ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

EUDO CITIZENSHIP OBSERVATORY

LOSS OF CITIZENSHIP
TRENDS AND REGULATIONS IN EUROPE

Gerard-René de Groot and Maarten P. Vink

June 2010
Revised October 2010

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

Loss of Citizenship
Trends and Regulations in Europe

Gerard-René de Groot and Maarten P. Vink

July 2010
Revised October 2010

EUDO Citizenship Observatory
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School
Comparative Report, RSCAS/EUDO-CIT-Comp. 2010/4
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Comparative Reports has been jointly supported by the European Commission grant agreement JLS/2007/IP/CA/009 EUCITAC and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).
The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at http://eudo-citizenship.eu

Loss of citizenship
Trends and regulations in Europe

Gerard-René de Groot and Maarten Peter Vink

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.

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 (English edition), we use abbreviations when referring to the thirty-three countries included in this comparative study:

AUT = Austria;[1] 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; ICE = Iceland; IRE = Ireland; ITA = Italy; LAT = Latvia; LIT = Lithuania; LUX = Luxembourg; MAL = Malta; MOL = Moldova; NET = Netherlands; NOR = Norway; POL = Poland; POR = Portugal; ROM = Romania; SLK = Slovakia; SLN = Slovenia; SPA = Spain; SWE = Sweden; SWI = Switzerland; TUR = Turkey; 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[2], 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.

[1] The European Bulletin on Nationality uses the abbreviation AUS for Austria. We prefer the more common abbreviation of AUT.
[2] www.eudo-citizenship.eu

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.

Acknowledgement

This report could not have been written without the detailed information provided by the country experts involved in the EUDO Citizenship Observatory. We also thank persons working in national administrations who have provided additional information on legislative practices, as well as Rainer Bauböck for feedback on an earlier draft of this paper.

Updated version

This paper is an updated version of a paper published in July 2010. Information on Cyprus, Poland and Romania has been added to the paper and information on Estonia and Latvia (Table 1) and Greece (Table 6) has been updated. Tables 7 and 8 from the previous version were renumbered as Tables 6 and 7, respectively.

Gerard-René de Groot and Maarten Peter Vink

12 October 2010

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 thirty-three 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 2010a; 2010b, Goodman 2010), but perhaps even more strongly due to the fact that only a few international documents exist with some 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.

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 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.[3] 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. 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* 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). 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 thirty-three countries of this study, where we observe a clear trend since 1985 of abolishing the rule of automatic loss of citizenship as a result of the voluntary acquisition of the citizenship of another country.

Box 1. Modes of loss of citizenship

ID	Grounds for loss	ID	Grounds for loss
L 01	Renunciation of citizenship	L 09	False information or fraud in the procedure of acquisition of citizenship
L 02	Permanent residence abroad	L 10	Retention of a foreign citizenship by persons acquiring citizenship of C1 by declaration or naturalisation
L 03	Service in a foreign army	L 11	Loss of citizenship by parent(s)
L 04	Employment in non-military public service of a foreign country	L 12	Loss of citizenship by spouse or registered partner
L 05	Acquisition of a foreign citizenship	L 13	Loss of family relationship
L 06	Retention of a foreign citizenship by persons who have acquired citizenship of C1 by birth	L 14	Establishment of foreign citizenship of a person who acquired citizenship of C1 as a foundling or as a presumptively stateless person
L 07	Disloyalty, treason, violation of 'duties as a national' or similar grounds	L 15	Loss for other reasons
L 08	Other (criminal) offences		

This having been 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 fifteen modes of loss of citizenship (Box 1; see

[3] 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)).

also Vink & Bauböck 2010). In this paper we analyse the wide variety of regulations on the different modes of loss of citizenship that can be found across thirty-three European countries.

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 thirty-three countries with regard to the fifteen 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.

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).

By structuring our analysis along the lines of the international norms on the loss of citizenship which 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 with 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 thirty-three states

have signed and ratified the ECN. In fact, only fifteen out of our thirty-three 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 without any doubt is the best available catalogue of international norms with regard to the loss of citizenship, it is not the final word. We will make some critical remarks on the provisions of the ECN as well. 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.

2 Voluntary acquisition of a foreign citizenship (L05)

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 a 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)).

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 no longer is 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. Nevertheless 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 either was 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 always somewhat at odds with the general principles of the citizenship policies in these countries. As a result, *anno* 2010, Chapter 1 of the 1963 Convention is only relevant for Austria, Denmark, 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 NET 15(2)).

As already 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. Twenty-one out of the thirty-three 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, Finland (since 2003), France (since 1973, 2009), Greece (1914), Hungary (1957), Iceland (2003), Ireland (1956, but see below), Italy (1992, 2010),[4] Luxembourg (2009), Malta (2000), Moldova (2003), Poland (1951), Portugal (1981), Romania (1948), Slovakia (2010), Sweden (2001), Switzerland, Turkey (2009), the United Kingdom (1949).[5]

[4] 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.

[5] Between 1870 and 1949 voluntary acquisition of a foreign citizenship was a ground for loss of citizenship of the

Table 1. Loss due to voluntary acquisition of a foreign citizenship (L05)
(special provisions for minors excluded)

	Article in law	Introduction / Abolition (after 1980)	Procedure	Exceptions (including changes after 1985)	1963 Strasbourg Convention Chapter 1 (+ 1993 Second Protocol) (Ratification / Denunciation)
AUT	27, 28	–	Lapse	Retention citizenship of C1 is in interest of C1, or (since 2005) benefits the well-being of a minor child; TP has acquired citizenship of C1 by descent or there are special reasons related to the TPs private or family life (1999).	R 1975
BEL	–	A 2007	–	–	R 1991 / D 2008
BUL	–	–	–	–	–
CRO	–	–	–	–	–
CYP	–	–	–	–	–
CZE	17	I 1993	Lapse	TP acquires citizenship of C3 by birth or by marriage.	–
DEN	7(1), 7(2)	–	Lapse	–	R 1972
EST	EST 29	I 1993	Lapse	TP has acquired citizenship of C1 by birth.	–
FIN	–	A 2003	–	–	–
FRA	–	–	–	–	R 1965 (SP 1995) / D 2009
GER	25	–	Lapse	TP acquires citizenship of C2 (EU/SWI) (since 2007), obtains permission to retain citizenship of C1 (discretionary) or had and could not have knowledge about possession citizenship of C1.	R 1969 / D 2002
GRE	–	–	–	–	–
HUN	–	–	–	–	–
ICE	–	A 2003	–	–	–
IRE	19(1)(e)	–	Withdrawal	TP acquires citizenship of C3 by marriage or has acquired citizenship of C1 otherwise than by naturalization.	–
ITA	–	A 1992	–	–	R 1968 (SP 1995) / D 2010
LAT	24(1)(1)	I 1991	Withdrawal	–	–
LIT	18(1)(2)	I 1991	Lapse	–	–
LUX	–	A 2009	–	–	R 1971 / D 2009
MAL	–	A 2000	–	–	–
MOL	–	I 1995 A 2003	–	–	–
NET	15(1)(a)	–	Lapse	TP is born in C3 and has main residence there; TP has had main residence in C3 for 5 years before majority; TP is married to a citizen of C3 (since 2003).	R 1985 (SP 1996)

United Kingdom. Between 1870 and 1914 citizenship could be retained by making a declaration. See UK 6 (Act 1870) and UK 13 (Act 1914).

NOR	23	–	Lapse	–	R 1969
POL	–	–	–	–	–
POR	–	A 1981	–	–	–
ROM	-	-	-	-	-
SLK	9(1)(b)	I 2010	Lapse	TP acquires citizenship of C3 by birth or by marriage.	–
SLN	–	–	–	–	–
SPA	24(1)	–	Lapse	TP declares desire to retain citizenship of C1 (since 2002), or is citizen of C2 (Latin American countries, Andorra, Philippines, Equatorial Guinea and Portugal). Does not apply in time of war	–
SWE	–	A 2001	–	–	R 1969 / D 2002
SWI	–	–	–	–	–
TUR	–	I 1981 A 2009	–	–	–
UK	–	–	–	–	–

Twelve out of the thirty-three countries of this study (see Table 1) do maintain voluntary acquisition as a ground for loss. Some of these countries always provide for loss, if a foreign citizenship is acquired voluntarily, without making any exception. An example is Denmark, where a person who is of full age loses her or his Danish citizenship by acquiring another citizenship by application or explicit consent (DEN 7(1))[6]. A similar provision can be found in Norway (NOR 23(1)). Czech citizenship is lost by acquisition of another citizenship, except when this citizenship was acquired by birth or marriage (CZE 17). A similar rule exists in the Slovak Republic (SLK 9(1)(b)), since July 2010, in response to the facilitated access to Hungarian citizenship for ethnic Hungarians from January 2011. In Lithuania there is an exception for cases where Lithuania concluded a treaty on dual citizenship (LIT 18(1)(2)).

Other countries provide in principle for automatic loss of citizenship by voluntary acquisition of a foreign citizenship, but make some exceptions. We list here a number of possible exceptions.

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

This is for example the case in Austria. 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.

[6] Danish citizenship is also lost automatically when the acquisition of foreign citizenship is the result of public service in another country (DEN 7(2)).

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 1998: comments 28-36, Sturm: nr. 122, German Ministry of Internal Affairs: 8 November 2000, personal communication). 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 EU member state increased from 38 in 2000 to 64 in 2002 and 251 in 2004.[7]

In Turkey, between 1981 and 2009, voluntary acquisition of another citizenship without informing the Turkish authorities was ground for the withdrawal of citizenship. The number of withdrawals increased from 42 in the year 2000 to 242 in 2005. However, in 2009 this ground for loss was removed from the law (Kadirbeyoglu 2010).

b) the target person still has to fulfil his military obligations

This was the case in Belgium until 1991, where a person who had reached the age of eighteen years and was subject to military service obligations needed the authorisation of the King in order to lose Belgian citizenship by voluntary acquisition of a foreign citizenship (BEL 22(2) old). This condition was introduced into Belgian law in 1926 and, in practice, consent was normally granted (Closset 1993: 377). However, when in 1991 the 1963 Strasbourg Convention, which provides for automatic loss, was ratified, the provision was abolished. Belgium also abolished mandatory military service in 1994.

c) the target person does not live abroad

In Spain, for example, 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.

[7] *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* (StAR-VwV) of 18 October 2000. Statistics for 2004 refer to situation of 30 June 2004. See *Antwort der Bundesregierung. Deutscher Bundestag.* Drucksache 15/3912, 12 October 2004.

d) the target person 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 not lost anymore in case of a 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. There are currently no countries with which Germany has concluded such a treaty.

e) 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 that people cannot 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.

f) the target person 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 during a 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 new Slovak provision (SLO 17) enacted in 2010 provides that Slovak citizenship is not lost in case of acquisition of another citizenship by or during the marriage with a spouse, who already possesses this other citizenship.

g) the target person did not know that she or he possessed the citizenship of the state in question

This exception exists in Germany, according to a court decision by the Federal Administrative Court[8]. This court came to the conclusion 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 has been unaware of his German citizenship when applying for a foreign citizenship, the loss of German citizenship does not occur. However, if target persons were aware of their German citizenship, but not of the consequences of voluntary acquisition when they applied for a foreign citizenship, they will lose their German citizenship.

Nearly 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

[8] *Bundesverwaltungsgericht* 10.04.2008 (5 C 28.07).

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,[9] 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).

Finally, a note on procedures and some comments on the notion of 'voluntary acquisition'. First, on procedures, 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 certain 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 in previous legislation of Greece and Turkey (De Groot 2003a: 212).

In Moldova, until 2003, voluntary acquisition of the citizenship of a state that did not conclude an agreement on dual citizenship with Moldova could be a ground for deprivation of Moldovan citizenship, if the person involved did not renounce the foreign nationality within one year (MOL 23(1)(d) old). Therefore, the loss did not occur *ex lege* at the moment of the acquisition, but could be the consequence after a period of time. This provision was abolished by Act 232/2003.

Second, in those countries where voluntary acquisition is always, or under certain circumstances, a ground for loss of the 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 also do not apply. 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 voluntary, Germany and Netherlands do consider this a legitimate ground for loss (see on Spain: Alvarez Rodríguez 1996: 86, on Germany: Hailbronner et al 2005: 762-763, on the Netherlands: De Groot 2003b: 367-368).

Third, 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[10], in countries such as Austria and Germany the answer is negative.[11] Again

[9] 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 will see no consequences after acquisition of another citizenship. The 1995 Citizenship Act continues this practice (EST 29).

[10] *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).

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

slightly different are cases 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 acquisition. Austria also does not consider this type of acquisition of a foreign citizenship as voluntary (Zeyringer: nr. 73).

To conclude, an analysis of changes across the thirty-three states 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 exceptions to the main rule. An example is the Netherlands where we find exceptions which are inspired by the 1993 Second Protocol to the 1963 Strasbourg Convention. Another example is Germany, which since 1 January 2000 increasingly often consented to retain German citizenship in case of voluntary acquisition of a foreign citizenship, particularly when this concerns German citizens residing in another EU member states. Since 2007 it is no longer required to obtain this permission as German citizenship is never lost in case of voluntary acquisition of the citizenship of another member state of the European Union or of Switzerland. In 1999 Austria introduced the possibility to allow Austrians by birth the retention of Austrian citizenship in case of voluntary acquisition of a foreign citizenship for special reasons in their personal or family circumstances.

3 Loss due to fraud or non-renunciation (L09/L10)

ECN 7(1)(b) provides for the 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 1961 Convention on the Reduction of Statelessness (Art. 8):

> 1. A Contracting State shall not deprive a person of its 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: (...)
> b. where the nationality has been obtained by misrepresentation or fraud.

In this section 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) and the loss of citizenship due to the non-renunciation, or retention, of a foreign citizenship by persons acquiring citizenship by declaration or naturalisation (L10). 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 can not 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.

We first discuss loss due to fraud and subsequently loss due to non-renunciation. Table 2 summarises the relevant provisions for both modes of loss in the thirty countries of this study.

Table 2. Loss due to fraud (L09) / non-renunciation (L10)

	Article in law	Procedure	Grounds	Can result in statelessness? (fraud)	Time limit
AUT	24 34	Nullification Withdrawal	Fraud Non-renunciation	Yes n.a.	– 6 years
BEL	23(1), 23(9)	Withdrawal	Fraud	Yes	5 years
BUL	22 12(6)	Withdrawal Withdrawal	Fraud Non-renunciation	Yes –	10 years –
CRO	–	–	–	–	–
CYP	113(2)	Withdrawal	Fraud	Unclear	–
CZE	–	–	–	–	–
DEN	8A	Withdrawal	Fraud	Yes	–
EST	28(1)(4)	Withdrawal	Fraud	Yes	–
FIN	33	Withdrawal	Fraud	Yes	5 years
FRA	27-2	Withdrawal	Fraud	No	1 year after acquisition / 2 years after discovery fraud*
GER	35	Withdrawal	Fraud	Yes	5 years
GRE	–**	Withdrawal	Fraud	Yes	–
HUN	9	Withdrawal	Fraud	Yes	10 years
ICE	–	–	–	–	–
IRE	19(1)(a)	Withdrawal	Fraud	Yes	–
ITA	–	–	–	–	–
LAT	24(1)(3)	Withdrawal	Fraud Non-renunciation	Yes n.a.	–
LIT	21(1)	Withdrawal	Fraud Non-renunciation	Yes n.a.	–
LUX	15	Withdrawal	Fraud	No	–
MAL	14(1)	Withdrawal	Fraud	Yes	–
MOL	23(1)(a)	Withdrawal	Fraud	Yes	–
NET	14(1) 15(1)(d)	Nullification	Fraud Non-renunciation	Yes n.a.	12 years –
NOR	26(2) 26(1)	Withdrawal	Fraud Non-renunciation	Yes n.a.	–
POL	–	–	–	–	–
POR	16, 18	Nullification	Fraud	Yes	20 years
ROM	25(1)(c)	Withdrawal	Fraud	Yes	-
SLK	–	–	–	–	–
SLN	16(1) 16(2)	Nullification	Fraud Non-renunciation	Yes n.a.	– (until 2002: 3 years) –

SPA	25(2) 25(1)(a)	Nullification Lapse	Fraud Non-renunciation	Yes n.a.	15 years –
SWE	–	–	–	–	–
SWI	41	Nullification	Fraud	Yes	5 years
TUR	31	Nullification	Fraud	Yes	–
UK	40(3)	Withdrawal	Fraud	Yes	–

* 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

3.1 Loss due to fraud (L09)

Twenty-six of our thirty-three countries explicitly 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 seven countries (CRO, CZE, ICE, ITA, POL, SLK, SWE) have no relevant provisions in this regard. Of the countries that do have loss provisions due to fraud, nineteen allow for the revocation of citizenship due to fraud, even when this leads to statelessness. As stated above, although this is as such in line with 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).[12]

The requirement 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 not all states use such a time lit and, moreover that, when doing so, these time limitations vary greatly, from 1 or 2 years (FRA) to 15 years (SPA).

An example of a country where no time limits are set is the UK, where the Secretary of State may deprive a 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 10 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.[13] Persons who told significant lies as to their identity are deemed never to have been granted certificates of naturalisation at all. This means that, in

[12] Compare also *Janko Rottmann vs. Freistaat Bayern*. Case C-135/08 [2010].
[13] Police Section of the Immigration and Nationality Directorate of the Home Office. Personal communication by Andrew Hirst, 7 September 2000.

those cases, although the formal procedure for this mode of loss is revocation, or withdrawal in the terms of our 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) mention 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 can 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.[14] A similar withdrawal procedure was introduced by Norway in 2006, with the provision that Norwegian citizenship will be only be revoked if the target person has furnished the incorrect information against her or his better judgment or has suppressed circumstances of substantial importance for the decision (NOR 26(2)(1)).

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 for example Denmark and Norway, the procedure which 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 case of citizenship acquisition by forgery, or use of forgery, or else on the basis of the appropriation of a name and in so far as the target person has been found guilty of one of these offences in a final court judgment. An important difference with the countries mentioned above is that in Luxembourg withdrawal of citizenship is not possible if this would lead to statelessness. France applies a similar statelessness prevention rule, since 1998 (FRA 27-3(2)).

An alternative to withdrawal procedure applied in most countries is the nullification procedure where a citizenship acquisition by naturalisation may be deemed 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 the Netherlands, Portugal, Spain, Switzerland and Turkey. One important difference with the withdrawal procedure is that

[14] The only published decision was made by 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.

nullification normally applies retroactively: the citizenship is never assumed to have been acquired (see e.g. POR 16, 18). Whereas in Portugal there is no time limit provided in the Nationality Act,[15] The Netherlands (12 years), Spain (15 years) and Switzerland (5 years) provide such a limit. In the Netherlands, the only exception to that general rule is in case the target person was sentenced for crimes of war, torture or genocide. In the latter case revocation is possible without any time limit (De Groot 1999: 13-22).

In Greece, 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 on the basis of administrative law in the case of fraud, new facts, new pieces of evidence or new decisions on relevant preliminary questions. In case of fraud the revocation of a naturalisation decree is possible even if statelessness would be the consequence.[16] In other cases reopening is only possible if the revocation would not cause statelessness.[17]

3.2 Loss due to non-renunciation of previous citizenship (L10)

In eight out of thirty-three 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. This ground for loss is only relevant in those countries where the renunciation of the previous citizenship is a requirement for naturalisation. 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).[18] 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:

> 1) acquired the nationality more than two years ago either through naturalisation or extension of the naturalisation;
> 2) did not acquire her or his nationality because of special services in the field of science, economy, arts or sports in the interest of Austria;
> 3) was not a refugee under the Convention of 1951 or the Protocol of 1974 on the status of refugees, on the day of naturalisation; and

[15] In Portugal the Nationality Act does not provide a time limit for a declaration of nullity of the entry in the register on which the attribution or acquisition of nationality depends. However, in 2004 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).

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

[17] *Bundesministerium für Inneres*. Communication by Peter Mak, 1 September 2000.

[18] 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.

> 4) 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. Similar provisions can be found in Norway, albeit without specified time limits. 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 (in the latter case it seems of little practical relevance because of a lack of administrative control). In Latvia and Lithuania the possibility of deprivation of nationality because of non-renunciation of a previous citizenship is based on the general provision on fraud during the naturalisation procedure.

Finally, we raise some difficulties concerning procedure and terminology. A first 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 himself who provided false information as to her or his 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.[19] 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).

Second, it is not easy to determine the precise substance of 'relevant facts'. The Council of Europe provides some guidance, by stressing that attention has to be paid to the gravity of the facts (Recommendation 99(18)). Within the European Union, recent case law on loss of Union citizenship points to the importance of the principle of proportionality, which implies here that the gravity of the facts has to be evaluated against the gravity of the consequence of losing one's citizenship, certainly in cases where this may lead to statelessness.

Having regard to the importance which primary law attaches to the status of citizen of the Union, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union. In this respect it is necessary to establish, in particular, whether that loss is justified in relation to the gravity of the offence committed by that person, to the lapse of time between the naturalisation decision and the withdrawal decision and to whether it is possible for that person to recover his original nationality.[20]

Finally, the 1961 Statelessness Convention also stresses the importance, when withdrawal of citizenship is at stake, of the right to a fair hearing by a court or other independent body (Article 8(4)). To conclude, we observe a general trend across European countries – manifested by the European Convention on Nationality – that the revocation of a

[19] 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.
[20] Janko Rottmann vs. Freistaat Bayern. Case C-135/08 [2010], consideration 56.

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 quite a few countries provide such time limits, the majority of countries do not.

Box 3. The German option provision (L06)

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 aspects of the automatic acquisition is a so-called option provisions implying a citizenship choice between the age of 18 and 23 (see Hailbronner 2009: 6-8 for background and details).

In particular, target persons are required to submit a written declaration to the German authorities, whether he wants to retain German nationality within five years after having attained the age of 18 years (GER 29). If the target person chooses in favour of the 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 next to 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, and will lose German citizenship automatically at the earliest in 2013, if they fail to renounce, or do not obtain permission to retain, their citizenship by descent. 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.

4 Voluntary foreign military service and non-military public service (L03/L04)

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 republican 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 many 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). Partly these provisions can 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 (1961 Convention, Article 8(3)).
>
> 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 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 procedural clause would have been a welcome addition to ECN 7(1)(c).

4.1 Foreign military service (L03)

When looking at the relevant provisions in citizenship laws across European countries, we find that four countries provide for *ex lege* loss of citizenship in the case of voluntary foreign military service (see Table 3). However, in all four cases, these provisions deal with voluntary military service *of another state*, not with service in other non-state military forces. In Austria, for example, a citizen who voluntarily enters the military service of a foreign country loses Austrian citizenship (AUT 32).[21] If a dual citizen fulfils his military obligations in his other state he does not lose Austrian citizenship, unless he voluntarily commits acts which go beyond normal mandatory military service (Zeyringer: nr. 84).[22]

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 flip side 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 the Second World. 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-Netherlands citizens in a foreign country. This juridical loophole was the reason to abolish this ground for loss. Nevertheless, in response to the participation by (naturalised) Netherlands 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 already 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), in the new construction the loss occurs automatically. Nevertheless, as the authorities still have the possibility to avoid the loss by granting consent according to the German statute on military service, the new loss provisions seem at odds with the constitutional ban on deprivation of citizenship.

[21] If the person involved is still a minor at the moment of entering the foreign military service, the previous consent of his legal representative is required. If the legal representative is not a parent of the minor involved, previous permission of the court is required (AUT 27(2)).

[22] See also the Austrian reservation to ECN 7(1)(c): 'Austria declares to retain the right to deprive a national of its nationality, if such person voluntarily enters the military service of a foreign State.' As the Austrian provisions seem fully in line with ECN 7(1)(c) this reservation seems somewhat superfluous.

Table 3. Loss due to foreign military service (L03) / state service (L04) / serious prejudicial behaviour (L07)

	Article in law	Procedure	Grounds	Special target group
AUT	32 33	Lapse Withdrawal	Military service of a foreign state Foreign service and damage to national interests and reputation	– –
BEL	23(1)(2)	Withdrawal	Violation of duties as a national	Acquired citizenship other than by birth
BUL	24	Withdrawal	Grave crime committed against C1	Acquired citizenship of C1 by naturalisation and is dual citizen
CRO	–	–	–	–
CYP	113(3)	Withdrawal	Lack of loyalty to laws of C1; 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
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	– Dual citizens
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
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 C1	Dual citizens Dual citizens who acquired citizenship by declaration, naturalisation or reacquisition (time limit: 10 years)
GER	28	Lapse	Voluntarily military service of a foreign state without government permission	Dual citizens
GRE	17	Withdrawal	Public service position abroad against express government prohibition	–
HUN	–	–	–	–
ICE	–	–	–	–
IRE	19 (1)	Withdrawal	Failure in duty of fidelity and loyalty to C1	Naturalised citizen
ITA	12	Withdrawal (in time of war: lapse)	Public service position abroad against express government prohibition	–

LAT	24(1)(2)	Withdrawal	Military service of a foreign state or security services without government permission	–
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
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)
MOL	23(1)(b), (c)	Withdrawal	Voluntary military service of a foreign state and acts which are seriously prejudicial to vital national interests	–
NET	15(1)(e)	Lapse	Voluntary service of an army of a hostile state	Dual citizens
NOR	–	–	–	–
POL	–	–	–	–
POR	–	–	–	–
ROM	15(1) (a)(b) (d)	Withdrawal	Behaviour prejudicial to the interests of C1; military service of state with which C1 has no diplomatic relations; ties with terrorist organisations	Acquired citizenship other than by birth
SLK	–	–	–	–
SLN	26	Withdrawal	Member of an organisation engaged in activities to overthrow the constitutional order of C1; member of a foreign intelligence service and as such harming the interests of C1, or harming such interests by serving under any government authority or organisation of a foreign state; persistent perpetrator of criminal offences prosecuted ex officio and of offences against public order; refusal to carry out the duty of a citizen of C1 as prescribed by the constitution and the law of C1, despite the appeal of the competent authority of C1.	Dual citizens
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’
SWE	–	–	–	–
SWI	48	Withdrawal	Acts against national interest or reputation	–
TUR	29	Withdrawal	Voluntary military service of a foreign state, public service position abroad against express government prohibition, or any kind of service without government permission for a country that is at war with C1.	–
UK	40(2)	Withdrawal	Acts which are seriously prejudicial to vital national interests.	Dual citizens

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. In the three Baltic states and in Moldova, 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), MOL 23(1)(b)). The Moldovan law provides that citizenship 'may be' revoked in such a case, which gives the authorities a margin of appreciation (see also FRA 23-28 and TUR 29).

4.2 Foreign service (L03/L04)

A considerable number of countries provide for the withdrawal of citizenship in cases of foreign service, without making a clear distinction between military service and civil service (see Table 3).

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 one to abstain from such support. The intended deprivation has to be communicated to the person involved and a term not shorter than 15 days and not longer than two months has to be given to stop the foreign employment. Since 1998 this ground for loss may not cause statelessness. Lagarde (1996: 323) mentions that this mode of loss is not applied in practice. 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, De Brabandere-Marescaux & Koukoulis-Spiliotopoulous: no. 93). 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 citizen shall 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 abandon the office or the military service (ITA 12(1)). In wartime different rules apply. 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 accepted or did not abandon a public office of that foreign state, or they were in the army of this state without being obliged to do so (ITA 12(2)1).[23] In Spain, voluntary foreign military or civil service is not a general ground for automatic loss, but applies exclusively to naturalised citizens,

[23] 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.

and only to political functions, if the government has expressly forbidden the involved service (SPA 25(1)).[24]

In Turkey service of a foreign state, in a way which conflicts with the interests of Turkey, is a reason for deprivation of citizenship, if the person involved does not obey the order of the Turkish authorities to abandon the foreign service within a period, which has to be no less than three months. Continuation of voluntary service of another state with which Turkey is at war is a ground for deprivation of citizenship, if the Turkish authorities did not give permission to continue the service (TUR 29(1)(b)).

In Austria, nationals in the service of a foreign country shall be deprived of nationality if they, through their behaviour, severely damage 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). 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 provisions also seem of 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 which 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)[25] and Luxembourg (see Schockweiler: no. 85, 1996: 519).

To conclude, notwithstanding the rather broad formulation of ECN 7(1)(c), nearly all states under consideration use foreign military service as 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. Apart from difficulties with regard to the definition of 'voluntary', which is a problematic concept when the alternative to foreign service would be to leave the foreign country of residence,[26] 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 of another member state could – under circumstances – violate European Union law (Schneider 1995: 367-370).

5 Seriously prejudicial behaviour (L07)

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

[24] 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 go voluntarily into foreign military service. Cf. Fernandez Rozas & Alvarez Rodrigues (1996: 239), who are of the opinion that this Decree is no longer in force.

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

[26] The government of the Netherlands decided in 1988/1989, that the nearly automatic acquisition of South African citizenship by persons in the age 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.

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)).[27] 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 a third of the thirty-three countries 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)).

Only twelve countries apply regulations that have loss of citizenship as a consequence based on individual behaviour seriously prejudicial to state interests (see Table 3). Most provisions are drafted in rather general and sometimes vague terms. For example, a Greek citizen may be declared 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 Switzerland the Ministry of Justice can deprive dual citizens of their Swiss citizenship, if their behaviour severely damages the interests or the reputation of Switzerland (SWI 48). Moldova allows the deprivation of citizenship in case of actions seriously prejudicial to the vital interests of the state (MOL 23(1)(c)).

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 23-27). In practice this provision is not applied if somebody, 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). 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,

[27] 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.

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. The Cypriote (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, some 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)). In the latter two cases, the application to naturalised citizens is only 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), France (FRA 23-27), Ireland (IRE 19(1)) and Malta (MAL 14(2)).

A 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 duals 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 judgement, loss cannot occur if this would lead to statelessness (DEN 8B). Similar safeguards are found in Bulgaria, France, Slovenia and the UK. In Austria, Belgium, Estonia, Ireland, Lithuania, Malta and Switzerland it is unclear whether protection against statelessness exists for this ground of loss of citizenship.

Although loss provisions on this ground exist only in a minority of our thirty-three countries, and many of these provisions are old and probably not often applied in practice, the problems of unequal treatment of citizens (natural born versus naturalised) and of statelessness are serious. The fact that many provisions are also rather general in scope makes this ground for loss a potential source of legal insecurity.

6 Permanent residence abroad (L2)

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. This arguably 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 both the European Convention and the 1961 Convention on the Reduction of Statelessness (Article 7(3)) indicate that loss of citizenship based on continued residence abroad, failure to register or similar grounds, may not occur if this would lead to statelessness. 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 thirteen of the thirty-three countries of this study persons may lose citizenship of a country due to continuous residence abroad (see Table 4). 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 attaining the age of twenty-two (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 it the target person does not become stateless.

Table 4. Loss due to permanent residence abroad (L02)

	Article in law	Procedure	Birth abroad	Dual citizen	Residence abroad	Age	Preventive action
AUT	–	–	–	–	–	–	–
BEL	22(1)(5)	Lapse	Yes	Yes	Residing outside C1 since age of 18	28	Declaration
BUL	–	–	–	–	–	–	–
CRO	–	–	–	–	–	–	–
CYP	113(4)	Withdrawal	No (but does not apply to 'natural born' citizens)	Yes	Seven years since naturalisation	–	Appeal to public interest
CZE	–	–	–	–	–	–	–
DEN	8(1)	Lapse	Yes	Yes	Never resided or stayed in C1 under circumstances indicating a special tie to C1	22	Request to retain citizenship before age of 22 (discretionary)
EST	–	–	–	–	–	–	–
FIN	34	Lapse	No	Yes	Residing outside C1 and not resided at least seven years in C1 or C2 (Nordic country)	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	Yes	No	Fifty years (parents)	–	Application for a passport, registration at consulate or for elections in C1
GER	–	–	–	–	–	–	–
GRE	–	–	–	–	–	–	–
HUN	–	–	–	–	–	–	–
ICE	12	Lapse	Yes	Yes	Since birth	22	Request to retain citizenship before age of 22 (discretionary)
IRE	19(c)	Withdrawal	No	No	Seven years, otherwise than in public service, after acquiring citizenship of C1 by naturalisation (except when based on cultural affinity)	–	Annual request to retain citizenship
ITA	–	–	–	–	–	–	–
LAT	–	–	–	–	–	–	–
LIT	–	–	–	–	–	–	–

LUX	–	–	–	–	–	–	–
MAL	14(2)(d)	Withdrawal	No	No	Seven years residence outside C1, other than in diplomatic service, after acquiring citizenship of C1 by naturalisation or registration	–	Declaration to retain citizenship
MOL	–	–	–	–	–	–	–
NET	15(1)(c) 15(3) 15(4)	Lapse	No	Yes	Ten years uninterrupted residence outside C1 or C2 (EU)	–	Obtaining a passport or similar document
NOR	24	Lapse	No	Yes	Not resided at least two years in C1 or at least seven years in C2 (Nordic country)	22	Request to retain citizenship before age of 22 (discretionary)
POL	–	–	–	–	–	–	–
POR	–	–	–	–	–	–	–
ROM	–	–	–	–	–	–	–
SLK	–	–	–	–	–	–	–
SLN	–	–	–	–	–	–	–
SPA	24(3)	Lapse	Yes (second gen.)	Yes	Currently	21	Declaration to retain citizenship
SWE	14(1)	Lapse	Yes	Yes	Never resided in C1 or at least seven years in C2 (Nordic country)	22	Request to retain citizenship before age of 22 (discretionary)
SWI	10	Lapse	Yes	Yes	Resident outside C1	22	Registration before age of 22
TUR	–	–	–	–	–	–	–
UK	–	–	–	–	–	–	–

Similar provisions can be found in the other Scandinavian countries (see FIN 34, ICE 12, NOR 24, 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 Iceland the majority of persons falling under the scope of this provision for loss of citizenship (ICE 12) have been in contact with Iceland to such an extent that they fulfill the condition of having either been domiciled in the country at some point or have resided in Iceland for any purpose which could be interpreted as indicating a desire to be an Icelandic citizen. In those cases a permit granted by the President to retain citizenship is not needed. Such permits are however granted now and then, but very rarely.[28] In Sweden this consent is normally granted (Bellander 1996: 658, note

[28] Ministry of Justice and Ecclesiastical Affairs. Personal communication with Jón Thors, Dóms - og Kirkjumálar Áduneytid, 17 November 2000.

38). In the period 1996-1999 the authorisation to retain Swedish citizenship has been granted in around 185 cases per year (753 cases in total).[29] The two countries that stand out with regard to the personal scope of this ground for loss are Finland and Norway, where lapse of citizenship can also apply to persons born in the country. In both countries 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. Whereas in Finland 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 Norway a formal permission to retain citizenship is always required (NOR 24).

In Belgium, Cyprus, Malta, Spain and Switzerland 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 (or register, in the case of Switzerland). 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 twenty years (LUX 25(8) old) and abolished this ground for loss in 2006 before it could have an effect. The Swiss procedure, introduced in 1952, is largely similar to the Belgian procedure (SWI 10). 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)). 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 has evident ties with the Netherlands. The loss of Dutch citizenship happened *ex lege*. This situation was arguably not in conformity 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 Netherlands 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 legitimized 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).

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. The loss of French citizenship can be established *(constatée)* by a judgment, if persons who

[29] *Migrationsverket*. Personal communication with Bo Lundberg, 6 September 2000.

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 fifty 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, Netherlands and Norway). 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, Ireland and Switzerland. 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 makes 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.

7 Loss of family relationship (L13)

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)), the loss of the family relationship may cause the loss of citizenship.

7.1 Annulment of maternity / paternity and annulment or revocation of adoption

Of the thirty-three countries under consideration only nine states regulate this ground for loss expressly. When comparing regulations across countries, we can distinguish between three main procedural approaches. In four 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, SWI). In similar situations, three states go a step further and provide for a nullification procedure (GER, MOL, NOR), implying that the person is assumed never to have been a citizen of the country involved. Finally, two other countries provide for a possibility of withdrawal of citizenship (FIN, ITA).

An important issue is whether loss of citizenship due to loss of a family relationship can cause statelessness. The European Convention is clear on this matter: it should not. Many, but not all, countries 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 is common in most other countries, except Finland, Germany and Italy.

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.[30] Since 2009, loss is only possible until the child reaches the age of five, except in those cases where recognition of paternity is annulled by a court on application of the authorities because this recognition happened for immigration law purposes (GER 17(3)).[31] However, this annulment is not possible if family life *(sozial-familiäre Beziehung)* exists between the father and the child.[32]

Italy is the only country where the loss provision is arguably at odds with the European Convention due to the absence of an age limit. It should be mentioned, though, that the Italian provision is particular in that it only applies to 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)). 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

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

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

[32] 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.

within one year after the revocation itself, if she or he possesses or reacquires another citizenship (Bariatti 1996: 485).

Other countries, in particular Finland and Norway, also explicitly take into account additional considerations, such as the ties between the target person and the country involved (FIN 32), or the length of time that has elapsed between the presumed date of acquisition and whether the persons involved have acted in good faith (NOR 6). In Norway, upon application, an administrative decision may be made to the effect that a decision on the nullification of the original acquisition shall have no significance. The person involved shall then be deemed as having been Norwegian from the date of the originally presumed acquisition of Norwegian citizenship.

Finally, 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. Another example from the recent past is Sweden, where only in 2006 an administrative court decided that a denial of paternity does not have nationality consequences (Lagerqvist Veloz Roca: 2007: 705-708).

Interesting in this context is also a reservation made by Austria 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.

Table 5. Loss due to loss of family relationship (L13)

	Ground for loss	Article in law	Procedure	Age limit	Can lead to statelessness?	Special considerations
AUT	–	–	–	–	–	–
BEL	Annulment of family relationship Adoption by a foreigner and TP acquires, or already possesses, foreign citizenship	8(4) 22(1)(4)	Lapse Lapse	18 18	Unclear No	– No loss if spouse of adopting parent is a citizen of C1
BUL	–	–	–	–	–	–
CRO	–	–	–	–	–	–
CYP	–	–	–	–	–	–
CZE	–	–	–	–	–	–
DEN	–	–	–	–	–	–
EST	–	–	–	–	–	–
FIN	Annulment of paternity	32	Withdrawal	5*	Unclear	TPs situation: age and

						ties with C1
FRA	–	–	–	–	–	–
GER	Annulment family relationship Adoption by a foreigner and TP acquires foreign citizenship	4(1), 17(3) 27	Nullification Lapse	5** 18	– No	– No loss if one of (adopting) parents is a citizen of C1 or if TP has children with a citizen of C1
GRE	–	–	–	–	–	–
HUN	–	–	–	–	–	–
ICE	–	–	–	–	–	–
IRE	–	–	–	–	–	–
ITA	Revocation of adoption due to TPs behavior	3(3)	Withdrawal	–	No	–
LAT	–	–	–	–	–	–
LIT	–	–	–	–	–	–
LUX	Annulment family relationship	13(3)	Lapse	18	No	–
MAL	–	–	–	–	–	–
MOL	Annulment of adoption and TP resides abroad or takes up residence abroad	14	Nullification	18	Unclear	–
NET	Annulment family relationship Judicial establishment of paternity, legitimation, adoption by a foreigner and TP acquires, or already possesses, foreign citizenship	14(2) 16(1)(a)	Lapse Lapse	18 18	No No	–
NOR	Annulment family relationship	6	Nullification	18	No	TPs situation: ties to C1 and acting in good faith (TP and parents)
POL	–	–	–	–	–	–
POR	–	–	–	–	–	–
ROM	Adoption by foreigner and TP acquires foreign citizenship	29	Renunciation	–	–	–
SLK	–	–	–	–	–	–
SLN	–	–	–	–	–	–
SPA	–	–	–	–	–	–
SWE	–	–	–	–	–	–
SWI	Annulment family relationship	8	Lapse	18	No	–
TUR	–	–	–	–	–	–
UK	–	–	–	–	–	–

* FIN: or within 5 years of establishing paternity.
** GER: except annulment of recognition for migration law purposes on application of authorities.

7.2 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 of the fact that the loss of the family relationship in 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. 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 contained as well 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)).[33]

In only a small minority of the countries under consideration, adoption of a child by foreigners is 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)), and Switzerland (SWI 8a(1)). 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 valid under German law and if the target person receives the citizenship of the person adopting her or him (GER 27). The citizenship is

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

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.[34] The loss extends to the minor offspring of the adopted German, if she or he has the 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.[35]

In other countries, adoption by foreigners does not have automatic consequences for the citizenship of the adopted child. In Switzerland courts decided expressly that other grounds for loss can not be applied by analogy in cases where a minor was adopted by a foreigner (Hecker 1985: 160). 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) (L11)

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 affect negatively the citizenship status of their children, in case they loss 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 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 loss cannot extend to children 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:

[34] See *Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht* of 18 October 2000, Comment 27.1.
[35] 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.

> 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.

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 and Vrinds 2004 for an extensive overview), we find many European countries that do not allow for the extension of loss from parents to their children (Cyprus, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Moldova, 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)).

Other countries have such regulations, but exclusively provide – and only under certain conditions – for a declaration of renunciation or of release of citizenship on application (BEL 22(1)(3); CRO 20(1)(2), 22(1)(2); CZE 16; LUX 13(2); ROM 27(2); SLK 9(5); TUR 27). 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 on their behalf an application for release from nationality.

Switzerland provides for extension of loss by release and by withdrawal of citizenship because of fraud (SWI 44 and 41(3)). With regard to withdrawal because of fraud, one should realise again 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)).

More extensive regulations including extension of ground for loss *ex lege* exist in Austria, Belgium, Denmark, Netherlands and Norway. Iceland and Sweden provide 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 (ICE 12; SWE 14(3)).

In Austria the loss of citizenship because of voluntary acquisition of another citizenship extends to children born in wedlock and 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 fourteen or older need to consent to the acquisition of the foreign citizenship (and hence the loss of Austrian citizenship). The loss of citizenship also extends to the children of the citizen if they are unmarried minors, born out of wedlock, and would follow the parent into the foreign citizenship by law, if their legal representative has explicitly given consent to the acquisition of the foreign citizenship in advance. This applies to children of a man only if his paternity has been established or recognized and he is in charge of care and custody of the children.

Danish citizenship is lost by an unmarried child under the age of eighteen years who acquires foreign citizenship because one of her or his parents, who has the custody or any part thereof, 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)). Norway applies similar rules (NOR 23 and 24(4)).

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. Dutch citizenship is not lost if the other parent possesses Dutch citizenship (NET 16). The Belgian law follows the same approach, for voluntary renunciation, but add as a condition that the relevant parent(s) must exercise their parental authority in respect to the child (BEL 22(1)(3)).

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.

Already during the twenties some countries had 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. Some 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 which 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 as well, 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 nowadays. 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, such as France or Ireland (IRE 22), 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)).

Finally, whether a parent should have at all 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 contribution. 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-going consequences and, arguably, where it is regulated by law, this should be done with 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 Voluntary renunciation (L01)

The only ground for loss of citizenship that universally exists in all thirty-three countries of this study 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, than 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)). The explanatory report to the Convention clarifies that, even though states are allowed to make renunciation conditional upon certain criteria, even for citizens residing abroad this discretion is not unlimited:

> It is not acceptable under Article 8 to deny the renunciation of nationality merely because persons habitually living in another State still have military obligations in the country of origin or because civil or penal proceedings may be pending against a person in that country of origin. Civil or penal proceedings are independent of nationality and can proceed normally even if the person renounces his/her nationality of origin.

In several other international instruments the right to renounce a nationality under certain circumstances was already stressed:

> Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.
> This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied (1930 Hague Convention, Article 6).

> The law of each State shall permit children of consuls *de carrière*, or of officials of foreign States charged with official missions by their Governments, to become divested, by repudiation or otherwise, of the nationality of the State in which they were born, in any case in which on birth they acquired dual nationality, provided that they retain the nationality of their parents (1930 Hague Convention, Article 12(2)).

> If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality (1961 Convention on the reduction of statelessness, Article 7(1)(a)).

> 1. A person who possesses the nationality of two or more Contracting Parties may renounce one or more of these nationalities, with the consent of the Contracting Party whose nationality he desires to renounce.

> 2. Such consent may not be withheld by the Contracting Party whose nationality a person of full age possesses *ipso jure*, provided that the said person has, for the past ten years, had his ordinary residence outside the territory of that Party and also provided that he has his ordinary residence in the territory of the Party whose nationality he intends to retain.
> Consent may likewise not be withheld by the Contracting Party in the case of minors who fulfil the conditions stipulated in the preceding paragraph, provided that their national law allows them to give up their nationality by means of a simple declaration and provided also that they have been duly empowered or represented (1963 Convention on Reduction of Cases of Multiple Nationality, Article 2).[36]
>
> The Contracting Party whose nationality a person desires to renounce shall not require the payment of any special tax or charge in the event of such renunciation (1963 Convention on Reduction of Cases of Multiple Nationality, Article 3).

The Committee of Ministers recommends to governments of Member States:

> .... 2. to insert provisions in their internal legislation for the purpose of avoiding dual nationality resulting either directly or indirectly from descent or resulting from the place of birth. To this end, they should, as minimum:
> (a) give the right to their nationals having another nationality to renounce their nationality;
> (b) permit their nationals having another nationality to make a declaration in favour of their nationality; consequently, to insert provisions according to which their nationals having made a declaration in favour of another nationality which they possess equally, shall lose their nationality automatically.
> They may in addition provide that their nationals of more than 22 years of age, possessing equally another nationality, and who have not made a declaration in favour of one or the other of their nationalities, may be summoned according to the previous paragraph to make a declaration within a time-limit which shall not be shorter than six months for one or the other nationality and that they, failing to do so within that time-limit, shall automatically lose the nationality of the State which summoned them. (Council of Europe; resolution (77) 13 on the nationality of children born in wedlock, adopted by the Committee of Ministers on 27 May 1977 at the 271st meeting of the Ministers' Deputies)

Even though, as stated above, all countries of our study permit renunciation of citizenship by their citizens, a wide variety of regulations exists, both with regard to the procedure, as well as to the conditions under which renunciation is permitted (see Table 7). On the procedure, the main difference is between, on the one hand, countries that allow citizens to renounce their citizenship by means of a declaration, which becomes effective as soon as the conditions are fulfilled and, on the other hand, countries that maintain a larger degree of administrative discretion and ultimately leave the decision to release the citizen from her or his citizenship to the administrative office in charge. On the substantive conditions, differences exist with regard to place of residence (abroad or not), fulfilment of military service, and other conditions.

[36] Article 2, paragraph 2, sub-paragraph 1 of the Convention is amended as follows: 'Such consent may not be withheld by the Contracting Party whose nationality a person of full age possesses *ipso jure* provided that the said person has his ordinary residence outside the territory of that Party' (1977 Protocol amending the Convention on the reduction of Cases of Multiple Nationality, Article 1).

Table 6. Loss due to voluntary renunciation of citizenship (excluding provisions for renunciation by minors or their legal representatives)

	Article in law	Procedure	Resident outside C1?	Military or civil service fulfilled?	Other conditions
AUT	37	Declaration	Yes, continuously for at least five years	Yes, in C1 or C3 (unless TP older than 36)	No pending charges for a crime which is punished with more than 6 months.
BEL	22(1)(2)	Declaration	No	–	–
BUL	20	Release	Yes	–	–
CRO	21 18, 19	Declaration Release	Yes –	Yes, if resident in C1	If resident in C1: no due taxes, no enforceable claims, no legally defined obligations towards spouse or child who reside in C1.
CYP	112	Declaration	No	Yes	No criminal prosecution
CZE	16	Declaration	Yes	–	–
DEN	9	Release	No, but release cannot be denied if TP resides outside C1.	–	–
EST	23-27	Release	–	–	No unperformed obligations towards C1 or in active service in the defence forces of C1.
FIN	35	Release	–	Yes, if resident in C1	No release if the aim of renunciation is to escape obligations towards C1.
FRA	23-4, 23, 18-1, 19-4, 22-3	Declaration Release	Yes –	–	By declaration between 17,5 and 19 years if TP is born outside C1 and only one parent is citizen of C1, if TP is born outside C1 and has acquired citizenship of C1 by filial extension (mode of acquisition A14), or if TP has acquired citizenship of C1 based on birth in C1 (mode of acquisition A02) and RP (parent born in C1) is not a citizen of C1.
GER	18-24, 26	Release	No, but release cannot be denied if TP resides outside C1 for 10 years	Yes, in C1 or C3	No release if TP is a civil servant, a judge or a similar public employee.
GRE	16, 18 19	Release Declaration	Yes No	Yes No	– TP is a citizen of C3, 18 years old, and has acquired citizenship of C1 while being a minor by a common declaration of the parents to acquire the citizenship of C1 (modes A02/A05) or by naturalisation of a parent (filial extension, mode A14).
HUN	8	Declaration	Yes	–	–
ICE	13	Release	Yes, but release may be granted for special reasons when TP resident in C1.	–	–

IRE	21(1)	Declaration	Yes	–	–
ITA	11, 3(4), 14	Declaration	Yes	–	TP was adopted as a minor but that family relationship was annulled due to behaviour of the adoptive parent, or acquired citizenship of C1 by filial extension (mode of acquisition A14).
LAT	23	Release	–	–	No unfulfilled obligations towards C1.
LIT	19	Declaration	–	–	TP is not suspected or accused of having committed a criminal act and does not face a court judgment that is final and enforceable.
LUX	13(1)	Declaration	–	–	–
MAL	13	Declaration	–	–	No registration of declaration in times of war or if registration is contrary to public policy.
MOL	22	Release	Yes	–	–
NET	15(1)(b)	Declaration	–	–	–
NOR	25	Release	No, but release cannot be denied if TP resides outside C1.	–	–
POL	13(1)	Release	No	–	No judicial proceedings under way.
POR	8	Declaration	–	–	–
ROM	27	Release	No	–	No criminal proceedings against TP or whereas TP is serving a sentence; no due debts
SLK	SLK 9	Release	Release shall be granted if TP is born outside C1 and never had permanent residence in C1	–	No due tax or public payments, criminal proceedings against TP or TP is serving a sentence or has a sentence to serve. Release shall be granted if TP is married to citizen of C3 or if TP has acquired citizenship of C1 by marriage and this marriage has ended
SLN	18-21 25	Release Declaration	Yes	–	No due debts or other lawful obligations; fulfilment of obligations arising from matrimony and from parent and child relation with persons who reside in C1; no pending criminal prosecution or sentence to prison in C1
SPA	24(2)	Declaration	Yes	–	No release in time of war
SWE	15	Release	No, but release cannot be denied if TP resides outside C1.	–	Release may be denied to TP who resides in C1 only if special reasons exist
SWI	42	Release	Yes	–	–
TUR	25, 26, 34	Declaration Release	–	Yes	No criminal prosecution or financial or penal sentences. By declaration between 18 and 22 if TP acquires citizenship of C1 by descent (mode of acquisition A01) and also acquires citizenship of C3 by descent or by birth in C3; TP acquires citizenship of C1 by adoption (mode of acquisition A10); TP acquires citizenship of C1 by birth in C1 (mode of acquisition A03); or if TP acquired citizenship by filial extension (modes of acquisition A14).
UK	12	Declaration	–	–	Does not apply in time of war

Only three states – Luxembourg, the Netherlands and Portugal – always permit citizens to renounce their citizenship if that person also possesses another citizenship, even in case of residence within the country and without any further conditions (LUX 13(1); NET 15(1)(b); POR 8). With the exception of time of war, this is also true for Spain (SPA 24 (2)) and the United Kingdom (UK 12(4)). This latter condition is not in conformity with the European Convention in cases where the person involved lives outside Spain or the UK. A similar problem occurs in Malta where a declaration of renunciation is invalid in times of war or accepting such a declaration is 'against public policy'

Some other states allow renunciation, even in times of war, but – in principle – only for citizens living abroad: the Czech Republic (CZE 16), Denmark (DEN 9), Hungary (HUN 8), Iceland (ICE 13), Ireland (IRE 21(1)), Moldova (MOL 22), Sweden (SWE 15) and Switzerland (SWI 42). However, in Denmark, Iceland and Sweden citizens residing in the country can apply for release as well, but their application may be rejected (in Sweden: only if special grounds exist). Other countries permit renunciation, without further requirements, only after a certain period of residence abroad, such as in Austria (5 years) and Germany (10 years). In Germany, a person will not be released from German citizenship if she or he is a civil servant, judge, member of the armed services or other person appointed to public duties, as long as the term of office is not terminated, except when it concerns a volunteers position (GER 26). Austria also only allows renunciation by persons resident in Austria, under certain circumstances (AUT 37(1)):

> 2) no criminal procedure or execution of a criminal sentence is pending in Austria for an offence punishable with more than six months of imprisonment;
> 3) a male person is not a member of the Federal Armed Forces; and
> a) has not yet passed the age of sixteen nor the age of 36;
> b) has fulfilled the regular military service or the regular civil service;
> c) has been found unfit for military service by the Recruiting Commission or has been declared permanently unfit for any kind of civil service by the competent administrative physician;
> d) has been dispensed from recruitment to the Federal Army for reasons of mental illness or mental disorder; or
> e) has fulfilled the military obligations or in their place service obligations in another state of which he is a national and therefore is dispensed from regular military service or regular civil service on the basis of a bilateral agreement or of an international covenant.

Italy normally requires citizens to reside abroad, in order to make a declaration of renunciation, but also allows renunciation of Italian citizenship during residence in Italy, in the exceptional cases of children whose adoption by Italian parents is revoked (ITA 3(4)) and for children who acquired Italian citizenship as a consequence of the acquisition or recovery of Italian citizenship by a parent during their minority (ITA 14(1)).

In Finland the possibility of refusing a release has become wider since 2003: an application for loss of Finnish citizenship will not be approved if the person involved has her or his municipality of residence in Finland or if the aim of the release is to escape an obligation related to Finnish citizenship, such as the obligation to do military service. Not having fulfilled military or civil service is also a ground for non-renunciation in Austria, Germany and Croatia. Some countries also mention pending criminal proceedings as a ground for refusal (Austria, Lithuania, Slovakia, Turkey), tax debts (Croatia, Slovakia), or more general unperformed obligation towards the country (Estonia, Latvia). All such conditions are not in

conformity with the European Convention (ECN 8) if the target person resides abroad. The same applies to the Croatian provision that renunciation can be refused if there are legal obligations towards spouse or children who live in Croatia (CRO 18).

A final problematic case is Greece where the release from Greek citizenship is permitted for children of naturalised Greeks, if they still possess the citizenship which they had at the time of the naturalisation of the parents and are not Greeks by ethnic origin (GRE 19). This distinction based on ethnic origin is not in conformity with the Convention either (ECN 5(1)).

10 Loss of a conditional citizenship (L14)

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 otherwise would 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 eighteen 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)).

Whereas six countries apply an age limit of 18 years (Belgium, France, Moldova, Portugal, Slovenia and Switzerland), in line with the Convention, some countries provide no limit at all, and other countries provide a much shorter limit (see Table 8). 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)). This limit only applies to foundlings; for potentially stateless children there is no loss provision. In Croatia, a foundling found in Croatia only loses Croatian nationality if it is established before the child reaches the age of fourteen years, that both parents are foreigners (CRO 7).

Table 7. Loss due to establishment of foreign citizenship of a person who acquired citizenship of C1 as a foundling or as a presumptively stateless person (L14)

	Article in law	Procedure	Age limit	Relevant mode of acquisition
AUT	8	Lapse	–	A03a
BEL	10	Lapse	18	A03a, A03b
BUL	–	–	–	–
CRO	7	Lapse	14	A03a, A03b
CYP	–	–	–	–
CZE	–	–	–	–
DEN	1(2)	Lapse	–	A03a
EST	–	–	–	–
FIN	12	Lapse	5	A03a, A03b
FRA	19, 19-1	Nullification	18	A03a, A03b
GER	4(2)	Nullification	–	A03a
GRE	–	–	–	–
HUN	3(3)	Lapse	–	A03a
ICE	1(2)	Lapse	–	A03a
IRE	10	Lapse	–	A03a
ITA	1(2)	Lapse	–	A03a
LAT	–	–	–	–
LIT	–	–	–	–
LUX	1(2)	Lapse	–	A03a
MAL	5(1)	Lapse	–	A03a
MOL	11(2)	Lapse	18	A03a
NET	3(2)	Lapse	5 years are having been found	A03a
NOR	4(2)	Lapse	–	A03a
POL	–	–	–	–
POR	1(2), 14	Lapse	18	A03a
ROM	30	Lapse	18	A03a
SLK	5(2)(b)	Withdrawal	–	A03a
SLN	9(2)	Lapse	18	A03a
SPA	–	–	–	–
SWE	2	Lapse	–	A03a
SWI	6(3)	Lapse	18	A03a
TUR	8(2)	Lapse	–	A03a
UK	15(2)	Lapse	–	A03a

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 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, Moldova, Portugal, Spain and Turkey 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 Moldova, where a foundling found on the territory of Moldova shall be considered a citizen, unless proven otherwise before

the age of eighteen (MOL 11(2)). The legislative provision in favour of potential stateless children (MOL 11(1)(b) is not amended in a similar way, from which one can deduce that no such loss provision exists for this group. This is the case in many countries. In Greece, Ireland, Italy, Luxembourg, Portugal, Spain and Turkey there is no provision that a citizenship acquired iure soli in order to avoid statelessness is lost if the possession of another citizenship is discovered. Croatian citizenship acquired iure soli is lost if it is discovered before the child reached the age of fourteen 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.

11 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. Given the potentially grave impact of losing one's citizenship, particularly when this occurs involuntarily, this biased attention for regulations concerns acquisition of citizenship versus those concerning loss of citizenship is not justified. This comparative report aimed to provide an extensive overview of regulations across thirty-three European countries, 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 of the fact that 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 which legitimates the loss of citizenship and of course one has to realise that not everybody who is living outside the territory of the state of her or his citizenship has lost the 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 recommendable to provide for at least either one of these two grounds for loss or to limit the transmission of citizenship in case of birth abroad to the first or the second generation born outside the country. It is remarkable nevertheless that a considerable number of states (like Bulgaria, Greece, Hungary, Italy, Luxembourg, Moldova, Poland, Romania and Turkey) 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 at all to imagine cases where there is no longer a link between the target person and the state, but the target person 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 (far) 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 leading opinion. 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 if the fraud had not happened, then the revocation is based on the conclusion that the criteria which are used in order to determine whether a foreigner built up such close ties with a state that the grant of citizenship is legitimated, are, after a 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.

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 is 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 acceptable 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 was still a minor. However, one can hesitate, whether taking the age of majority as a limit is not considerably too long. It would be preferable to set the period of limitation at, for example, 10 years, in line with the maximum residence requirement mentioned in the Convention in case of naturalisation (ECN 6(3)).

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 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 the question in 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, it can be accepted that their children's loss of status will follow, in principle, *ex lege*. 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 which cause the loss of citizenship by these children? We have severe hesitations on 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 some 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 has to raise the question 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 control and without the possibility of reacquisition after having attained the age of majority is questionable.

Bibliography

Alvarez Rodríguez, A. (1996), *Guía de la nacionalidad española* [Guide to Spanish Nationality] (2nd ed.), Madrid: Ministerio de Trabajo y Asuntos Sociales [Ministry of Labour and Social Affairs].

Aznar Sánchez, J. (1977), *La doble nacionalidad: doctrina, convenios, legislación, jurisprudencia* [Double Nationality: Doctrine, Conventions, Legislation, Case Law]. Madrid: Montecorvo.

Bariatti, S. (n.d.), 'Italie' [Italy], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Bariatti, S. (1996), 'Le droit Italien de la nationalité' [Italian Nationality Law], in B. Nascimbene (ed.), *Nationality laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 465-504. Milan: Giuffre Editore; London: Buttersworths.

Bellander, I. (1996), 'Le droit suédois de la nationalité' [Swedish Nationality Law], in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne,* 629-671. Milan: Giuffre Editore.

Blake, N. (1996), 'British Nationality Law', in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 679-771. Milan: Giuffre Editore.

Carlier, J.-Y. & S. Goffin (1996), 'Le droit belge de la nationalité' [Belgian Nationality Law], in B. Nascimbene (ed.), *Nationality laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 95-167. Milan: Giuffre Editore; London: Buttersworths.

Closset, C. L. (n.d.), 'Belgique' [Belgium], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Closset, C. (2004), *Traité de la nationalité en droit belge* [Treatise on Nationality in Belgium Law] (second ed.). Brussels: Larcier.

Closset, C. L. and M. J. Verwilghen (eds.). (n.d.), *Jurisclasseur Nationalité* [Nationality Law Compendium] (Loose-leaf ed.). Paris: Editions Techniques.

Corboz, P. (n.d.), 'Suisse' [Switzerland], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

De Groot, G. R. (1984), 'Wijziging van het Oostenrijkse nationaliteitsrecht' [Amendment of Austrian Nationality Law], *Het Personeel Statuut* 35(2: 18-27.

De Groot, G. R. (1989), *Staatsangehörigkeitsrecht im Wandel : Eine rechtsvergleichende Studie über Erwerbs- und Verlustgründe der Staatsangehörigkeit* [Nationality Law in Movement: A Legal Comparative Study of the Grounds for Acquisition and Loss of Nationality]. Köln: Heymanns.

De Groot, G. R. (1999), 'Verder op weg naar een hernieuwd nationaliteitsrecht: bespreking wijzigingsnota Rijkswet Nederlanderschap' [On the Road to a New Nationality Law: Discussion of the Bill to Amend the Dutch Nationality Act], *Migrantenrecht* 14(1): 13-22.

De Groot, G. R. (2003a), 'Loss of Nationality: A Critical Inventory', in D. Martin & K. Hailbronner (eds.), *Rights and Duties of Dual Nationals: Evolution and Prospects*, 201-299. The Hague: Kluwer Law International.

De Groot, G. R. (2003b), *Handboek nieuw Nederlands nationaliteitsrecht* [New Handbook Dutch Nationality Law]. Deventer: Kluwer.

De Groot, G. R. (2005), 'Towards a European Nationality law?', in H. Schneider (ed.), *Migration, Integration and Citizenship. A Challenge for Europe's Future,* vol. 1, 13-54. Maastricht: Forum Maastricht.

De Groot, G. R. (2008), *Nationaliteit en rechtszekerheid* [Nationality and Legal Certainty]. Amsterdam: Boom Juridische Uitgevers.

De Groot, G. R. & H. Schneider (1994), 'Das Werturteil in der Rechtsvergleichung: Die Suche nach dem besseren Recht' [Normative Judgment in Comparative Law: Searching for Better Law], in K. Boele-Woelki et al. (ed.), *Comparability and Evaluation: Essays on Comparative Law, Private International Law, and International Commercial Arbitration in Honour of Dimitra Kokkini-Iatridou,* 53-68. Dordrecht: Nijhoff.

De Groot, G. R. & H. Schneider (2007), 'Erschlichene Einbürgerungen, Identitätsbetrug und Entzug der Staatsangehörigkeit in Deutschland und den Niederlanden' [Fraudulous Naturalisations, Identity Fraud and Deprivation of Nationality in Germany and the Netherlands], in E. Klein, S. U. Pieper & G. Ress (eds.), *Rechtsstaatliche Ordnung Europas*, 79-102. Köln: Heymanns Verlag.

De Groot, G. R. & E. Vrinds (2004), 'The Position of Children in Respect of Decisions Made by their Parents Regarding their Nationality', paper presented at the *3rd European Conference on Nationality*, Council of Europe, Strasbourg, 11-12 October 2004.

De Patoul, P., T. O'Connor & J. G. Fisch (n.d.), 'Irlande' [Ireland], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Dutoit, B. (1973), *La nationalité de la femme mariée: Europe* [Nationality of the Married Women: Europe], vol. 1. Geneva: Droz.

Fernandez Rozas, J. C. & A. Alvarez Rodrigues (1996), 'Le droit Espagnol de la nationalite' [Spanish Nationality Law], in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 207-261. Milan: Giuffre Editore; London: Buttersworths.

Fulchiron, H. & S. Grignon Dumoulin (n.d.), 'France', in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Gonset, Y. (1977), *La nationalité de l'enfant naturel en droit comparé: étude des légalisations européennes* [Nationality of Children in Comparative Law: Study of European Legal Systems]. Geneva: Droz.

Grammaticaki-Alexiou, A. (1996), 'Greek Nationality Law', in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 387-421. Milan: Giuffre Editore; London: Buttersworths.

Hailbronner, K., G. Renner & M. Wiedmann (eds.) (2005), *Staatsangehörigkeitsrecht (StAngR)* [Nationality Law]. Munich: C. H. Beck.

Hecker, H. (1985), 'Einfluß der Adoption auf die Staatsangehörigkeit : rechtsvergleichende Darstellung der Regelungen in 175 Staaten' [Influence of Adoption on Nationality: Legal Comparative Observations of Regulations in 175 states], *Das Standesamt*, 38(6): 153-163.

Kreuzer, C. (1997), 'Der Entwurf eines Übereinkommens des Europarates zu Fragen der Staatsangehörigkeit' [The Design of an Agreement of the Council of Europe on the Question of Nationality], *Das Standesamt*, 50(5), 125-132.

Lagarde, P. (1996), 'Le droit Francais de la nationalite' [French Nationality Law], in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 309-356. Milan: Giuffre Editore; London: Buttersworths.

Lagerqvist Veloz Roca, A. (2007), 'Svenskt medborgarskap ej avhängigt ändrat faderskap' [Swedish Nationality Not Dependent on Modification of Paternity], Juridisk tidskrift vid Stockholms universitet, 2006-2007(3): 705-708.

Marescaux, M.-H. (1984), 'Nationalité et statut personnel dans les instruments internationaux des Nations Unies' [Nationality and the Personal Statute in International Instruments of the United Nations], in M. Verwilghen (ed.), *Nationalité et statut personnel: Leur interaction dans les traités internationaux et dans les législations nationals,* 18-24. Brussels.

Massfeller, F. (1955), *Deutsches Staatsangehörigkeitsrecht* [Germany Nationality Law] (2 ed.). Frankfurt am Main: Alfred Metzner Verlag.

Moura Ramos, R. M. (1984), *Do Direito Português da Nacionalidade* [On Portuguese Nationality Law]. Coimbra: Coimbra Editora.

Mussger, H. & P. Fessler, (1996), *Österreichisches Staatsbürgerschaftsrecht* [Austrian Nationality Law] (4th ed.). Wien: Juridica.

Nascimbene, B. (ed.) (1996), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*. Milan: Giuffre Editore; London: Buttersworths.

O'Leary, S. (1996), 'Irish Nationality Law', in B. Nascimbene (ed.), *Nationality laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 423-451. Milan: Giuffre Editore; London: Buttersworths.

Pérez Vera, E. & J.-M. Espinar y Vicente (n.d.), 'Espagne' [Spain], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Ravet-Gobbe, A.-F. (n.d.), 'Portugal', in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Rozas, A. & M. Suksi (1996), 'Finnish Nationality Law', in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne,* 267-307. Milan: Giuffre Editore; London: Buttersworths.

Schneider, H. (1995), *Die Anerkennung von Diplomen in der Europäischen Gemeinschaft* [The Recognition of Diplomas in the European Community]. Antwerpen: Maklu.

Schockweiler, F. (n.d.), 'Luxembourg', in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Schockweiler, F. (1996), 'Le droit luxembourgeois de la nationalité' [Luxemburg Nationality Law], in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 505-543. Milan: Giuffre Editore; London: Buttersworths.

Sturm, F. (n.d.), 'Allemagne' [Germany], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

Tratnik, M. (1989), *Het nationaliteitsrecht in de Oosteuropese landen* [Nationality Law in Eastern European Countries]. Deventer: Kluwer.

Verwilghen, M. (1985), *Le code de la nationalité belge* [The Belgian Nationality Code]. Brussels: Bruylant.

Vink, M. P. & G. R. De Groot (2010a), 'Citizenship Attribution across Western Europe: International Framework and Domestic Trends', *Journal of Ethnic and Migration Studies*, 36(5): 713-734.

Vink, M. P. & G. R. De Groot (2010b), Birthright Citizenship: Trends and Regulations in Europe. Comparative Report, RSCAS/EUDO-CIT-Comp. EUDO Citizenship Observatory <http://eudo-citizenship.eu/comparative-analyses/forthcoming-reports>, pp. 35 (forthcoming).

Vink, M. P. & R. Bauböck (2010), 'Comparing Citizenship Laws: Terminology and Methodology', *EUDO Citizenship Comparative Analysis* (forthcoming).

Von Klüchtzner, M. (1998), 'Probleme der Rückname einer Einbürgerung' [Problems of the Withdrawal of Naturalisation], in *Aan de grenzen van het Nederlanderschap* [*The Confines of Netherlands citizenship*], 127-131. Den Haag: Ministerie van Justitie - Directie Wetgeving.

Waldrauch, H. (2006), 'Loss of Nationality', in R. Bauböck, E. Ersboll, K. Groenendijk & H. Waldrauch (eds.), *Acquisition and Loss of Nationality. Policies and Trends in 15 European Countries,* vol. 1, 183-220. Amsterdam: Amsterdam University Press.

Wallace Goodman, S. (2010), 'The Politics of Naturalization: Patterns and Trends across Europe', *EUDO Citizenship Comparative Analysis* (forthcoming).

Weiss, A. (1907), *Traité théorique et pratique de droit international privé* [Theoretical and Practical Treatise on International Private Law], vol. 1 (La nationalité) [Nationality], (2 ed.). Paris: Sirey.

Zahle, H. (1996), 'Danish Nationality Law', in B. Nascimbene (ed.), *Nationality Laws in the European Union. Le droit de la nationalité dans l'Union Européenne*, 183-199. Milan: Giuffre Editore; London: Buttersworths.

Zeyringer, W. (n.d.), Autriche [Austria], in C. L. Closset & M. J. Verwilghen (eds.), *Jurisclasseur Nationalité* (Loose-leaf ed.). Paris: Editions Techniques.

EUDO Citizenship Observatory | Robert Schuman Centre for Advanced Studies | European University Institute
Via dei Roccettini, 9 • 50014 San Domenico di Fiesole • Italy