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RSCAS 2010/50

ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES  
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HOW ILLIBERAL ARE CITIZENSHIP RULES  
IN EUROPEAN UNION COUNTRIES?

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*How illiberal are citizenship rules in European Union countries?*

**COSTICA DUMBRAVA**

EUI Working Paper **RSCAS** 2010/50

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ISSN 1028-3625

© 2010 Costica Dumbrava

Printed in Italy, June 2010  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)  
[www.eui.eu](http://www.eui.eu)  
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Research for the EUDO Citizenship Observatory working papers series has been jointly supported by the European Commission grant agreement JLS/2007/IP/CA/009 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 more information about the project please visit the project website at <http://www.eudo-citizenship.eu>

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## **Abstract**

The paper proposes an assessment of citizenship rules in European Union countries. First, it designs an analytical framework in order to evaluate the rules of political membership from a liberal-democratic perspective. Second, it develops a systematic comparative study of the citizenship rules of the 27 member states of the EU. I argue that a liberal-democratic conception of membership requires certain degrees of inclusiveness as well as exclusiveness. Moreover, liberal-democratic membership can be compatible with both major ideological views on membership –ethno-cultural and civic-territorial. It is not the ethnic or civic ideological conception of the polity that renders the rules of membership illiberal, but their unjustified scope.

## **Keywords**

Ethno-cultural citizenship, civic citizenship, political membership, liberalism, EU countries



## Introduction\*

This paper proposes an assessment of citizenship rules in European Union countries. First, it designs an analytical framework in order to evaluate the rules of political membership from a liberal-democratic perspective. Second, it develops a systematic comparative study of the citizenship rules of 27 member states of the EU.

The analytical framework defines a criterion for liberal-democratic membership (minimalist-political, partially-voluntary and effective link) and develops along two dimensions. The first refers to the normative scope of citizenship rules: inclusive vs. exclusive. Unlike other authors, I do not take it for granted that there is a strict correspondence between ‘open’ (unrestrictive/ inclusive) and ‘liberal’. According to the proposed criterion of liberal-democratic membership, a certain degree of exclusiveness is not only compatible but also required by liberalism. The second dimension accounts for the ideological outlook of citizenship rules. For this purpose, I refurbish the classical distinction between ‘ethnic’ and ‘civic’, associating rules that refer to (the myth of) descent and ‘thick’ culture with ‘ethno-cultural’ and rules that refer to connection to territory and (commitment to) common institutions with ‘civic-territorial’.

The theoretical model is informed by a comparative analysis of citizenship rules in (27) EU countries. In an attempt to go beyond acknowledging general trends and/or reinforcing problematic dichotomies, I extend the analysis of citizenship rules to account not only for the few traditional features that have been widely debated in the literature (e.g. *ius soli*, residence requirements, dual citizenship and integration requirements) but also for provisions regarding *ius sanguinis*, re-acquisition of citizenship, preferential acquisition for ethno-cultural ‘relatives’, and loss of citizenship.

## 1. Analytical framework

### *1.1 Are citizenship rules in Europe liberal(izing)?*

In the last few decades, citizenship issues have received considerable attention in both academia and politics. This is the result of a complex combination of interrelated factors: geo-politic (the end of self-contained geo-political blocs, increased international migration, European regional integration, terrorism, ‘cultural wars’, etc.), theoretic-ideological (the development of new models of citizenship; e.g. multicultural, postnational, transnational, etc.), and domestic-democratic (the crises of ‘post-modern’ democracies, the need for socio-political integration of migrants, etc.).

Citizenship debates can be roughly structured according to two general questions: a *what* question, and a *to whom* question. The first question (what does citizenship mean?) refers to the content of citizenship - more exactly, to what specific combination of rights, obligations and identity citizenship should entail. The second question (who is/should be a citizen?) refers to the fundamental issue of membership in political communities. It is simply not true that only the former is of interest for political theorists (Kymlicka and Norman 1994; for criticism, Cole 2000). Although it is clear that the question of membership must be answered before the question of substance can be, it is also useful to be aware that they are deeply interconnected. As pointed out in the recent debates on citizenship and immigration in Europe, claims of (formal) membership trigger important queries about the nature, aims and legitimate expression of political community (e.g. democratic self-determination, ‘national

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\* This paper was written for the EUDO citizenship conference, Edinburgh Law School, January 2010, in response to a call for papers in the IMISCOE research network. Participation at the conference was supported by an IMISCOE grant. I am very grateful to participants in the EUDO Conference for their comments on the first draft of this paper. I am also grateful to Rainer Bauböck for his valuable suggestions.

identity', the future of 'our' community). Even when abandoning the idea of clear and (relatively) stable conceptual frames that nation-states enforce when confronted with citizenship questions (e.g. much-criticized 'nationhood' - Brubaker 1990, 1992), one can analyse rules of citizenship by referring to concepts of legitimate/liberal political membership. Far from being just a technical and normatively uninteresting aspect of the 'fiat' of political communities, rules of membership should be regarded as important features and therefore placed under normative scrutiny.

One of the major theses in the recent literature of comparative citizenship is that citizenship rules in Europe are gradually converging (Vink and De Groot 2009). This convergence is often interpreted as an instance of liberalization – a broad process driven by the need to integrate long-term immigrants (Hansen and Weil 2001, Howard 2006). Such a conclusion is often derived from comparative studies that account for selected features of the citizenship rules, which are seen as 'the most important general elements of a country's citizenship policy' (Howard 2009: 9). In two studies on citizenship regimes in Europe, Howard (2005, 2006) confirmed the thesis of the liberal convergence of citizenship regimes in the 'old' EU countries by surveying the rules concerning *ius soli*, residence requirement for (regular) naturalization and dual citizenship.

The 'liberalization' thesis is also validated by Joppke, who signals several broad trends, including the extension of legal entitlement to citizenship for second- and third-generation migrants, the weakening of naturalization rules (by lowering residence time requirements), the increased toleration of dual citizenship, and the elimination of gender discrimination or outright racist rules (Joppke 2008a: 4). Joppke dismisses the idea of a 'restrictive turn' in Europe that has been associated with certain micro-trends, such as adjusting old legacies (e.g. facilitated access for former colonial subjects, provisions of pure *ius soli*), qualifying rights to family migration, new emphasis on integration as a prerequisite for citizenship, and re-ethnicization (upgrading ties with emigrants). These micro-trends are interpreted as being 'embedded within an overall liberal, sometimes even liberalizing framework', since they only change 'the balance of "rights" and "obligations" [...] toward the "obligation" pole' (Joppke 2008: 35). Although Joppke criticizes Howard's citizenship policy index (CPI) due to its selectivity, he seems to arrive at a similar conclusion: there is no overall 'restrictive turn' in Europe (Smooha 2008).

When questioning Joppke's conclusions, one cannot but welcome his suggestion that not all restrictive rules should be classified as 'illiberal'. Moreover, Joppke's hypothesis of 'ethnicization' makes it possible to extend the analytical and geographical scope of a concept that has been primarily employed with regard to Eastern Europe (where it sits next to nationalism, ethnic discrimination and conflict). In the new West European context, 'ethnicization' refers to broader European trends of strengthening *ius sanguinis* rules and upgrading ties with expatriates (Joppke 2003). It is not clear from the analysis whether these 'ethnic(ized)' rules are 'illiberal' or whether the general conclusion of 'embeddedness' within a liberal framework applies to them as well. Joppke's optimism with regard to the minimalist political implications of the policies aiming at upgrading ties with emigrants seems, however, to be based on a quantitative assessment - that they 'have been rare, and they are largely limited to classic emigration countries' (Joppke 2008a: 30) - rather than on a normative inquiry into their liberal credentials. The idea of tracing 'ethnicization' outside its geographic-ideological 'cradle' (Eastern Europe) may be instrumental for problematizing some aspects of citizenship regimes that have so far escaped scrutiny. It also opens an opportunity to bring Europe's citizenship regimes under the same analytical roof, to question old dichotomies (e.g. civic vs. ethnic), and to bridge two separate scholarly concerns: (co-)ethnic citizenship and emigrant citizenship.

We can observe that many accounts in comparative citizenship literature build on selective features of citizenship rules and arrive at general conclusions about the 'liberal' character of membership in (Western) Europe without specifying any clear normative criteria for making this claim. They usually take into account features that are important from a Western perspective because they are related to the *problematique* of integrating long-term immigrants (e.g. *ius soli*, dual citizenship, conditions for naturalization). When applying such Western-inspired frameworks to the 'new' Europe (post-

communist countries of Central and Eastern Europe), they lead to reiterating old cleavages between liberal (civic) West and illiberal (ethnic) East (Howard 2006; for criticism: Dumbrava 2007). The tendency to equate 'open', 'less restrictive' or 'inclusive' with 'liberal' (and the reverse: to associate 'ethnic' with illiberal) leaves unanswered the normative question of what liberalism entails when it comes to the rules of political membership.

### ***1.2 A criterion for liberal-democratic membership***

The problem of political membership and of the relationship between members and non-members of political communities has been largely ignored by liberal political theorists. Until recently, the main focus of liberal political philosophy has been to define 'distributive justice within, and sometimes between, political societies' (Hampton 1995: 67). For example, Rawls (1999 [1971]) built his famous theory of justice explicitly on a model of 'closed society' that was deemed to change naturally only through births and deaths.

Since liberalism is anything but a unified normative theory, one cannot attempt to reach a definitive and uncontested answer to the question of what liberal membership is. The intuition behind this paper is that some rules of membership are more 'acceptable', 'justified' and 'fair' than others. In order to make normative sense of this intuition, I opt to construct an analytical lens by making reference to *several general* liberal-democratic values, without further addressing the normative credentials of these values. I use the term liberal in a conventional way so as to designate 'justified' norms of political membership in light of certain liberal and democratic values.

Membership in a liberal-democratic polity describes a political relationship between free and equal members that is created and maintained with the aim of furthering (certain) individual interests via political organization. Although political membership serves fundamental individual interests (such as autonomy or self-rule), it may not serve all fundamental individual interests (e.g. social-, cultural- or identity-related).

I argue that rules of membership in a liberal-democratic community should be based on a link between members that is conceived of as: 1) minimalist-political; 2) partly-voluntaristic; and 3) effective.

First, liberal-democratic membership is political because it is created and maintained with the specific aim of fostering a political community (in itself instrumental for members' individual interests). It is minimalist-politic because it requires only a minimum connection that is sufficient to maintain a functional political community. Such political conception excludes rules of membership that are based on ascriptive characteristics (such as race, ethnicity, gender). Nobody should be barred from membership on the basis of ascriptive and non-learnable features; anybody should be able and allowed to develop a political link with a community, if he or she so desires and if he or she follows a certain (rule-based) path.

Second, political membership is partly voluntaristic in the sense that some individuals may choose voluntarily to develop a political link with a community while many others will find themselves in particular political associations without actually consenting to or aiming at membership. What matters for membership is the existence of a relevant political link, and not the way in which such link has been developed (for example, one could not refuse membership to newly-emancipated slaves because they did not consent to being part of the community).

Finally, membership in a liberal-democratic polity should be effective, in the sense that it requires the link between members to be actual (genuine) and sufficiently strong. The idea of a 'genuine link' is one of the few principles recognized by international law in the area of citizenship: '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'.<sup>1</sup> In order to further qualify the criterion of effective link, we need to refer back to the purpose of membership: maintaining functioning liberal-democratic communities. In this light we ought to abandon the reference to 'social fact[s] of attachment' or 'existence.. [of] sentiments' for more politically significant criteria. The effectiveness of a political link can be evidenced by the existence of sufficiently 'objective' facts: significant interests, shared benefits and responsibilities. It may be desirable that social attachments and sentiments of belonging develop along with interests, benefits and responsibilities, but this is not relevant for the purpose of membership. The reverse is also true: individuals can develop strong sentiments and social attachments, but this alone is not sufficient for membership.

For the purpose of testing how the proposed criterion of liberal-democratic membership is accounted for by actual rules of citizenship, I have developed a bi-dimensional scheme that includes a) the scope of membership (inclusive vs. exclusive); and b) the ideological outlook of membership (ethno-cultural vs. civic-territorial).

### *Inclusion vs. exclusion*

Citizenship is 'a powerful instrument of social closure' (Brubaker 1992). While recognizing some individuals as members, the rules of citizenship exclude all others. How legitimate is this exclusion, given that it lies at the heart of the principle of democratic membership?

It has been argued that democratic communities cannot justify their in-built exclusion of non-members by reference to their internal norm of democratic participation (the so called 'boundary problem' - Whelan 1983, Dahl 1989), while some scholars have rushed to conclude that membership in democratic polities should be left unquestioned (Schumpeter 1994) or open to all (Abizadeh 2008). These interpretations, however, appeal to a rather technical or procedural concept of democracy and ignore broader normative ideals of democratic self-government (for criticism see Arrhenius 2005, Goodin 2007, Bauböck 2009).

A certain degree of exclusion is inevitable and necessary for democratic membership. Democratic self-government requires that members have control over the boundaries of their community (this does not mean that they have strict control over the borders of the territory administered by the community) (Bauböck 2007a, Chwaszcza 2009). Members depend on each other (via democratic decision making) in what concerns the benefits and burdens of membership, so they have a major interest in ensuring that their community survives (and that the other members share this interest). This is not to say that each member should have the power to veto every application for membership: control over membership should not be dependent on the whims of persons or majorities, but must be translated into procedural rules. These rules should reflect the general restrictions related to the very conception of membership in liberal-democratic communities.

Historically, within the confines of the nation-state, political membership has been gradually expanded (Marshall 1950) to include different groups of subjects (e.g. the 'lower' classes, women, long-term residents, etc.). Does an extended inclusiveness always indicate a liberal trend? I argue that a degree of exclusiveness is compatible with the idea of liberal-democratic membership. In the same vein, I propose that membership in liberal-democratic communities is not compatible with unqualified inclusiveness. Awarding membership to individuals who do not satisfy the criterion of membership is as illiberal as excluding individuals who qualify. The argument is essential for evaluating recent trends in Europe towards granting citizenship status to individuals who have only symbolic links with the polity (e.g. descendents of former nationals, ethnic relatives).

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<sup>1</sup> Nottebohm Case (Liechtenstein v. Guatemala) (second phase), Judgement of April 6th, 1955: International Court of Justice. Reports 1955.

*Civic-territorial vs. ethno-cultural*

In a pioneering work on comparative citizenship in Europe, Brubaker argued that the ‘politics of citizenship vis-à-vis immigrants has been informed by distinctive national self-understandings, deeply rooted in political and cultural geography and powerfully reinforced at particular historical conjunctures’ (Brubaker 1990: 379). Despite criticism as to the conceptual and historical accuracy of this account (Weil 2001), the idea that there is a deep connection between the conception of the nation (national identity, national culture) and the rules of membership has become a commonplace in both the theories and politics of citizenship.

At the descriptive end of the cline, there are contradictory assessments of contemporary practices. On the one hand, Joppke argues that the idea of the ‘state as “owned” by a particular nation’ and of ‘citizenship policies [...] in the service of reproducing internally homogenous yet externally sharply bounded collectivities’ has been abandoned by contemporary states (Joppke 2005: 48). On the other, Brubaker has developed a full-scale theory of the ‘nationalizing state’ (Brubaker 1996) (especially applicable in Eastern Europe), which goes against Joppke’s specific argument. In the same vein, Kostakopoulou claims that ‘exclusion on the grounds of national origin remains a defining characteristic of modern citizenship’ (Kostakopoulou 2008: 277).

At the normative end of the cline, there is an ongoing debate about the kind of shared culture that a liberal-democratic state should foster and how much of this should affect the rules of membership. It is often argued that in order for a political community to reproduce itself, it must cultivate a degree of commonness. But what kind of commonness?

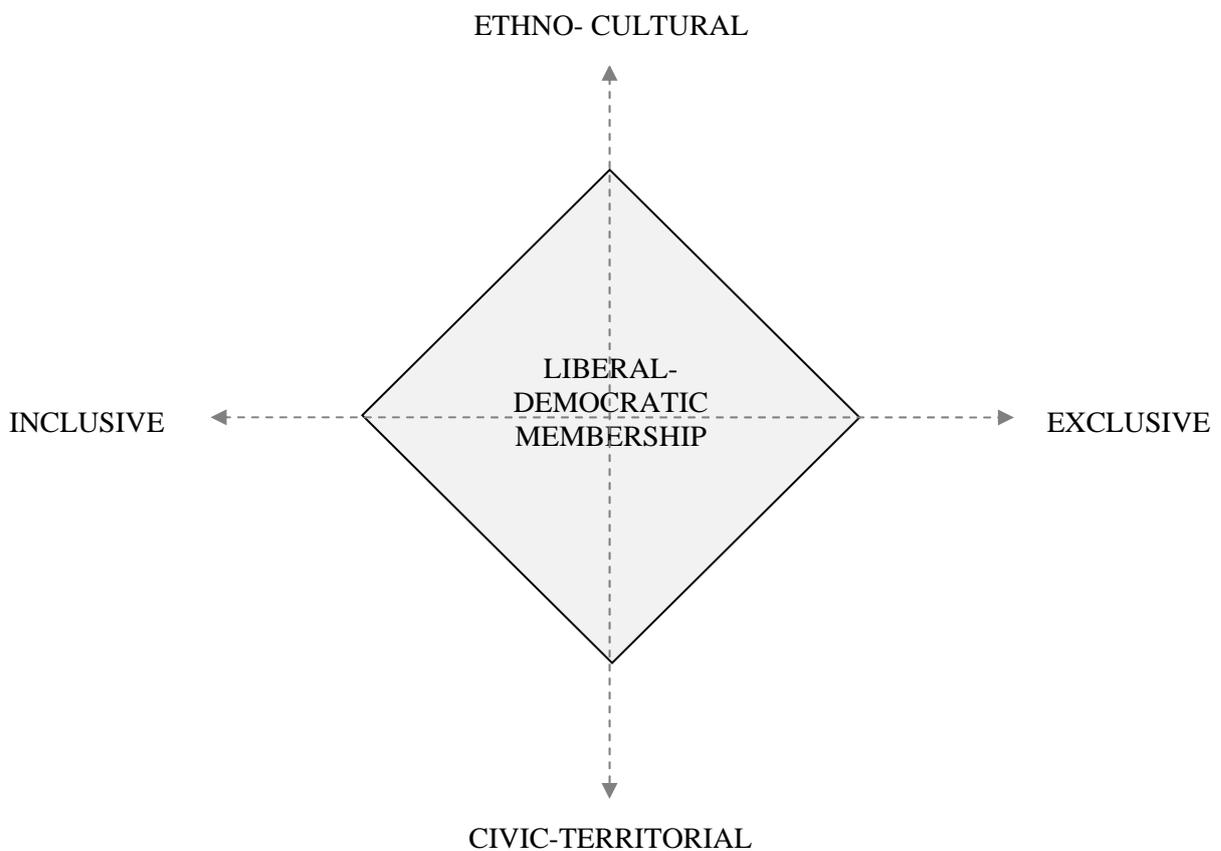
Aware of the likely critique of reductionism, I classify the ideological answers to this question of commonness into two major categories: civic and ethno-cultural. From the outset it must be clear that this distinction does not refer to historical cases of nations/nationalisms, but represents a heuristic tool to categorize various conceptions of ‘commonness’ that underpin specific rules of political membership. It is important to point out that the proposed analytical distinction does not match with the distinction between Eastern/Western (Kohn 1944, 1955), cultural/political (Hutchinson 1987) or liberal/illiberal. Despite the fact that these accounts have benefited from plenty of good criticism, one can still find traces of such dichotomist thinking in contemporary analysis of comparative citizenship.

Are the concepts associated with ‘ethnic’ necessarily illiberal? Conversely, are those linked to the opposite of ‘ethnic’ (often referred to as ‘civic’) necessarily liberal? In recent debates, various problematic rules have been tagged as ‘ethnic(ist)’: perpetual *ius sanguinis* abroad (Liebich 2009); inadequate *ius soli* (Bauböck et al. 2006); opposition to immigrants (in admission and political incorporation) (Brubaker 2008), ‘crypto ethnic bias toward ethnic Europeans’ (Smootha 2008); dual citizenship for emigrants, but not for immigrants (Joppke 2008a, Smootha 2008); (certain) language and integration clauses (Bauböck et al. 2006, Kostakopoulou 2008); ‘privileged re-acquisition of ancestral citizenship’ without ‘genuine link’ (Waldrauch 2006, Joppke 2008a); preferential citizenship for co-ethnics (Brubaker 1996, Fowler 2002, Iordachi 2004, Sievers 2007, Liebich 2008, 2009). However, it is not clear what makes these rules ‘ethnic(ist)’, and why all these problematic rules should be tagged as ‘ethnic’ in order to be addressed normatively. Moreover, it remains unclear why ‘ethnic’ is ‘bad’ or ‘illiberal’ (for example, some liberal nationalists would argue that ethnic preferentialism can be justified from a liberal point of view).

I would suggest that ethno-cultural rules are those that make reference to shared (imagined) descent, ethnicity and culture (understood in a thicker sense than ‘political’ culture as language, history, cultural markers, customs and society). Civic-territorial rules are instead those rules that refer to shared political beliefs and commitments towards a political community defined in terms of territory and common political institutions. While membership in an ethno-cultural community is a matter of descent or a confirmation of (lengthy and deep) acculturation, civic-territorial membership is conceived of as an expression of attachment and commitment to a political community.

Obviously, it is impossible to draw a clear line between the two categories. While descent (or ethnicity) is a clear indicator of ethno-cultural membership, the reference to culture is highly disputed between the two models. Some rules of citizenship are hard to fit into the scheme; for example, the requirement of minimum residence before naturalization can be seen as an ethno-cultural requirement (the more time one spends in a territory, the more likely is one to assimilate into the specific culture) or as a civic-territorial element (co-residence facilitates the intake of civic/political values). Despite this, I maintain that the distinction remains analytically useful because it shows that certain rules of membership are problematic from a liberal-democratic point of view, although they are backed by different (even opposite) ideological views. In other words, it is not the ethno-cultural or the civic-territorial views that make rules illiberal but their specific normative scope.

**Figure 1. Analytical framework for assessing the liberal-democratic character of citizenship rules**



## 2. Acquisition of citizenship at birth

The overwhelming majority of individuals in the world acquire their citizenship at birth. At a very first glance, however, birthright citizenship (a principle that ascribes membership according to facts related to birth) does not sit comfortably with liberal ideals. This has led several authors to denounce citizenship as ‘the modern equivalent of feudal privilege’ (Carens 1987: 252), a form of ‘inherited property’ (Shachar and Hirschl 2007) or ‘birthright lottery’ (Shachar 2009). Nevertheless, one should keep in mind that the primary rationale of this principle is not the distribution of goods, but the distribution of membership. Unlike security or property, membership in a political community only makes sense when and to the extent that such a community exists and persists. Ascribing citizenship at birth to individuals sufficiently connected to the respective community is a way of ensuring

democratic unity and political continuity (Chwaszcza 2009), which is an imperative ‘not merely across political decisions but also across generations’ (Bauböck & Guiraudon 2009: 442). What counts in this case is not the mere accident of birth or lineage, but the reasonable expectation that children of citizens or children born into the territory of a political community/state will develop appropriate links that will ensure the reproduction of the political community.

This is neither a case against other methods of granting citizenship (after birth) nor a case against different individual claims to membership that are not expressed in the language of communal interests (e.g. membership claims based on grounds of need, justice or merit). Birthright citizenship is, rather, a convenient solution to the general problem of reproducing political communities that, nevertheless, does not solve all the dilemmas related to the definition of membership (e.g. what method, in what conditions, to what extent). Although it relies on ascriptive criteria (facts related to birth), and despite its alleged global discriminatory effects, the general principle of birthright citizenship is not illiberal because it responds to a structural need of political communities.

Although the general principle of birthright citizenship is not illiberal, can we say the same of its two main implementing tools (*ius soli* and *ius sanguinis*)? There is an ongoing debate whether the preference for one method over the other is telling about the normative character of particular states and the meaning of their political membership. According to Brubaker, for example, the two rules ‘express deeply rooted habits of national self-understanding’ and, whereas ‘*ius soli* defines the citizenry as a territorial community’, *ius sanguinis* demarcates ‘a community of descent’ (Brubaker 1992: 187).

The two rules have been also associated with the dichotomy between ethnic and civic (nations). The perpetuation of membership through the blood-line, as in the case of *ius sanguinis*, seems to suggest a closed and ethnic (and supposedly illiberal) community, while the uniform acquisition of citizenship by birth in the territory, as in the case of *ius soli*, seems to imply an open and liberal one. These assumptions are, however, wrong, both historically and normatively. Historically, the introduction of *ius sanguinis* was an important tool through which states modernized: by moving away from the feudal conception of membership (*ius soli*), defined in strict connection to land (Weil et al. 2009), to one whereby states revised their rules of membership before the increased movement of populations would push them to re-adopt *ius soli* provisions (Weil 2001), the adoption of the *ius sanguinis* rule in modern Europe need not be seen as an attempt to promote (ethno)nationalism. Indeed, normatively speaking, it is problematic to assume that *ius sanguinis* alone defines an ethno-cultural conception of the nation. As a general rule, the transmission of citizenship by descent does not differentiate between ‘ethnic’ and ‘non-ethnic’ individuals. The configuration of membership that results from applying a *ius sanguinis* rule is thus dependent on preliminary decisions about the initial determination of citizenship within a territory.

Applying our analytical framework to the rules of acquisition of citizenship at birth, we find the following cases:

**Table 1. Illiberal rules concerning acquisition of citizenship at birth**

	<b>Ethno-cultural</b>	<b>Civic-territorial</b>
<b>Over-inclusive</b>	<p><b>1. Inadequate <i>ius sanguinis</i></b></p> <p><i>1a. Unconditional <i>ius sanguinis</i> abroad:</i> (13) AUS, BUL, CZE, EST, GRE, HUN, ITA, LIT, LUX, MAL, NED, ROM, SLK</p> <p><i>1b. Quasi-automatic (11):</i> BEL, CYP, FRA, GER, IRL, LAT, POL, POR, SLV, SPA, UK</p>	<p><b><i>Unconditional <i>ius soli</i></i></b></p> <p>-</p>
<b>Over-exclusive</b>	<p><b>1. Inadequate <i>ius soli</i></b></p> <p><i>1a. No conditional <i>soli</i>, no double <i>ius soli</i>, and no facilitations after birth:</i> (9) CYP, DEN, EST, HUN, LIT, LAT, MAL, POL, SWE</p> <p><i>1b. No conditional <i>soli</i>, and no double <i>ius soli</i>:</i> (10) AUS, BUL, CZE, FIN, GRE, ITA, ROM, SPA, SLK, SLV</p> <p><b>2. Unequal birthright (<i>ius sanguinis</i> over <i>ius soli</i>):</b> (1) GER</p>	<p><b><i>Unequal birthright (<i>ius soli</i> over <i>ius sanguinis</i>)</i></b></p> <p>-</p>

### 2.1 Over-inclusive illiberal rules

#### *Unconditional *ius sanguinis* abroad*

It is in the logic of the principle of descent to create a continuity of citizenry across time by de-linking status from place of birth. However, the birthright principle does not want to create territorially alienated citizens who are completely disconnected from the community that created the status in the first place. Granting citizenship automatically to children of citizens living abroad without any generational stopping point is a clear example of an illiberal (ethno-cultural) rule. It is ethno-cultural because it awards entitlements based on ascriptive grounds (descent) and it is illiberal because it unjustifiably stretches the boundaries of political membership (without checking the existence of effective links). While the first generation of descendants of citizens abroad could be considered as sufficiently connected to the reference state through their parents (the original emigrants), this cannot be said about the following generations. As argued above, birthright citizenship is not in principle illiberal because it is backed by a valid justification with regard to the purpose and structural needs of a political community (continuity). However, failing to live up to a consistent ideal of a bounded, effective political community renders the rule of unconditional *ius sanguinis* abroad illiberal.

In our survey, an impressive number of states (13) allow for the unconditional transmission of citizenship to descendants of citizens abroad: Austria, Bulgaria, the Czech Republic, Estonia, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Romania, and Slovakia.

Some states use a form of quasi-automatic *ius sanguinis*, making birthright citizenship abroad dependent on the registration of children with relevant authorities abroad. This way of confirming rather than establishing the status is presently used in eleven cases: Belgium, Cyprus, France,

Germany, Ireland, Latvia, Poland, Portugal, Slovenia, Spain and the United Kingdom. Failure to register the birth does not imply waiving the entitlement, since, in all cases, there are alternative routes to claim the status at later points in time. In the case of Spain, the requirement of declaring an intention to retain Spanish citizenship applies only starting with the second generation of descendants abroad. In the cases of Poland and Latvia, parental agreement is required in order to transmit citizenship abroad.

In three other cases (Denmark, Finland, Sweden), the transmission of citizenship is conditional upon showing proof of connection to the state. Even though this proof may be easy to provide (e.g. declaration of intent to retain citizenship), the discretionary power of authorities in the assessment of the link with the country makes this procedure less formalistic than the quasi-automatic one. Danish citizenship can be retained by descendants of citizens abroad if they submit an application for retention of citizenship before their 22<sup>nd</sup> birthday, which is then approved by the Ministry of Integration (Ersbøll 2009). The same goes for Finland: Finnish citizenship is retained abroad if the descendants of citizens prove that they have a sufficient connection with Finland (prior to their 22<sup>nd</sup> birthday). However, following the 2003 reform, such connection can be established by simply giving written notice to a Finnish diplomatic mission expressing the wish to retain citizenship (Fagerlund and Brander 2009). Finally, the loss of Swedish citizenship is automatic for persons after the age of 22 if they were born abroad, have never been domiciled in Sweden, and who possess another citizenship. Although it is possible for them to apply for retention of citizenship, the authorities have full discretion to assess the strength of the connection between the applicant and the country (Bernitz 2009).

#### *Unconditional ius soli*

At the civic-territorial end of our analytical framework, we find the case of unconditional *ius soli*. Such rule ascribes membership to anybody born in the territory, without any further verification of their (or of their parents') connection to the political community. Although there may be a higher expectation that children born into the territory grow up and develop effective links to the political community in comparison to children born abroad from citizen parents, leaving the rule unqualified is problematic. It may lead to accidental citizenship or it may create incentives for citizenship-tourism, neither of which are compatible with liberal-democratic membership. In order to avoid granting citizenship to the children of parents who are not sufficiently linked to the political community (who may intentionally travel to or take up temporary residence in the country only for the purpose of securing an extra citizenship for their children), the legislator should require minimum proof of connection with the country (such as a minimum period of residence in the country before the child's birth). Moreover, in cases where such proof cannot be shown, the legislator should provide for alternative ways of acquisition for children born in the country and whose parents continue to reside there for a certain period of time (e.g. facilitated naturalization after birth).

There is no current case of unconditional *ius soli* in the EU countries; Ireland was the last country to maintain unconditional *ius soli* rule until 2004).

## **2.2 Over-exclusive illiberal rules**

#### *Inadequate (exclusive) ius soli*

It is often argued that the lack of adequate *ius soli* (conditional *ius soli* or double *ius soli*) is an indicator of illiberal (ethno-cultural) citizenship regimes, 'an ethnic privilege derived from descent' (Bauböck et al. 2006: 30), especially in the contemporary European contexts of long-term immigration. The most obvious illiberal over-exclusive (ethno-cultural) case is the denial of birthright citizenship to children born in the country to non-citizens who were themselves born in the country (the so-called 'third-generation immigrants' although neither they nor their parents have actually 'immigrated').

In spite of the fact that all 27 states in our survey make provisions for *ius sanguinis*, very few of them make use of *ius soli*. In nine cases, there are neither any provisions of conditional *ius soli* nor any provisions for the facilitated acquisition of citizenship after birth: Cyprus, Denmark, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, and Sweden. In ten cases, there are no provisions of conditional *ius soli* or double *ius soli*: Austria, Bulgaria, Czech Republic, Finland, Greece, Italy, Romania, Slovakia, Slovenia, and Spain.

Conditional *ius soli* (for the children of foreign-born, non-citizen residents) is available in six countries: Belgium, Germany, Ireland, Portugal, Spain, and the United Kingdom. Finally, double *ius soli* (for ‘third-generation’ residents) is available in five countries: Belgium, France, Luxembourg, the Netherlands, and Portugal.

### *Unequal birthright*

Lastly, we can imagine an over-exclusive illiberal rule that differentiates between birthright entitlements, according to the different methods of acquisition (descent vs. birth in territory). At first glance, any conditional form of *ius soli* creates discriminatory treatment among citizens by birth, as long as there are no similar conditions attached to the principle of *ius sanguinis* for births in the territory. However, as mentioned above, imposing minimal residential requirements on parents can be justified as a way of ascertaining the link between parents and the country (this is independent from comparable arguments concerning *ius sanguinis*). If the differentiated implementation of birthright entitlement gives priority to *ius sanguinis*, the rule is classified as ethno-cultural illiberal. If it gives preference to *ius soli*, it is interpreted as civic-territorial illiberal.

In our survey, Germany applies an ‘option model’, according to which the beneficiaries of *ius soli* must ‘confirm’ their citizenship at majority by relinquishing any other citizenship they have acquired at birth. This problematic conditioning creates a differentiation between birthright entitlements, privileging citizens by descent to the detriment of citizens by birth in the territory (Heilbronner 2009). A reverse case of preference for *ius soli* over *ius sanguinis* it is not to be found in our cases.

### **3. Acquisition of citizenship through naturalization (residence based)**

In this section I limit the analysis to one particular mode of naturalization, the so-called ‘regular’ or residence-based naturalization. This mode constitutes the core of recent debates on citizenship reform in Europe.

There is an ongoing debate about the liberal vs. restrictive character of citizenship regimes in (mainly Western) Europe (Hansen and Weil 2001, Howard 2006, Joppke 2008a). One dimension of the so-called ‘restrictive turn’ is the increased emphasis on integration requirements for naturalization (introduction or hardening of language or comprehensive citizenship tests). This restrictive trend has led scholars to discern paradoxical versions of liberalism, such as ‘illiberal civic nationalism’ (Bauböck 2008), ‘repressive liberalism’ (Joppke 2009) or illiberal liberalism (Orgad 2010).

In line with the proposed criterion of liberal-democratic membership, I identify several cases of illiberal rules that apply to regular naturalisation:

**Table 2. Illiberal rules regarding regular naturalization**

	<b>Ethno-cultural</b>	<b>Civic-territorial</b>
<b>Over-inclusive</b>	(preferential naturalization on ethno-cultural grounds, - see section IV below)	<i>Automatic naturalisation</i> (without consent) -
<b>Over-exclusive</b>	<p><b>1. Difficult language test</b> (10) CZE, , DEN, EST, FIN, GER, HUN, LAT, LUX, SPA, UK</p> <p><b>2. 'Thick' knowledge about the country:</b> (6), DEN, GER, GRE, LAT, NED, ROM</p> <p><b>3. Discriminatory multiple citizenship</b></p> <p>3a. Applicants for naturalization vs. citizens who naturalize elsewhere: (4) AUS, BUL, POL, SLV</p> <p>3b. Citizens by birth vs. other citizens when they naturalize elsewhere (3) EST, IRL, SPA</p>	<p><b>1. Long residence requirement</b> (&gt; 5 years): (19) AUS, BUL, CZE, CYP, DEN, EST, GER, GRE, FIN, HUN, ITA, LIT, LUX, POL, POR, ROM, SLK, SLV, SPA</p> <p><b>2. Morality and/or civic virtue</b> (7) DEN, FRA, IRL, MAL, NED, POR, UK</p>

### 3.1 Over-inclusive illiberal

At the ethno-cultural end of our framework, I list all the types of preferential naturalization on the basis of shared ethno-cultural characteristics with the (members of the) political community. Since this special mode of naturalization is treated in a different section of this paper, the box remains blank. At the civic-territorial end, I mention only the case of automatic naturalization (without consent), e.g. of foreign spouses as a result of marriage with a citizen or of foreign children as a result of their parents' naturalization. Whenever this automatic naturalization is coupled with the automatic deprivation of a pre-existing citizenship, the rule must be treated as over-inclusive illiberal.

### 3.2 Over-exclusive illiberal

#### *Difficult language test*

From our normative perspective of liberal-democratic membership the requirement of a certain degree of connection with the political community for the purpose of membership is legitimate. The main question is, however, what kind of connection? Like most of the other rules discussed in this section, language requirements can be interpreted as either ethno-cultural (language is an important expression and repository of ethno-national culture) or civic-territorial (linguistic competence is instrumental for political deliberation). I chose not to treat this indicator as civic-territorial because I am not convinced that the political process in liberal democracies requires members to share *only one* language, or only *this* particular language (of the specific national culture dominant in a given territory).

Although there is a legitimate suspicion about the motivations and practical relevance of formal testing, I consider acceptable those provisions that make naturalization conditional upon proving 'reasonable' levels of linguistic competence, under the assumption that the efforts invested in the acquiring of the language of the place stands for an expression of a link with the community. For the

purpose of this broad analysis, I take as reasonable level of linguistic competence the level A2 as defined by the Common European Framework of Reference for languages.

In our survey, ten countries ask for linguistic competences higher than A2: Czech Republic (B1), Denmark (B2), Estonia (B1), Finland (B1), Germany (B1), Hungary (B1/B2), Latvia (B1), Luxembourg (B1/A2), Spain (B1/A2), and UK (B1). This list must be treated with caution because I only take into account the formal requirement as specified in the laws, while disregarding important factors such as mode of testing, exceptions, and level of administrative discretion.

#### *'Thick' knowledge about the country*

Along with language tests, many countries have introduced provisions that require applicants to prove knowledge of broad aspects of the particular community, generically called 'knowledge about the country'.

According to the proposed criteria of liberal-democratic membership, broad aspects of 'culture and society' cannot be invoked to inform rules of membership. First, the requirements of cultural integration serve a wrong aim: cultural homogeneity it is not a prerequisite for the functioning of a political community (Abizadeh 2002). Such an argument needs to be based on a preliminary agreement with regard to *what* is considered (national) culture, and, especially, *whose* version of culture is to be promoted. Taking into account the inherent multicultural character of all 'national' cultures, it is hardly possible to arrive at a general definition of 'common' culture. But even if there is a general consensus regarding national culture, it is not obvious why this should be relevant for the purpose of attributing political membership. If we conceive of liberal-democratic membership as minimalist-political, the only legitimate knowledge that is required is that related to the purpose of the political community. This may include only knowledge about the constitution and about the democratic tradition of the country (e.g. history of institutions, 'core political liberal principles' (Orgad 2010)).

Second, these requirements do not even serve their (however problematic) purpose. Formalized written tests (despite their alleged advantage of diminishing administrative discretion) do not always test integration and they 'do not provide sufficient flexibility in judging relevant skills' (Bauböck et al. 2006: 13). Moreover, it is improbable that asking applicants to learn about broad aspects of national culture would make them identify with the particular culture, especially when the whole process is set up to discourage rather than foster identification (e.g. Blitzkrieg-style' integration courses (Orgad 2010: 30)).

In our survey, the provisions with regard to knowledge about the country include basic knowledge of 'democratic order and history' (Austria), 'basic constitutional issues' (Hungary), 'knowledge of society, culture and history' (Denmark), 'knowledge of the rights and duties of nationals' (France), 'familiarity with the public order' (Germany), 'sufficient knowledge of history and culture' (Greece), knowledge of 'the Constitution, the anthem and the history' (Latvia), 'elementary notions of culture and civilization, of the Constitution, and anthem' (Romania), aspects of history, law, politics, society and manners (the United Kingdom).

Some countries have inserted this requirement within more comprehensive citizenship tests (along with provisions concerning language, commitment or general integration). The German federal test adopted in 2008 includes a question about German culture which covers broad topics, such as history, geography, constitution, symbols, customs (e.g. Easter practices). The Danish citizenship test includes questions that cover wide aspects of Danish history and culture (from Vikings, football-related performances, Danish Nobel prize laureates, etc.) Finally, the heatedly debated Dutch citizenship test asks applicants to be able to behave as a Dutch person would when finding him or herself in particular social situations.

*Discriminatory multiple citizenship*

Tolerance of multiple citizenship is indisputably a phenomenon of the last few decades that is usually interpreted as part of a more general liberalizing trend (Hansen and Weil 2001, Howard 2005, Vink and De Groot 2009). Beyond the liberalization thesis, authors have identified different rationales driving the toleration of dual citizenship. It is argued that the move has been instrumental in Western Europe for integrating long-term immigrants, while it has also served as ‘a tool for expanding the national community beyond state borders’ (Bauböck 2007b: 70) in some other countries, such as Hungary, Romania, Moldova. Kovács and Tóth connect the toleration of dual citizenship with a ‘counter-trend [...] of re-linking citizenship with ethnicity’ (2009: 11). Joppke’s re-ethnicization hypothesis points out that such ethnically-driven policies of dual citizenship are not peculiar to Eastern Europe, but are present in the West as well, e.g. the strengthening of ties with non-resident (or former) citizens in the Netherlands, Italy, Spain, France and elsewhere.

Acceptance of multiple citizenship is *prima facie* a liberal feature. In a global context, characterized by increased cross-border mobility, multiple allegiances must be recognized and accommodated. However, a consistent approach towards avoiding dual citizenship may not be, at least theoretically, incompatible with a conception of (bounded) liberal-democratic membership. This is why the assessment of the liberal credentials of rules concerning multiple citizenship takes into account only those cases where the rules are applied in a discriminatory manner. We can distinguish two situations: a) rules that discriminate between applicants for naturalization and citizens who naturalize elsewhere (adults); and b) rules that discriminate between citizens by birth and other citizens when they naturalize elsewhere.

A number of states in the survey provide for full acceptance/tolerance of multiple citizenship: Belgium, Finland, France, Greece, Hungary, Italy, Luxembourg, Malta, Portugal, Romania, Sweden, and the United Kingdom. Among those states that reject dual citizenship, many provide for considerable exceptions. For example, in Denmark around 40 % of all naturalized foreigners are allowed to retain their original citizenship (Ersbøll 2009: 26); in Germany, in 2006, 51% of naturalized citizens maintained their previous nationality. Considerable exceptions are also made in the Czech Republic, Lithuania, Slovenia, Spain, whereas in Poland the authorities have discretionary power to ask for the renunciation of a previously held citizenship.

*Applicants for naturalization vs. citizens who naturalize elsewhere*

The differential treatment where applicants for (regular) naturalization are required to renounce their citizenship (as a rule, disregarding exceptions) while citizens who naturalize abroad are allowed to retain their original citizenship is referred to in the literature as immigrant vs. emigrant dual citizenship. It must be noted that this terminology is not accurate since applicants for naturalization are not always ‘immigrants’, while citizens who obtain another citizenship are not always abroad.

Arguments according to which naturalization is not compatible with maintaining dual citizenship (claiming that it is an obstacle to integration or that it signals divided loyalty) do not justify privileging external dual citizens (who may have even better chances to lose ties with the country or to act disloyally). Such illiberal differentiation is applied in Austria, Bulgaria, Poland, and Slovenia. Needless to say, in practice, it is much harder to check whether citizens possess or have acquired another citizenship than to impose a formal renunciation on applicants for naturalization. Germany is a rather exceptional case where re-acquisition by former citizens who automatically lost German citizenship when acquiring their Turkish citizenship is impossible (despite maintaining residence in Germany) (Hailbronner 2009).

*Citizens by birth vs. other citizens (when they naturalize elsewhere)*

This type of discrimination does not occur at the moment of naturalization, but is activated at the moment when naturalized citizens attempt to naturalize elsewhere. While the illiberal rules in case a)

discriminate between applicants to citizenship and citizens, the illiberal rules in the case b) discriminate between present citizens. This is by far the clearest example of an illiberal rule among those discussed in this section. Illiberal rules of this type appear whenever states require their citizens to renounce their citizenship when they naturalize abroad but maintain a general (often constitutional) ban on the renunciation of citizenship if acquired at birth. This is the case of Estonia, Ireland, and Spain.

#### *Long residence requirement*

Demanding rules with regard to minimum residence required before naturalization can be interpreted as an ethno-cultural attempt to make the admission of unwanted aliens as difficult as possible. However, I chose to place this rule in the civic-territorial category because it matches better with the core civic conception of political community as territorial community.

Having spent a minimum period of residence in the country before the application for naturalization is the main, if not the most difficult, condition for naturalization (especially now that the conditions of legal immigration and stay are becoming more drastic). Although the rules of minimum residence are generally complex (e.g. accounting for various types of residence, degree of continuity, exceptions, delays, etc.), I focus here only on the total (minimum) length of required residence. For the purpose of counting the legally-relevant period of residence, one must add to the years required for naturalisation the minimum period necessary in order to acquire the relevant residence status (in many cases a status of permanent residence).

The total period of minimum residence in our 27 cases varies from three to ten years: 3 years (Belgium), 4 years (Ireland), 5 years (France, Latvia, Malta, the Netherlands, Sweden, and the United Kingdom), 6 years (Finland, Portugal), 7 years (Cyprus, and Luxembourg), 8 years (Estonia, Germany, Hungary, Romania, and Slovakia), 9 years (Denmark), 10 years (Austria, Bulgaria, the Czech Republic, Greece, Italy, Lithuania, Poland, Slovakia, Slovenia, and Spain).

One cannot identify a magic number to be used for determining a liberal or fair minimum period of residence for the purpose of naturalization. Following some previous assessments that consider five years as an indicator for liberal naturalization regimes (Howard 2006), we find a troubling indicator: only 8 out of 27 countries qualify as liberal.

#### *Morality and/or civic virtue*

Many citizenship laws in our survey make reference to vague criteria for determining the worth or the attachment of the applicant to the country. The formulations vary: 'affirmative attitude towards the Republic' (Austria), 'no serious facts with respect to the person' (Belgium) 'good character' (Belgium, Ireland, Malta, the United Kingdom), 'respectable life' (Finland), 'deemed to be a suitable citizen' (Malta), 'decent life and manners' (France), 'good moral character', 'effective connection to the community' (Portugal), 'good civic conduct', 'adaptation to culture and lifestyle' (Spain), 'respectable life' (Sweden), 'attachment to the state and people' (Romania).

In some cases, vague citizenship rules are interpreted in a culturally-biased manner; e.g. a negative assessment of applications in cases of polygamy (the Netherlands, France) or through a morality test. This is clearly illiberal: as Joppke argues, citizenship rules that scrutinize a candidate's inner disposition 'raise eyebrows, precisely for transgressing the thin line that separates the regulation of behaviour from the control of beliefs' (Joppke 2008b: 542). What is acceptable for states to put under test is 'cognitive expectations' and not psychological dispositions (Miller 2008, Orgad 2010).

Some laws ask for 'active' (Denmark) or 'earned' citizenship (the United Kingdom), making citizenship provisional for a period of time. The British clause on 'probationary citizenship' creates 'provisional' citizens, whose citizenship can be revoked if they do not abide by the law during the three-year period following naturalization. In some other cases, demonstrating a sufficient degree of

social insertion requires collecting testimonies from other (worthy) citizens (Malta, the Netherlands, Portugal, and the United Kingdom). Such rules are intrusive and seek to impose a version of ‘virtuous citizenship’ (Joppke 2008a), which is illiberal and discriminatory (since similar demands are not imposed on ‘native’ citizens).

#### **4. Reacquisition of citizenship and facilitated naturalization of ethno-cultural relatives**

Across Europe we witness various state-based initiatives to create, retain or boost ties with special categories of non-residents (former citizens and/or co-ethnics). What is especially puzzling is the fact that these policies are not just relics of a nebulous past, to be slowly replaced by universalistic commitments (Joppke 2008b), but are instead recent and often widely debated contemporary issues. No matter what justifications or strategic interests underpin these developments, they have undoubtedly important practical and normative implications for political membership.

I strategically opted to treat provisions concerning former citizens in the same section with provisions regarding non-citizen co-ethnics. These groups are not easily distinguishable; in several cases, the same rule can be treated under both rubrics. Despite their potential for illiberal features, I do not treat here other modes of preferential acquisition (such as family-related ones or those based on inter-state agreement or personal contribution).

##### **4.1 Former citizens and descendants**

In the case of re-acquisition of citizenship, a major distinction must be made with regard to different cases of loss of citizenship. With these reasons in mind, I classify rules of re-acquisition into two main categories: i) restitution – when citizenship was lost due to unilateral and undue deprivation (e.g. as an act of political persecution); and ii) general re-acquisition – when no particular circumstances of loss are taken into account. While focusing on more ‘historical’ (and possibly problematic) cases of restitution, I leave aside a specific type of restitution that aims at undoing some of the consequences of the application of certain (usually unfair) rules that are now obsolete (e.g. gender discrimination, avoidance of dual citizenship).

##### *Restitution*

Where the loss of citizenship was caused by unilateral and undue deprivation, the re-acquisition is a matter of rectificatory justice and not of facilitated acquisition. A former citizenship lost in this way ought to be restituted without imposing any further conditions or even, as a matter of compensation, with certain exceptions and privileges that may be unavailable to other applicants (e.g. permission to maintain dual citizenship and/or residence abroad). This restitution and further positive discrimination must, however, be limited in time so as to include only the deprived persons and their direct descendents. In order to be consistent with the idea of bounded political membership, the entitlement to reacquisition could be extended at most to one further generation (i.e. the grandchildren of the deprived persons) but, in this case, it must be made conditional upon proving sufficient links with the country. A failure to make conditions (generational limit, sufficient link) renders these rules of re-acquisition illiberal (as in the case of perpetual *ius sanguinis* abroad).

It must be noted that defining what stands for ‘undue’ or ‘unjust’ deprivation is not always easy. While deprivation of citizenship on ethnic/racial grounds (e.g. Germany’s rules under the Nazi regime) or on political ones (e.g. rules enforced by communist regimes) are straightforward examples, this may not be the case in other circumstances. For example, is automatic loss of citizenship due to territorial changes (e.g. postwar Hungary, Romania, etc.) unjust, with the implication that restitution is legitimate? For the purposes of this analysis, I take for granted the claim of justice invoked by most of the rules concerning restitution of citizenship and check only the validity of their vertical (generational limit) and horizontal (non-discrimination between potential claimants) scope.

*General re-acquisition*

In what concerns general re-acquisition (where no justice claims are involved), the absence of state reparative duties disqualifies special privileges. Since the loss of citizenship has occurred, most probably, by renunciation, the activation of the link between the state and the alienated person should not be automatic but conditional upon a manifest commitment to reconnect made by the applicant, for which taking up residence in the country should suffice (for this purpose the length of minimum residence may be shortened since the socialization function of long residence in the country is less relevant). Given that acquisition of citizenship is often a very conditional, difficult and uncertain process for most foreigners, allowing citizens to step in and out of membership cannot be considered fair. In any case, the legislator could acknowledge the existence of a past link and could refrain from imposing checks with regard to integration (e.g. language or civic knowledge tests).

In order to ensure equality of treatment between persons who naturalize and persons who re-acquire citizenship, exceptions with regard to dual citizenship are not justified. If dual citizenship is prohibited for persons who naturalize, it must be denied to those who re-acquire citizenship as well. Finally, the facilitated procedure must be limited in time. The grandchildren of persons who renounced their citizenship and who did not keep sufficient links with the country cannot be sufficiently distinguished from other foreigners for the purpose of attributing membership. If such descendants of former citizens have developed strong attachments to the country of their ancestors or have cultivated its language and culture, this will serve them perfectly when and if they decide to take up residence and to apply for naturalisation.

Although instrumental for assessing illiberal rules, classifying actual rules as either justice-driven or general is not easy. For example, as a way of rectifying communist injustice, the first post-communist government of Romania unconditionally restored citizenship to all ‘former Romanian citizens who, before 22 December 1989, [had] lost their Romanian citizenship for different reasons’, without any requirement regarding residence or dual citizenship (Iordachi 2009b: 189). The language of justice is also invoked in different emigration contexts; for example, the Spanish legislator justified the offer of facilitated access to citizenship to former citizen and descendants by reference to the need to solve ‘the last negative consequences of a historical process – the massive emigration of Spaniards’ and to the constitutional obligation of ‘protecting Spanish emigrants’ (Marín and Sobrino 2009).

**Table 3. Illiberal rules with regard to re-acquisition of citizenship**

	<b>Ethno-cultural</b>	<b>Civic-territorial</b>
<b>Over-inclusive</b>	<i>Insufficient conditions and/or unjustified privileges:</i> (9) FRA, GER, IRL, ITA, LIT, LUX, POR, ROM, SPA	
<b>Over-exclusive</b>	<i>Differential treatment of applicants</i> (9) BEL, DEN, GRE, ITA, IRL, LIT, LUX, MAL, SPA	

## **4.2 Over-inclusive illiberal**

### *Insufficient conditions and/or unjustified privileges*

Many states in our survey have provisions concerning the restitution of citizenship as a way of undoing the wrongs of their past: Austria (survivors of the Holocaust, political emigrants of the Third Reich), Bulgaria (persons deprived of their citizenship by decrees during the period 1944 to 1947), the Czech Republic (persons deprived during the communist regime), Estonia (persons who possessed Estonian citizenship before 16 June 1940 and their children), Germany (former nationals persecuted during Nazi rule), Greece (refugees during the Civil War), Hungary (persons deprived of their citizenship between 1945 and 1990), Latvia (persons who possessed Latvian citizenship before 1940), Lithuania (persons deported or who left after 1940, and descendants), Poland (exiles from several republics of the former Soviet Union), Romania (persons stripped of citizenship against their will), Slovenia (certain persons deprived of Yugoslavian citizenship), Spain (persons persecuted during the Civil War).

In several cases, the restitution of citizenship has played a crucial role in the determination of citizenries for the new/restored states (e.g. in the Baltic Republics). In other cases, restitution was applied not in order to rectify personal deprivations but to counteract any implications of territorial changes. In Romania, the reacquisition of citizenship is granted to all those who ‘were stripped of Romanian citizenship against their will or for reasons beyond their control, and their descendants’, basically referring to citizens of the Great Romania who resided in the ‘historical provinces’ of Bessarabia and Northern Bukovina, lost after 1940 (Iordachi 2009b: 177). References to defunct states for the purpose of the re-acquisition of citizenship are also common (e.g. in Austria, the Czech Republic, Germany, Italy, Slovenia, Slovakia, etc.). The complicated matters of initial determination of citizenship, as well as matters related to state succession deserve special attention and cannot, unfortunately, be covered in this paper.

Some rules of restitution are illiberal because they restore citizenship to the descendants of descendants without sufficient conditioning. In the case of Romania, the legislator has recently (2009) extended the pool of eligible applicants for the restitution of citizenship on grounds of unwilled loss to third-degree descendants of former citizens, a reform which ‘coincided’ with an unprecedented number of naturalizations — over 11,000 between September 2007 and April 2009 (Iordachi 2009a). Equally suspicious is the case of Spain where, following the ‘Historical Memory Act’ of 2007, individuals whose ancestors (up to three generations) were Spaniards ‘by origin’ and who were forced to renounce Spanish nationality as a consequence of exile were able to opt for the Spanish nationality (Marín and Sobrino 2009).

In many cases of general re-acquisition, states grant citizenship to former citizens along with the privilege of keeping their residence abroad. This is the case in France, Italy, Luxembourg, Romania, Slovakia, Spain, Luxembourg, and Portugal. Even more dubious, in some cases the rules of re-acquisition extend to children and grandchildren of former citizens, along with other exceptional privileges. This type of rule is applied in: Greece, Italy, Ireland (persons by origin), Lithuania (no renunciation), Luxembourg (for Luxembourgers ‘of origin’), Portugal (no renunciation), Romania (no residence), and Spain (no renunciation).

## **4.3 Over-exclusive illiberal**

### *Differential treatment among applicants*

Either in the case of restitution or in that of the general re-acquisition of citizenship, making distinctions between different categories of persons on ethno-cultural grounds (original vs. non-original former citizens, former citizens by descent or birth in the country vs. other former citizens) will count as an illiberal feature.

As in other rules of citizenship, many provisions on the re-acquisition of citizenship privilege ‘original’ citizens to the detriment of others (e.g. the naturalized). Privileges for ‘original’ citizens are granted in nine countries. These are Belgium (persons born in the country), Denmark (citizens by birth), Greece (‘homogeneis’), Italy (citizens by birth), Ireland (persons born on the island of Ireland), Lithuania (persons of Lithuanian origin), Luxembourg (citizens by birth, Luxemburgish of origin), Malta (descendants of persons born in Malta from parents also born in Malta), and Spain (citizens by origin).

*Ethno-cultural relatives*

This section deals with special privileges in the acquisition of nationality available to persons who are considered as ‘related’ to the state and/or nation. This category often overlaps with those discussed above, of former citizens and descendants. What differentiates it from the latter is the fact that the reference persons are mainly targeted because of their ethno-cultural traits (e.g. ethnicity, culture, language), although in some cases additional requirements apply (e.g. place of residence, citizenship record). Due to their explicit target, the rules concerning facilitated acquisition by ethno-cultural relatives may be, and generally have been, considered problematic from a liberal-democratic point of view. However, following the proposal made here, mere reference to ethnicity or culture should not be considered illiberal by default.

The basic argument behind these rules is that the targeted persons share with the members of the political community certain features that are relevant for membership in a particular community. Although one must be suspicious about too much ‘particularism’ in a liberal political community, I would allow that the possession of certain knowledge (such as language and knowledge about constitution) could be made a prerequisite for membership as an expression of an effective link with the political community. Since ethno-cultural relatives are assumed to already have some knowledge about the language or democratic history of the country, they may be granted partial exceptions with regard to certain naturalization requirements (such as reduced minimum residence). There is no justification for granting exceptions with regard to taking up residence or the renunciation of dual citizenship (if generally prohibited).

**Table 4. Illiberal rules concerning facilitated naturalization (ethno-cultural)**

	<b>Ethno-cultural</b>	<b>Civic-territorial</b>
<b>Over-inclusive</b>	<p><i>Unjustifiable exceptions with regard to</i></p> <p><b>1. residence:</b> (8) BUL, GRE, IRL, ITA, LIT, POR, SLV, SPA</p> <p><b>2. dual citizenship:</b> (4) BUL, GER, IRL, POR</p>	
<b>Over-exclusive</b>	<p><i>Differential treatment among applicants</i></p> <p>e.g. GRE</p>	

#### **4.4 Over-inclusive illiberal**

##### *Unjustifiable exceptions with regard to residence and dual citizenship*

A primary distinction can be made with regard to the general scope of the rules referring to facilitated naturalization for ethno-cultural relatives: a) territorially-targeted ones – which apply only to persons from certain territories (e.g. Germany, Greece, etc.); and b) non territorially-targeted ones that apply generally (e.g. Hungary, Ireland).

In the category of the territorially-targeted rules of facilitated acquisition we have the following cases: Denmark (persons who were born in Southern Schleswig, who are ‘Danish-minded’), France (citizens of francophone states, whose primary education is in French), Germany (citizens of Liechtenstein, Austria or other areas in Europe where German is an official or colloquial language; *Aussiedler*), Greece (Pontic Greeks from the Soviet Union, who left Turkish territory before 1924, and their descendants), Italy (ethnic Italians resident in the territories assigned to the former Yugoslavia after the 1947 treaty and to their descendants), Latvia (Livs – an indigenous group of Finno-Ugric descent living near the Baltic Sea), Poland (exiles from certain republics of the former Soviet Union), and Slovenia (persons belonging to Slovene minorities in neighboring countries). Special programmes for the repatriation of co-ethnics have been put in place in Germany (for *Aussiedler*), Greece (for Pontic Greeks), and Poland (deportees).

While cultural/linguistic features are the qualifying criteria for facilitation in three cases (Denmark, France, and Germany), a clear reference to ethnicity (often in combination with culture and descent from citizen) appears in all the others. Finally, the only two (and rather exotic) examples where religion plays an independent role are offered by Greece (exceptional naturalization for the monks in service at the mountain of Athos), and Spain (reparatory acquisition for Sephardic Jews whose ancestors were expelled from Spain in the late 15<sup>th</sup> century).

In what concerns non-territorially targeted rules, we can list the cases of Bulgaria (persons of Bulgarian origin), Ireland (persons of Irish descent or association), Lithuania (persons of Lithuanian origin), Hungary (descendant of a Hungarian national who declares himself or herself to be an ethnic Hungarian), Malta (grandchildren of persons born in Malta), Portugal (persons with Portuguese ancestry or members of Portuguese communities abroad), Slovenia (persons of Slovenian descent).

For our assessment, the problematic rules are those that allow for unjustifiable privileges with regard to residence and dual citizenship. Across all cases, eight states grant citizenship to their ‘relatives’ without requiring them to take up residence in the country; these are Bulgaria, Greece, Ireland, Italy, Lithuania, Portugal, Slovenia, and Spain.

The argument of shared ethno-cultural features is sometimes paired with claims of reparative justice or a duty to protect certain individuals or groups. However, one should not lose sight of the principal issue at stake: political membership. Where there is no case of restitution, but the need for justice and the duty to protect are genuine, alternative solutions may be available, such as diplomacy, assistance, asylum and immigration. The offer of membership has to come as a confirmation of a sufficiently established link with the country and not in a hasty, unqualified manner. In the particular case of Germany, justice-driven entitlement for German ethnics who found themselves outside the borders of the post-war state has come to stand for nothing other than ‘an open door to immigration and automatic citizenship for ethnic German immigrants from Eastern Europe and the Soviet Union’ (Brubaker 1998: 1050). Despite recent restrictions that indicate that there is some realization that ‘the law is therefore becoming obsolete with the disappearance of the consequences of expulsion for the second and third generation of expelled persons’ (Hailbronner 2009), the rules still maintain for most of the repatriating Germans the exception on the general prohibition of dual citizenship. Similar (and even less justifiable) exceptions are provided in the cases of Bulgaria, Ireland, and Portugal on a discretionary basis.

#### 4.5 Over-exclusive illiberal

##### *Differentiated treatment among applicants*

A problematic aspect of this type of rule is related to their rather unsystematic nature, deriving from their specific historical context or ad-hoc rationale (as in the case of restitution of citizenship to former nationals). This is why it makes sense to maintain our attention on potential discriminatory effects that these rules may have even in the light of their already questionable scope.

I illustrate this point by referring only to the case of Greece, where some co-ethnics seem to be more valuable than others. As with other rules of this type, the definition of the targeted persons is too restrictive when measured against its rationale (protection, reparation, and commonality). There is no reasonable explanation why, for example, Pontic Greeks are offered privileged access to nationality while this has been repeatedly refused to Greeks from Albania (Christopoulos 2009).

### 5. Rules regarding the loss of citizenship

The rules concerning loss of citizenship have received far less attention among scholars in the field. It is true that, in terms of numbers, these rules affect many fewer people than the rules of acquisition of citizenship; however, they may constitute a privileged site for illiberal rules. Generally, a liberal-democratic point of view will recommend minimizing deprivations (if there are any) and minimal conditions for renunciation.

**Table 5. Illiberal rules regarding the loss of citizenship**

	<b>Ethno-cultural</b>	<b>Civic-territorial</b>
<b>Over-inclusive</b>	<i>Perpetual allegiance</i> -	
<b>Over-exclusive</b>	<i>Discriminatory treatment between citizens</i> (11) BEL, BUL, CYP, EST, FRA, IRL, LAT, MAL, ROM, SPA, UK	<i>Unjustifiable reasons of deprivation</i> (4) AUS, IRL, LUX, MAL

#### 5.1 Over-inclusive illiberal

##### *Perpetual allegiance*

The absence of a formal possibility for the renunciation of citizenship (or the prohibition of renunciation) is an example of an ethno-cultural illiberal rule. This rule is based on a clearly illiberal idea, according to which membership in a political community is beyond individual choice. There are no cases of a legal duty of perpetual allegiance in our survey.

#### 5.2 Over-exclusive illiberal

##### *Discriminatory treatment between different categories of citizens*

Certain rules dealing with the loss of citizenship differentiate among citizens on ethno-cultural grounds. This includes provisions that explicitly discriminate against certain categories of citizens, and provisions that offer special protection to other categories (original/worthy).

Despite the fact that the acquisition of citizenship by (regular) naturalization is a difficult process (in comparison to effortless acquisition by birth), many of the 27 EU Member states maintain provisions that make the deprivation of citizenship easier for naturalized citizens (beyond the generally accepted provision of fraud in acquisition). Making the security of citizenship status dependant on acceptable personal conduct (criminal or moral) constitutes an unjustifiable policy, which could be easily compared to the discredited rules adopted by authoritarian states (e.g. pre-1989 communist regimes of Eastern Europe).

Four states maintain provisions of extra protection for citizens by birth (Belgium, Bulgaria, Estonia, and Romania). For example, ‘Bulgarian by birth’, which refers to ‘those born within the country’s borders or to Bulgarian citizen parents’ (Smilov and Jileva, 2009: 218), have a constitutional safeguard against the withdrawal of citizenship, while all other citizens (e.g. naturalized citizens) can face deprivation on the grounds of ‘grave crimes against the state’. In the same vein, Romania has recently changed its rules by exempting ‘natural citizens’, who obtained Romanian citizenship at birth, from the mandatory termination of the citizenship of those ‘who worked abroad against the interests of the country or who enrolled in an enemy army’ (Iordachi 2009a). The definition of citizenship by birth is extended in Belgium to cover both citizens by descent and persons who benefited from the rule of double *ius soli*.

Seven states in our survey enforce rules for the deprivation of citizenship that apply exclusively to naturalized citizens: Cyprus, France, Ireland, Lithuania, Malta, Spain, and the United Kingdom. The termination of citizenship acquired by naturalization can be triggered by conviction for crimes (Cyprus, France, Malta, Spain, and the United Kingdom) or residence abroad (Cyprus, Ireland). For example, the French *Conseil d’Etat* has the power to withdraw French citizenship from naturalised citizens who commit certain crimes during the first ten years after naturalization (Weil et al. 2009). The reasons for deprivation are even broader in Ireland, where naturalized citizens can risk losing their Irish citizenship if they take permanent residence abroad, acquire another nationality voluntarily, possess the citizenship of a country at war with the State, or fail ‘in the duty of fidelity to the nation and loyalty to the State’ (Handoll 2009: 13).

#### *Unjustifiable reasons for deprivation*

Among the most easily defensible reasons for deprivation, we find certain serious actions against the state (independence, security, constitutional order, institutions, etc.) and voluntary service in foreign armies. Among the most problematic/illiberal rules in our survey, we can list ‘damage to the national interest and reputation’ (Austria), ‘failure in duty of fidelity and loyalty to the state’ (Ireland), ‘disloyalty or disaffectedness towards the nation’ (Malta), deprivation if a citizen is proven ‘to be unworthy’ of keeping citizenship (Luxembourg).

## **Conclusion**

The theoretical model proposed in this paper is an attempt to assess the rules of citizenship by looking at two dimensions: normative scope and ideological outlook. It was designed in order to account for rules that have been hastily tagged as ‘open’, ‘ethnic(ist)’ or ‘liberal’ without much normative accuracy. I have argued that a liberal-democratic conception of membership requires certain degrees of inclusiveness as well as exclusiveness. Moreover, liberal-democratic membership can be compatible with both major ideological views on membership -ethno-cultural and civic-territorial. It is not the ethnic or civic ideological conception of the polity that renders the rules of membership illiberal. Although many of the illiberal rules in our comparative study are classified as ‘ethno-cultural’ (see Figure 2 below), one ought not to disregard the cases where illiberalism comes in a ‘civic’ wrapping (it is precisely these rules that form the core of the present citizenship debates in Western Europe).

The comparative analyses show that the present citizenship rules of the 27 EU countries are not simply liberal. Although table 6 below does not provide for a ranking or a final labeling of these countries, it outlines a map of illiberal rules across the EU. The ‘stained’ map shows that there is no single state that does not enforce certain illiberal rules. As expected, there is no visible trace of a cleavage between the ‘old’ Europe of the pre-2004 EU member states and the ‘new’ Europe of the EU-12.

**Figure 2. Overview of illiberal citizenship rules**

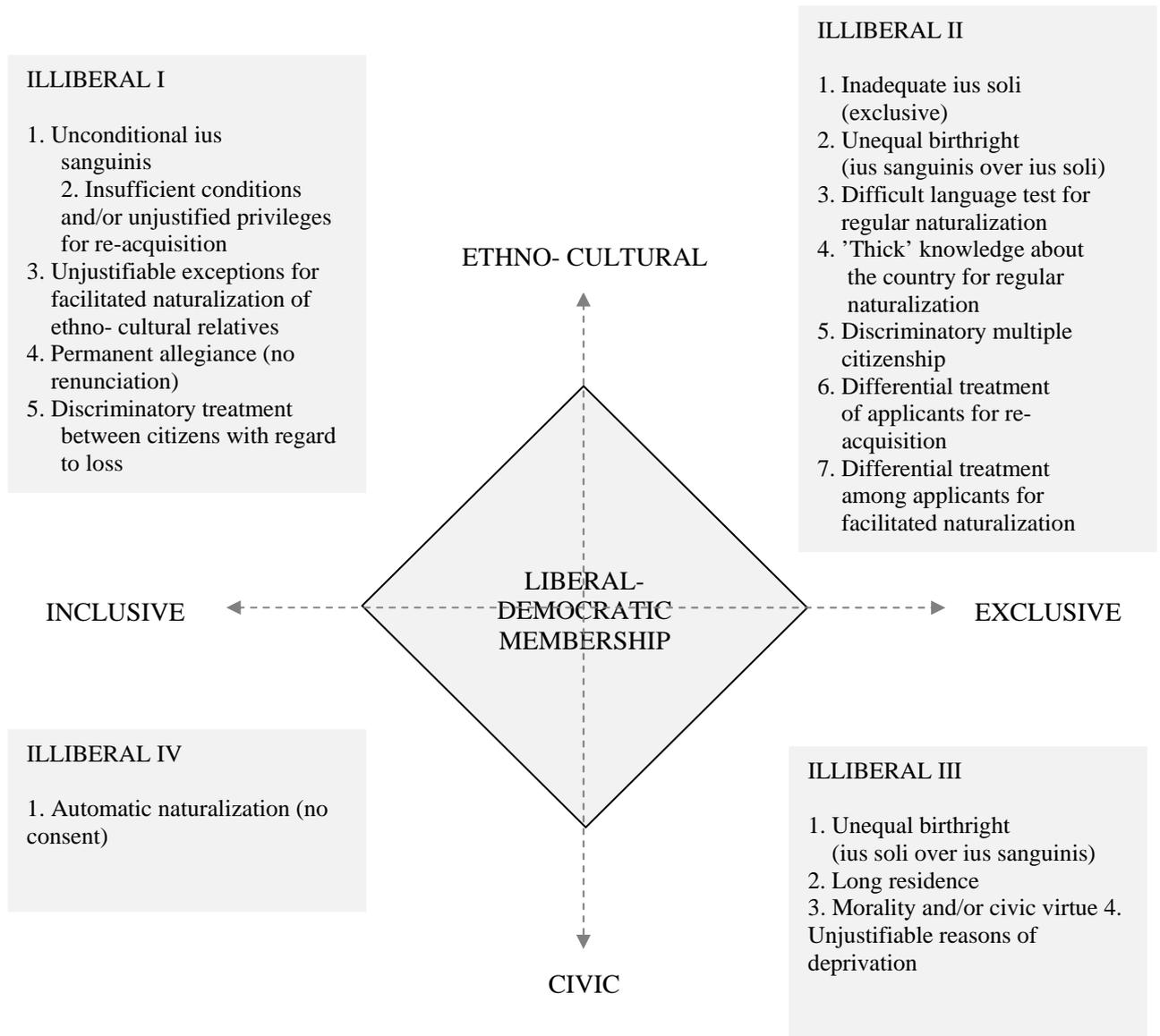


Table 6. Overview of illiberal citizenship rules in EU countries

	Over-inclusive						Over-exclusive											
	Ethno-cultural					Civic-territorial	Ethno-cultural						Civic-territorial					
	Unconditional ius sanguinis	Unconditional ius soli	Insufficient conditions / unjustified privileges in re-acquisition	Unjustifiable exceptions in facilitated naturalization (ethno-cultural)	Permanent allegiance		Discriminatory treatment between citizens in loss of citizenship	Automatic naturalization	Inadequate ius soli (exclusive)	Unequal birthright (sanguinis over soli)	Difficult language test in regular naturalization	'Thick' knowledge about the country in regular naturalization	Discriminatory multiple citizenship a) and/or b)	Differentiated treatment among applicants for re-acquisition	Differentiated treatment among applicants / facilitated naturalization	Unequal birthright (soli over sanguinis)	Long residence	Morality and civic virtue
AUSRIA	X			X				X				X				X		X
BELGIUM	X					X							X					
BULGARIA	X			X		X		X				X				X		
CYPRUS	X					X		X								X		
CZECK R	X							X		X						X		
DENMARK								X		X	X		X			X	X	
ESTONIA	X					X		X		X		X				X		
FINLAND								X		X						X		
FRANCE	X		X			X											X	
GERMANY	X		X	X					X	X	X					X		
GRRECE	X			X				X			X		X	X		X		
HUNGARY	X							X		X						X		
IRELAND	X		X	X		X						X	X				X	X
ITALY	X		X	X				X					X			X		
LATVIA	X							X		X	X							
LITUANIA	X		X	X		X		X					X			X		
LUXENBOURG	X		X							X			X			X		X
MALTA	X					X		X					X				X	X
NETHERLANDS	X										X						X	
POLAND	X							X				X				X		
PORTUGAL	x		X	X												X	X	
ROMANIA	x		X			X		X		X						X		
SLOVAKIA	x							X								X		
SLOVENIA	x			X				X			X					X		
SPAIN	x		X	X		X		X		X	X					X		
SWEEDEN								X										
UK	x					X				X							X	

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