



Imiscoe Policy Brief

The Acquisition and Loss of Nationality in 15 EU States. Results of the Comparative Project NATAC.

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All fifteen Member States of the European Union before enlargement in May 2004 have received substantial immigration. Many are also traditional countries of emigration that attempt to retain legal, political and cultural ties with their expatriates. In 2001, about 31 million immigrants, i.e. foreign-born residents, lived in the EU-15 states. Among the foreign born population and those born as foreign nationals in the EU about 20 million were foreign nationals, while about 12 million had acquired the citizenship of their state of residence. Less than a third (31%) of foreign nationals were citizens of another EU Member State. In Austria, Italy and Finland the share of third country nationals was more than 80%. A majority of foreign residents are Union citizens only in Belgium, Ireland and Luxembourg. Average rates of acquisition of nationality (i.e. annual acquisitions of nationality divided by the number of foreign residents at the beginning of the year) in the period from 2000 to 2003 vary between 0.4% in Luxembourg and 7.6% in Sweden. Overall the share of foreign nationals in the population will continue to grow even where immigration is low.

Minimum standards for citizenship policies of the EU Member States

The project NATAC (The Acquisition and Loss of Nationality in EU Member States) was funded by the 6th EU framework programme and compared nationality laws and their implementation in the 15 old Member States. Research was coordinated by a consortium consisting of the Institute for European Integration Research at the Austrian Academy of Sciences, the Centre for Migration Law at Radboud University Nijmegen, the Danish Institute for Human Rights and the European Centre for Welfare Policy and Research, Vienna. The project team included also the Migration Policy Group, Brussels and experts for each of the fifteen states.

The project's main recommendation is that, although the EU has no direct legal competence in matters of nationality, it should initiate a process of open coordination in order to promote minimum standards and good practices in the area of citizenship and nationality law. There are two main arguments why this is a common concern for the EU and its members:

(1) Access to citizenship for immigrants and their descendants is a crucial condition for integration.

- Full security of residence and political rights still depend on acquisition of citizenship. These conditions for integration are not covered by Council directive 2003/109/EC (in force since 23 January 2006), which harmonizes the legal status of long term resident third country nationals after five years of residence. Moreover, several Member States have introduced "integration tests" as a condition for access to this status.
- Excluding long term immigrants and their children from citizenship fosters a perception in the wider society that they are "foreigners" who do not belong and whose loyalty is in doubt.
- Immigrant groups who are citizens and enjoy full voting rights will be represented in the political process. Mainstream political parties have to compete for their votes and are less likely to ignore their interests or to engage in anti-immigrant rhetoric.
- A growing population of permanent residents who are subjected to the laws without having access to legislative representation amounts to a serious deficit of democratic legitimacy.

(2) In order to avoid unintended and undesirable effects of their citizenship policies, Member States need to achieve a higher level of coordination among themselves and with migrant sending states.

- Policies on acquisition or loss of nationality in sending and receiving states impact on each other. For example, EU states that require renunciation of a previous nationality as a condition for naturalisation still tolerate dual nationality if the state of origin refuses to release its citizens. The effect of this policy is to consolidate illiberal citizenship laws, e.g. in Arab states. A contrasting example is Turkey which has facilitated naturalisation of its expatriates since 1995 by promoting dual nationality and introducing a “pink card” that allows former nationals to retain citizenship rights in Turkey.
- Becoming the national of a Member State entails the rights of Union citizenship to settle and take up employment in all other Member States. Some governments are therefore increasingly concerned about easy access to nationality in other countries. In the Republic of Ireland, *ius soli* acquisition by birth in the territory was reformed in 2004 after a Chinese mother had used it in order to acquire Union citizenship for her daughter and a right to legal residence for herself in Britain. Several ‘old’ Member States (Ireland, Italy, Germany, Greece, Portugal and Spain) have also created Union citizens outside EU territory by offering their nationality to descendants of emigrants or to co-lingual and co-ethnic populations in other countries. Policies of naturalizing descendants of emigrants or members external ethnic kin groups are also widespread among the new Member States. Coordination within the EU could avoid two undesirable effects: (1) a competition between states to raise the hurdles for naturalisation of immigrants, and (2) a generous awarding of Union citizenship to populations living abroad who may then settle in other Member States.
- Free movement of EU citizens may come into direct conflict with nationality laws in two cases. (1) When national laws provide for a loss of citizenship after some years of residence abroad, Union citizens may lose their status merely because they have made extensive use of their right to live in another Member State. In order to avoid this paradoxical effect the Dutch law was reformed so that now residence in the EU no longer leads to automatic loss of Dutch nationality after ten years. (2) When naturalisation requires a long period of continuous residence in one Member State, third country nationals who extensively use their right under directive 2003/109/EC to migrate within the Union may find their access to full citizenship blocked. The Union should try to prevent that nationality laws create obstacles to mobility. We recommend therefore that periods of residence spent in other Member States should count towards naturalisation.

The Council of Europe has been more active in the area of nationality law than the European Union. The 1997 European Convention on Nationality has been ratified by nine of the 25 EU Member States and defines minimum standards from a perspective of human rights and international law. These include, for example, a maximum residence requirement of ten years for naturalisation and a prohibition to discriminate between persons who have acquired nationality at birth or after birth. While it is important that all EU Member States should sign and ratify the ECN, the specific concerns of immigrant integration and policy coordination within the European Union call for additional guidelines and mutual learning from good practices.

Main results of the project

NATAC results have been published in September 2006. They include:

- a report on international and European law
- a comparative analysis of 27 modes of acquisition and 15 modes of loss of nationality across all countries for the period between 1985 and 2004

- a comparative report on the implementation of nationality laws
- a comparative assessment of nationality statistics
- an analysis of major trends in legislation
- comparative analyses of the status of nationals with restricted rights, of third country ‘denizens’, and of quasi-citizens
- an evaluation of nationality policies and policy recommendations
- a separate volume with comprehensive analyses of each countries’ policies.

Some major results are briefly summarized below.

(1) Trends in nationality legislation

In the 1990s several authors saw a general trend of convergence towards more liberal citizenship policies in the EU. A second assumption was that nationality laws tend to be rather stable since they reflect historical conceptions of citizenship and national identity.

In our study we find that nationality law has become a highly politicized matter in many countries and that reforms have become more frequent. While there is still some convergence in matters such as the toleration of dual nationality or the introduction of elements of *ius soli*, there are contrasting trends with regard to naturalisation:

- more liberal laws (Germany 1999, Belgium 2000, Luxembourg 2001, Sweden 2001, Finland 2003, Portugal 2006). A liberal reform has also been announced by the new Italian government in mid 2006.
- a remarkable new trend towards raising the hurdles for naturalisation in countries with sizeable settled immigrant populations (Austria 1998 and 2005, Denmark 2002, France 2003, the Netherlands 2003, Germany since 2004) and the United Kingdom 2005).
- none of the new Member States has yet adapted its citizenship law to new immigration, but several reforms have aimed at strengthening ties with expatriates and ethnic kin minorities living abroad.

(2) Naturalisation of first generation immigrants

Residence requirements for naturalisation by first generation immigrants vary between three and four years in Belgium and Ireland respectively and ten years in Austria, Italy and Spain. Standard requirements are knowledge of the country’s language (all EU-15 countries except Belgium, Ireland, Italy and Sweden), a clean criminal record and proof of sufficient income. However, the Portuguese reform of 2006 has abandoned income criteria because of their discriminatory class bias. There is a recent trend towards comprehensive citizenship tests with stricter language requirements and additional examinations on the country’s history, constitution or public values (Austria, Denmark, France, Germany, Greece, the Netherlands, United Kingdom).

One of the most important findings in our project is that access to nationality by first generation immigrants depends not merely on the conditions laid down in the law, but also on administrative procedures, fees and the attitudes of authorities. Only Belgium, France, Luxembourg and Spain charge no fees for regular naturalisations. The highest fees (about € 1500.-) are charged in Greece and Austria. Some countries impose also high fees for taking naturalisation tests.

Regional variations in administrative practice are strong, not merely in federal states like Austria and Germany, but also in unitary states, such as France, Italy and the Netherlands. In Greece there is neither a requirement to justify negative decisions nor a right to appeal. In order to guarantee equal treatment, Member States should aim to limit the discretionary powers of authorities and decide applications within a fixed time period. In contrast with overseas countries of immigration, European states generally invest few resources into preparing applicants for naturalisation or into public campaigns that encourage them to take this step. Such campaigns could have an important impact not just on the numbers of applications, but would also signal to the wider population that immigrants are regarded as future citizens.

(3) Dual nationality

Nine of the 25 EU Member States still generally try to enforce that immigrants must renounce a previous nationality in order to naturalise (Austria, Denmark, Estonia, Germany, the Netherlands, Latvia, Lithuania, Luxembourg and Slovenia). Germany and the Netherlands, however, allow for many exceptions. Luxembourg is currently considering general toleration of dual nationality.

The number of multiple nationals is growing rapidly in all Member States not merely because of toleration in naturalisations, but also because all countries accept dual nationality when it arises from descent of parents with different nationality or from the combination of *ius soli* (birth in the territory) and *ius sanguinis* (descent from a foreign national). The German law of 1999 has created a new category of dual nationals by birth on German territory, but requires these to choose between one of their nationalities until the age of 23.

(4) Second and third generations

All modern nationality laws include the principle of *ius sanguinis*. A majority of the EU-15 states combines this with a right to nationality derived from birth in the territory. In Belgium, France, the Netherlands, Portugal and Spain the third generation (children born in the country with at least one parent also born there) acquires citizenship automatically at birth. Germany, Ireland, Portugal and the United Kingdom apply this principle already to the second generation (with various conditions concerning the status or time of residence of parents). In Belgium acquisition by *ius soli* is not automatic but requires registration. Several states also provide for *ius soli* acquisition after birth through declaration (Belgium, Finland, France, Italy, the Netherlands, United Kingdom) or automatically at majority (France). The 2006 Portuguese reform has set a new standard by introducing automatic *ius soli* for the third generation and conditional *ius soli* for the second generation if one parent has had 5 years of residence (irrespective of the legal title).

In countries of immigration the effect of *ius soli* is that second and third generations will not grow up as foreign nationals in their country of birth who may even be deported to their parents' country of origin. A similar integrative effect is achieved by the Swedish law that permits minors who have lived in Sweden for five years to acquire nationality without further conditions by simply notifying the authorities. In contrast with *ius soli*, this provision also includes the "generation 1.5" of minors brought into the country after birth by their parents.

(5) Spouses and gender discrimination

All EU-15 states facilitate the acquisition of nationality by spouses of persons who are already nationals. Five countries (Austria, Belgium, France, Germany and Luxembourg) also provide for the extension of naturalisation from a principal applicant to the spouse. Several states, however, currently attempt to restrict family reunification rights of established immigrants. This trend has recently also hit nationality law. Spouses enjoy fewer privileges and exemptions with regard to general conditions of naturalisation. Within the last 13 years requirements concerning their residence or the duration of marriage have been raised in Austria, Belgium, Denmark and France.

Constraining access to citizenship for spouses will in most cases affect women. We have also found some remaining forms of explicit gender discrimination in nationality laws. All fifteen countries have now gender-neutral *ius sanguinis* from both the father's and the mother's side. However, past gender discrimination in this respect has not been corrected consistently. Italy and Luxembourg introduced a fully retroactive option for nationality for these children, whereas in Austria and the Netherlands they could only make their claims within a transitional period.

The opposite kind of gender discrimination still persists for children born out of wedlock. In six of the EU-15 countries they do not automatically acquire their father's nationality at birth, even if paternity has been established. Combating 'bogus recognitions' seems to be a concern that overrides gender equality in these cases.

(6) Refugees and stateless persons

Several international conventions ask host states to facilitate as far as possible the naturalisation of refugees and of stateless persons. Twelve of the EU-15 states (the exceptions are the Netherlands, Portugal and the United Kingdom) do this, mainly by reducing the residence requirement or by waiving it completely (France and Ireland). Austria has, however, recently raised the requirement for refugees from four to six years with five of these after official recognition of refugee status and in Denmark the requirement was raised from six to eight years in 2002.

(7) EU citizens

Only Austria and Italy facilitate the naturalisation of citizens of other EU or EEA states by reducing the residence requirement (from ten to six years in Austria and four years in Italy). All Nordic states, however, make citizenship acquisition easier for other members of the Nordic Union. EU citizens have generally very low rates of naturalisation in other Member States since their rights are already well protected and their citizenship of origin is often of great importance to them. The Austrian and Italian policies have only a minimal impact (in the Austrian case also because a previous nationality must be renounced). We recommend instead that years spent in other Member States should count towards a general residence requirement, but that a minimum period must have been spent in the state whose nationality is acquired. Third country nationals should be provided with the same opportunities for facilitated naturalisation if they have resided for some time in other Member States. This model would be non-discriminatory, it would highlight the Union as a common space of free movement, but would still preserve the importance of residential attachment to the state whose nationality is acquired.

(8) Kin groups and ethnic minorities

The common assumption that citizenship in Europe has become largely disconnected from ethnic identity is undermined by the fact that a majority of Member States give privileged access to nationality to groups with whom they share specific affinities derived from former colonial ties, the same language or an ethnic identity. As mentioned above, six of the EU-15 states have granted their nationality on grounds of cultural or ethnic affinity even to persons residing abroad.

Ethnic conceptions of citizenship are also prevalent in all new Member States. All give privileged access to their citizenship to descendants of emigrants or persons with close cultural affinity, or have at least done so for a certain period after 1989. Hungary, Slovakia and Slovenia have additionally introduced a status of external quasi-citizenship for minorities of co-ethnic descent who do not possess their formal citizenship.

In some of the states that have been restored or newly established after 1989 the rules for initially determining of who are the country's citizens have also led to excluding native or long-term settled ethnic minorities who had been nationals of the predecessor state. The most dramatic case concerns Russian minorities in Estonia and Latvia, of whom many remain stateless to this day because they cannot meet the demanding requirements for naturalisation. After the separation of Czechoslovakia Roma living in the Czech Republic had for a certain period faced difficulties in acquiring Czech citizenship. According to different sources, in Slovenia, between 18.000 – 40.000 persons originating from other Yugoslav republics have been 'erased' from the civic registry because they failed to acquire Slovene citizenship in time. The avoidance of stateless and of discriminatory treatment of ethnic minorities should be a common concern for the European Union.

(9) Emigrants

All EU Member States are not only destinations of recent immigration, but also sending countries. Often, their nationality laws have been shaped by a tradition of emigration more than by receiving immigrants. Attitudes towards expatriates do, however, vary strongly. While some countries consider those who have resided abroad for some time as no longer having a genuine link to their country of origin, others encourage even their descendants to retain their citizenship of origin and facilitate reacquisition by former citizens and their offspring.

The right to renounce one's nationality when residing abroad is a basic human right. Among the EU-15 states authorities still have some discretion in this matter in Denmark, Finland, France, Greece and Sweden. In Greece they do not even have to justify a refusal to release an emigrant from his or her nationality. First generation emigrants should, however, also not be deprived of their nationality against their will. Provided they would not thereby become stateless, emigrants of Dutch, Finnish, Irish or Spanish nationality may lose their citizenship of origin due to long residence abroad, but they can in most cases prevent this by declaring their intention to retain it. A more important concern is loss due to acquisition of a foreign nationality. Currently, nine of the EU-15 states provide for automatic loss of nationality in this case. Toleration of dual nationality in Sweden and Finland has partly come about through lobbying by emigrants rather than by immigrants. We suggest that the same standards should apply to both groups.

Emigrants who have lost their citizenship may often reacquire it under a simplified procedure. Reacquisition of nationality by former citizens is fairly easy in Austria, Belgium, the Netherlands, Finland, Portugal and Sweden. Apart from Cyprus, Greece, Hungary, Ireland and Malta, all EU Member States allow external citizens without permanent residence in the country to participate in elections, although a few countries, such as Denmark, grant voting rights only to a selective group of expatriates. In the 2006 Italian and Slovak elections expatriates could vote for the first time. This strong trend towards external voting rights indicates that EU states promote strong transnational ties among their own emigrants, although they frequently regard political involvement in the homeland as an obstacle for the integration of immigrants in their domestic societies.

Seven of the old Member States (Austria, France, Greece, Italy, Luxembourg, the Netherlands and Spain) and all new ones permit their emigrants to transfer their nationality by descent from generation to generation without any residence requirement in the country of origin. This unqualified *ius sanguinis* makes nationality in sending states over-inclusive, just as the absence of *ius soli* provisions in an immigrant receiving country makes it under-inclusive. The third generation will retain a genuine link to the grandparents' country only in a few cases. If they wish to return to that state, they will face the same challenges and problems as any other immigrant and should not be treated more favourably.

(10) Denizenship and quasi-citizenship

'Denizenship' refers to a legal status of long-term resident foreign nationals who enjoy similar rights as citizens. In most of the EU-15 states, the rights attached to permanent residence status granted under national law have undergone little change since 2000. However, the general tendency in recent years has been to make it more difficult to acquire this status and more easy to lose it. So far, the adoption of Directive 2003/109/EC on the status of long-term resident third country nationals appears to have had the perverse effect of making access to denizenship status more difficult, with the introduction of a language and integration requirement or of longer residence conditions, as in Austria, France and the Netherlands. The UK, where the directive does not apply, has also adopted such criteria. Facilitation of access to this status has only occurred in Spain. In the new Member States, the EU directive is more likely to improve access to permanent resident status, which has often been difficult and subject to arbitrary administrative decisions.

Under EU law, local voting rights remain a privilege of EU citizens. Twelve Member States (the Nordic and Benelux countries, Ireland, Estonia, Hungary, Lithuania, Slovakia and Slovenia) have, however, introduced a local franchise that is purely based on residence and no longer discriminates third country nationals.

Alongside the growing numbers of non-nationals with nearly full citizenship, there are still several groups of nationals who do not enjoy full citizenship, including those affecting British nationals from overseas territories who are subject to immigration control and Danish nationals who must have held their nationality for 28 years in order to enjoy equal rights to family reunification. The Dutch government even considered imposing integration tests on large numbers of naturalised citizens but had to drop this plan in summer 2006 because it would have violated constitutional norms as well as international law.

Prospects for reform

The NATAC recommendations for reform favour the political inclusion of long-term immigrants and their descendants in the political community of receiving societies, while respecting at the same time the external ties linking emigrants to their countries of origin. We suggest, however, that nationality and EU citizenship should not be offered to external populations without genuine ties with the country concerned.

We are only moderately optimistic that the reforms we advocate will be adopted and fully respected by all Member States. There is a current trend towards new restrictions in access to denizenship and citizenship in countries with large and settled immigrant populations. These policy developments contribute to the marginalisation of migrant populations who are thereby excluded from equal rights and full membership. They also signal to native populations that immigrants are not welcome as future citizens.

Our moderate optimism is based mainly on two arguments:

(1) Most Member States that are currently reluctant to admit immigrants to full citizenship will experience sharp declines in their working age populations within the next ten years. In response, they may have to reconsider their policies in order to make their countries more attractive to long-term immigrants.

(2) Enlargement of the Union has included new countries whose traditions of citizenship have often been shaped by concerns very different from those of the old Member States. In several cases, nationality laws and policies directly affect historic minorities with strong cultural and political affinities to neighbouring states. If the Union wishes to address these conflicts, it will need a more coherent set of guidelines for the acquisition and loss of nationality both within and outside a Member State territory.

Publications

The results of the NATAC projects have been published in two volumes:

Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch: The Acquisition and Loss of Nationality, vol. 1: Comparative Analyses, vol. 2: Country Analyses. Amsterdam University Press, Sept. 2006.

Additional material is available at: <http://www.imiscoe.org/natac>. On this site you will find extended versions of several book chapters, the questionnaires, comparative tables with data on modes of acquisition and loss of nationality and a collection of relevant national statistics.

A third volume on citizenship in the ten new Member States and Turkey will be published in winter 2006/2007:

Rainer Bauböck, Bernhard Perchinig and Wiebke Sievers (eds.) Citizenship Policies in the New Europe. Amsterdam University Press, forthcoming.

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