–	–
GRE	–	–		–	–	–
HUN	–	–		–	–	–
IRE	19(c)	Withdrawal	Person acquired	Person has been ordinarily resident abroad for a continuous	–	Annual request to retain citizenship

			citizenship by naturalisation. Provision does not apply to persons naturalised on the basis of cultural affinity to Ireland.	period of 7 years, otherwise than in public service.		
ITA	–	–		–	–	–
LAT	–	–		–	–	–
LIT	–	–		–	–	–
LUX	–	–		–	–	–
MAL	14(2)(d)	Withdrawal	Person acquired citizenship by naturalisation	Person has been resident abroad for at least 7 years, other than in diplomatic service.	–	Declaration to retain citizenship
NET	15(1)(c) 15(3) 15(4)	Lapse	Person is also a citizen of another state.	Person has been resident outside the European Union (EU) for an uninterrupted period of 10 years for other than diplomatic purposes or work in an international organisation. Period is interrupted when the person resides in the EU for more than 1 year.	–	Obtaining a passport or similar document
POL	–	–		–	–	–
POR	–	–		–	–	–
ROM	–	–		–	–	–
SLK	–	–		–	–	–
SLN	–	–		–	–	–
SPA	24(3)	Lapse	Person is born abroad to a citizen who was also born abroad. Person is also a citizen of another state	Person is resident abroad.	21	Declaration to retain citizenship
SWE	14(1)	Lapse	Person is born abroad and also a citizen of another state.	Person has never resided in Sweden (or at least seven years in Sweden or another Nordic state), and never stayed in Sweden under circumstances indicating a special tie to Sweden.	22	Request to retain citizenship before age of 22 (discretionary)
UK	–	–		–	–	–

Similar provisions can be found in the other Scandinavian countries (see FIN 34, and SWE 14). In all these cases the loss of citizenship occurs automatically ('lapse') at the age of 22 when the target person has been born abroad, has another citizenship as well, and has not been granted permission to retain citizenship before the age of 22. In Finland the personal scope of this ground for loss also includes persons born in the country. Residence for seven or more years outside another Nordic country leads to the lapse of citizenship before the age of 22 for persons who also possess the citizenship of another country. Having been issued with a Finnish passport or completing military or civil service in Finland are sufficient conditions for retaining Finnish citizenship (FIN 34).

In Belgium, Cyprus, Malta and Spain a different procedure exists for the prevention of loss of citizenship due to residence abroad: the target person has to make a declaration stating the wish to continue being a citizen. In Belgium, inspired by Denmark and the Netherlands, the provision was introduced as late as 1985 (Carlier & Goffin 1996: 146). Since 1987 Luxembourg had a provision very similar to the Belgian one, but required permanent residence abroad for 20 years (LUX 25(8) old) and abolished this ground for loss in 2006 before it could take effect. In Malta the loss does not occur automatically, but by withdrawal, and the scope of the provisions is restricted – as in Ireland – to naturalised citizens. Public service abroad, or giving notice in writing to the Minister of the intention to retain citizenship of Malta, suffice to retain Maltese citizenship (MAL 14(2)(d); compare also CYP 113(4) and IRE 19(2)). The Spanish procedure only applies to persons who have been born abroad and who have acquired Spanish citizenship from a parent who was also born abroad (SPA 24(3)).

In the Netherlands, remarkably, between 1985 and 2003 no preventive action existed other than taking up residence outside the country of birth, even if the target person evidently still had ties with the Netherlands. Moreover, there was also no possibility for the authorities to correct the loss in cases where the person involved still had evident ties with the Netherlands. The loss of Dutch citizenship happened *ex lege*. This situation was arguably not in conformity with the European Convention (ECN 7(1)(e), explanatory report) and also led to much protest from the emigrant community. Since 2003, loss of citizenship no longer exists when the target person is in possession of a Dutch passport not older than ten years or a certificate of possession of Netherlands nationality, which is not older than ten years. A remarkable aspect of the current Dutch provision is that the Netherlands do not apply this ground for loss to citizens living permanently in other member states of the European Union. These persons are deemed to maintain relevant ties with the Netherlands. Moreover, when introducing the EU amendment in 2003, the Dutch government legitimised this explicitly by referring to the possibility that a loss of citizenship by Dutch citizens residing in another member state, if they would not have the citizenship of another member state, might well be perceived as an obstruction of the free movement of persons (De Groot 2005: 25-34, Vink 2005: 151). However, a huge disadvantage of the Dutch rule is that an *application* for a Dutch passport or a certificate of possession of Netherlands nationality does not yet lead to the avoidance of loss of nationality because of the residence abroad. That is only the case when the passport or certificate is issued. This is problematic in view of the ECN and also violates the proportionality principle (De Groot 2014a).

In France and Ireland, as in Cyprus and Malta (and in Greece until 1998), loss of citizenship caused by residence abroad does not occur automatically, but only as a result of a specific administrative act (FRA 23-6). In general, one could say loss of citizenship by these types of 'withdrawal' procedures is far less likely to occur than if this happened automatically. We could not find any statistics on the withdrawal of citizenship due to continued residence abroad. The loss of French citizenship can be established *(constatée)* by a judgment, if persons who acquired French citizenship by descent never possessed the 'status of a French national' *(possession d'état)* and never had their habitual residence in France. Additional conditions are that the ancestors of the target person did also not have the 'status of a French national' or lived in France for the last 50 years. The judgment also has to indicate at which moment French citizenship was lost. A decision on the loss of citizenship of a parent may lead to the conclusion that the target person never possessed French citizenship (Lagarde 1996: 323-324).

In Ireland, as in Cyprus and Malta, loss provisions for residence abroad apply only to naturalised citizens. Even though at least the Irish provision is of little or no practical relevance, as no systematic checks are being carried out by the authorities (O'Leary 1996: nr. 436), this restricted personal scope is at odds with the European Convention (ECN 5(2)). The Irish provision, moreover, has an ethnically restricted scope as well, as it does not apply to a 'person of Irish descent or associations', which is problematic in relation to the Convention's ban on discrimination based on sex, religion, race, colour, or national or ethnic descent (ECN 5(1)).

To conclude this section, a number of countries provide for loss of citizenship if the target person lives permanently abroad. On the one hand, this approach is used by countries which already try to avoid cases of dual citizenship, for example by providing that voluntary acquisition of a foreign citizenship is a ground for loss of their nationality (see Denmark and Netherlands). On the other hand, this construction is also used as an alternative – instead of voluntary acquisition – ground for loss of citizenship. This is, for example, the case in Belgium, Finland, France and Sweden. It is remarkable that the Netherlands do not apply this ground for loss to

citizens living permanently in other member state of the European Union. In a way this can be seen as a corresponding alternative for the exception Germany and Latvia make for citizens voluntarily acquiring the citizenship of another member state.

The explanatory memorandum on the ECN underscores that this ground for loss should be applied in a way in which all relevant circumstances are taken into account. Therefore individuals must have the possibility of making a declaration of retention or to lodge an application for permission of the government to retain the citizenship involved. All countries that have provisions based on this ground for loss indeed allow for some form of preventive action. However, in some countries problems can be observed. In Belgium e.g. a person concerned has to make a special declaration in order to retain Belgian nationality; a renewal of her/his Belgian passport will not suffice.[53] This is problematic. The Tunis Conclusions[54] underline that if nationality is lost by naturalised citizens on the basis of continuous residence abroad without registration with the authorities, states should consider an application for the renewal of a passport as 'registration'. It is desirable to impose a time limit for loss, which is considerably longer than the validity of national passports. With the increasing use of machine-readable passports, this will often be ten years.

Another problematic point is the information that States should provide to persons, who could be subject to loss of their nationality due to residence abroad. The Tunis Conclusions[55] underline:

> Participants noted the difficulties faced by individuals in complying with the type of requirements for retention set out in paragraphs (4) and (5) of Article 7 (declaration, registration or residence). They noted that if States retain such provisions, they need to take all possible steps to ensure that the persons concerned are informed individually and in a timely manner of the formalities and time limits to be observed to retain their nationality, as recommended under the Final Act of the 1961 Convention.

The following observations and recommendations can be made:

- Loss of nationality on the ground of residence abroad should never cause statelessness (Art. 7 ECN; would also be a violation of the proportionality principle);
- Loss of nationality should not apply in case of residence in another member states of the EU; this would be problematic in view of the free movement right guaranteed by EU law;
- Loss of nationality should not apply only to naturalised citizens; such discrimination is at odds with the principle that citizens by birth and those by naturalisation should be treated equally (Art. 5(2) ECN);
- All relevant circumstances should be taken into account, in particular all indications of existing links with the state involved. Member states have an obligation to inform the person concerned explicitly and individually about the steps to be taken in order to avoid loss of nationality due to residence abroad. For these reasons, it is recommended to use a 'deprivation' construction rather than an 'automatic loss' approach.
- If loss of nationality due to residence abroad can be prevented by a declaration, the application for a passport or identity card should suffice; if such declaration should be made within a certain period after having attained the age of majority, this period should be longer than the period of validity of a passport or identity card;
- In the context of checking the proportionality of a deprivation decision, it is relevant to distinguish between the first generation born abroad and further generations born abroad.

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[53] See on the problems with the application of this type of loss provisions De Groot 2014.

[54] Tunis Conclusions, par. 50.

[55] Tunis Conclusions, par. 49.

7. Loss of family relationship

Given that citizenship is often automatically acquired by descent if one of the parents is a citizen, if it becomes evident that the assumed family relationship never existed, for example by a judicial confirmation following a denial of paternity, if the family relationship ends because of annulment or revocation of adoption, or if it ends because of adoption, this also undermines the claim to citizenship (De Groot 1989: 301-303). In those cases, and only during minority and if this does not lead to statelessness, in line with the European Convention (Articles 7(1)(f) and 7(1)(g) and Article 5 of the 1961 Convention on the Reduction of Statelessness), the loss of the family relationship may cause the loss of citizenship.

Annulment of maternity / paternity and annulment or revocation of adoption

Of the twenty-eight countries under consideration only five states regulate this ground for loss expressly. When comparing regulations across countries, we can distinguish between three main procedural approaches. In three countries, if it is established that the preconditions laid down by internal law which led to the *ex lege* acquisition of citizenship, are no longer fulfilled, the person involved is automatically assumed no longer to be a citizen (BEL, LUX, NET). In similar situations Germany goes a step further and provides for a nullification procedure, implying that the person is assumed never to have been a citizen of the country involved. Finally, Finland provides for a possibility of withdrawal of citizenship.

An important issue is whether loss of citizenship due to loss of a family relationship can cause statelessness. The European Convention and the 1961 Convention are clear on this matter: it should not. Luxembourg and the Netherlands expressly provide for protection against statelessness.

A further distinction between countries relates to the age limit. As stated above, the European Convention expressly limits this ground for loss to minors. In the Netherlands, for example, until 2003 this provision was not restricted to cases where the family relationship ceases during the minority of the target person, which was obviously not in conformity with Article 7(f) ECN. Since 1 April 2003, with retroactive effect to 1 January 1985, loss of citizenship based on the loss of the relevant family relationship is restricted to minors. The age limit of 18 years also exists in Belgium and Luxembourg. In Finland and Germany the age limit is five years. Italy has a very particular provision that only applies to the loss of a family relationship due to the annulment of adoption, and specifically to cases where the adoption is revoked due to criminal behaviour of the adopted child against the adoptive parents (ITA 3(3)). This loss provision is arguably at odds with the European Convention due to the absence of an age limit. When revocation of adoption is based on other grounds, and occurs when the target person is of full age, the latter will be entitled to renounce Italian citizenship within one year after the revocation itself, if she or he possesses or reacquires another citizenship (Bariatti 1996: 485).

In Germany, the successful denial of paternity has as a consequence that the child loses its legal links to this person with retroactivity from the day of its birth. Hence the original citizenship acquisition is nullified. Consequently, the person concerned loses German citizenship, if he or she does not also derive this citizenship from the mother or acquired this *iure soli*.[56] Since 2009, loss of citizenship is only possible until the child reaches the age of five, except in those cases where the recognition of paternity is annulled by a court on application of the authorities because this recognition happened for immigration law purposes (GER 17(3)).[57] However, this annulment is not possible if 'family life' *(sozial-familiäre Beziehung)* exists between the father and the child.[58]

[56] German Constitutional Court Decision: BVerfG, 2 BvR 696/04 of 24.10.2006 (De Groot and Schneider 2007: 79-102).

[57] See Par. 1600 (1) 5 and 1600 (3) in combination with 1592 (2) BGB (German Civil Code).

[58] The 2009 age limitation arguably makes a related reservation by Germany to the European Convention redundant ("Germany declares that loss of nationality may also occur if, upon a person's coming of age, it is established that the requirements governing acquisition of German nationality were not met"). According to German authorities this reservation was necessary because *the legislative provision* provides for the possibility of minors and adults losing their German citizenship if the preconditions which led to the acquisition are no longer fulfilled.

Table 6. Loss of citizenship due to annulment of maternity or paternity

EUDO CITIZENSHIP mode of loss of citizenship: L13a, ILEC questionnaire: Q3.1

Country	Article in law	Procedure	Conditions	Other considerations
AUT	No provision	n.a.	n.a.	
BEL	BEL 8(4)	Lapse	Person is a minor whose family relationship with a citizen is annulled.	
BUL	No provision	n.a.	n.a.	
CRO	No provision	n.a.	n.a.	
CYP	No provision, but general principles apply	Lapse	No conditions specified in the law.	
CZE	No provision, but general principles apply	Lapse	No conditions specified in the law.	Law provides protection of legitimate expectations.
DEN	No provision, but general principles apply	Lapse	No conditions specified in the law.	
EST	No provision, but general principles apply	Lapse	No conditions specified in the law.	
FIN	FIN 32	Withdrawal	Person is a minor whose family relationship with a citizen is annulled before the age of 5, or within 5 years of the establishment of paternity.	Consideration of minor's situation, in particular of his/her age and ties with Finland.
FRA	No provision	n.a.	n.a.	
GER	GER 4(1), 17(3)	Nullification	Family relationship between a minor under the age of 5 and his/her father who is a citizen is annulled.	
GRE	No provision	n.a.	n.a.	
HUN	No provision and unclear whether general principles apply	n.a.	n.a.	
IRE	No provision, but general principles apply	Lapse	No conditions specified in the law.	
ITA	No provision, but general principles apply	Lapse	No conditions specified in the law.	Loss cannot lead to statelessness.
LAT	No provision	n.a.	n.a.	
LIT	No provision	n.a.	n.a.	
LUX	LUX 13(3)	Lapse	Person is a minor whose family relationship with a citizen ceases to be established.	Loss cannot lead to statelessness.
MAL	No provision	n.a.	n.a.	

NET	NET 14(4)	Lapse	Person is a minor and her/his family relationship with a citizen is annulled and the other parent is not a citizen.	Loss cannot lead to statelessness.
POL	No provision, but general principles apply	Lapse	Any changes in establishing the father, arising from a court decision issued as a result of an action for denial of paternity, or annulment of recognition, shall be considered when determining the citizenship of a minor unless the minor has come of age or upon his/her consent if he/she has reached 16 years of age.	
POR	No provision, but general principles apply	Nullification	For filiation, the apparent status is relevant (Article 1831 et seq. of the Civil Code). However, general principles of law, such as legal security, enshrined in the Article 2 of the Constitution, and the Principle of Family Unity, enshrined in Artcile 36 of the Constitution, must be taken into account.	Law provides protection of legitimate expectations.
ROM	No provision	n.a.	n.a.	ROM 7 for adoption
SLK	No provision	n.a.	n.a.	
SLN	No provision, but general principles apply	Withdrawal	No conditions specified in the law (but see SLN 16 on fraud).	Loss cannot lead to statelessness.
SPA	No provision	n.a.	n.a.	
SWE	No provision	n.a.	n.a.	Decision Supreme Administrative Court RA 2006, 73
UK	No provision, but general principles apply	Lapse	No conditions specified in the law.	Not for revocation of adoption

Finland also explicitly takes into account additional considerations, such as the ties between the target person and the country involved (FIN 32).

Remarkably, in countries that do not mention this ground for loss specifically in their citizenship act, it is not always clear whether this implies that no such ground for loss exists. An example was, until 2009, the legal situation in Germany. Loss of German citizenship as a consequence of a successful denial of paternity was not regulated in the Nationality Act, but was regarded as a logical consequence of the application of the relevant provisions of the Civil Code.[59] A similar practice exists in Cyprus, the Czech Republic, Denmark, Estonia, Italy, Poland, Portugal, Slovenia and the United Kingdom (see De Groot & Wautelet 2014). However, by contrast, in Sweden, the supreme administrative court decided in 2006 that a denial of paternity does not have nationality consequences, because such loss is not expressly regulated in any statute (Lagerqvist Veloz Roca:

[59] Decision of the Supreme Administrative Court, RA 2006, 73.

2007: 705-708; compare also De Groot & Wautelet 2014).

Aa reservation made by Austria is also interesting in this context at the occasion of the ratification of the European Convention on Nationality concerning Article 7(1)(f):

> Austria declares to retain the right to deprive a national of its nationality whenever it has been ascertained that the conditions leading to the acquisition of nationality *ex lege*, as defined by its internal law, are not fulfilled any more.

Although Austrian legislation does not (seem to) provide for loss of citizenship due to a loss of family relationship, if it were to introduce such a ground, Austria reserves the right to do so for both minors and adults.

In respect of this ground for loss following observations and recommendations can be made:

- If a State provides that the loss of a family relationship is a ground for the loss of nationality, in specific circumstances, it should provide so expressly in its nationality law and regulate the conditions and limits of its application;
- Loss of nationality due to the loss of a family relationship should never cause statelessness;
- In light of the proportionality principle and the desirability of the protection of legitimate expectations a limitation period is desirable. The required period should be shorter than the residence period required for naturalisation and also shorter than the limitation period which may exist in the state involved for deprivation of citizenship based on fraud;
- The protection mechanisms (no statelessness; limitation period) should not only apply in cases where the family relationship legally existed, but was annulled, but also in cases where it is discovered that the relevant family relationship never legally existed.

Adoption

With regard to loss provisions relating to adoption, we have already discussed loss of citizenship due to annulment of adoption, as a variation of the annulment of the family relationship. However, in a few countries, we also find mirroring provisions of loss of citizenship due to adoption. An important distinction is between full and weak adoption. The difference between the two is that full adoption *(adoption plénière)* has as a consequence, that the legal relationship with the (natural) parents are dissolved and new legal relationships between the child and the adoptive parents are created. Weak adoption *(adoption simple)* does not dissolve the legal relationship with the (natural) parents.

Full adoption can at first sight be regarded as a special case of loss of family relationship. At the same time, one can defend a different approach because the loss of the family relationship in the case of adoption is a mere legal fiction and not the legal affirmation of a fact, as is the case with a denial of paternity or an annulment of recognition of paternity. From a comparative perspective one can observe both approaches. From a normative perspective, the European Convention mentions loss of citizenship by adoption in a separate proviso (ECN 7(1)(g)) and not as a subcategory of loss of citizenship because of loss of family relationship. What is important is that loss of citizenship due to adoption may not cause statelessness. This restriction goes as far back as the 1930 Hague Convention on Nationality:

> If the law of a State recognises that its nationality may be lost as the result of adoption, this loss shall be conditional upon the acquisition by the person adopted of the nationality of the person by whom he is adopted, under the law of the State of which the latter is a national relating to the effect of adoption upon nationality (Article 17).

This principle was also contained in the 1961 Statelessness convention:

> If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality (Article 5(1)).

Reference has to be made as well to the 1967 European convention on the adoption of children:

A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality (Article 11(2)).[60]

In only a small minority of the countries under consideration is adoption of a child by foreigners a ground for loss of citizenship, provided that the child involved acquires the citizenship of the adoptive parents by the adoption or already possesses this citizenship. This is the case in Belgium (BEL 22(1)(4), Germany (GER 27), the Netherlands (NET 16(1)(a))). Luxembourg abolished this ground for loss in 2009 (LUX 25(4) old).

In Germany, since 1977, a German citizen loses her or his citizenship because of adoption by a foreigner if the adoption is regarded as valid under German law and if the target person receives the citizenship of the person adopting her or him (GER 27). The citizenship is not lost if the person involved remains related to a German parent (weak adoption). If the acquisition of the foreign citizenship does not occur *ex lege* by the adoption, and foreign citizenship is acquired by declaration lodged after the adoption, Article 27 does not apply.[61] The loss extends to the minor offspring of the adopted German, if she or he has sole parental custody and if the acquisition of the new citizenship also extends to the offspring. Although until recently the German provision was also applicable in exceptional cases of adoption of an adult, since 2007 the German provision is restricted to minors only and thereby brought into conformity with the European Convention.[62]

In other countries, adoption by foreigners does not have automatic consequences for the citizenship of the adopted child. The only other relevant provisions are to be found in Greece, where a adoption of a Greek citizen by foreigners does not automatically have consequences for Greek citizenship, but the adoptive parents may apply for the loss of Greek citizenship by their, still minor, adopted child, if this child acquires the citizenship of the adoptive parent (GRE 20). This application will be accepted by the Minister of the Interior, who has to take into account the special circumstances of the case. The Minister has to ask the opinion of the Council for Citizenship. The application will not be accepted if the adopted child delays his military obligation or is being prosecuted for a crime or offence (De Brabandere-Marescaux/Koukoulos-Spiliotopoulos: nr. 100).

8. Loss of citizenship by parent(s)

Most people acquire citizenship by virtue of the citizenship of their parents, either automatically at birth, by descent or at a later time, for example by recognition of paternity or by extension of naturalisation. By way of mirror image, the citizenship status by persons can, under circumstances, also negatively affect the citizenship status of their children, if they lose their citizenship. The European Convention allows for the loss of citizenship by children whose parents lose their citizenship, except in cases where the parent loses her or his citizenship because of voluntary service in a foreign military force or because of conduct seriously prejudicial to the vital interests of the state (ECN 7(2)). Children shall not lose their citizenship if one of the parents retains that citizenship, and loss of citizenship due to loss of citizenship by a parent may not occur if that would make the target person stateless (cf. 1961 Statelessness Convention, Article 6).

It is striking that, whereas the European Convention allows for the extension of loss of citizenship from parents to their children, when the loss occurs automatically, or at the initiative of the state, that such extension to children is not regulated when the loss of citizenship occurs at the initiative of the parent by voluntary renunciation (ECN 8). For this reason, the Netherlands made the following interpretative declaration at the occasion of the ratification of the ECN:

> With regard to Article 7, paragraph 2, of the Convention, the Kingdom of the Netherlands declares this provision to include the loss of the Dutch nationality by a child whose parents renounce the Dutch nationality as referred to in Article 8 of the Convention.

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[60] See a similar provision in the 2008 European Convention on the Adoption of Children (revised), Article 12(2).

[61] See *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* of 18 October 2000, Comment 27.1.

[62] With a view to the older legislative provision, Germany made the following reservation at the occasion of the ratification of the European Convention on Nationality: 'Germany declares that loss of German nationality can also occur in the case of an adult being adopted.' This reservation has become redundant since the legislative amendment in 2007.

When looking at the regulations across states with regard to the effect of the loss of citizenship by the parents on the citizenship status of their children (see De Groot & Vrinds 2004 for an extensive overview), we find nine member states of the European Union that do not allow for the extension of loss from parents to their children (Estonia, France, Hungary, Ireland, Latvia, Malta, Portugal, Spain and the UK). Irish law even explicitly states that the loss of Irish citizenship by a person shall not of itself affect the citizenship of her or his children (IRE 22(2)).

Table 7. Loss due to loss of citizenship by a parent

EUDO CITIZENSHIP mode of loss of citizenship: L11, ILEC questionnaires: Q 2.14

Country	Article in law	Procedure	Conditions	Considerations
AUT	24	Nullification	Parent of minor loses citizenship due to discovery of fraud in acquisition procedure.	Provision does not specify consequences for dependent family members, but must be presumed that nullification of naturalization decision for parent extends into *ex tunc* loss of citizenship by dependent family members.
	29	Lapse	Parent of an unmarried minor loses citizenship due to acquisition of another citizenship and extends the acquisition to the minor (or would extend it if the minor were not already a citizen of that country).	Provision does not apply if the other parent remains a citizen. If the minor is born out of wedlock, citizenship is only lost if he/she acquires citizenship of another country by law and his/her legal agent consents to the acquisition of that citizenship (in case the parent is male citizen: only if paternity has been established).
BEL	22(1)(3), 22(1)(6), 22(3)	Lapse	Parent of a minor renounces citizenship, acquires the citizenship of another country, and extends the acquisition to the minor (or would extend it if the minor were not already a citizen of that country).	Provision does not apply if the minor's other parent remains a citizen, if the parent is the minor's sole legal representative and loses citizenship because of permanent residence abroad, or if the minor would thereby become stateless.
BUL	21	Extension of Release	Parent of minor renounces citizenship.	Applies to minors 14 years or older only with the consent of the minor.
	23	Nullification	Parent of minor loses citizenship due to fraudulent acquisition, and the minor acquired citizenship based on same false or concealed information or facts.	BUL23 explicitly stipulates that the repeal would not affect family members unless they have not acquired their own citizenship by fraud too. (The family members do not receive citizenship automatically but in separate

				proceedings, so the rules on fraud apply to them in the same manner).
CRO	22(2), 20(2)	Ext Declaration / Ext Release	Parent of minor renounces citizenship and the other parent is a citizen of another country.	-
CYP	no provision	Lapse	Citizenship acquisition of the minor child was based on the acquisition of nationality of the parent whose natonality is withdrawn.	-
CZE	No provision (since 2014)	n.a.	n.a.	-
DEN	7(3), 8(2)	Lapse	Parent of minor loses citizenship due to voluntary acquisition of the citizenship of another country or residence abroad.	Provision does not apply in the case of acquisition of a foreign citizenship if the other parent remains a citizen and has (shared) custody over the minor. Provision does not apply in the case of permanent residence abroad if the minor would thereby become stateless.
EST	no provision	n.a.	n.a.	-
FIN	33(2), 33(3), 33(4)	Withdrawal	Parent of minor loses citizenship due to fraudulent acquisition (acquired by declaration or naturalisation) or withholding relevant information, and the minor acquired citizenship based on the same false or concealed information or facts.	Provision does not apply if the other parent is a citizen. Consideration of the minor's situation, culpability of the act, circumstances in which fraud is committed and his/her ties with Finland as well as age. Withdrawal proceeding needs to start within five years following the acquisition of citizenship.
FRA	no provision	n.a.	n.a.	-
GER	17(2)	Withdrawal	Parent of a minor loses citizenship due to fraudulent acquisition.	Applies only if minor is under the age of 5.
GRE	no provision (based on GPAL)	Withdrawal	Citizenship acquisition of the minor child was based on the acquisition of nationality of the parent whose natonality is withdrawn.	-
HUN	no provision	n.a.	n.a.	-
IRE	no provision	n.a.	n.a.	-
ITA	no provision (based on	n.a.	Citizenship acquisition of the relative was based on the	-

	GPAL)		acquisition of nationality of the parent whose natonality is withdrawn.	
LAT	24(2)	n.a.	Law states explicitly that that depriving a person of citizenship should not affect citizenship of spouse, children or other family members.	-
LIT	28	Withdrawal	Both parents, who have acquired citizenship by naturalisation, lose citizenship. Person whose parents lose citizenship is under 18 years of age and he/she has acquired citizenship of Lithuania by means other than by birth.	Provision does not apply if person would thereby become stateless. Consent of person between 14 and 18 years of age is required.
LUX	13(2)	Lapse	Parent of minor renounces citizenship and has sole parental authority over the minor.	Provision does not apply if person would thereby become stateless. In case of shared custody, both parents need to renounce citizenship.
MAL	no provision	n.a.	n.a.	-
NET	16(1)(c), 16(1)(d)	Lapse	Parent of minor loses citizenship due to voluntary acquisition of another citizenship and extends the acquisition to the minor (or the minor already holds citizenship of this other country). Or parent of minor voluntarily renounces citizenship, or loses citizenship due to residence abroad or non-compliance with the requirements for naturalisation.	Provision does not apply if other parent remains a citizen, if the minor acquired citizenship by birth in the Netherlands, if the minor is born in another country and resides there at the time of acquisition, or if the minor has uninterruptedly resided in another country for 5 years.
POL	7, 8	Extension of release	Parent of minor renounces citizenship and includes the minor in the declaration of renunciation.	Consent from minor is needed from the age of 16.
POR	no provision	n.a.	n.a.	-
ROM	28(1), 28(2)	Extension of release	Both parents of minor renounce citizenship and live in another country together with the minor.	Consent from minor is needed from the age of 14.
SLK	9(2), 9(7)	Extension of release	Parent of a minor under the age of 14 renounces	Loss is conditional on proof of acquisition of another

			citizenship and includes the minor in the application for release.	citizenship or the promise to become a citizen of another country.
SLN	22, 23, 24	Release	Child of 18 years or older loses citizenship at the request of both parents when both parents renounced citizenship (or one parent in the case only one parent is a citizen).	Consent is needed if the child is 14 years or older.
	16(3)	Nullification	Child loses citizenship because parent loses citizenship due to fraud in the naturalisation procedure or non-renunciation.	-
SPA	no provision	n.a.	n.a.	-
SWE	14(3), 17	Lapse	Child loses citizenship acquired through the parent when this parent was born abroad and loses citizenship because he/she never resided in the country (or at least 7 years in the country or another Nordic state) and never stayed in the country under circumstances indicating a special tie to it.	Exceptions: other parent remains a citizen and the child also acquired his/her citizenship from that parent. Loss cannot result in statelessness.
UK	no provision	n.a.	n.a.	-

Five countries exclusively provide this – and only under certain conditions – for a declaration of renunciation or of release of citizenship on application (CRO 20(1)(2), 22(1)(2); CZE 16; LUX 13(2); POL 7,8; ROM 27(2); SLK 9(5)). However, one should realise that in countries where this possible extension does not exist, parents may be able to represent their minor children in respect of a declaration of renunciation or may lodge an application for release from nationality on their behalf.

In three states (CYP, GRE and ITA) the citizenship of a minor can be lost or withdrawn, if the nationality of a parent is withdrawn and acquisition of the nationality of the child was based this parent's nationality. Striking is that in these three countries no explicit regulation of this extension of loss of nationality exists.

In nine other Member States also involuntary loss of nationality by a parent can cause the loss of nationality by children. This may apply in case of voluntary acquisition of a foreign nationality by a parent (AUT, DEN, LIT, NET) or loss of nationality by a parent due to permanent residence abroad (BEL, DEN, NET and SWE).

With regard to withdrawal because of fraud, one should realise that the authorities who deprived a parent of her or his citizenship for this reason may under certain circumstances by a separate order withdraw the citizenship of a child for the same reason. In Germany, for example, the loss of citizenship by children due to the loss of citizenship by their parents is formally not an extension, because in respect of a child all relevant circumstances – including attention to the best interest of the child - have to be taken into account (GER 35(5)).

Extensive regulations including extension of ground for loss *ex lege* exist in Austria, Belgium, Denmark and the Netherlands. Sweden provides for an extension of the *ex lege* loss of citizenship, but only in case of loss of citizenship by the parent due to permanent residence abroad (SWE 14(3)).

In Austria the loss of citizenship because of voluntary acquisition of another citizenship extends to (adopted)

children, if they are minors and unmarried and follow the parent into the foreign citizenship by law, or would follow the parent if they were not already in the possession of that citizenship, except in the case that the other parent remains an Austrian citizen (AUT 29). Minors who are 14 or older need to consent to the acquisition of the foreign citizenship (and hence the loss of Austrian citizenship).

Danish citizenship is lost by an unmarried child under the age of 18 years who acquires foreign citizenship because one of her or his parents, who has the (shared) parental authority, acquires a foreign citizenship, unless the other parent remains Danish and also has custody (DEN 7(3)). If a parent loses Danish citizenship due to permanent residence abroad, children lose Danish citizenship as well (DEN 8(2)).

The Netherlands is, as far as we can see, the country with the widest scope of modes of loss of citizenship by the parent that can extend to children: voluntary acquisition of another citizenship (L05), voluntary renunciation (L01), permanent residence abroad (L02), and fraud (L10). In all cases 'father and mother' is deemed to include the adoptive father or mother from whom the minor acquired Dutch citizenship. However, Dutch citizenship is not lost if the other parent continues to possess Dutch citizenship (NET 16). The Belgian law follows the same approach, for voluntary renunciation and for loss due to permanent residence abroad, but adds as a condition that the relevant parent(s) must exercise their parental authority in respect to the child (BEL 22(1)(3) and (6)).

It is problematic that in Austria and the Netherlands the loss of nationality by a parent can also extend to children, although the parent does not have (shared) parental authority regarding the children concerned.

In some countries one finds a provision that loss of nationality by a parent due to fraud can include children (BUL 23, FIN 33, SLN 16(3)). This is only acceptable if a separate deprivation decision is made in respect of each child under consideration of the minor's situation, culpability, circumstances under which the fraud was committed and the genuine ties between the child and the state involved (see FIN 33). Furthermore, the best interests of the child should be of paramount relevance. The Tunis Conclusions[63] stress in this regard:

Where authorities are considering the deprivation of nationality of children due to misrepresentation or fraud, special attention needs to be given to the objective of preventing statelessness among children as set out in Articles 1-4 of the 1961 Convention and Articles 7 and 8 of the CRC, read in light of the principle of the best interests of the child of CRC Article 3. It is never in the best interests of the child to be rendered stateless.

It is essential to:

Ensure that, as far as possible, in proceedings affecting their nationality, children are consulted and their views and wishes are taken into account, having regard to their degree of maturity. Applications for nationality made on behalf of children should include the opinion of children considered by law as having sufficient understanding. A child should be considered as having sufficient understanding upon attaining an age, prescribed by law, which should not be more than 14 years. (Recommendation 2009/13 of the Committee of Ministers of the Council of Europe, principle 19).

The Explanatory Memorandum in this Recommendation mentions:

Respect for the independent personality of the child and taking account of his views and wishes could imply restrictions on the parents' rights to speak for their children in nationality matters. In particular, rules have to be designed in order to increase the relative weight assigned to the will of the child in the form of the right to be heard and the right to give her or his opinion. The non-observation of the right of the child to be heard in cases of acquisition and loss of nationality can – under certain circumstances – violate Articles 8 and 12 of the United Nations Convention on the Rights of the Child. (Explanatory Memorandum, No. 49).

Following observations and recommendations can be made:

If a state wants to provide for an extension of nationality to children, the following minimum conditions should be included:

- Extension of loss of nationality should never cause statelessness;

[63] Tunis Conclusions, par. 62.

- A child should never lose her or his nationality by extension if one parent is still a national;
- The loss of nationality should never be extended to the child by a parent, if that parent does not have parental authority;
- A child should never lose her or his nationality by extension without being heard, if necessary represented by a special guardian;
- The loss of nationality due to the voluntary acquisition of another nationality should never be extended to a child if the child lives in the member state of the nationality concerned or in another MS;
- The loss of nationality due to residence abroad should never be extended to a child, if the child lives in the member state of the nationality concerned or in another MS;

Due to this very detailed list of conditions that would need to be safeguarded in order to meet appropriate standards under which loss of nationality can be extended to minor children, we recommend that member states provide in their national legislation that loss of nationality is not extended to minor children.

Box 4. Marriage

In the past almost all citizenship acts applied the so-called unitary system of citizenship within a family (cf. Dutoit 1984). A foreign woman who married a citizen generally acquired the citizenship of her husband. By marrying a foreigner a woman lost her original citizenship. As a result, man and wife possessed one and the same citizenship, which was, in *ius sanguinis* countries, also transferred to their children. If a man acquired another citizenship during the marriage and therefore lost his original citizenship, his wife (and in most cases their children) also followed this new citizenship status. A disadvantage of this system was that in most countries women also used to lose their citizenship, if they married a stateless person or if their husband became stateless during the marriage. In order to avoid this disadvantage some states provided that women only lost their citizenship if they acquired the citizenship of their husbands. This policy was encouraged later on by the 1930 Hague Convention on Nationality, which provided that women would not lose their nationality by or during the marriage, if they would become stateless (Article 8). These provisions were *inter alia* a reaction to the increasing phenomenon of statelessness after the revolutions of 1918.

During the 1920s some countries made an additional step by providing that marriage did not influence the citizenship of women. The Soviet Union, Bulgaria and France were the first states to do this. Other states, such as Austria (1947), Belgium (1926), Greece (1955), Luxembourg (1934), Switzerland (1941) and the United Kingdom (1934), made it possible for women to retain their own citizenship after marriage by making a declaration. An important development was the 1957 Convention on the Nationality of Married Women, which was initiated by the United Nations. This was the first multinational convention that wanted to create a completely independent citizenship status of married women (a so-called dualist system). Gradually, most countries granted to married women such an independent citizenship status and finally also the possibility to transmit their citizenship under the same conditions as men to their children.

A consequence of these developments is that in almost all countries' provisions dealing with the citizenship status of women following the loss of citizenship by their husband are lacking, because these consequences no longer exist. The European Convention also provides that neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage shall automatically affect the nationality of the other spouse (ECN 4(d)). This equal treatment provision is in line with a similar provision from the Convention on the Elimination of All Forms of Discrimination against Women (Article 9). Some countries, i.e. France or Ireland, expressly provide that marriage shall not affect the acquisition or loss of citizenship by the spouse (FRA 21-1; IRE 23), that the death of a citizen shall not affect the citizenship of the surviving spouse (IRE 22(1)), or that the loss of the citizenship by a person shall not affect the citizenship of the spouse (IRE 22(2)) (De Groot 2012a).

Finally, whether a parent should have the power to determine directly or indirectly the citizenship status of her or his children is a matter of debate that goes beyond the scope of this paper. In many jurisdictions the power of parents to represent their minor children is restricted in specific cases, such as making a last will or the sale of

immovable goods owned by the child. In citizenship matters, parental representation may have far-reaching consequences and, arguably, where it is regulated by law this should be done within strict limitations. The loss of citizenship by a parent without parental authority, for example, should not cause the loss of citizenship of the child.

9. Loss of a conditional citizenship

Citizenship is sometimes acquired conditionally, as in the German *ius soli* provision that requires children who acquired German citizenship by virtue of birth on German territory to renounce their foreign citizenship acquired *iure sanguinis* between their 18th and 23rd birthday. If they do not comply with this renunciation requirement they lose German citizenship (see Box 3 for a more elaborate description). Whereas the German provision is a unique case, much more common loss provisions due to failure to fulfil acquisition conditions relate to persons who acquire citizenship as foundlings (A03a) or as persons who would otherwise be stateless (A03b). In both cases the legislation in many countries provides that the conditional citizenship is lost again if it is discovered later that the child possesses another citizenship.

The European Convention prescribes that a foundling found in the territory of a state has to acquire the citizenship of that state, if she or he would otherwise be stateless (ECN 6(1)(b)). The wording of this provision is drawn from the 1961 Convention on the Reduction of Statelessness (Article 1). One has to realise that this provision is not restricted expressly, as for example in the British Nationality Act (UK 1(2)) – to new-born infants, but can apply to every child in the sense of the Convention, i.e. every person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier (see ECN 1(c)). If later on, but during minority, it is discovered who the parents of the child are, and the child derives a citizenship from (one of) these parents or has acquired a citizenship because of her or his place of birth, the conditional citizenship may be lost. This is also in line with the provisions on loss of citizenship from the Convention (ECN 7(1)(f)).[64]

Whereas four countries apply an age limit of 18 years (Belgium, France, Portugal and Slovenia) in line with the Convention, some countries provide no limit at all, and other countries provide a much shorter limit. In the majority of countries no explicit age limit is provided in the national citizenship legislation, which is at odds with the Convention. The citizenship legislation of Finland and the Netherlands provide for a much shorter period of limitation. In Finland a foundling found in Finland is considered to be a Finnish citizen as long as he or she has not been established as a citizen of a foreign state. If it has been established that the child possesses another citizenship only after he or she has reached the age of five, the child retains Finnish citizenship (FIN 12). The Netherlands applies a limit of five years from the day on which the child was found (NET 3(2)). In Croatia, a foundling found in Croatia only loses Croatian nationality if it is established before the child reaches the age of 14 years that both parents are foreigners (CRO 7).

Inspired by the 1961 Convention on the reduction of statelessness, the European Convention also prescribes that states shall provide in their internal law for citizenship to be acquired by persons born on their territory who would otherwise be stateless (ECN 6(2)). This rule is repeated in the Council of Europe Recommendation R 99 (18) in Part II A sub b. The citizenship of the country of birth has to be attributed either *ex lege* at birth or subsequently to children who remained stateless upon application. Belgium, Croatia, Finland, France, Greece, Ireland, Italy, Luxembourg, Portugal and Spain opted for the first possibility. In some of these countries a provision also can be found dealing with the loss of this citizenship, if it is later discovered that the person involved was not stateless (e.g. FRA 19-1).

Nevertheless, there are also countries where this ground for acquisition is not linked with a conditional ground for loss. This is, for example, the case in Greece, Ireland, Italy, Luxembourg, Portugal and Spain. In those countries there is no provision that a citizenship acquired *iure soli* in order to avoid statelessness being lost if the possession of another citizenship is discovered. However, Croatian citizenship acquired *iure soli* is lost if it

[64] Compare also par. 60 of UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: http://www.refworld.org/docid/50d460c72.html.

is discovered before the child reached the age of 14 years that both parents are foreigners (CRO 7). Finnish citizenship acquired *iure soli* is lost if it is established before the child reaches the age of five that the child possesses another citizenship. In France the loss of citizenship on this ground is limited to minors.

10. Concluding reflections

In comparison with extensive political and academic debates about the acquisition of citizenship, loss of citizenship is a topic that is less frequently discussed. However, given the potentially grave impact of losing one's citizenship, particularly when this occurs involuntarily, this biased attention for regulations concerning acquisition of citizenship versus those concerning loss of citizenship is not justified. This comparative report aimed to provide an extensive overview of regulations across the member states of the European Union, as well as of the legislative trends over the past decades, particularly in light of the concrete norms on loss of citizenship from the European Convention on Nationality. In this concluding section we reflect on these patterns and trends.

Why do countries opt to include particular grounds for loss of citizenship in their citizenship acts? Some grounds for loss of citizenship are included in the citizenship statutes of several countries because the countries involved are of the opinion that certain facts related to a person indicate that no genuine link exists between this person and the state. This is the case if voluntary acquisition of a foreign citizenship is mentioned as a ground for loss and also if permanent residence abroad is a reason for loss of citizenship. However, it is questionable whether voluntary acquisition of a foreign citizenship always indicates that the ties with the state of origin are weakened to an extent that legitimates the loss of citizenship, and of course one has to realise that not everybody who lives outside the territory of the state of her or his citizenship has lost ties with her or his country of origin. But, generally speaking, one can conclude that in order to avoid large numbers of people possessing the citizenship of a state without having a genuine link with the state involved, it is advisable to provide for at least one of these two grounds for loss or to limit the transmission of citizenship in the case of birth abroad to the first or the second generation born outside the country. It is remarkable nevertheless that a considerable number of member states (like Bulgaria, Greece, Hungary, Italy, Luxembourg, Poland and Romania) do not apply at least one of these means to *all* nationals in order to avoid a transmission of their citizenship *in saecula saeculorum*, even if it must be obvious that a person no longer has a genuine link with these countries. This tends to conflict with the character of citizenship as such.

Of course one also has to realise that many countries offer a wide possibility of renunciation of citizenship by an individual or release from citizenship by the state on application by a citizen, but that possibility is not enough to avoid the possession of the nationalities involved by persons without serious links with the state involved. Certainly, a renunciation of a citizenship gives, under normal circumstances, an indication of the fact that the person involved has the feeling that her or his links with the state of origin have weakened to such an extent that the citizenship no longer manifests a genuine link. Only in very exceptional circumstances will a genuine link continue to exist in spite of renunciation. On the other hand it is not difficult to imagine cases where there is no longer a link between a person and the state, but the person involved does not take the initiative to renounce because of complete ignorance of possessing the citizenship involved, laziness or simply the feeling that one never knows whether the citizenship involved could be useful in the (distant) future. A wide possibility of renunciation does therefore not compensate for the absence of grounds for loss based on the assumption of lack of a genuine link.

In some other cases the loss of citizenship occurs not because of the assumption that the facts involved manifest the loss or inexistence of a genuine link, but – at least partly – as a sanction because of the behaviour of the national involved. That is, in our opinion, the case when citizenship is lost because of voluntary military service and in cases of deprivation because of behaviour seriously prejudicial to the vital interests of the state involved. However, some discussion on the character of these grounds for loss is possible. One could argue that the behaviour involved illustrates that the person in question lost, or even deliberately cut, the ties with the state of her or his citizenship. This, however, no longer seems to be the prevailing view. In this context, one should pay attention to the fact that the European Convention on Nationality (ECN 7) accepts these two grounds of loss, but does not accept any consequences for the citizenship of the (still minor) children of the person(s) involved. The sins of the parents must not have any consequences for the children. The loss of citizenship for these

reasons does not imply, according to the Convention, that these children no longer have serious ties with the country involved. This approach underscores that the grounds for loss in question are seen as a sanction and not as an indication of the loss of a genuine link.

A particular category is the loss of citizenship by revocation of a naturalisation decree because of fraud or other similar acts. In those cases loss of citizenship is a reaction to the behaviour of a person who acquired the citizenship by naturalisation. If the acquisition would not have taken place without the fraud, then the revocation is based on the conclusion that the criteria that are used in order to determine whether a foreigner built up such close ties with a state that the granting of citizenship is legitimated, are, after new examination, not fulfilled. A difficulty with regard to this ground of loss is that if many years have passed since the acquisition, in the meantime an obvious genuine link between the person involved and the state where the naturalisation took place can have developed. The loss of citizenship by revocation is then, more or less, a penalty. The Convention accepts this ground for loss even in cases where statelessness would be the consequence. Loss of citizenship and even statelessness is also accepted for the children of the persons involved. This is highly problematic if the fraud is only discovered after a very long period and the children were born after the naturalisation of the parent who committed the fraud. In those cases the guidelines of the European Court of Justice on the application of a proportionality test have to be taken seriously, which implies that no automatic extension of the deprivation to children may take place.

A special remark has to be made on the loss of a citizenship because of loss of the family relationship, which was the basis for the acquisition of a certain citizenship. As such this ground for loss seems to be a logical correction of the grounds of acquisition. If a citizenship is attributed to a child because of the descent of a certain person, it is in principle understandable that this citizenship is lost again if the family relationship involved is lost. Nevertheless, one has to realise that the person involved can have already developed close factual ties with the state whose citizenship she or he possesses before the family relationship was annulled. It seems to us that in this perspective it is absolutely necessary to limit this ground for loss in time. The Convention exclusively accepts this ground for loss if the person in question is still a minor. However, one could ask whether taking the age of majority as a limit is not too long. It would be preferable to set the period of limitation at, for example, ten years, in line with the maximum residence requirement mentioned in the Convention in case of naturalisation (ECN 6(3)). Furthermore, in those countries that want to provide for this type of loss an explicit regulation is necessary in order to achieve legal certainty, which is of particular importance in nationality law.

An extremely difficult issue is whether (and if so: under which conditions) grounds for loss should have consequences for the children of persons who lost the citizenship involved. If the grounds for loss are based on the assumption that the parent no longer has ties with the state of the citizenship involved, it is – at first sight - an acceptable assumption that her or his minor children also do not possess ties with the state involved. But it is once again not too difficult to imagine exceptions to this main rule. If the loss of the citizenship by a parent has consequences for the children, such exceptional situations have to be regulated as well. On the other hand, it is problematic if loss of citizenship by parents never has consequences for their minor children and if the citizenship involved can be transmitted *iure sanguinis* without any limitation in case of birth abroad. The consequence would be that children who acquired the citizenship *iure sanguinis* keep this citizenship even if the parents involved have already lost this citizenship.

A closely related issue is how far parents should be able to influence the citizenship position of their children. If parents lose their citizenship because of lack of a genuine link, under certain circumstances it can be accepted that their children's loss of status will follow. The situation that children lose their citizenship because of the fact that parents lose this status as a kind of penalty is, on the other hand, not acceptable. But should parents also be able to represent their children in acts that cause the loss of citizenship by these children, e.g. by renunciation? We have severe reservations about this point. Parents have the task to protect the interests of their children. They have to do this by, *inter alia*, representing their children in legal affairs. All jurisdictions provide that in certain very important matters parents need the consent of the court in order to be able to represent the children. In citizenship affairs this construction is also chosen in some jurisdictions (for example Germany), while in other jurisdictions children cannot lose their citizenship by acts of the parents or even by their own acts committed as minors (for example in Ireland). Both views are acceptable. Another acceptable solution is to

provide that children can lose their citizenship by acts of their parent as a representative or by their own acts with the consent of the parent, but that the child can reacquire the lost citizenship within a certain period after having attained the age of majority. This is an elegant solution, which could also be applied in case of *ex lege* loss of citizenship by a minor as a consequence of the loss of citizenship by a parent.

A special problem concerns the loss of citizenship by a child because of the renunciation of this citizenship by a parent. It has to be admitted that this can be, under specific circumstances, a manifestation of the loss of a genuine link with the state involved. But one should ask whether such a voluntary act by a parent should have consequences for a child. The construction of consent of the court is again acceptable. Loss of citizenship without judicial control and without the possibility of reacquisition after having attained the age of majority is questionable.

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