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## **2 METHODOLOGY FOR COMPARING ACQUISITION AND LOSS OF NATIONALITY<sup>1</sup>**

### **HARALD WALDRAUCH**

There are numerous forms, ways, types and modalities of *acquisition of nationality*: it can be acquired at birth or after birth, acquisition can be automatic (*ex lege*) or non-automatic (requiring an initiative on the part of the target person<sup>2</sup> and/or some public authority), and acquisition may become effective from the time all conditions are met, from the time the responsible authority makes a decision; it may even be acquired retrospectively (mostly from birth). If the acquisition is automatic, the main types are acquisition by descent, by birth (on the territory of the state), by legitimation, by marriage, by adoption, upon reaching majority, or by establishing residence in the relevant country. If acquisition is non-automatic, the granting of nationality can be at the responsible authority's discretion or be dependent upon the target person meeting certain conditions. That means that acquisition can become effective either as soon as all conditions are met or only after a decision by the responsible authority. The type of procedure may then be called acquisition by naturalisation, grant (conferment) or extension of grant, declaration, notification, registration, option or similar. None of these distinctions actually say anything about the numerous potential conditions themselves that have to be met in order to be eligible for acquisition of nationality. In addition, the actual procedures, responsible authorities, possibilities for appeal, etc., may vary considerably from country to country.

The ways, types and modalities of *loss of nationality* are less varied: it can also be automatic or non-automatic in the same sense as above. A non-automatic loss of nationality can occur because of renunciation by the target person or withdrawal by the authorities. Under certain circumstances, the acquisition of nationality can be revised altogether so that, legally, the target person has never been a national. If the loss is non-automatic, the responsible authorities may have the discretion to decide whether to withdraw nationality or to grant release from nationality if all conditions are met, or they may always have to withdraw or grant renunciation. In cases of renunciation, the loss of nationality may require a formal decision by a public authority to become effective (release from nationality) or it may become effective automatically as soon as the declaration of renunciation has been made and all other conditions are met. Here too, states differ considerably with respect to the conditions under which a renunciation is possible or under which nationality lapses or may be withdrawn. The procedures, authorities, instances of appeal, etc., as well as the possibilities for prohibiting a lapse or withdrawal of nationality, are of course also not uniform among countries.

### **2.1 Basic outline of the method of comparison**

Chapters 3 and 4 summarise the results of a comparison of these differences with respect to the way nationality can be acquired and lost in the EU15 states, i.e. the fifteen Member States of the European Union before the latest round of accessions in 2004. This comparison proceeds in four steps:

Firstly, a typology of 27 general 'modes of acquisition' and fifteen 'modes of loss' of nationality was developed, in which each mode was defined on the basis of characteristics that

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<sup>1</sup> This comparison relies on the information collected by the NATAC project partners in the fifteen EU countries. Without their excellent cooperation, this comparison would not have been possible.

<sup>2</sup> The target person is the person who is to acquire or, in the context of loss of nationality, the person who is to lose nationality.

are not specific to a particular country. ‘Mode of acquisition’ and ‘mode of loss’ themselves were defined in this context as any way of acquiring/losing nationality based on a distinct legal rule (law, decree, circular, as well as official administrative guidelines) or a combination of legal rules that applies to a specific group of persons, which is again defined on the basis of general criteria without being specific to any country. Each mode was assigned a code so that it can quickly be referred to: for modes of acquisition of nationality these codes are numbered from A01 to A27 and, for modes of loss, from L01 to L15.

Secondly, *all* modes of acquisition and loss of nationality in force in each state at the end of 2004 or at some point since 1985 (the start of our period of investigation) were classified on the basis of these typologies. Therefore, NATAC project partners were not merely encouraged to report rules that are defined as separate modes of acquisition or loss in their respective countries and/or for which separate statistics exist. Rather, they should also take into account modes of acquisition and loss, according to our definition, that are based on general regulations, but for which ancillary clauses in laws, decrees or similar define aberrant rules<sup>3</sup> when applied to members of any group of persons defined by our typologies. For each identified national mode, project partners produced a short description containing information on its basic procedural characteristics, the main conditions target persons or reference persons (e.g. a spouse or parent) have to meet, the articles in the law on which the mode is based and the points in time when the respective legal regulations for this mode have changed since 1985. All of these short descriptions are also included on the attached CD-ROM.<sup>4</sup> Quite frequently, though, states have more than one set of rules that can be classified within the same category in our typology. In order to distinguish these different ‘sub-modes’ of acquisition/loss in a particular state, we therefore assigned separate codes to each of these sub-modes, e.g. A05a, A05b, etc..

For the United Kingdom, only the provisions concerning ‘British Citizenship’ were taken into account, while rules concerning the acquisition and loss of all special nationality statuses – ‘British Overseas Territories Citizenship’ (‘British Dependent Territories Citizenship’), ‘British Overseas Citizenship’ and the statuses of ‘British Subject’, ‘British Protected Person’ and ‘British National (Overseas)’ – were disregarded.

Thirdly, the project consortium selected eleven of the 27 modes of acquisition and seven of the fifteen modes of loss as particularly relevant to the purposes of the project. NATAC project partners then filled in detailed standardised questionnaires on the procedures, conditions and legal basis for each national mode that was classified as belonging to one of the selected general categories. The completed questionnaires were then checked by the author, who requested supplementary data in cases of incomplete information.

The project partners were asked to answer the questionnaires, first and foremost, on the basis of the respective country’s nationality law and/or other relevant laws. However, they were also requested to take into account other legal or official administrative texts, such as ministerial decrees, ordinances, explanatory notes to laws, or guidelines for authorities. This was especially important in cases where the law itself only specifies a few conditions and/or vague conditions so that the authorities are left with considerable discretion to introduce additional conditions or to interpret the vague clauses in a particular way. If no other detailed information was available, correspondents were also free to use other reliable sources of information about the application or interpretation of certain conditions, such as the results of

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<sup>3</sup> For example, important procedural aspects such as lower fees or a right to acquisition rather than administrative discretion; or important conditions such as a shorter residence requirement, exceptional non-application of conditions such as loss of the previous nationality, language skills, or similar. Nevertheless, in particular because of the discretion involved in deciding what is an important procedural aspect or material condition, project partners had some leeway in deciding whether general national rules of acquisition in combination with special provisions for particular groups of persons actually form a mode of acquisition according to our understanding of the term.

<sup>4</sup> The file is called *Acquisition - Overview of all EU15 states.xls*.

previous research on this matter, information collected directly from the responsible authorities (via interviews or questionnaires), or official guides for applicants.

Fourthly, the final comparison of modes of acquisition and loss of nationality is based on information collected and structured during the three preceding steps. The results presented below mainly focus on the selected modes for which standardised questionnaires were completed. However, the sixteen non-selected modes of acquisition and eight modes of loss of nationality will also be covered, although in less detail.

Before we turn to the results, we first have to present the typology of modes of acquisition and loss of nationality (section 2.2) and give an overview of the questions asked in the standardised questionnaires (section 2.3). The completed questionnaires for all national modes of acquisition and loss selected are available separately on the attached CD-ROM. These questionnaires also contain detailed information on the legal texts on which the described regulations are based. For this reason, information on the exact legal articles of each mode of acquisition can be omitted from Chapters 3 and 4.

## 2.2 Typology of modes of acquisition and loss of nationality

### 2.2.1 Modes of acquisition

The first important distinction is between modes of *acquisition of nationality at birth* and modes of *acquisition after birth*. Acquisitions of nationality at birth are defined not only as modes that occur *ex lege* at birth, but also those that can, in principle, occur immediately after birth by declaration, registration, making use of an option, notification or similar, because all the conditions for acquisition have already been met at the time of birth. Among acquisitions at birth, we distinguish between modes of *ius sanguinis* (code for this mode: A01) and modes of *ius soli*. For the purposes of this project, *ius sanguinis* (at birth or after birth) is defined as the determination of the target person's nationality on the basis of the nationality of his or her parents (or one particular parent) at the time of the target person's birth *and* at the time of his or her acquisition of nationality (the two points in time differ in cases of acquisition after birth). *Ius soli*, on the other hand, is defined as the principle that the nationality of a person is determined on the basis of his or her country of birth. *Ius soli* regulations at birth can be further broken down into those that apply to persons who are foundlings, whose nationality is unclear or who would otherwise be stateless (A03), and those that apply generally to persons born in the country under consideration (A02).

Modes of *acquisition of nationality after birth* were grouped into five clusters: 1) birthright-based modes of acquisition after birth; 2) basic residence-based modes; 3) family relation-based modes; 4) affinity-based modes; 5) other targeted modes of acquisition. The mechanism of acquisition within each of these groups may also be automatic (*ex lege*) or non-automatic, i.e. require an act by a public authority and/or an expression of will of some kind (application, declaration, etc.) by the target person or his or her legal agent.

1. Among the birthright-based modes of acquisition after birth, we distinguished between modes of *ius sanguinis* after birth (A04) and *ius soli* after birth (A05). For the sake of simplicity and because they are relatively rare, we included *ius soli* regulations targeted at foundlings, persons of unclear nationality and/or persons who would otherwise be stateless under mode A05. Of course, both types of birthright-based modes after birth presuppose that the respective modes of acquisition at birth do not (or did not) cover all relevant cases. This means that not all children have acquired their parents' nationality and not all children born in the country have become its nationals.

2. Two modes were classified under the heading *basic residence-based modes*: firstly, residence-based acquisition by persons with a certain period of residence in the country but without any other special status mentioned above or below (e.g. he or she was not born in the country, is not a family member of a current or future national, a recognised refugee, a former national, etc.) (A06). The second mode is socialisation-based acquisition by a person who was raised for a certain period of time in the state while still a minor (A07). Obviously, A06 covers the general regulations concerning the naturalisation of adult immigrants, whereas A07 deals with modes targeting persons who immigrated as minors and who have to prove in one way or another (e.g. by simple residence requirements, by having immigrated before a certain age or by having attended school) that they have been socialised in that country.
3. *Family –relation-based modes of acquisition after birth* comprise two sub-groups, which we labelled *transfers of nationality* and *extensions of acquisition of nationality*. The first was defined as any mode of acquisition of nationality after birth based on a family relationship with a reference person who already *is* a national of the country under consideration. On the other hand, an extension of acquisition was defined as any mode of acquisition after birth (with or without consent) that is conditional upon, or results automatically from, the simultaneous acquisition of nationality by a certain reference person.

Transfers of nationality distinguished in the typology are transfers to spouses of nationals of the respective country (A08); within this context, we also analyse rules for unmarried heterosexual and homosexual partners; transfers to children of nationals who acquired the respective country's nationality only after the child's birth or whose nationality is irrelevant when the child is born (A09); to adopted children of nationals, whose acquisition of nationality can take place automatically at the time of the adoption or be dependent on an application, declaration or similar after the adoption (A10); to any other relatives of nationals (A11); and to relatives of former or deceased nationals (A12).

Extensions of acquisitions of nationality, on the other hand, were broken down into three separate modes, i.e., extensions to spouses (A13), to children (A14), and to any other relatives (A15) of persons who are about to acquire the nationality of the respective state.

4. The commonality in the fourth group of modes of acquisition of nationality after birth is the fact that the target persons have some sort of affinity, other than of a familial nature, to the country whose nationality they are about to acquire. Probably the most immediate affinity in this context is if the target person is a former national of the country under consideration (A16). Another mode in this group is based on the fact that the nationality laws of some countries do not define just one general nationality status, but also special nationality statuses for specific groups of persons. In most cases, this kind of special nationality status does not entail the full rights and/or duties of citizenship for its holder.<sup>5</sup> Where there are special regulations for acquisition of (full or general) nationality by special nationals with restricted citizenship, these were classified under A17. Much more frequently, states do have special rules for nationals of particular foreign states, e.g. because these states are members of the same alliance of states or because they were its former colonies (A18). Another group of persons with special links who are frequently the target of special regulations for acquisition of nationality are persons with a cultural affinity to the respective country, which is defined via a specific ethnicity, mother tongue and/or religion (A19). A very special group of persons are those who acted as nationals in good faith and/or who were presumed nationals for some time (A20). Finally, we also

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<sup>5</sup> Examples of such special nationality statuses are British Overseas or Dependent Territories Citizenship or British Overseas Nationality in the United Kingdom.

included in our typology a residual category of modes of acquisition targeted at persons with other special affinities to the respective country (A21).

5. Finally, the following modes were grouped together under the label *other targeted modes of acquisition*: regulations targeted at recognised refugees (A22) and stateless persons or persons of unclear nationality (A23); provisions concerning the acquisition of nationality by persons with special achievements in sports, science, the arts or similar for the country in the past and/or who expect achievements of this kind in the future (A24); service-based acquisition by persons in the military or non-military public service of the respective country (A25); and regulations targeted at persons with special financial assets and/or persons investing money in the country (A26). All other modes of acquisition after birth are grouped together in the residual category 'other modes of acquisition' (A27).

**Table 2.1: Typology of modes of acquisition of nationality**

GROUP OF MODES		ID	MODE OF ACQUISITION OF NATIONALITY
Birthright-based modes of acquisition at birth	Ius sanguinis at birth	A01	<i>Acquisition by persons born to nationals of C1</i>
	Ius soli at birth	A02	<i>Acquisition by person born in C1 (except those classified under mode A03)</i>
		A03	Acquisition by persons who are foundlings, by persons born in C1 of unclear nationality or persons born in C1 who would otherwise be stateless
Modes of acquisition after birth	Birthright-based modes	A04	<i>Ius sanguinis after birth: acquisition by persons whose relevant parent was a C1 national at the time of their birth</i>
		A05	<i>Ius soli after birth: acquisition by persons born (or assumed to have been born) in C1</i>
	Basic residence-based modes	A06	Residence-based acquisition by persons with a certain period of residence in C1 with no other special status
		A07	<i>Socialisation-based acquisition by persons raised (while minors) in C1</i>
	Family relation-based modes	A08	<i>Transfer of nationality to spouses of nationals of C1 (spousal transfer)</i>
		A09	Transfer of nationality to children of persons who are now, but were not nationals of C1 at the time of the child's birth, or whose nationality at that time is irrelevant (filial transfer)
		A10	Transfer of nationality to adopted children of nationals of C1
		A11	Transfer of nationality to other relatives of nationals of C1
		A12	Transfer of nationality to relatives (spouse, child, grandchild) of former or deceased nationals of C1
		A13	Extension of acquisition to spouses of foreign nationals who acquire nationality of C1 (spousal extension)
		A14	<i>Extension of acquisition to children of foreign nationals who acquire nationality of C1 (filial extension)</i>
		A15	Extension of acquisition to other relatives of foreign nationals who acquire nationality of C1
	Affinity-based modes	A16	Reacquisition by former nationals of C1
		A17	Acquisition by special nationals with restricted citizenship
		A18	<i>Acquisition by persons with nationality of C2</i>
		A19	<i>Acquisition by persons with cultural affinity to C1 (special ethnicity, mother tongue or religion)</i>
		A20	Acquisition by persons who acted as nationals of C1 in good faith and/or were presumed C1's nationals for some time
		A21	Acquisition by persons with other special connections to C1
	Other targeted modes	A22	Acquisition by recognised refugees
		A23	Acquisition by stateless persons or persons of unclear nationality
		A24	<i>Acquisition by persons with special achievements for C1</i>
		A25	Acquisition by persons in the public (military or non-military) service of C1
		A26	Acquisition by persons with special financial assets and/or persons who invest money in C1
		A27	Other modes of acquisition

**Notes:** C1 = Country under consideration, i.e. country whose rules for acquiring nationality are described; C2 = Particular foreign country for which special regulations apply, e.g. EU Member States, member states of other alliances (e.g. Nordic states), countries involved in bilateral or multilateral agreements. Italics indicate modes of acquisition selected for further analysis.

### 2.1.1 Modes of loss

The most basic distinction in the context of loss of nationality is that between *renunciation* and *other modes of loss*. We defined renunciation as a loss of nationality initiated by a declaration by the target person or his or her legal agent, addressed to the relevant authorities concerning the intent to give up his or her nationality. All other modes of loss occur without such an explicit declaration of intent by the person concerned. Among the modes of loss that are not renunciations, we distinguished between those that occur automatically if the conditions defined by law are met and those requiring a formal decision by a public authority

to deprive the target person of his or her nationality – the first we referred to as *lapse of nationality* and the second as *withdrawal of nationality*. In addition, the fact that a person ceases to be a national may not even be defined as a ‘loss’ of nationality in legal terms, but may rather be a *revision of acquisition* or a *nullification of the acquisition*. For the purposes of this comparison, we regard a revision of acquisition as a loss of nationality for several reasons. Firstly, the circumstances are the same – a person is no longer a national after having been treated as a national for some time. Secondly, certain reasons for ceasing to be a national are defined in some states as reasons for the loss of nationality whereas, in others, they are reasons for nullifying the acquisition. Thirdly, in contrast to non-acquisition, a loss by nullification requires a procedure initiated by an authority.

Renunciation forms a separate category (code L01). The mechanism of loss for any reason other than the explicit wish of a person to be released from nationality can be by automatic lapse or by withdrawal by the responsible public authority (including by nullification of the acquisition).

The other reasons for loss can be broadly divided into two groups, i.e. those that occur while the target person is *abroad* or because he or she has acted in a certain way abroad (L02-L04) and those for which a period abroad or reference to an act performed there is not essential, but may nevertheless exist (L05-L15) (see also Table 2.1):

1. The first group includes loss due to permanent residence abroad (L02), loss due to the fact that the target person has joined the army of a (particular) foreign state (L03) and loss because the person has taken up employment in the non-military public service of a foreign state (L04).
2. The second group contains modes of loss resulting from acquisition and retention of a foreign nationality by the target person or his or her parents and modes of loss of nationality because of offences committed by this person. However, the two sub-groups overlap because two modes could be assigned to either of them.

The potential types and grades of severity of offences leading to a lapse or withdrawal of nationality are of course numerous. We defined the following for our typology: loss because of acts of disloyalty, treason, acts against the central interests of the state, a violation of one’s ‘duties as a national’ or similar (L07); loss because the target person acquired nationality based on false information, fraud or deception (L09); loss because the person concerned did not fulfil the conditions imposed on him or her after acquisition (L10); and loss because of committing some other – most likely criminal – offence (L08).

The second and third modes of loss mentioned in the previous paragraph are obviously directly related to the issues of acquisition and retention of nationality. They can therefore also be seen as belonging to the second sub-group. Besides modes L09 and L10, we included six modes here. These are loss due to the acquisition of a foreign nationality (L05); loss due to the fact that a multiple national chooses to retain his or her foreign nationality when required by law to choose between the nationality of the respective country and his or her foreign nationality (L06); loss because the target person’s parent(s) (L11) or spouse (L12) lose(s) nationality; loss as a result of the fact that the child-parent relationship between the target person and a national is annulled, including the annulment of an adoption (L13); and loss by a person who acquired nationality as a foundling or because his or her nationality was unclear (mode of acquisition A03) when it is subsequently established that he or she holds a foreign nationality (L14).

Finally, we also included a residual category here, which is known as loss for other reasons (L15).

**Table 2.2: Typology of modes of loss of nationality**

Group of modes	ID	Mode of Loss of nationality	
Renunciation	<i>L01</i>	<i>Renunciation of nationality</i>	
Lapse or withdrawal of nationality (incl. nullification of acquisition)	Abroad	<i>L02</i>	<i>Loss due to permanent residence abroad</i>
		L03	Loss due to service in a foreign army
		L04	Loss due to employment in non-military public service of a foreign state
		<i>L05</i>	<i>Loss due to acquisition of a foreign nationality</i>
	In C1 or abroad	<i>L06</i>	<i>Loss by multiple national due to decision to retain foreign nationality when required by law to opt for C1's or foreign nationality</i>
		L07	Loss due to disloyalty, treason, violation of 'duties as a national' (or similar)
		L08	Loss due to commission of other (criminal) offences
		<i>L09</i>	<i>Loss due to false information or fraud in procedure of acquisition of nationality</i>
		<i>L10</i>	<i>Loss due to non-compliance with conditions for acquisition of nationality</i>
		<i>L11</i>	<i>Loss due to loss of nationality by parent(s)</i>
		L12	Loss due to loss of nationality by spouse
		L13	Loss due to annulment of paternity/maternity of a national of C1 (incl. annulment of adoption)
		L14	Loss by person who acquired nationality as a foundling, person of unclear nationality or who would otherwise have been stateless from birth when foreign nationality is established
		L15	Loss for other reasons

**Notes:** C1 = Country under consideration, i.e. country whose rules for acquiring nationality are described. Italics indicate modes of loss selected for further analysis.

## 2.3 Reasons for the selection of modes for detailed description

The eleven modes of acquisition in italics in Table 2.1 and the seven modes of loss in italics in Table 2.2 are those selected by the project consortium for in-depth description on the basis of detailed standardised questionnaires. The selection criteria for the modes were *statistical, political and normative salience*, i.e. the modes should cover relatively large numbers of cases, they should have been at the centre of political controversies and/or they should be especially relevant from the perspective of claims for inclusion. In addition, it was decided that at least one mode would be selected from each of the seven main groups of modes of acquisition (*ius sanguinis* and *ius soli* at birth, plus the five groups of modes of acquisition after birth) and at least one from each of the three groups (renunciation, loss abroad, loss in the respective country or abroad) and two sub-groups (loss due to an offence, loss due to issues more directly related to nationality) of modes of loss described in section 2.1.1. This was intended to reduce the risk of completely overlooking important methods of access to or loss of nationality in the EU15 states. Lastly, we limited the number of modes of acquisition and loss to be described in detail simply to keep the workload within manageable limits.

Beyond these general criteria, the more specific criteria for the selection of single modes of acquisition and loss are summarised in the following two sections.

### 2.3.1 Acquisition of nationality

The grounds for the choice of the modes covering *ius sanguinis* and *ius soli* regulations at birth and after birth were mainly statistical and normative in nature. This is because *ius sanguinis* and *ius soli* concern a large group of persons and they are contentious issues in political theory.

Mode A06, i.e. basic residence-based acquisition, was chosen for the obvious reason that it is the main mode of nationality acquisition for adult immigrants. In the same vein, we chose mode A07 because it concerns the second (or rather 1.5<sup>th</sup>) generation, which was not

born in but has nevertheless already been socialised in the parents' country of immigration, which lends extra weight to their normative claims for inclusion. In most countries in our sample, this group can be assumed to be significant in size. Grounds for its inclusion were therefore of a statistical, normative and political nature.

From the family relation-based modes, we chose transfer to spouses (A08) and extension of acquisition to children (A14) because they affect the most people in this group and because they pose a number of interesting normative questions. In order to further limit the actual number of regulations to be described, we did not describe all the regulations that could be included under mode A14 but mainly only those that apply in cases in which the reference person acquires nationality on the basis of a regulation that is described in detail as well. In other words, we did not cover extension regulations in very few cases (e.g. special regulations for the extension of nationality to children of persons who acquire nationality via mode A25). On the other hand, we did not select the children of nationals who have not yet acquired the nationality of their parents (A09) because, compared to children acquiring nationality at birth or together with their parents, they make up only a relatively small group of persons in most countries. Numerical arguments were also mainly relevant to the exclusion of modes of transfer to adopted children (A10) from the list of modes to be described in detail. The transfer of nationality to relatives of former or deceased nationals (A12) is a rather special case as well and one that will most probably concern fairly diverse groups of persons in the countries compared. Regulations dealing with the extension of acquisition to spouses (A13) would have been interesting, but this mode was omitted in order to cut down the workload. In comparison to modes targeting the core family, modes targeting other relatives of current (A11) or soon-to-be nationals (A15) are of much less numerical, normative or political relevance.

Normative reasons in particular justified the inclusion of modes A18 (specific nationality) and A19 (cultural affinity) from the group of affinity-based modes of acquisition. Should nationals of certain states or members of a particular ethnic, linguistic, or religious group be given special treatment? Furthermore, A18 was also included because it covers special regulations for nationals of other EU Member States. Since the NATAC project compares the nationality policies of EU states, the special treatment of other EU nationals must receive extra attention. What about the modes not selected for in-depth description? Most nationality laws contain more than one set of regulations concerning the reacquisition of nationality by former nationals (A16). However, a quick survey of the existing regulations showed that they target diverse groups of persons which are often very specific to each country and its history of nationality law. In other words, an in-depth comparison would be rather labour-intensive and would probably not yield results from which comparative conclusions could easily be drawn. The other modes in the group of affinity-based modes, i.e. those targeting nationals with restricted citizenship (A17), persons who acted as nationals in good faith (A20), and persons with other types of affinities to the respective country (A21), are rather rare and are expected to concern comparatively small groups of persons.

Finally, normative and political reasons were also behind the choice of one mode from among the cluster of other targeted modes of acquisition, i.e. that based on special achievements for the respective country. Which reasons are justifiable and which special treatment should be given? Strong normative arguments can be brought forward in favour of the naturalisation of refugees (A22) and stateless persons (A23). However, little potential for political controversy seems to exist concerning the issue of their naturalisation. Finally, the acquisition of nationality by persons in the respective state's public service (A25), by persons with certain financial assets or persons investing money in the respective country (A26), or by any other group of persons (A27) are of very limited political or statistical relevance.

### **2.3.2 Loss of nationality**

Besides the fact that renunciation (L01) is the only mode of loss in its cluster, we describe it in detail mainly for normative reasons. Since the right to exit the community of nationals can be seen as a basic right in a liberal democracy, we should ask how states deal with persons who want to make use of that right, if there are special regulations for certain groups of persons (e.g. those who have acquired nationality via a particular mode of acquisition) and whether states, under certain circumstances, refuse to accept a renunciation by their nationals.

The reason for the inclusion of loss due to permanent residence abroad (L02) is also normative: should permanent absence from the country's territory, particularly by nationals born abroad in the first or subsequent generations, be a reason for the loss of status as national? The rights of this group, especially when compared to nationals and non-national immigrants living in the country, are of particular interest for normative political theory. In addition, most European countries do have a sizeable (albeit not always easily quantifiable) proportion of nationals living abroad, which is why this mode of loss is also of potential statistical significance. Loss as a result of entering the military (L03) or non-military service (L04) of another state, on the other hand, is of much less statistical or normative relevance.

From the third cluster of modes of loss of nationality, which are those for which the target person's place of residence is less clear, we chose those two modes that can be assigned to either of the cluster's two sub-groups (offence-related modes of loss and modes related to the acquisition/retention of nationality). The main argument for selecting these two modes, i.e. loss on the basis of false information, fraud or similar (L09) and loss because of non-compliance with conditions to be fulfilled after the acquisition of nationality (L10), is their political salience. A number of countries have recently introduced new or modified regulations to this end or are thinking about doing so. In addition, these two modes raise important normative questions: how serious does an offence in this context have to be in order to justify a loss of nationality? What counts as false information or fraud in this respect in the first place? Is it acceptable to require new nationals to meet certain conditions once they have already been granted the status of nationals?

Modes of loss based on treason and related offences (L07) and those based on the commission of other (criminal) offences (L08) would also have warranted a detailed comparison, especially for normative reasons. However, only few states among the EU15 states still apply regulations concerning loss based on criminal offences, which makes a comparison less attractive. On the other hand, a number of states provide for the possibility of loss of nationality as a result of treason or related offences. Losses for this reason seem to be extremely rare, however. In addition, the regulations are formulated in such a broad and vague manner as to make clear comparative statements difficult.

Loss based on the acquisition of a foreign nationality (L05) and loss resulting from the retention of a foreign nationality when a person is obliged to choose between the nationality of the respective state and that of a foreign state (L06) were chosen for detailed analysis mainly in view of the political salience of the issue of multiple nationality. However, the question of being able to retain one's nationality when acquiring another is, of course, also of high normative salience and it also concerns a large number of people. Finally, loss as a result of the loss of nationality by one's parents (L11) was also included mainly for normative reasons. Should persons be 'punished' for something over which they have little or no control? Similar arguments could be advanced in favour of looking into the mode of loss as a result of the loss of nationality by one's spouse (L12). However, no regulations have been in force since 1985 that provide for this kind of loss.

## 2.4 Detailed questionnaires

### 2.4.1 Acquisition of nationality

The detailed questionnaires were tailor-made for each mode of acquisition. However, certain questions were more or less the same in all questionnaires, i.e. questions concerning:

- *the relevant legal and administrative texts* and the most important articles in these texts regulating the respective mode of acquisition;
- *the period of effectiveness of the relevant regulations*, i.e. since when they have been in force, when they were amended/changed and, if applicable, when they ceased to apply;
- *general procedural details*, i.e. the mechanism (automatic or not) and type of acquisition (by descent, grant, declaration, etc.); whether target persons are entitled to acquisition if they meet the conditions or whether this lies within the authorities' discretion; the temporal effectiveness of acquisition (retroactive or not); the authorities investigating and making the decisions; the maximum duration of the procedure; duties of the authorities to justify negative decisions; possibilities for and instances of appeal; age limits; fees; required oaths of loyalty and any other specific features of the procedure;
- *documents to be submitted* and known problems affecting target persons in this context and;
- *the acceptance of multiple nationality*, including the question of whether there are any specific procedural aspects in this respect (e.g. the previous nationality has to be renounced before the nationality can be acquired or it has to be renounced until some point after acquisition). For modes of acquisition after birth, detailed questions were asked about whether multiple nationality is accepted under thirteen listed conditions (e.g. if renunciation of one's previous nationality is impossible or regularly refused in practice; if it is too costly or results in economic loss; if it takes too long; or in cases where the target person was born or raised in the respective country, is a recognised refugee or an elderly person).

Other questions on certain *core conditions* to be met in order to be eligible for acquisition of nationality via the respective mode were part of almost all questionnaires, i.e. whether:

- *the country of birth* of the target person and/or a reference person (especially a parent) has to be the respective country or a certain other country;
- *the target person must be of a particular foreign nationality* and whether he or she must have acquired that nationality in a particular way (e.g. not by naturalisation);
- *a reference person must hold the nationality of the respective country or a particular foreign country*; if he or she has to have acquired this nationality in a certain way; and/or if he or she must already have held it for some time;
- the target person or a reference person has to have a *certain cultural affinity to the respective country*, i.e. have a certain ethnic, linguistic or religious background; and;
- the target person and/or a reference person must have *residence in the country*, as well as whether he or she must already have held this residence for some time and/or have a certain residence status or permit (e.g. as permanent resident).

For all selected modes of acquisition after birth (A04-A24), detailed questions were asked concerning the potential *conditions to be met* by the target person in the following areas:

- *criminal record*,
- *financial and employment situation*,
- *command of the respective country's official language(s)*,
- *knowledge of certain aspects of the country* (e.g. history, society, political system),
- *health* and;

- other vaguely defined conditions, especially the need to prove one's *integration, assimilation, good character, or similar*.

Certain questions were only relevant for a limited number of questionnaires:

- for modes of *spousal transfer of nationality* (A08): questions concerning the required *duration of marriage, a common household*, whether or not the rules *treat male and female target persons differently* and whether or not the rules apply to *non-married partners, homosexual partners and polygamous spouses* as well;
- for *birthright-based modes of acquisition after birth* (A04, A05), *socialisation-based modes* (A07) and *modes of filial extension of acquisition* (A14): questions on whether or not *education in the country* is required and, if so, of which type and duration;
- for *modes of acquisition that are dependent on a parental reference person* (A01-A05, A14, potentially A07): questions concerning possible *exceptions for persons above the age limit* (if applicable); whether the rules do not apply to certain children of the reference person (e.g. those not in the custody of the parent, adopted, non-natural, non-legitimised or married children); whether or not the rules *treat male and female target persons differently*; *age limits above which* minor target persons have to be *heard in the procedure* or above which they have to *act in their own name*.

Finally, all questionnaires contained a question on whether or not there were any other conditions not addressed in the questions above.

#### **2.4.2 Loss of nationality**

In general, the questionnaires for modes of loss of nationality were considerably shorter than those for modes of acquisition. Again, certain questions were the same in all questionnaires, especially questions concerning *the relevant legal and administrative texts* and *the period of effectiveness of the relevant regulations*. Beyond that, questions about the supplementary conditions were asked for all modes of loss, i.e. whether target persons:

- must have *acquired nationality in a certain way* or even via a particular mode;
- can only lose nationality if they do not become *stateless*;
- have to have their current *residence abroad* or must already have held residence abroad for a certain period of time;
- need to have already completed their *military or alternative service*;
- must not be the target of ongoing police or judicial investigations;
- have to be of a certain *sex* or in a certain *age* bracket and;
- have to meet any additional conditions.

Questions regarding *procedural aspects* differed for modes of renunciation on the one hand and modes of lapse and withdrawal (nullification) on the other. Concerning renunciation, the questions dealt with:

- the mechanism of loss, i.e. whether renunciation becomes *effective automatically* if all conditions are met or whether an authority has to give its formal approval. If an authority has to issue an official decision, the questionnaire asked whether the authority has to give its approval if all formal conditions are met (persons are *entitled*) or whether the authority has *discretionary power* to deny the release from nationality;
- the *responsible authorities* verifying whether the conditions are met and making the final decision if the renunciation does not become effective automatically when all conditions are met;
- the potential *maximum duration of the procedure*;
- *fees* to be paid for the renunciation;
- whether the authorities have an *obligation to inform the target person* that the loss of nationality has become effective if the renunciation becomes effective automatically;

- whether the renunciation requires a decision by the authorities to become effective and whether the authorities have to *justify negative decisions* and;
- whether the *possibility of appeal* exists against a negative decision by the authorities and what the respective instances are.

The questions on the procedural aspects of lapses and withdrawals (including nullifications) of nationality were only partially the same. Questions were asked about:

- *information duties of the authorities*: for modes of lapse, whether the authorities have to inform the target person that nationality will be lost if no action of a certain kind is taken and/or that nationality has already been lost. On the other hand, for withdrawals (nullifications), whether the target person must be informed that a withdrawal procedure has been started, that nationality will be withdrawn if no action of a certain kind is taken and/or that nationality has already been withdrawn;
- *potential actions by the target person to prevent the loss*, e.g. registration with the authorities, submission of a declaration or, if possible, stopping the action that may be the reason for the loss in the first place and;
- possibilities for and instances of appeal against the loss.

In addition, for withdrawals (nullifications), the questionnaire also asked:

- whether the authorities *have to withdraw* nationality if all conditions defined by law are met or whether the withdrawal lies within their *discretion* and;
- which *authorities* are responsible for checking whether a person meets the conditions for withdrawal and which authority is responsible for making the final decision.

Finally and most importantly, for all modes of loss by withdrawal (nullification) or lapse, correspondents were asked to specify:

- the exact reason for the loss;
- the *mechanism of loss*, i.e. whether it is a loss by lapse or withdrawal and,;
- if information of this kind is available, the *relevance of the respective mode of loss in practice*, e.g. whether the authorities perform regular checks to decide if nationality should be withdrawn or has lapsed, or if the information to judge this is available at all.

## 2.5 Research questions

The chapters on acquisition and loss of nationality below have three main aims: 1) *comparative description*; 2) *determination of trends* and 3) the *detection of groups or types of states* and their approaches in the area of acquisition and loss of nationality.

The first aim is to provide a thorough *comparative description of all modes of acquisition and loss of nationality* in the EU15 states in force at the end of 2004 or, at the latest, as of 1 January 2005. Subsequent changes or proposed amendments (especially the new nationality laws proposed in June 2005 in Portugal and adopted by the upper chamber of parliament in December 2005 in Austria) will only be mentioned in brief. Contrary to most work produced in this area, the description will not follow the categories of the states' laws, but will be structured according to the typology of modes of acquisition and loss outlined in section 1.2. Using this approach, the description becomes truly comparative, rather than simply being limited to a sequential juxtaposition of national rules. The comparison will focus not only on the material conditions for the various modes of acquisition and loss of nationality, but also on their procedural aspects.

With respect to the conditions for the loss of nationality, the focus of attention will of course be on the states' concrete specifications of the reasons for the loss that were used in abstract terms to define the respective mode of loss itself. However, almost as important are the qualifying conditions under which the loss can become effective. The main questions in

this context are: does the loss only become effective if *statelessness of the person can be avoided*? Can the persons concerned lose their nationality only if they have their current *residence abroad*? Is the applicability of the respective mode of loss dependent on the person's *mode of acquisition of nationality*?

Secondly, the following chapters try to discern *trends concerning the acquisition and loss of nationality* in the EU15 states. In this context, we will focus mainly on trends over the past five to ten years, but we will also take into account developments since the start of our period of investigation in 1985. Trends may affect 1) the *introduction or abolition* of certain modes of acquisition and loss of nationality, 2) the *easing or tightening* of procedures and conditions or, 3) trends towards *liberalisation or restriction* with respect to the acquisition and loss of nationality more generally.

The third general aim is to *classify or at least group states* on the basis of their regulations concerning the acquisition and loss of nationality. This will mainly be done within single sections on specific modes but, in the summary sections at the end of the two main chapters, we will look into possible ways of classifying the EU15 states on the basis of their overall pattern of modes of acquisition and loss of nationality. In addition, we will test whether trends exist within certain geographical and/or cultural regions. The regions taken into consideration in this context are the Nordic states (Denmark, Finland and Sweden), Southern Europe (Greece, Italy, Portugal and Spain), the Benelux states (Belgium, Luxembourg and the Netherlands), the British Isles (Ireland and the United Kingdom) and the German-speaking states (Austria and Germany). France does not form an obvious part of any of these groups or of any alternative group of states.

Last but not least, we have one additional aim with respect to modes of loss of nationality. Since there are very few if any statistics available concerning the loss of nationality in almost all states,<sup>6</sup> we also try to gauge the *importance of the various modes of loss of nationality in practice*. Even though the available information in this context is far from systematic, we would like to draw at least preliminary conclusions regarding whether the respective modes of loss are applied in practice or whether they only exist on paper.

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<sup>6</sup> See chapter 6 on statistical developments in this Volume.