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3 ACQUISITION OF NATIONALITY HARALD WALDRAUCH

3.1 Birthright-based modes of acquisition of nationality at birth

3.1.1 *Ius sanguinis* at birth (mode A01)

We defined *ius sanguinis at birth* as the principle that a person's nationality is determined on the basis of the nationality of his or her parents – or one (particular) parent – at the time of the target person's birth. We included not only automatic acquisitions by birth here, but also non-automatic acquisitions *immediately* after birth which require a declaration, registration, or similar, because all the conditions for acquisition were already met at the time of birth.¹

3.1.1.1 General rules

At the end of 2004, all EU15 states had regulations for the acquisition of nationality at birth based on *ius sanguinis*.² However, an unqualified form of *ius sanguinis* exists only in a minority of states. Only in France, Greece, Italy, Luxembourg, the Netherlands and Spain do children with at least one parent who is a national and whose paternity and/or maternity is established at the time of birth acquire nationality automatically, regardless of whether the child is born in or out of wedlock, whether the father or the mother is a national, or whether the birth occurs in that country or abroad.³

The regulations currently relevant in Germany also provide for a more or less unqualified automatic acquisition of nationality at birth by children of nationals. However, in about a decade, another rule will become relevant in practice. If the parent was born abroad after 1999 and resides there permanently, his or her children born abroad will only become nationals at birth *ex lege* if they would otherwise be stateless. Children of parents who do acquire a foreign nationality at birth become nationals only if their birth is registered with a German consulate within one year.

In the other nine states' nationality laws, the country of birth, the marital status of the parents and/or the sex of the parent who is a national are relevant for the acquisition of nationality at birth, at least for the question of whether or not some action is required by the target person or his or her parents. In addition, the nationality laws of these states contain three other conditions that parents may have to meet so that their children can acquire nationality at birth *ex lege* or by registration or declaration immediately after birth: 1) they must have been born in the country themselves, 2) birth abroad must be due to the fact that they are in the public service or another designated type of service of the respective country and/or, 3) they must have acquired nationality in a particular way. Six of the nine countries can be grouped into two clusters.

¹ The possibility of naturalisation without further conditions in Denmark of those children born to Danish fathers and foreign mothers out of wedlock is not treated as acquisition immediately after birth for two reasons: firstly, in a strictly legal sense, these children still do not have the right to acquire nationality in this way; secondly, the fact that naturalisations in Denmark only occur collectively by law two or three times a year hardly makes them cases of acquisitions immediately after birth.

² For a summary, see Table 3.1 below.

³ For the rules of acquisition of nationality by children whose filiation to a national is only established after birth or who are recognised as children by a national only after birth, see section 3.2.1.2.

In Belgium, Ireland and Portugal, all children of nationals born in the respective country and some born abroad automatically become nationals at birth, while all other children born abroad can acquire nationality by registration or declaration. The parents' marital status is irrelevant in all of these states. The rules of *ius sanguinis* in cases of birth abroad in these three states are as follows: in Belgium, children born abroad to nationals acquire nationality *ex lege* if at least one parent was born in Belgium or one of its colonies before independence⁴ (mode A01b). It is also acquired *ex lege* if no other nationality is acquired at birth (and until the age of eighteen) (A01d). If it is established that the child *did* acquire a foreign nationality at birth or while a minor, nationality lapses automatically (loss mode L14a). All other children born abroad to at least one Belgian parent are entitled to acquire nationality by declaration (by the parents) before the head of a diplomatic or consular post or the local registry within five years of birth (A01c).⁵ Nationality law in Ireland states that children born abroad to nationals who were born in (Northern) Ireland or who are in the public service of Ireland abroad are Irish nationals *ex lege*. All other children with an Irish parent can acquire nationality by registration – without time restriction – in the foreign births entry book (embassies or consulates) or the foreign births register (Department of Foreign Affairs). Additionally, in Portugal, children born abroad to parents who are in Portugal's public service abroad also acquire nationality automatically at birth (A01b), whereas all other children are entitled to become nationals by declaration at a Portuguese consulate or by registration at the Central Registry in Lisbon (A01c).

In Denmark (A01), Finland (A01a) and Sweden (A01a), any child born in those countries to at least one parent who is a national acquires nationality. The rules for children born abroad to at least one national parent are also very similar. These children acquire nationality *ex lege* if the parents are married or if the mother is a national. Nationality is not acquired automatically if the child is born out of wedlock and only the father is a national. For these children, special procedures exist in Finland and Sweden (both A01b): a child born abroad to a father who was a national at the time of the child's birth and still is a national can acquire nationality by a simple declaration (Finland) or notification (Sweden) to a consulate abroad or directly to the responsible authority, i.e. the Directorate of Immigration in Finland and the Migration Board in Sweden. In Finland, no age limit is set for the declaration, whereas Swedish law requires that the notification be made before the child is eighteen. By contrast, Danish children born out of wedlock to a Danish father and a foreign mother have to undergo a procedure of discretionary naturalisation, even if virtually no other conditions have to be met (A04c; see section 3.2.1.3).

The regulations in Austria and the United Kingdom are different from those in the other states. Unlike the six states discussed in the previous two paragraphs, the country of birth is irrelevant in the nationality law of Austria. Here, the rules for children born abroad apply to all children irrespective of their place of birth, which means that a child acquires nationality if the mother is a national or if the father is a national and the parents are married. Therefore, the child of an Austrian national does not acquire Austrian nationality at birth only in cases where the parents are not married and only the father is a national.

The rules in the United Kingdom demonstrate that the concepts of *ius sanguinis* and *ius soli* may overlap. The rule that children of British citizens born in the United Kingdom acquire nationality *ex lege* at birth is defined in the British context as a rule of *ius soli*. The reason for this is that, before the British Nationality Act (BNA) came into force in 1983, *ius*

⁴ Congo became independent on 30 June 1960, and Rwanda-Burundi on 1 July 1962.

⁵ If for reasons beyond his or her influence it is impossible for the parent to make the declaration before the child reaches the age of five, a court may relieve him or her from the consequences of not having made the declaration.

soli in the United Kingdom applied to all persons born on the state's territory, irrespective of their nationality or residence status. The BNA restricted this mode of acquisition to the children of British nationals and settled foreign nationals. Rules targeting exactly the same persons – i.e. children born in the respective country to nationals – are defined as *ius sanguinis* in all other states. For comparative reasons, we therefore take also include the above British regulation when talking about *ius sanguinis* at birth.

The rules in force in the United Kingdom in 2004 state that children born in the United Kingdom or a qualifying territory⁶ acquire British citizenship *ex lege* if one parent is a citizen and the parents are married, or if the mother is a British citizen. However, these rules are defined as being part of the general rule of *ius soli* ('acquisition by birth', A02). Children born abroad to a married citizen or an unmarried British mother only acquire nationality automatically at birth under one of two circumstances: Either the parent must be in the British Crown Service abroad, having been recruited in the United Kingdom or a British Overseas Territory, or in European Community Service, recruited in an EC country, or in another designated service defined by statutory instrument (A01b); or the parent is a citizen 'other than by descent' (A01a). Children born abroad to citizens 'by descent' – this concept mainly covers persons born abroad who acquired citizenship via one of a number of modes⁷ – are entitled to be registered as citizens within twelve months of birth⁸ if one of the following conditions applies: one of the respective parent's parents was a British citizen 'other than by descent' at the time of the parent's birth or became a British citizen upon commencement of the BNA 1981 in 1983. Furthermore, this parent must have had his or her residence in the United Kingdom or a qualifying territory before the target person's birth for at least three years, during which he or she was not absent for more than 270 days (A01c). In essence, therefore, citizens 'by descent' with residence abroad cannot pass on their British citizenship indefinitely. If they were born abroad, which is normally the case, their foreign-born children can be registered as citizens only if one of their parents (i.e. the children's grandparents) was born and had held residence in the United Kingdom for some time.

⁶ Qualifying territories are overseas territories, except the Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus, in other words Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, the Pitcairn Islands (including Henderson, Ducie and Oeno Islands), St. Helena and Dependencies, South Georgia and the South Sandwich Islands, the Turks and Caicos Islands and the Virgin Islands.

⁷ These modes are: acquisition by birth to a British parent abroad (A01a); acquisition by registration by a person born abroad under the conditions described above as A01c; acquisition by registration by persons born abroad between 1961 and 1982 to British mothers (A04c); acquisition by registration of minors born abroad to a British father between 1983 and 1988 (A04d); acquisition by registration as a minor (A09/A14) if, at the time of the person's birth, at least one parent was a British citizen or a citizen of the United Kingdom and colonies who later became a British citizen, i.e. upon commencement of the BNA 1981; acquisition by registration between 1983 and 1987 by a woman born abroad who is or was married to a man who became (A08b) – or would have become but for his death or renunciation (A12) – a British citizen by descent upon commencement of the BNA 1981, unless the husband's father was in public service abroad at the time of the husband's birth; acquisition by registration by various groups of former citizens who, before losing their citizenship by renunciation or declaration, were citizens by descent (A16a-d); or acquisition by registration by certain British Overseas Citizens, British Subjects and British Protected Persons (A17c) or by British Overseas Territories Citizen (A17d). In addition, certain other groups of persons are also defined as being citizens 'by descent', i.e. those who had already become citizens by descent before commencement of the BNA 1981 or who were deemed to be such citizens by descent or those who had right of abode by virtue of a connection to the United Kingdom, or who were registered as citizens of the United Kingdom and colonies by virtue of marriage to a British Citizen.

⁸ This period can be extended by discretionary decision by the Secretary of State to up to six years.

Table 3.1: Ius sanguinis at birth (A01): acquisition of nationality by persons born to at least one parent who is a national

	Birth in C1		Birth abroad	
	in wedlock	out of wedlock	in wedlock	out of wedlock
AUT	<i>Ex lege</i>	<i>Ex lege</i> if mother is a national	<i>Ex lege</i>	<i>Ex lege</i> if mother is a national
BEL	A01a: <i>Ex lege</i>		<ul style="list-style-type: none"> • A01b: <i>Ex lege</i> if parent was born in C1 or its colonies before independence; • A01c: <i>Declaration</i> of birth within five years; • A01d: <i>Ex lege</i> if no other nationality is acquired 	
DEN	<i>Ex lege</i>	<i>Ex lege.</i> Before 02/1999: <i>ex lege</i> if mother was a national	<i>Ex lege</i>	<i>Ex lege</i> if mother is a national
FIN	A01a: <i>Ex lege</i>	A01a: <i>Ex lege.</i> Before reform of 2003: <ul style="list-style-type: none"> • A01a: <i>Ex lege</i> if mother was a national; • A01b: <i>Declaration</i> if father was a national 	A01a: <i>Ex lege</i>	<ul style="list-style-type: none"> • A01a: <i>Ex lege</i> if mother is a national; • A01b: <i>Declaration</i> if father is a national
FRA	<i>Ex lege</i>		<i>Ex lege</i>	
GER	<i>Ex lege</i>		<i>Ex lege.</i> If parent was born abroad after 1999 and has permanent residence abroad: <ul style="list-style-type: none"> • <i>Ex lege</i> if TP was otherwise stateless, or • <i>Notification</i> of birth to consulate within one year 	
GRE	<i>Ex lege</i>		<i>Ex lege</i>	
IRE	<i>Ex lege</i>		<ul style="list-style-type: none"> • <i>Ex lege</i> if parent who is a national was born on island of Ireland, or is in C1's service abroad; • Otherwise: <i>Registration</i> at foreign mission or Foreign Ministry 	
ITA	<i>Ex lege</i>		<i>Ex lege</i>	
LUX	<i>Ex lege.</i> Before 1987: <i>Ex lege</i> if father was a national, or mother was a national and father was stateless	<i>Ex lege.</i> Before 1987: No	<i>Ex lege.</i> Before 1987: <i>Ex lege</i> if father was a national, or mother was a national and father was stateless	<i>Ex lege.</i> Before 1987: No
NED	<i>Ex lege</i>	<i>Ex lege</i>	<i>Ex lege</i>	<i>Ex lege</i>
POR	A01a: <i>Ex lege</i>		<ul style="list-style-type: none"> • A01b: <i>Ex lege</i> if one parent who is a national is in C1's service abroad; • A01c: <i>Declaration</i> of the birth to a C1 consulate, or <i>registration</i> of birth on the Central Civil Registry 	
SPA	<i>Ex lege</i>		<i>Ex lege</i>	
SWE	A01a: <i>Ex lege</i>	A01a: <i>Ex lege.</i> Before reform of 2001: <ul style="list-style-type: none"> • A01a: <i>Ex lege</i> if mother was a national; • A01b: <i>Notification</i> if father was a national 	A01a: <i>Ex lege</i>	<ul style="list-style-type: none"> • A01a: <i>Ex lege</i> if mother is a national; • A01b: <i>Notification</i> if father is a national

	Birth in C1		Birth abroad	
	in wedlock	out of wedlock	in wedlock	out of wedlock
UK	A02: <i>Ex lege</i>	A02: <i>Ex lege</i> if mother is a national. Once sec. 9 NIAA 2002 is in force (no date known yet): <i>Ex lege</i> if one parent is a national	<ul style="list-style-type: none"> • A01a: <i>Ex lege</i> if parent is a national 'otherwise than by descent'; • A01b: <i>Ex lege</i> if parent is a national in public service abroad; • A01c: <i>Registration</i> within one year if one parent is a national 'by descent', he or she lived in UK for three years sometime before TP's birth and one of his or her parents was a national 'otherwise than by descent'. 	<ul style="list-style-type: none"> • A01a: <i>Ex lege</i> if mother is a national 'otherwise than by descent'; • A01b: <i>Ex lege</i> if mother is a national in public service abroad; • A01c: <i>Registration</i> within one year if mother is a national 'by descent', lived in UK for three years sometime before TP's birth and one of her parents was a national 'otherwise than by descent'. <p>Once sect. 9 NIAA 2002 is in force: one parent must meet the conditions</p>

Notes: Codes A01a-A01c = code of respective mode of acquisition/loss; TP = target person, i.e. person who is to acquire nationality; C1 = the country where nationality is acquired; C1 national = national of respective country; for the UK: C1 nationality = British citizenship.

3.1.1.2 Multiple nationality

If a foreign nationality is also acquired at birth, the multiple nationality of persons who are nationals *iure sanguinis* is accepted in most states. One exception concerns Belgium, where children born abroad to nationals who were themselves born abroad only become nationals *ex lege* if they do not acquire another nationality at birth or before they reach majority (A01d). However, they can still be registered as nationals within the first five years of their lives (A01c). In some states, certain dual nationals, mostly those born abroad, may lose their nationality later in their lives if they hold permanent residence abroad (loss mode L02; see section 4.2.1), or they may lose it in Luxembourg if they opt for a foreign nationality when required by the law of a foreign country to choose one of two (or more) nationalities (L06; see section 4.3.2).

3.1.1.3 Additional rules for non-automatic modes of acquisition

In order not to overburden the description of general principles above, we only mentioned the main rules for the acquisition of nationality at birth based on the principles of *ius sanguinis*. However, certain additional specific features of some of the modes of acquisition discussed should also be mentioned, especially additional rules for the non-automatic modes of acquisition by declaration (Finland: A01b; Belgium, Portugal: A01c), notification (Germany: A01; Sweden: A01b) or registration (Ireland: A01; United Kingdom: A01c).

- *Capacity to act:* The declaration in Finland can be made by the target person after reaching the age of majority, or it can be made while the child is a minor by his or her parents (or guardians). From the age of twelve, however, the child must be heard in the procedure and, after the age of fifteen, his or her objection prohibits the acquisition of nationality. In Sweden, the declaration is always made by the child's father, but all parents must consent to the acquisition, as must the child himself or herself after the age of

twelve. In Belgium, Germany and the United Kingdom, the declaration, notification or application for registration can only be made during the early years of the child's life by the parents. In the United Kingdom, both parents must consent to the application for registration if they are alive and the birth was legitimate. The same applies in Portugal if a declaration is made in the name of a minor (A01c). Consent of both parents is not checked in Belgium and, in Germany, the law does not require that both parents make a notification or consent to it.

- *Fees:* The fee for the declaration in Finland is 100 euros, it is 175 Swedish crowns (~ 19 euros) for the notification in Sweden and 125 euros in Ireland for the registration. In Portugal, a declaration or registration made while the child is a minor is free of charge. Subsequently, however, 92 euros is paid for a declaration and 68 euros for registration as a national. In the United Kingdom, a fee of 200 British pounds (~ 290 euros) has to be paid for the registration of a child as a British citizen. No fees apply, except for possible local taxes (stamp duties, taxes for certified copies, etc.), only in Belgium for the declaration and in Germany for the notification.
- *Time of effectiveness:* In Belgium, Finland, Ireland, Sweden and the United Kingdom, the acquisition of nationality via the non-automatic modes becomes effective from the date of the declaration/registration/notification or from the time the authority decides that all conditions are met. In Portugal, by contrast, nationality is acquired retrospectively from birth and, in Germany, the notification only belatedly establishes that nationality is acquired from birth.

3.1.1.4 Changes since 1985

The rules of *ius sanguinis* for children whose filiation to a national is clear at the time of birth have changed little or not at all since 1985 in Austria, Belgium, France, Greece, Ireland, Italy, the Netherlands, Portugal and Spain. However, in some of these states, gender equality with respect to the transfer of nationality to children born in wedlock or even all children was introduced only a few years before 1985 (Portugal: 1981; Austria, Italy: 1983; Belgium, Greece: 1984).

In the other six states, however, fairly far-reaching reforms were introduced. Before the 1987 reform in Luxembourg, children only acquired nationality at birth *iure sanguinis* if the birth was in wedlock, if the father was a national, or if the mother was a national and the father was stateless. In Denmark, Sweden and Finland, the rules that currently apply to children born out of wedlock abroad also applied to children born out of wedlock in the respective country before the reforms of the laws in 1999, 2001 and 2003 respectively. In other words, they acquired nationality *ex lege* if the mother was a national, or – as in Finland and Sweden – they became nationals by declaration or notification (A01b). In Germany, the special rule for children born abroad to nationals who were themselves born outside Germany after 1999 only came into force in 2000. Last but not least, in the United Kingdom, the rules specifying the public service abroad for which parents have to work so that their children, born abroad, are entitled to acquire British citizenship *ex lege* (A01b) have been changed frequently since 1985. Furthermore, since 2003, birth in most overseas territories is the same as birth in the United Kingdom in terms of *ius soli* at birth (A02). Finally, section 9 of the Nationality, Immigration and Asylum Act (NIAA) 2002 will introduce gender equality with respect to all British regulations, which means that all the rules that now apply only to children born out of wedlock to British mothers will then apply to all children born to at least one British parent. However, as of spring 2005, no date has yet been set by the Secretary of State for the implementation of this section.

To summarise, the rules of acquisition of nationality at birth *iure sanguinis* for children whose filiation to a national is clear have become more inclusive in five countries (Denmark, Finland, Luxembourg, Sweden and the United Kingdom) since 1985, especially by extending the eligible group of children to those born out of wedlock. By contrast, Germany is the only state to have tightened its rules of *iure sanguinis* by replacing *ex lege* acquisition of nationality for the second generation born abroad with a temporally restricted right to acquisition by declaration. In all other countries, the provisions have, by and large, remained the same. As we will see in section 3.2.1.2, however, some of these states have introduced less inclusive rules for children whose descent from a national is only established after birth.

3.1.2 General *iure soli* at birth (mode A02)

Iure soli is the principle that a person's nationality is determined by his or her country of birth. In this section we look at modes of acquisition based on this principle that take effect either *ex lege* at birth or immediately after birth, because all conditions were already met at birth, but which require a declaration, registration, use of an option right or similar.⁹ However, we exclude special modes targeting foundlings, children of unclear nationality or those who would otherwise be stateless here. These modes are described in section 3.1.3.

3.1.2.1 Basic rules

Regulations for the acquisition of nationality based on birth in the respective country, which are not targeted at any of the special groups mentioned above, are lacking in Austria, Denmark, Finland, Greece, Italy, Luxembourg and Sweden. The acquisition of nationality at birth in these seven states is more or less exclusively determined by *iure sanguinis*.

The other states can be grouped into three clusters. The first cluster contains France, the Netherlands and Spain, where respective regulations of *iure soli* at birth only target children born on their territory to foreign nationals who were themselves born there (*double iure soli*). In France and Spain, children born in the country acquire nationality automatically at birth if at least one of their parents was born there too. Former colonies of France and Spain are considered foreign countries for this purpose, except for Algeria before its independence in 1962, because it was part of France at that time. In both countries, the rule of double *iure soli* does not apply to children of foreign diplomats and consular personnel.

The Netherlands is a special case, because its provisions do not explicitly require the birth of the child or his or her parent on its territory. The child of a foreign national with main residence in the Netherlands, the Netherlands Antilles or Aruba, who was himself- or herself born to a foreign national with main residence in one of these territories, acquires Dutch nationality *ex lege* provided that the child's main residence at birth is also in one of these countries. In principle, therefore, nationality can even be acquired by a child born abroad if the conditions listed above are met. However, it is obvious that in most cases children born in the country to parents who were themselves born there do benefit from this regulation, which is why we treated it as a case of double *iure soli*, even though permutations are conceivable in which even the birth of the child and one of his or her parents in the country are not sufficient.

Belgium is the only state with different rules for the first and second generation born in the country. Children born in Belgium become nationals *ex lege* if a parent was born there as well and has had his or her main residence in Belgium for five of the ten years preceding the child's birth (A02a). By contrast, the acquisition of nationality by the first generation born

⁹ For a summary, see Table 3.2.

in Belgium requires a declaration within twelve years of birth (A02b). The declaration, for which only stamp duties are due, has to be made by both parents before the local registrar and it requires them both to have had their main legal residence in Belgium for ten years without interruption prior to the declaration and the child to have had his or her residence there since birth. If all conditions are met, the registrar transfers the case to the public prosecutor, who has to issue a recommendation on the case within one month. If the recommendation is positive or none is issued, the declaration is registered and the child becomes a Belgian national. If the public prosecutor issues a negative recommendation, the case is transferred to court, which decides the case after hearing all the parties. However, the public prosecutor can only make a negative recommendation if the declaration is not in the child's interest because it was made for reasons solely related to the parents' own interests (e.g. to avoid expulsion).

The last cluster consists of Germany, Ireland, Portugal and the United Kingdom, where the parents' country of birth is irrelevant for the rules of *ius soli* at birth. Children born in the United Kingdom or in one of its overseas territories (except the Base Areas on Cyprus) are British citizens if the mother or – in cases of birth in wedlock – either parent is 'settled' (or a British citizen – see section 3.1.1). Being settled generally means having been granted 'indefinite leave to remain'.¹⁰ In Germany, the acquisition of nationality by a child born on its territory is also automatic if at least one of the foreign parents has had his or her legal habitual residence there for eight years without interruption¹¹ at the time of the child's birth. In addition, the parent must have an unlimited residence permit or be a national of an EU or EEA state.¹²

The Irish rules in force at the end of 2004 stipulated that anyone born on the island of Ireland (Republic of Ireland and Northern Ireland), even the children of tourists or irregular migrants, could become a national by performing an 'act that only an Irish citizen is entitled to do', e.g. applying for a passport or seeking entry into the register of voters in presidential elections. However, since January 2005, certain residence requirements apply to children whose parents are not Irish or British nationals, persons entitled to Irish nationality or persons with a permanent residence permit for the island of Ireland. These children are only entitled to acquire Irish nationality if one of their parents had been a legal resident on the island of Ireland for three of the four years preceding their birth (or if they do not acquire any other nationality at birth: mode A03b). The law contains detailed rules concerning the documents required to prove this residence. In any case, 'performing an act...' is only a declaratory procedure and nationality is acquired from birth. Furthermore, there are no time limits for making use of this entitlement.

Finally, Portugal is the only state in this cluster in which acquisition is not automatic or quasi-automatic (Ireland).¹³ Children born in Portugal can acquire nationality by declaration at the local Civil Registry Office if one of their parents has had legal residence there for at least ten years at the time of the child's birth (not at the time of declaration). For parents who are nationals of a state with Portuguese as an official language, the required residence is reduced to six years. The declaration can be made at any time after birth. The

¹⁰ Immigrants can apply for this permanent residence permit after four years of residence on the basis of a permit issued for work purposes or after two years of residence on the basis of a marriage, spouse or married partner visa. Members of a diplomatic or consular mission, of visiting forces or an international organisation are not settled in this sense.

¹¹ Temporary absences of less than six months are not taken into consideration.

¹² With these requirements concerning the parent's residence status, the children of persons with diplomatic immunity in Germany are excluded from the application of the *ius soli* regulations.

¹³ This text refers to the Portuguese regulations before the reform of 2006. For this reform, see the chapter on Portugal in the second volume of this publication.

rules concerning fees (no fees for minors; 92 euros for the declaration and 68 euros for the registration for adults) and the time from which the acquisition becomes effective (retrospectively from birth) are the same as those described for mode A01c in section 3.1.1.3.

Table 3.2: Ius soli at birth (A02): acquisition of nationality by persons born in the country to non-national parents – overview of rules in force since 1985

	Type of acquisition	Residence of parent/s at TP's birth	Other conditions
Double ius soli: at least one parent was born in C1			
BEL	A02a: Ex lege. Before 06/1991: Declaration	Five of the ten years prior to TP's birth	None
FRA	<i>Ex lege</i>	No 01/1994-08/1998: parent born in Algeria before independence needed five years' residence	Before 01/1994: birth by RP parent in former colony or territory was equal to his or her birth in C1
NED	<i>Ex lege</i>	One parent has main residence in the country and one grandparent (before 04/2003: grandmother) had residence when this parent was born	Since 04/2003: TP has main residence in C1 at time of his or her birth
SPA	<i>Ex lege</i>	No	None
Both parents born abroad or parents' country of birth is irrelevant			
BEL	A02b: Declaration (since 06/1991)	Ten years prior to declaration of both parents	Declaration within 12 years after birth and TP has had main residence since birth
GER	<i>Ex lege</i> (since 01/2000)	One parent has legal residence for eight years and a PRP (or equivalent for EEA-nationals)	None
IRE	Since 2001: 'Doing an act only an Irish citizen is entitled to do'	Since 01/2005: If neither parent is a national of C1 or UK or has PRP in C1 or Northern Ireland: one parent must have resided in C1 or N.I. for 3 of the four years prior to TP's birth	Born in C1 or Northern Ireland and entitled to another nationality
POR	Declaration	One parent has legal residence for six (for nationals of Lusophone states) or ten years (other nationalities) Before reform 1994: six years of legal or illegal residence for all nationalities	None
UK	<i>Ex lege</i>	Either parent (birth in wedlock) or mother is 'settled', i.e. has a PRP (or is a C1 national). Once sect. 9 of NIAA 2002 enters into force: either parent is 'settled' (or a C1 national)	None

Notes: Rules of acquisition for foundlings and stateless children are not included. States not listed in this table do not have (and after 1985 did not have) relevant rules.

RP = reference person (parent); PRP = permanent residence permit; other abbreviations: see Table 3.1.

3.1.2.2 Multiple nationality

Dual nationality based on the simultaneous application of ius soli and the regulations of ius sanguinis of the parents' state of origin is accepted unreservedly in seven of the eight

countries. Only Germany has special rules in this respect. There, multiple nationals who acquired nationality by *ius soli* have to decide whether to keep their foreign or their German nationality after reaching majority. If they decide to keep the foreign nationality or if they do not renounce their foreign nationality before the age of 23, German nationality is lost.¹⁴

3.1.2.3 Changes since 1985

No changes were observed in the rules described in the EU15 states since 1985 only in the seven countries that currently do not have any general modes of acquisition based on the principle of *ius soli*. All other states with relevant regulations have changed them at least slightly over the past twenty years. *Completely new modes of ius soli* at birth were introduced in two countries, the most famous case being Germany, where *ius soli* at birth came into force in 2000. However, subsequent reforms have brought about certain additional restrictions, albeit indirectly. Following a streamlining of the Aliens Law in 2004, which reduced the number of different types of residence permits, the required permit of one parent is now a '*Niederlassungserlaubnis*', acquisition of which is tied to language skills and a certain knowledge of Germany's social and legal system. Before that, possession of an unlimited '*Aufenthaltserlaubnis*' for three years was sufficient, which was considerably easier to obtain. In Belgium, mode A02a had already been enacted in mid-1984 but, until the reform of June 1991, acquisition of nationality under the conditions described was not automatic, but required a declaration. The more important change in 1991, however, was the possibility of acquisition by declaration for the first generation born in Belgium (A02b). The procedure for this mode was modified in 2000: the declaration was made free of charge and the deadline for the public prosecutor to issue a recommendation on the case was reduced from two months to one. In the same year, in a circular letter, the Minister explained that the required residence by the parents (ten years) and the child (since birth) must have been legal. However, in early 2004, the Court of Cassation decided that periods of illegal residence also have to be taken into account.

Apart from Spain, where the only change since 1985 concerned the rule that filiation has to be established while the child is a minor, some important principles of *ius soli* at birth have also been amended. In France, the changes concerned the definition of the territory of France. Until 1993, birth of a parent in France was equated with birth in a former colony before its independence. Parents born in Algeria before independence in 1962, however, are still on a par with parents born in France but, between 1994 and August 1998, they needed five years of residence in order for their children to benefit from the double *ius soli* rule. The modifications to the law in Portugal in 1994 concerned the residence requirement. Before the amendment, the law did not differentiate between parents who are nationals of states with Portuguese as an official language and other parents. It furthermore defined six years as the required residence for all. The rule that the parent's residence must have been legal was also only introduced with the 1994 reform.

The reforms in Ireland in 2001 and 2004 also made *ius soli* less inclusive. In 2001, the mechanism of acquisition was changed from automatic to 'quasi-automatic'. Since then, 'an act that only an Irish citizen is entitled to perform' is required for persons born on the island of Ireland to acquire nationality. This reflects the Good Friday Agreement of 1998 which stated that those born in the Republic of Ireland or Northern Ireland are free to choose Irish nationality. Furthermore, as a result of the referendum in mid-2004, the right to Irish nationality for children born on the island of Ireland was restricted to those whose parents – if

¹⁴ See section 4.3.2 for more details.

they are not Irish or British nationals or permanent residents – meet certain residence requirements.

In the Netherlands, the ‘quasi-double *ius soli*’ rule was liberalised in 2003 insofar as, at the time of the parent’s birth in the Netherlands, either his or her mother or father must have had residence there, whereas, beforehand, only the parent’s mother counted. However, the same reform also tightened the conditions because, since then, the child also has to have residence in the Netherlands at the time of birth. In addition, all persons now need (target person, parent) or needed (grandparent) to have their ‘main residence’ in the country – ‘ordinary residence’ is not sufficient any more.

Finally, the most important change to the rules of *ius soli* in the United Kingdom occurred shortly before 1985. The BNA 1981, which came into force in 1983, abolished the unqualified right to nationality for anyone born in the United Kingdom and reserved it for the children of British Citizens and settled foreign nationals. After 1985, however, two legal changes made *ius soli* at birth more inclusive. Firstly, since the implementation of the respective provision in the British Overseas Territories Act (BOTA) 2002 in February 2003, the territory on which children have to be born in order to benefit from the *ius soli* rules also includes most of the United Kingdom’s overseas territories. Secondly, when implemented (no date has yet been set), section 9 of the NIAA 2002 will introduce gender equality for parents. For *ius soli* at birth, this means that, for a native-born child to acquire British citizenship, either the father or the mother, irrespective of their marital status, has to be settled (or be a British citizen).

Summarising the developments since 1985 in the eight states with *ius soli* at birth, no clear trend can be discerned. Germany included relevant regulations in its legal system for the first time; Belgium made its double *ius soli* regulations more inclusive and introduced an additional, though non-automatic *ius soli* targeted at the first generation born in Belgium; the United Kingdom liberalised its existing *ius soli* rules in 2002, even though it had made them considerably more exclusive shortly before 1985; the Netherlands liberalised its rules markedly, but also introduced certain additional restrictions; and four states introduced more (France, Ireland and Portugal) or fewer (Spain) severe restrictions.

3.1.3 Foundlings or stateless children (mode A03)

As Hailbronner’s contribution to this volume shows, the prevention of statelessness is one of the few areas in which international law constrains states’ sovereignty to regulate access to nationality. Special cases in this context are children born on the state’s territory – or, as is the case for foundlings, children assumed to have been born there – whose nationality is unknown or unclear or who would be stateless unless they acquire the respective state’s nationality. Art. 6 (1) of the European Convention on Nationality (ECN) stipulates that foundlings shall acquire nationality *ex lege* and that state parties are obliged to provide for the acquisition of nationality by children born in their territory who do not acquire another nationality by birth. Although only ten EU15 states have so far signed the ECN and only six have ratified it,¹⁵ we can ask: how do states meet their obligation, arising from customary international law,¹⁶ to avoid statelessness by foundlings and children born on their territory of no or unclear nationality? In answering this question, we leave out the question concerning the effects of

¹⁵ As of July 2005, only Austria, Denmark, Germany, the Netherlands, Portugal and Sweden have so far ratified the Convention; Finland, France, Greece and Italy have signed the Convention, but have not yet ratified it.

¹⁶ See section 2.5 of Hailbronner’s contribution to this volume.

subsequent establishment of the fact that the child actually acquired a foreign nationality at birth – this will be dealt with in Chapter 4 (section 4.3.6.3).

3.1.3.1 Foundlings

Even though many states' regulations for foundlings explicitly assume that they are descended from nationals and should therefore acquire nationality by *ius sanguinis* (e.g. in Austria, Denmark, Germany, Ireland, Spain and Sweden), we analyse them here in the context of *ius soli* rules. The reason for this is that the main condition for acquisition of nationality is the fact that the baby is found on the state's territory at a very early stage of life, which makes it very likely that it was also born there. In countries with many foreign residents this is at least more likely than a birth to parents who are nationals.¹⁷ Descent is only then deduced from the main condition for acquisition, i.e. that the infant was found/born on the state's territory.

Fourteen of the fifteen EU15 states have provisions that explicitly target foundlings or persons born on the state's territory to unknown parents and provide for their automatic acquisition of nationality. The only exception is Greece but, there too, foundlings nevertheless will probably acquire nationality via the rules that persons born in the country of unknown (A03a) or unclear nationality (A03b) become Greek nationals *ex lege*. Belgium (A03b), Ireland (A03a) and the United Kingdom explicitly limit the application of the foundling rule to newborns and, in Austria (A03a), acquisition is contingent on the foundling being under six months old. All other states only speak of 'children' or 'foundlings' in this context.

3.1.3.2 Children born stateless or of unclear or unknown nationality

Unlike for foundlings, five EU15 states – Denmark, Germany, the Netherlands, Sweden and the United Kingdom – do not have any special provisions for the acquisition of nationality at birth by 1) children born on the state's territory of unclear or unknown nationality or 2) native-born children who would become stateless for some other reason. However, with the exception of Germany, all of these states at least have special provisions for the acquisition of nationality after birth by stateless persons born on the state's territory (see section 3.6.2.2).

Let us look separately at the rules for the two groups mentioned above. Firstly, only Austria and Greece (both A03b) specifically target children born in the country of *unclear nationality*. In Greece, *ex lege* acquisition is not tied to any other conditions but, in Austria, children of unclear nationality only become Austrian nationals if either parent (if birth is in wedlock) or both parents (birth out of wedlock) was/were also born in Austria. In three more states, the legal rules explicitly speak of children of *unknown nationality*. In Finland, a child is a national *ex lege* if it is born in wedlock to two parents of unknown nationality or born out of wedlock to a mother whose nationality is not known. In France and Greece, all children of unknown nationality become nationals *ex lege*.

Secondly, with the exception of Austria, all states not mentioned in the first paragraph above provide for the automatic acquisition of nationality at birth by *children born to stateless persons or children who would otherwise be stateless*.¹⁸ In Belgium (A03a), Finland (A03c), France (A03b), Greece (A03a), Ireland (A03b), Italy (A03a), Portugal (A03b) and Spain (A03b), all children who do not acquire a foreign nationality at birth become nationals automatically, either because their parents are stateless or because their parents' state of

¹⁷ In Belgium, Ireland, Luxembourg, Portugal, Spain and the United Kingdom, a foundling's birth on the state's territory is actually explicitly assumed in the relevant regulations.

¹⁸ In Denmark and Sweden, stateless minors can acquire nationality under relaxed conditions; see section 3.2.2.1.

nationality does not attribute nationality to them. Only in Luxembourg (A03b), the automatic acquisition is reserved for children of stateless parents only – children who become stateless for some other reason are not covered by the respective legal rules.

3.2 Birthright-based modes of acquisition of nationality after birth

3.2.1 *Ius sanguinis* after birth (mode A04)

As we saw in section 3.1.1, not all children acquire the nationality of their parents automatically at birth. Depending on the country, the reasons for this can be that the parents are not married and the parent who is a national is of the ‘wrong’ sex; that the birth takes place abroad; that filiation to a national is not established at the time of birth and/or that the parent was also born abroad. In this section, we therefore look at modes of acquisition of nationality based on the principle of *ius sanguinis* after birth.

Two qualifications have to be made. Firstly, here we only analyse rules that target persons with at least one parent who was already a national at the time of the target person’s birth and still is a national. By contrast, rules for children of nationals who only acquired nationality after the child’s birth or rules where it is irrelevant when the parent became a national are analysed in section 3.4.3.1. Secondly, we do not describe non-automatic modes of acquisition of nationality again; these were explained in section 3.1.1. However, these modes can also be classified as *ius sanguinis* after birth because they can be applied during certain periods of time after birth. This concerns the acquisition by declaration within five years of birth by children born abroad in Belgium (A01c = A04b); by declaration or notification by children born abroad to a male national in Finland (A01b = A04b) and Sweden (A01b = A04a); by notification by children born abroad to nationals who were themselves born abroad after 1999 in Germany (A01 notification = A04); by registration or declaration by children born abroad to nationals in Ireland (A01 registration = A04) and Portugal (A01c = A04); and acquisition by registration by children born to parents who are nationals ‘by descent’ within one year of birth in the United Kingdom (A01c = A04a).

3.2.1.1 Transitional regulations

As examples of *ius sanguinis* after birth, we also classified (often transitional) *regulations after a change in the basic principles of ius sanguinis at birth*, even if these are only of secondary interest and are therefore only described briefly. These provisions target children of nationals who did not acquire nationality at the time of their birth because of the rules in force at that time, but who would acquire it if they were born now. They mostly concern persons whose mother was a national at the time of their birth, but who did not become nationals because of the patrilineal rules at that time. Such provisions were in force in Austria from September 1983 until the end of 1988, and in the Netherlands for four years from 1985 onwards. In both states, nationality could be acquired by declaration if the person had not yet reached a certain age (Austria: nineteen; Netherlands: 21) when the new nationality law came into force. Non-transitional rules for children born to female nationals before a change in *ius sanguinis* rules are still in force in three states. In Denmark (A04b), persons born to Danish mothers between 1961 and 1978 can be naturalised without residence in Denmark if they could have acquired nationality had their mother submitted a declaration to this end between 1979 and 1981. Spain gives children born to Spanish mothers abroad before the reform of the

nationality law in 1982 the option to acquire nationality (A04b). Before 1990, these persons even became nationals *ex lege*. In the United Kingdom, persons born abroad between 1961 and 1982 to a British mother are entitled to be registered as nationals if the old Act would have allowed them to become British by descent through the mother (A04c).

Lastly, three states have (or until recently had) regulations for persons whose father was a national at the time of birth. Greece provides for the acquisition of nationality by option for persons born before 16 July 1982 to a Greek father and a foreign mother in civil wedlock. This was considered non-existent before that date, so that children born in civil wedlock did not become Greek automatically because they were defined as illegitimate. Sweden had transitional provisions in force for two years starting in July 2001 concerning acquisition by notification for minors who had been born in Sweden before that date and who would have become Swedish had the new rules of *ius sanguinis* (automatic acquisition if born in Sweden to a national) already been in place (A04b). In the United Kingdom, minors born abroad out of wedlock to a British father and a foreign mother before 1983 were entitled to be registered as British citizens for five years from the beginning of 1983 (A04d).

3.2.1.2 Establishment of filiation

The rules of *ius sanguinis* described in section 3.1.1 all presuppose that the filiation to a national is clear at the time of birth. However, what happens if it is not established until after birth – either by recognition of paternity by the father, by judicial determination of paternity (maternity), or in some other way – that the child is descended from a national? In Belgium, Finland, Italy, Luxembourg, Portugal, Spain (since 1990)¹⁹ and Sweden, nationality is acquired *ex lege* and retrospectively from birth on the basis of the rules of automatic *ius sanguinis* at birth if a person's descent from a national is established while he or she is a minor (i.e. before reaching the age of eighteen or before emancipation in some other way). In addition, the right of certain children born to nationals abroad to acquire nationality by declaration or notification in Finland (A01b), Portugal (A01c) and Sweden (A01b) is also tied to the establishment of filiation during minority. Germany's rules are more inclusive in this respect because the procedure for determining a person's extraction from a national can be initiated up to the age of 23 in order for him or her to acquire nationality *ex lege* (A01).

In two states, the establishment of filiation of a minor to a national after birth leads only under certain circumstances (or never) to an automatic acquisition of nationality. In the Netherlands, children born out of wedlock only acquire nationality *ex lege* if their descent from a national is established by a court (A09a). By contrast, since April 2003, a child born out of wedlock who is acknowledged by a Dutch father no longer acquires nationality automatically. He or she can only acquire nationality by declaration, which requires the father to care for the child for three years after acknowledgement (A09d).²⁰ The rationale for this rule is to avoid 'bogus recognitions' of paternity that are only made so that the child can acquire nationality. In Denmark, minors whose descent from a Danish national is determined after birth do not become nationals *ex lege*. They can be naturalised by parliament (even if they reside abroad), which requires that the parent still hold Danish nationality and have (shared) custody of the child (A04c). Most of the other conditions for regular naturalisation (see section 3.3.1) are not applied here, including the need to pay a fee and to renounce a

¹⁹ Before 1990, nationality was always acquired *ex lege*, irrespective of the age at which filiation was established.

²⁰ The codes for the modes in the Netherlands and those for Italy are A09 instead of A04 because, unlike the provisions in the other states, they seem to apply not only to children of parents who were already nationals at the time of the child's birth, but also to those who acquired nationality *ex post*; see section 3.4.3.1.

foreign nationality. The only exception is that applications from minors aged fifteen or older who have committed a serious crime are submitted to the Parliament's Standing Committee on Nationality for a decision on whether to include them in the naturalisation bill. Despite the relatively clear conditions, naturalisation still remains within the discretion of parliament and applicants cannot appeal against a negative decision.

The nationality laws in the remaining five states (Austria, France, Greece, Ireland and the United Kingdom) do not contain any indications concerning the effects of establishment of filiation (by recognition or otherwise) to a national after birth. The relevant rules of *ius sanguinis* only state that nationality is acquired at birth if a parent is a national at that time (and also, occasionally, that certain other conditions are met). We can therefore assume that even persons whose descent from a national is only determined after birth always – without age restrictions – acquires nationality automatically and retrospectively from birth. This, of course, depends on whether or not they would have acquired nationality at birth if their filiation to a national had been known at that time – e.g. the legitimacy or place of birth may be factors still preventing the *ex lege* acquisition.

Finally, four states also have special rules for persons whose filiation to a national is established only after emancipation (usually by reaching majority age). In Finland, persons whose father was already a national at the time of their birth and still is a national are entitled to acquire nationality by declaration addressed to the Directorate of Immigration (Ministry of Interior) (A04c). The only other condition is the payment of a fee of 250 euros. This mode applies to native-born persons only, however, because persons born abroad to an unmarried Finnish father can acquire nationality by declaration at any time after birth (A04b). Italy gives persons the right to acquire nationality by simple declaration within one year of the acknowledgement or the establishment of filiation by a court judgement, which is not tied to any other condition (A09b). In Spain, persons whose filiation to a national is established once they are adults are entitled to acquire nationality by option within two years of the establishment of filiation (A04a). The declaration to this end has to be made in front of the judge in charge of the local civil register or a Spanish consul abroad. Besides proving descent from a parent who was a national at the time of the applicant's own birth, the only other conditions are the swearing of an oath of loyalty to the King and obedience to the constitution and the laws, and the symbolic 'renunciation' of any foreign nationality held so far. However, this does not require any proof of its legal effectiveness. Last but not least, in 2003 the Netherlands introduced the possibility of becoming Dutch by naturalisation for adult persons whose filiation to a national is established after reaching the age of majority. All the conditions for regular naturalisation apply in this case (see section 3.3.1), except that three years of residence (instead of five) are sufficient (A09e).

3.2.1.3 Other non-transitional regulations

Other modes of acquisition of nationality after birth based on the principle of *ius sanguinis* only exist in five EU15 states. These are in addition to transitional modes of acquisition, regulations concerning retrospective automatic acquisition in cases of a belated establishment of filiation to or acknowledgement of paternity by a national and non-automatic modes of acquisition right after birth. The arrangements under which nationality is acquired as well as the type and mechanism of acquisition are rather different for the seven modes of acquisition concerned.

In Denmark and Finland (both A04a), the children of fathers who are nationals acquire nationality automatically by *legitimation* upon marriage between the natural parents. However, in both cases, the child must still be unmarried, the father's paternity must be

established and the father must already have been a national at the time of the child's birth and have remained so since. This condition is in contrast to acquisition by legitimation in other states (Austria, Greece, Sweden and the United Kingdom), where the father only has to be a national at the time of legitimation, which is why these modes were classified as examples of mode A09 (see section 3.4.3.1).

The three remaining modes of acquisition in Belgium, Denmark and the United Kingdom are aimed at different groups of persons. In Denmark, minor children born out of wedlock to a Danish father can be naturalised under the same conditions as children whose filiation to a national is established only after birth (A04c), which we have described in section 3.2.1.2 above. In the United Kingdom, minor children of married British citizens 'by descent'²¹ or unmarried British mothers 'by descent'²² who have not acquired nationality via modes A01b or A01c/A04a, are entitled to be registered as British citizens by the Home Secretary if they and both their parents have lived in the United Kingdom for three years before making the application for registration; during this period, no more than 270 days of absence are allowed. Only two more conditions apply: firstly, both parents have to give their consent to the application for registration; and, secondly, a fee of 200 British pounds (~ 290 euros) has to be paid. Finally, in Belgium, persons born abroad to at least one Belgian parent²³ who have not yet acquired nationality via modes A01b-d, can do so by making a declaration of choice (*option*) in front of the local civil registrar within five years of reaching majority. The following conditions must be met: the person must have had his or her main residence in Belgium for one year immediately before the declaration, as well as residence between the ages of fourteen and eighteen or for at least nine years in total. Persons meeting these conditions can still be denied the acquisition of nationality if the public prosecutor issues a negative recommendation within one month (or three months in certain cases) because of 'serious facts with respect to the person', which usually means criminal convictions and threats to national security.²⁴ If the recommendation is in fact negative, the case is transferred as a naturalisation case to parliament. This can be prevented by asking the local registrar, within fifteen days, to transfer the case to the court of the first instance. If the recommendation is positive or none is issued, the declaration is transcribed in the civil register and nationality is acquired. Except for local stamp duties, no fees have to be paid for this.

3.2.1.4 Summary

In France, Greece, Italy, Luxembourg, the Netherlands and Spain, all children with one national parent acquire nationality *ex lege* at birth if the filiation is established (see section 3.1.1.1). In all other states, however, at least some children of nationals are not automatically nationals. Most states therefore have special rules for these groups of persons. Regulations may exist concerning the acquisition of nationality that can be applied straight after birth (Belgium, Finland, Germany, Ireland, Portugal, Sweden and the United Kingdom), or rules for the acquisition of nationality for a certain period of time after birth (Belgium, Denmark, Finland, Spain and the United Kingdom). Only two states have no regulations for *ius sanguinis* after birth – except those concerning acquisition by establishment of filiation. In

²¹ Concerning the definition of the concept of being a citizen 'by descent', see section 3.1.1.1 and especially footnote 13.

²² Under section 9 of the NIAA 2002, unmarried British mothers and fathers are treated equally. However, no date has yet been set by the Secretary of State for the entry into force of this section.

²³ Before an amendment in 1993, the parent had to be Belgian by birth.

²⁴ See sections 3.3.1.12 and 3.3.1.17.

Luxembourg, the group concerned are persons whose filiation to a national is established after reaching majority, whereas Austria has no rules that specifically target the children of foreign mothers and Austrian fathers who have not acquired nationality *ex lege* at birth. These children have to rely on modes of acquisition for the children of Austrian parents, irrespective of whether or not they were already nationals at the time of their birth.²⁵

3.2.2 *Ius soli* after birth (mode A05)

As we saw in section 3.1.2, only about half of all EU15 states have regulations for the automatic acquisition of nationality at birth targeted at the first (Germany, United Kingdom) or second generation born on the territory of the state (Belgium, France, the Netherlands and Spain) or at least rules allowing for non-automatic acquisition by declaration or registration immediately after birth (Belgium, Ireland and Portugal). The questions now are, firstly, do the other states at least provide for modes of facilitated acquisition of nationality for native-born persons at some point after birth – something which is demanded, in very general terms, by the ECN in art. 6 (4) e and, secondly, do the eight states with *ius soli* at birth also have additional modes of acquisition after birth which are specifically targeted at native-born persons?

All EU15 states have (or until recently had) some rules regarding *ius soli* after birth, but the type of acquisition, the specific target group and the relevance of the rules in practice vary markedly. We can discern five types of provisions in this context: 1) modes targeting stateless persons born in the country,²⁶ 2) other less important or transitional modes of acquisition, 3) modes of non-automatic acquisition of nationality which are relevant not only immediately after birth, but also for some time thereafter, 4) general residence-based modes of acquisition adapted for persons born in the respective state's territory and, most importantly, 5) special modes of acquisition specifically targeted – in principle – at all persons born as foreign nationals in the country. We will mainly focus on the rules in groups 4) and 5), because the others are of less relevance in practice or have already been described elsewhere.

3.2.2.1 Rules for stateless persons

Some rules for *ius soli* after birth only target stateless persons.²⁷ Acquisition via all these modes is only possible for a certain period of time but the conditions are facilitated considerably in comparison to general residence-based modes. Eligibility is limited to minors (in a certain age range) in three states. All unmarried persons born in Belgium who become stateless while minors acquire Belgian nationality *ex lege* (A05a). In Denmark, minors born and with residence in the country can be naturalised by parliament without further conditions. In addition, stateless children born and domiciled in Sweden can acquire nationality by notification while under the age of five if they have a permanent residence permit. In three more states, acquisition can also or only take place after the person comes of age. Stateless persons born in the United Kingdom are entitled to be registered as British citizens while

²⁵ This is the acquisition by legitimation (A09a) or the right to naturalisation if an extension of acquisition is impossible because the respective parent is already an Austrian national (A09b); see section 3.4.3.1.

²⁶ According to art. 6 (2), the ECN state signatories have an obligation to grant stateless children born in the country nationality within five years of birth at the latest.

²⁷ Giving native-born stateless persons privileged access to nationality is required by a number of international conventions, specifically the 1961 UN Convention on Reduction of Statelessness, the 1966 UN Convention on Civil and Political Rights (art. 24 (3)), and the ECN (art. 6 (2)).

under the age of 22 if, for the five years prior to the application, they had not been abroad for more than 450 days. Germany gives native-born persons under the age of 21 who have been stateless since birth the right to be naturalised after five years of residence, unless they have been sentenced to five years imprisonment or youth custody (A05b). In Austria, native-born stateless persons have the right to be naturalised within two years of reaching majority age if they have resided in Austria for five years immediately before the granting and for ten years in total, and if they have not been convicted of certain serious crimes (A05b). The United Kingdom and Austria charge considerable fees for the acquisition, i.e. 188 British pounds (~ 270 euros) for minors and 200 British pounds (~ 290 euros) for adults in the United Kingdom, and between 631 euros and 1,547 euros in Austria.²⁸

3.2.2.2 *Other less important or transitional modes of acquisition*

There are four more modes of *ius soli* after birth that are either also of little relevance in practice or that were in force only transitionally after 1985. A well-known mode among these was the transitional right to naturalisation in Germany in 2000, which applied to all minors under the age of ten with residence in Germany on 1 January 2000 if the conditions for acquisition of nationality by *ius soli* at birth – at least one parent must already have had legal habitual residence in Germany for eight years and hold a permanent residence permit (A02) – were met at the time of their birth *and* at the time of application (A05a). Whereas this entitlement was of considerable statistical importance,²⁹ the three other modes to be addressed here obviously concern very small groups only. In Austria, persons who were found abandoned during their first six months of life before September 1983 acquire nationality automatically (A05c), as do foundlings found since that date (A03a). Children born in Belgium acquire nationality automatically upon adoption by a foreign national while minors if that adopting parent was born in Belgium as well and has been resident there for five of the ten years preceding the adoption (A05b). Lastly, a person born in Spain can acquire nationality by option if his or her filiation to a foreign parent who was also born in Spain is established only after reaching the age of majority (A05a).³⁰ However, the option-right is limited to two years after establishment of filiation.

3.2.2.3 *Acquisition of nationality immediately after birth or later*

Besides the transitional or secondary modes described above, all EU15 states except Denmark, Germany and Sweden have regulations that allow for the acquisition of nationality by persons born on the respective territory who have not become nationals automatically at birth; for an overview see Table 3.3. These include three non-automatic modes described in section 3.1.2.1 that are relevant here too, because they provide for the possibility of acquisition of nationality by native-born children not only *immediately* after birth, but also for a longer period of time thereafter. This concerns acquisition by ‘performing an act that only an Irish citizen is entitled to perform’ in Ireland, which requires (except for Irish or British citizens) that one parent either be a permanent resident or, since 2005, have held residence on the island of Ireland for three of the four years prior to birth (A02=A05). There is no time limit for making use of this right. The same is true of the acquisition of nationality by

²⁸ For details, see the remarks on fees for naturalisations based on an entitlement in Austria in section 3.3.1.7. There is an additional mode of *ex lege* acquisition for persons born before September 1983, of unclear nationality, to at least one parent who was also born in Austria (A05d), but this mode is irrelevant in practice.

²⁹ See Chapter 6, on statistical developments, in this volume.

³⁰ If it was established while a minor, nationality would be acquired *ex lege* via mode A02a; see section 3.1.2.

declaration in Portugal, which applies to persons born to a foreign parent with at least ten years of residence – or six years for nationals of Portuguese-speaking states – immediately before the birth (A02=A05). In both states, the conditions always have to be met at the time of birth. This does not apply to acquisition by declaration in Belgium, which is possible within twelve years of birth, if both parents have resided there for ten years before the declaration (A02b=A05c). The conditions *can* be met at the time of the child's birth, in which case acquisition is possible immediately after birth. However, if the parents only have ten years of residence at some point within twelve years of the birth, they can still make the declaration in the name of the child.

3.2.2.4 Adapted general residence-based modes of acquisition

Since some of their conditions cannot be met at the time of birth, all the remaining modes of acquisition can only be applied after birth. These include modes that – unlike those dealt with in section 3.2.2.5 – are only general residence-based modes of acquisition with relaxed residence requirements for persons born in the country, but no substantially facilitated conditions or simplified procedures beyond that.

In Austria (A05a: since 1999), Greece and Spain (A05b), these are the only modes of *ius soli* after birth that are not targeted at stateless persons or other small groups. Applicants have to be at least eighteen years old in Greece, but can also be minors in the other two states. The residence requirement for naturalisation is reduced from ten years in all three states to one year in Spain and to four (minors) or six years (adults) in Austria. In Greece, on the other hand, 'permanent residence' is necessary, which does not mean an uninterrupted stay since birth, but obviously long-term residence. All the other conditions as well as all the characteristics of the naturalisation procedure are the same as for general residence-based naturalisation in these states (for Austria: mode A06a), which will be described in full detail in section 3.3.1. For Austria and Greece this means, in particular, that applicants are not entitled to acquisition; that they have to meet comparatively demanding requirements (especially in the area of 'good character', language skills and other 'integration' indicators), which leave wide room for discretion; that they must renounce their previous nationality; and that they have to pay the highest fees of all EU15 states. Furthermore, in Greece, applicants cannot even appeal against a negative decision, notably because the authorities are not obliged to respond to a request for naturalisation. By contrast, Spain does entitle applicants to naturalisation, but some conditions they have to meet (especially 'good civic conduct' and 'sufficient integration') are just as vague as those in Austria and Greece, which devalues the entitlement to some degree.

Italy also has a mode of acquisition that needs to be mentioned in this context (A05b): persons who had not held uninterrupted residence in Italy between birth and the age of eighteen – they fall under the regulations for mode A05a described below – can be naturalised after three years of residence (instead of ten for the regular naturalisation). However, as will be described in section 3.3.1, naturalisation in Italy is very difficult, not because of the manifold explicit conditions to be met but, on the contrary, because of the absence of clear conditions and the wide room for discretion by the authorities. Their discretion is only constrained by a rather ineffective right of appeal to an administrative tribunal without plenary jurisdiction.

3.2.2.5 Special modes of acquisition for persons born in the country

Finally, seven states have special *ius soli* regulations that are only relevant for an acquisition of nationality after birth and are more than just somewhat facilitated general residence-based modes. In all seven states, persons meeting the conditions for all of the eleven modes of acquisition are entitled to become nationals. Nationality is acquired *ex lege* in France (A05a); by declaration or option in Belgium (A05d+e), Finland, France (A05b+c), Italy (A05a), Luxembourg and the Netherlands and by registration in the United Kingdom (A05a+b). Declarations have to be made at and are decided upon by the local registry office (Belgium, Italy), local court (France) or the mayor (the Netherlands). On the other hand, in Finland (Directorate of Immigration), Luxembourg (Ministry of Justice) and the United Kingdom (Secretary of State), a Ministry or an authority subordinate to it has the final say over whether or not nationality is acquired.

The mode classified as A05a in France is unique because it provides for *automatic acquisition of nationality* by persons born in the country upon attaining majority age if they have had five years of residence in France since the age of eleven (A05a). Since minors do not need a residence permit, no particular residence status is required during that period. However, children of foreign diplomats or consular personnel are excluded from the application of this regulation. Non-stateless persons can prevent the acquisition of nationality by a declaration to this end made within six months before and twelve months after their eighteenth birthday. If the declaration is made after age eighteen, it is assumed that the person has never been French. However, acquisition upon reaching majority was not in force between January 1994 and the end of August 1998. During that time, persons born in France were only entitled to acquire nationality by declaration between the ages of sixteen and 21 if they had acquired five years of residence (except Francophones) without interruption before the declaration (A05d). However, this right was ruled out in cases of certain crimes or acts of terrorism committed between the ages of eighteen and 21, or if an expulsion order or a prohibition of residence had been issued during that time.

With the exception of the regulations in Belgium, Ireland and Portugal mentioned in section 3.2.2.3, currently only France and the United Kingdom have modes of *ius soli* after birth that allow for the acquisition of nationality *while a minor*. In France, minors born on the state's territory can become French by declaration between the ages of sixteen and eighteen if they have had five years of residence (since 1998: this may be interrupted) on the state's territory since the age of eleven (A05b). Additionally, between the ages of thirteen and sixteen, the declaration can be made with the child's consent by his or her parents if he or she has resided in France for five years since the age of eight (A05c). This mode is even open to children of diplomatic or consular personnel. The declaration can only be refused within six months of the official receipt, noting the submission of all documents necessary for the declaration, being delivered to the target person.³¹ In the United Kingdom, native-born minors are entitled to be registered as British citizens if their mother or – if the child is legitimate – their father becomes 'settled' or British (A05a). Only when section 9 NIAA 2002 comes into force (no date set yet) will the legitimacy of a child's birth make no difference. Being settled means that a person's residence is not subject to any time limit under immigration law, which in general requires a permanent permit ('indefinite leave to remain'). In addition, persons born in the United Kingdom after 1982 also have a right to register as British citizens at any time after their tenth birthday if they have not been abroad for more than 90 days within their first

³¹ However, since 1998, the public prosecutor can also contest the declaration in cases of false information or fraud within two years of its discovery (see loss mode L09) and, since late 2003, also within one year of the declaration if the conditions are not satisfied (mode L10).

ten years of life (A05b). Unlike France, a fee has to be paid for both modes of registration, which is 188 British pounds (~ 270 euros) for minors and 200 British pounds (~ 290 euros) for adults.

All other modes of *ius soli* after birth require the target person to have *attained majority*. The provisions in Luxembourg, the Netherlands (since April 2003)³² and Belgium (A05d) do not contain an upper age limit. However, in Finland the declaration is limited to persons younger than 23, in Italy (A05a) to persons not yet nineteen and, in Belgium, for a declaration via mode A05e, to persons who are under the age of 22. The *residence requirements* vary considerably for these six modes. In Italy (A05a), target persons must have had their main residence in the country since birth until the age of eighteen and, in the Netherlands and Belgium (A05d), they must have resided in the country since birth by the time they make the declaration. The conditions are more liberal for the other modes: Belgium (A05e) demands one year of residence immediately before making use of the option and residence between the ages of fourteen and eighteen or for at least nine years in total. Finland requires two years of residence directly before the declaration and six years of residence in total. In Luxembourg, persons opting for nationality must have resided in the country for the last year and need to have had five years of uninterrupted residence sometime in the past. Except for Belgium, where illegal residence seems to be taken into account as well under certain circumstances, legal residence for the whole of the prescribed period is now required in all states. In Italy, before the new law of 1992 came into force, however, the residence neither had to be legal nor uninterrupted since birth.

Which *other conditions* have to be met by persons wanting to acquire nationality via any of these six modes of *ius soli* after reaching the age of majority? Mode A05a in Italy is the only one for which no additional conditions apply. In three of the four remaining states, the main or only additional condition concerns the person's criminal record. In Belgium (A05d+e), acquisition can only be prevented by the public prosecutor in cases of 'serious facts with respect to the person', which mainly concern grave criminal convictions. In the Netherlands, since 2003, target persons must not have been convicted in the past four years of certain crimes³³ and, in Finland (since 2003), they must not have been sentenced to imprisonment at any time in the past. Besides these integrity clauses and the fees to be paid (300 euros in Finland, 132 euros in the Netherlands), only minor additional conditions apply in the latter two states. These are that applicant must not have acquired nationality by declaration before (the Netherlands) or must not have lost it on the grounds of fraud in an acquisition procedure and that acquisition by (former) nationals of a 'hostile state' is ruled out during a state of defence (Finland). Contrary to general residence-based modes of acquisition, the Netherlands does not require native-born persons to renounce their previous nationality. The lack of or relatively undemanding additional conditions in these states are in stark contrast to the option in Luxembourg, for which applicants basically have to meet all the conditions for regular naturalisation. This means that they not only need a more or less clean criminal record, but they must also prove sufficient knowledge of one official language and a basic knowledge of Luxemburgish, they must not have any obligations towards their country of origin, and – most importantly – they must renounce their previous nationality.³⁴ Despite imposing the least exacting residence requirement, Luxembourg therefore has the most restrictive special rules of acquisition of nationality after birth based on *ius soli*. However,

³² Before that date, the declaration could only be made before the age of 25.

³³ For details on the interpretation of these rules in the Netherlands and Belgium, see section 3.3.1.12.

³⁴ For more details on all of these conditions, see section 3.3.1.

compared to the adapted residence-based modes of acquisition in Austria, Greece, Spain and Italy described in section 3.2.2.4, it is still comparatively liberal.

Table 3.3: Ius soli after birth (A05): acquisition of nationality by persons born in the country to non-national parents – main rules in force since 1985

	Type of acquisition	Age	Residence	Other conditions
AUT	<i>Discretionary granting</i>	No limits	Four (minors) or six years before application	See mode A06a (see sect. Error! Reference source not found.)
BEL	A05b (=A02b): <i>Declaration</i>	0-12	Since birth	Both parents have had main residence there for ten years prior to declaration
	A05d : <i>Declaration</i>	18+	Since birth	No 'serious facts with respect to person'
	A05e : <i>Option</i>	18-22	One year before option and between ages of fourteen and eighteen or nine years in total	No 'serious facts with respect to person'
FIN	<i>Declaration</i>	18-23	Six years, previous two years uninterrupted	No prison sentence (since 2003), no loss of Finnish nationality due to false information, fee
FRA	A05a : <i>Ex lege</i>	18	Five years since age eleven	None
	A05b : <i>Declaration</i>	16-18	Five years since age eleven	None
	A05c : <i>Declaration</i>	13-16	Five years since age eight	None
	01/1994-08/1998: A05d : <i>Declaration</i>	16-21	Five years prior to declaration	No serious crimes and no illegal residence
GRE	<i>Discretionary naturalisation</i>	18+	'Permanent residence'	See mode A06 (see sect. Error! Reference source not found.)
IRE	Since 2001: ' <i>Doing an act only an Irish citizen is entitled to do</i> ' (=A02); Before 2001: <i>ex lege</i>	No limits	None	Since 01/2005: If neither parent is a national of C1 or UK or permanent resident in C1 or Northern Ireland: one parent must have been resident in C1 or N.I. for three of the four years prior to TP's birth
ITA	A05a : <i>Declaration</i>	18-19	Uninterrupted between birth and age eighteen	None
	A05b : <i>Discretionary naturalisation</i>	18+	Three years	See mode A06 (see sect. Error! Reference source not found.)
LUX	<i>Option</i>	18+	One year before option and five years uninterruptedly in the past	Loss of previous nationality, language skills, no criminal record of a certain type, no obligations towards country of origin
NED	<i>Declaration</i>	18+	Since birth	TP has not acquired nationality by declaration in past, no criminal record of certain type (since 2003)
POR	<i>Declaration</i> (=A02)	0-18	None	One parent has had legal residence for six (for nationals of Portuguese-speaking countries) or ten years (other nationalities) at time of TP's birth. Before reform 1994: six years of legal or illegal residence for parents of all nationalities
SPA	A05b : <i>Discretionary naturalisation</i>	No limits	One year	See mode A06 (see section Error! Reference source not found.)

UK	A05a: <i>Entitlement to registration</i>	0-18		One parent becomes settled or a British citizen, fee
	A05b: <i>Entitlement to registration</i>	10-	First years of life with max. 90 days absence per year	Fee

Notes: Transitional rules and rules for stateless or other small groups are excluded. Abbreviations: see Table 3.1.

States not listed in this table do not have (and since 1985 have not had) relevant rules.

3.3 Basic residence-based modes of acquisition of nationality after birth

3.3.1 General residence-based acquisition of nationality (mode A06)

In this section we will analyse the general regulations for the acquisition of nationality after birth requiring a certain period of residence, which are not targeted at any other group used to define modes of acquisition in our typology (e.g. persons born or raised in the respective country, family members, nationals of certain states, former nationals, refugees, etc.). In most states, these regulations are the most important ones for the acquisition of nationality after birth. However, because of the restrictiveness of the rules in comparison to the ones for other modes, because of a special composition of the foreign population (e.g. many persons who are stateless or of a particular nationality) or because of special rules targeting persons with a special affinity to the respective country (especially former nationals, members of an ethnic diaspora), mode A06 may only be of subordinate importance in practice.³⁵

In eleven of the fifteen old EU states, only one set of regulations can be classified as an example of a general residence-based mode of acquisition (A06). The laws in four countries, by contrast, contain rules for more than one mode of acquisition relevant in this context:

- In Austria, the most basic residence-based mode of acquisition of nationality is by discretionary granting after ten years of residence (A06a). Since 1999, the required residence period can be reduced to four years for minors or six years for adults in cases of ‘sustainable personal and professional integration’ in Austria (A06b). If applicants can prove such sustainable integration after fifteen years, they have also been entitled, since 1999, to the granting of nationality (A06c). However, this type of entitlement, that is independent of special integration, only arises after domicile in Austria for 30 years (A06d);
- Since the reform of 2000, the main residence-based acquisition of nationality in Belgium is by declaration after seven years of residence (A06a). However, foreign nationals can still apply for naturalisation after three years (before reform: five years) of residence (A06b), but the procedural requirements and material conditions for it are more demanding;
- In Germany, the most important residence-based mode since 2000 has been naturalisation on the basis of an entitlement after eight years of residence (A06a). On the other hand, naturalisation by discretion after the same duration of residence is still possible (A06b);
- Finally, in the Netherlands, naturalisation can be achieved after five years of uninterrupted residence (A06a), which is reduced to two years of uninterrupted residence before the

³⁵ See Chapter 6 of this volume on statistical developments.

application in cases where the person's total residence in the past adds up to ten years (A06b). Since April 2003, however, target persons aged 65 or older with fifteen years of uninterrupted residence can acquire nationality by declaration (A06c).

In total, we are therefore dealing with 22 general residence-based modes of acquisition of nationality in the EU15 states. The level of detail of the analysis of these modes of acquisition will be higher than those for most others because, quite often, the regulations for these other modes build on those for general residence-based modes.

We first focus on questions concerning the procedural characteristics of the general residence-based modes of acquisition of nationality in sections 3.3.1.1 to 3.3.1.8. Topics covered are the type of acquisition, whether the target persons are entitled to acquisition or whether it lies within the authorities' discretion, the authorities' obligation to justify negative decisions, appeal rights, responsible authorities, maximum duration of the procedure, fees, oaths of loyalty and citizenship ceremonies. Table 3.4 gives an overview of the relevant regulations. We will then turn to the material conditions persons have to meet in order to be eligible for naturalisation or acquisition of nationality by declaration via the relevant modes. We look at age requirements, the duration of residence in the past and the current residence status, the requirement that previous nationality be renounced, the target persons' 'good character' and criminal record, their financial situation, knowledge of the language(s) of the respective state as well as of general aspects of the country, broader 'integration' and 'assimilation' clauses and other potential conditions. The rules in these areas are summarised in Table 3.5.

3.3.1.1 *Type of acquisition*

First of all, the acquisition of nationality by means of twenty of the 22 modes is by *naturalisation*, i.e. it requires an application by the target person and an act of granting by a public authority. This type of acquisition is mostly also called 'naturalisation', with the exception of Austria (granting), Finland and Sweden (acquisition by application) and Spain (acquisition by residence).

Only Belgium (in 2000) and the Netherlands (in 2003) introduced regulations for a general residence-based mode of acquisition by *declaration* relatively recently. The difference compared to a naturalisation procedure is that no real granting by an authority is required, but nationality is acquired by simple registration after it has been established that all conditions are met (the Netherlands) or as soon as it is clear that the responsible authority does not issue a negative recommendation concerning the acquisition (Belgium). In the Netherlands, however, declaration is only open to a small group of persons, i.e. persons aged 65 or older with at least fifteen years of uninterrupted residence (A06c). In Belgium, by contrast, declaration after seven years of residence is now the main residence-based mode of acquisition of nationality (A06a).

3.3.1.2 *Discretion or entitlement*

A certain level of unpredictability is introduced into many acquisition procedures for two reasons: firstly, because the responsible authority is given discretionary power – within more or less well defined limits – to allow or to refuse the granting of nationality; and second, because the legal requirements are vague and, therefore, leave a certain amount of room for interpretation. It is furthermore important to note that, even if applicants are entitled to acquisition in cases where all conditions are met, which means that the final decision is not left to the authority's discretion, vaguely defined conditions (e.g. 'integration', 'good

character’, ‘no danger to public order or national security’) can still lead to considerable insecurity regarding the procedure. Whether the 22 modes of acquisition contain any unclear conditions of this kind will be analysed in sections 3.3.1.10 ff.. Here, we will focus on the question of whether or not applicants are, in principle, entitled to acquisition if they meet all the requirements.

The question whether the granting lies within the authorities discretion or whether target persons are entitled to nationality is easy to answer only for some states. Since it is explicitly mentioned in the law, since there is no possibility of appeal, or because it is unanimously interpreted in this way, it is more or less clear that naturalisation in Belgium (A06b), Denmark, Finland, France, Greece, Ireland, Italy, Portugal, Sweden and the United Kingdom, as well as discretionary naturalisation in Austria (A06a+b) and Germany (A06b), are based on a discretionary decision by the responsible authorities. By contrast, applicants are explicitly entitled to naturalisation via modes A06c and A06d in Austria and via mode A06a in Germany, even if some of the conditions (especially in Austrian law) leave considerable room for interpretation. The acquisition of nationality by declaration for persons aged 65 and over in the Netherlands (A06c) is also clearly based on an entitlement.

The situation is less clear in all other cases. The Dutch government has claimed that naturalisation (A06a+b) is a right that applies to all persons who meet the conditions. However, legal scholars have questioned this by pointing out that the law still contains unclear conditions (‘integration’, ‘serious suspicion of bad behaviour’).³⁶ In Spain, the Supreme Court ruled in 1999 that if they meet all the conditions, applicants are in fact entitled to naturalisation. In 2002, however, it emphasised in another ruling that the authorities have discretion to deny naturalisation if it endangers the ‘public order’ or is not in the ‘national interest’. Naturalisation is also seen as a right of applicants who meet the requirements in Luxembourg. However, since the final decision is made by parliament, it is unclear what could prevent the legislature from not including an applicant who meets all legal conditions in the law that confers nationality. Finally, the declaration in Belgium was clearly intended to give foreign nationals an entitlement to acquire nationality. Nevertheless, legal scholars (including the project correspondents) and NGOs³⁷ have argued that the right to acquire nationality by declaration is devalued somehow by an unclear interpretation of the requirements of ‘main residence’ and the absence of ‘serious facts with respect to the person’ (see sections 3.3.1.10 and 3.3.1.12).

With regard to the liberality or restrictiveness of a particular mode of acquisition of nationality, its official definition as being based on an entitlement seems to be of much less importance in practice than the contents and clarity of its underlying conditions, the obligation of the responsible authority to justify negative decisions, and the possibilities of appeal. Anticipating a result of the discussion in the following sections, it can be noted that, among the general residence-based modes of acquisition of nationality based on entitlement in the EU15 states, the conditions for naturalisation in Germany (A06a) and the declaration by older persons in the Netherlands (A06c) are those most clearly defined and leaving the least room for interpretation. By contrast, some of the requirements to be met for acquisition of nationality by declaration in Belgium (A06a), for the right to naturalisation in Austria after 30 years of residence (A06d), Luxembourg, the Netherlands (A06a+b) and, especially, in Austria after fifteen years of residence (A06c) and in Spain are very vaguely defined. The value of the entitlement to acquisition is therefore seriously jeopardised. Ambiguities in this context

³⁶ See Groot de, G. & Tratnik, M. (2002), ‘Nederlands Nationaliteitsrecht’, *Studiepockets privaatrecht Nr. 41*. W.E.J. Tjeenk Willink - Zwolle, section 5.5.6.

³⁷ See Chapter 5 in this volume on NGOs’ evaluation of nationality law and practice.

mainly concern the conditions of ‘good character’ (Belgium, Austria) and integration (Austria: A06c, Luxembourg, the Netherlands and Spain).

3.3.1.3 Obligation of authorities to justify negative decisions

The obligation of the responsible authorities to justify negative decisions can mitigate the effects of the right of authorities to decide on a discretionary basis. Additionally, it is the precondition for any effective right of the persons concerned to be able to appeal against unfavourable decisions.

In Austria, Finland, France (since 1994), Germany, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden, the authorities’ duty to justify their decisions is either inscribed in the law itself or in a decree, or it is based on the general principle that all administrative decisions have to be justified. In some of these states, the courts have reaffirmed this obligation. In Austria, the Administrative Court has ruled repeatedly that the authorities must give sufficient reasons for why they used their discretion in a naturalisation procedure in the way they did. In Spain, no justification for a decision must be given if the application is denied for reasons of ‘public order’ or ‘national interest’. However, the Supreme Court ruled that such indeterminate concepts cannot be interpreted arbitrarily and require justification.

In three more states, the authorities’ duty to justify negative decisions was only introduced recently or is still less straightforward. For a long time, in the United Kingdom, the Secretary of State did not have to justify his or her discretionary decisions. In 1998, the Court of Appeal modified this absolute discretion to some degree by ruling in the Fayed case that, even though the Home Secretary has no general duty to justify his or her discretionary decisions, rules of fairness nevertheless have to be observed. In the end, the NIAA 2002 repealed the sections of the BNA 1981 exempting the Secretary of State from the obligation to justify his or her discretionary decisions. In Ireland, the Nationality Act does not contain any obligation for the Minister of Justice to justify his or her decisions. However, a decision by the Information Commissioner in 2003 established that the Minister is required to give reasons and this has not been challenged by the Minister. Therefore, in some cases, a failure to give reasons may lead to judicial review proceedings. In Belgium, the public prosecutor is the only authority who can prevent acquisition by declaration (A06a) and he or she clearly has to motivate his or her decisions. If the public prosecutor issues a negative recommendation, however, and the case is transferred as a naturalisation case to the House of Representatives (A06b), a refusal to grant nationality no longer has to be justified.

In addition to Belgium, in naturalisation cases, general administrative procedure laws do not apply to naturalisations in Denmark or Greece either, which means that no legal obligation derives from these laws to justify rejected applications. However, in Denmark, parliament always gives reasons for non-approved naturalisations unless the reason for the rejection is that the applicant is considered a threat to national security.³⁸ By contrast, the authorities in Greece do not even have to respond to applications for naturalisation. In some cases, applicants therefore wait in vain for years or even decades for a decision on the application.

3.3.1.4 Right of appeal

In Denmark, Greece and in Belgium (for mode A06b) there is also no effective possibility of appeal against a refused naturalisation. In Denmark, applicants can usually only reapply. In

³⁸ It can be argued that an obligation to justify declined applications derives from Article 11 of the ECN.

Greece, no real right to appeal exists, also because negative decisions do not have to be justified, but applicants can still file an appeal with the Council of State. No appeal against a refusal to grant naturalisation is possible in Belgium (A06b), but if the public prosecutor issues a negative recommendation in a procedure to acquire nationality by declaration (A06a), the person can prevent the case from being transferred automatically into a naturalisation case before parliament by asking the registrar, within fifteen days, to hand the case over to the court of the first instance. A further appeal is then possible to the court of appeal.

Applicants in Ireland can ask for a judicial review of the Minister's decisions by the High Court, although the chances of success are limited because the granting of nationality is within the 'absolute discretion' of the Minister. In the United Kingdom, prior to 2002, rejected naturalisation candidates could also only ask for a judicial review of the Secretary of State's discretionary decision. With the NIAA 2002, they were given a proper right of appeal to the Secretary of State, but judicial review in the Divisional Court of the Queen's Bench Division of the High Court (which recently established a separate branch for such cases) is still possible, even if it only curtails the Minister's discretionary powers to a limited degree.

In all other states, at least one instance of appeal is provided for rejected applicants. The Netherlands even offers three and Germany four stages of appeal, the first instance of which is – as in the United Kingdom – the authority that made the decision and subsequent instances are courts (for details see Table 3.4). In Austria, Finland (since 1998)³⁹, France, Italy and Spain, the first or only instance of appeal is an administrative court; in Luxembourg and Portugal it is another court and, in Sweden, it is the Alien Appeals Board.

However, in most cases, the instances of appeal do not have plenary jurisdiction, i.e. they cannot make a final decision on the case and grant nationality. Rather, they can only refer the case back to the authority to make a new decision that is in line with legal or constitutional requirements. This is the case in Austria, France, Ireland, Italy, the Netherlands and Portugal, as well as in the United Kingdom for the second instance of appeal. Therefore, naturalisation cannot be enforced by means of appeal in these states, but the right of appeal can only limit the authorities' discretion and/or their room for interpretation of vague clauses. In Germany, the situation is slightly more complicated. The instances of appeal (administrative courts) in Germany cannot grant nationality themselves, but only refer the case back to the authority that made the initial decision. However, if the court comes to the conclusion that only a positive decision is possible, which can mainly occur in procedures of naturalisation based on entitlement (A06a), the court may force the administrative authority to grant nationality.

In some other states, the instances of appeal cannot only remit the case back to the initial authority, they may also overturn the decision of the first responsible authority and grant nationality themselves. This is possible not only in states where applicants meeting the conditions have a right to acquisition, i.e. Belgium (A06a), Luxembourg and Spain, but also in Finland and Sweden, where naturalisation lies within the authorities' discretion.

3.3.1.5 Responsible authorities and further particularities of the procedure

The authorities in the EU15 states that are responsible for making the final decision on whether to grant naturalisation or to object to the acquisition of nationality by declaration are varied. They can be regional judicial authorities, executive authorities at local, regional or national level, as well as national parliaments.

³⁹ Until August 1998, the President was responsible for matters of nationality and no right of appeal existed.

In *declaration procedures*, the responsible authorities in both cases are below the national level. In Belgium (A06a), it is up to the public prosecutor to object to acquisition by declaration and the local registry is responsible for transcribing the declaration into the population register, whereupon nationality is acquired. In the Netherlands, it is the local council (mayor) where the person resides, which checks whether all the conditions are met by persons aged 65 and over who want to acquire nationality by declaration (A06c).

Decisions on applications for *naturalisation*, by contrast, only fall within the realm of responsibility of authorities below the national level in two federal states. In Austria, the government of the province in which the applicant has his or her main residence not only checks whether the applicant meets all requirements, it also makes the final decision. In Germany, the responsible authorities are determined by the laws of the sixteen federal states. In most of the other EU15 states, central executive authorities make the final decision on applications for naturalisation. The responsible authorities are:

- the Ministry of the Interior (Greece, Portugal and the United Kingdom) or an authority subordinate to it (Finland: Directorate of Immigration⁴⁰);
- the President of the Republic on the recommendation of the Minister of the Interior (Italy);
- the Monarch, on the basis of a recommendation by an authority subordinate to the Ministry of Alien Affairs and Integration (the Netherlands: Immigration and Naturalisation Service);
- the Ministry of Justice – either along (Ireland) or on the recommendation of another central authority (Spain: General Directorate of the Registrars and Notaries Public – DGRN);
- the Ministry of Social Affairs (France); or
- a separate institution implementing immigration, asylum and citizenship policy under the control of government (Sweden: Migration Board; before July 2000: Immigration Board).

In some of these states, other authorities are also involved in the procedure. In France, the conditions are checked by the regional *préfecture* where the application was lodged. The *préfecture* interviews the applicants as well, in particular to test their language skills and knowledge of France.⁴¹ The Prefect writes a report on which the Ministry of Social Affairs bases its decision. In Italy, the request for naturalisation must also be filed at the Prefecture. The Prefect collects all the documents and submits them to the Interior Ministry, which checks (again) if the conditions are met. The Minister then recommends applicants who he or she deems worthy of naturalisation to the President, who makes the final decision after consulting the Council of State. In the Netherlands, the application has to be lodged at the local council, which has generally only been possible since April 2003 after having passed the ‘naturalisation test’ on the applicants’ knowledge of the Netherlands and the Dutch language. The complete file, together with a recommendation concerning the case, is then transferred to the Immigration and Naturalisation Service, which assesses the application. Applicants meeting the conditions are then recommended to the Queen for naturalisation. Applications for naturalisation in Spain have to be filed at the local civil registry. The judge in charge of the register leads the investigation, which also includes an interview with the applicant. The DGRN, to which the file is transferred together with a recommendation, may double check, however. The DGRN then puts forward all applications meeting the conditions to the Ministry of Justice for the final decision. However, nationality is only acquired if the target person expresses the wish to acquire nationality, swears an oath of allegiance, and ‘renounces’ his or

⁴⁰ Before August 1998, the Finnish President was the authority formally deciding on nationality matters.

⁴¹ On these two conditions in France and the other countries mentioned below, see sections 3.3.1.14 and 3.3.1.15.

her previous nationality before the civil register of his or her place of residence within 180 days of notification of the granting of nationality. Only then is the naturalisation inscribed in the register, otherwise the grant expires. A similar rule applies in Portugal, where the acquisition of nationality only becomes effective when the target person registers his or her naturalisation at the Central Nationality Register in the Central Registry Office. The Ministry of the Interior is responsible for the actual naturalisation procedure, even if certain authorities (as in most states) are always consulted. In Sweden, the Migration Board decides most applications for naturalisation itself, but it may forward a case to the government if it considers it to be important in practice.

Naturalisation requests are not always decided by an executive authority, however. In Belgium (A06b), Denmark and Luxembourg, naturalisation always occurs by law passed by parliament. Applications for naturalisation in Belgium must be lodged at the local registry or sent directly to the House of Representatives. The House then requests a recommendation from the public prosecutor, who has to issue it within a month (otherwise it is deemed positive) and it can also ask for advice from other authorities. The decision on naturalisation cases is then made by the House's Commission on Naturalisation or one of its chambers. In Denmark, the Ministry of Integration checks whether applicants meet the conditions and drafts a bill. The draft law is submitted to the parliamentary standing committee on nationality, which may suggest that individual applicants be excluded from the bill during its deliberations. Finally, in Luxembourg, applications for naturalisation have to be made at the municipal council. The municipal council then transfers the file, together with a justified opinion, to the Ministry of Justice, which assesses the case. The file is then submitted to the Council of State, which transmits it to the Chamber of Deputies for the final decision.

3.3.1.6 Maximum duration of the procedure

Another indicator of the extent of discretion held by the responsible authorities is whether or not they have to make their decision within a certain period of time. No limits of any kind concerning the duration of the procedure are set in Denmark, Finland, Greece, Ireland, Luxembourg, Portugal, Sweden or the United Kingdom. In Portugal, limits only apply to certain steps in the procedure,⁴² but not for the final decision by the Ministry of the Interior.

In all other EU15 states, at least certain limits are set by the nationality law itself or by some other legal rules (especially general rules for administrative procedures). The quickest procedure in this context, at least in theory, is acquisition by declaration in Belgium (A06a). The public prosecutor only has four weeks, which can be extended by another eight weeks in certain cases, to issue a positive or negative recommendation on a person's declaration. If no opinion is given within this period, the recommendation is assumed to be positive and the declaration is inscribed in the register, whereupon nationality is acquired. In a naturalisation procedure before the Belgian parliament (A06b), however, there are no limits to the duration of the procedure. Comparatively tight time limits also exist for a declaration procedure in the Netherlands (A06c) which may, in principle, last up to thirteen weeks, but it can be extended once by another thirteen weeks. A naturalisation procedure (A06a+b), by contrast, has a much longer time frame. The Dutch authorities have to decide the case within one year of payment of the naturalisation fee, but this period can be extended twice by a period of six months. The same total time, i.e. two years, is available to the authorities to make their decision in Italy. The authorities in Austria are given six months and, in France, eighteen months from the time

⁴² I.e. eight days to analyse whether the application is complete, eight days to ask the Ministries of Justice and External Affairs to provide information on the case, and two months for these Ministries to provide information.

the application is complete to reach a decision. In Spain, the legally prescribed maximum duration of the procedure is one year. Finally, in Germany, the authorities do not face a maximum time period within which they have to decide. However, according to the rules of administrative courts, applicants can file a complaint if the responsible authority has not made a decision after three months without sufficient justification.

In practice, however, the authorities do not always seem to abide by the rules mentioned (e.g. in Belgium and Spain). In addition, naturalisation is often dragged out, not so much by the authorities deciding a case, but by the arduous process of collecting and supplementing the required documents. In countries which do not allow applicants to keep their previous nationality, lengthy procedures to renounce nationality in the country of origin may also intervene.⁴³

3.3.1.7 Fees

Fees can be strong deterrents when it comes to applying for naturalisation or filing a declaration to acquire nationality, especially for persons at the lower end of the income scale. However, only Belgium, France, Italy, Luxembourg and Spain do not charge a fee – except for stamp duties – for general residence-based acquisition of nationality. In Belgium, fees were abolished only in 2000, in France in 2001 and in Luxembourg in 2002. In Belgium, however, municipalities may still charge local stamp duties in a declaration procedure (A06a). If the declaration is refused and transferred to the court of the first instance (not if it is converted into a naturalisation case), registry fees are due. The only fees in Italy are also stamp duties of about 11 euros, which are due before taking the oath of loyalty.

For most modes of acquisition in the other states fixed fees apply. The fee is 56 euros in Portugal for registering the naturalisation, slightly more than 130 euros for the application for naturalisation in Denmark (1,000 Danish crowns), and for the declaration by elderly foreign nationals in the Netherlands (A06c); about 160 euros (1,500 Swedish crowns) for the application in Sweden; 255 euros for naturalisation in Germany; (roughly) 400 euros for the application in Finland; about the same amount in the United Kingdom for the naturalisation itself and the ceremony (268 British pounds) plus, since November 2005, about another 58 euros (40 British pounds) for the test of knowledge of life in the United Kingdom; about 635 euros for naturalisation in Ireland;⁴⁴ and almost 1,470 euros for naturalisation in Greece! In two countries, the fees depend on the applicant's income. For an application for naturalisation in the Netherlands (A06a+b), a fee ranging from 229 euros to 344 euros is due. On top of that, applicants have to pay 255 euros for the naturalisation test (90 euros for the part on 'societal orientation', 165 euros for the language test). The total fee therefore ranges from 484 euros to 599 euros. The situation in the last country, Austria, is complicated. All applicants there have to pay a federal application fee of 43 euros and a federal granting fee, which is 725 euros for a discretionary naturalisation (A06a+b) and 545 euros for naturalisation based on an entitlement (A06c+d). In addition, the provincial governments charge two additional fees, one for the 'assurance of granting' as soon as release from the previous nationality is demonstrated (which is required for applicants who cannot prove that they lose their previous nationality automatically upon naturalisation in Austria) and one for the granting itself.⁴⁵

⁴³ See Chapter 5 of this volume on the NGOs' evaluation of nationality law and practice.

⁴⁴ Since January 2005, minors can also apply for naturalisation: they only have to pay a fee of approx. 127 euros.

⁴⁵ Only one province does not charge a fee for this assurance; in the others it ranges from 7 to 80 euros. All provinces charge a separate provincial granting fee, which depends on the applicant's income in five provinces and which is higher for a discretionary naturalisation (A06a+b) than for a granting based on an entitlement

Adding all the fees together, the fees may total between 841 euros and 1,878 euros for modes A06a+b and between 631 euros and 1,547 euros for modes A06c+d. In Vienna, where roughly 40-45 per cent of all annual naturalisations in Austria have taken place since the end of the 1990s, the total fee for naturalisation (including its assurance) is 958 euros for a discretionary granting (A06a+b) and 882 euros for a granting based on an entitlement (A06c+d).

To summarise, the acquisition of nationality in some of the EU15 states – especially in Austria and Greece, as well as some other states – can therefore be rather expensive. This is particularly true when taking into account that, in most cases, additional fees for the issue or certification of required documents are due. Additionally, the fact that many applicants acquire nationality together with their spouses and children, for whom the acquisition of nationality is often tied to certain additional fees or other costs, is also relevant. What is also troubling is the fact that in some states the fee is due not for the acquisition itself, but for the application: this is true in Austria (partially), Denmark, Finland, the Netherlands and Sweden.

3.3.1.8 Oath of loyalty and 'citizenship ceremonies'

States frequently attach considerable symbolic value to nationality. Therefore, in order to emphasise that value, states frequently require new nationals to declare their allegiance to the state and its values. Occasionally, they also have to attend a ceremony during which they have to swear the oath and are officially welcomed into the community of nationals.

Persons to be naturalised in Finland, France, Luxembourg, the Netherlands (A06a+b), Portugal and Sweden, as well as those becoming nationals by declaration in Belgium (A06a) and the Netherlands (A06c), do not have to take an oath. In all other states and in Belgium, in cases of naturalisation (A06b), applicants have to swear an oath or sign a declaration to this end. In Germany, this type of declaration was only introduced in 2000 and in Denmark and the United Kingdom in 2002. With the exception of Germany, the oaths or declarations are short and fairly similar. They almost always contain pledges of loyalty to the state and promises of observance of or respect for the law and the constitution. Other pledges to be made include loyalty to the monarch (Spain, United Kingdom), the country's society (Denmark) or the nation (Ireland), compliance with the ECHR (Belgium), respect for the state's rights and freedoms and the promise to uphold its democratic values (United Kingdom), avoiding harming the state's interests or reputation (Austria) and the promise to fulfil citizenship duties (Greece, United Kingdom). In Germany, the declaration to be signed is by far the longest: not only are a profession of the Basic Law and its democratic order required, but persons to be naturalised also have to approve of certain features of the constitutional order, such as elections, the separation of powers, the rule of law, the right to opposition, the independence of the courts and human rights. In addition, they also have to declare that they do not have or support any intention to overthrow the state and its constitutional order, to disrupt the administration of constitutional bodies, or to endanger Germany's external relations by violent means.

In Denmark, applicants must take the oath before they can be listed in a naturalisation bill. On the other hand, three states set a time limit within which the oath has to be taken, otherwise the granting expires: in Italy and Spain the period is six months and in Greece it is one year.

(A06c+d) in seven provinces. This provincial granting fee can therefore range from 43 to 872 euros for naturalisation based on an entitlement and from 72 to 1,090 euros for a discretionary granting.

Finally, at present, persons to be naturalised have to attend a ‘citizenship ceremony’ only in the United Kingdom (since 2002). In Austria, some provinces (e.g. Vienna) also organise such ceremonies, but attendance is not compulsory. Two more states are planning to introduce granting ceremonies. In the Netherlands, the Minister of Integration and Alien Affairs recently announced a proposal to introduce a ‘naturalisation day’, on which all new Dutch nationals acquire their Dutch passports after having participated in a ceremony. In Denmark, with effect from 2006, new nationals are invited to attend a ceremony in parliament to inform them of their rights and duties as nationals.⁴⁶

⁴⁶ Migration News Sheet, July 2005.

Table 3.4: Basic residence-based modes of acquisition (A06) in force at the end of 2004 – procedural characteristics

	Mode	Acquisition by	Discretion / entitlement	Decisions justified	Decision-making authority	Max. duration of procedure	Fees	Oath of loyalty	Right of appeal to:
AUT	A06a+b A06c+d	Granting (naturalisation)	Discretion Entitlement	Yes	Provincial government of province of residence	6 months from filed application	€ 768 + € 72.7-1,110.2 € 588 + € 43-959.3	Yes	Administrative Court or Constitutional Court
BEL	A06a	Declaration	Entitlement	Yes	Registrar, public prosecutor (PP)	4-12 weeks for PP to issue opinion	No, except for local stamp duties	No	1. House of Representatives or court of first instance, 2. Court of Appeal
	A06b	Naturalisation	Discretion	No	House of Representatives	No	No	Yes	No
DEN	A06	Naturalisation	Discretion	No; in practice, yes	Parliament	No	DKK 1,000 (~ € 134) for application	Yes	No, but reapplication possible
FIN	A06	Application	Discretion	Yes	Directorate of Immigration (subordinate to Ministry of Interior)	No	€ 400 for application	No	1. County Administrative Court, 2. High Administrative Court
FRA	A06	Naturalisation	Discretion	Yes	Ministry of Social Affairs	18 months from filed Application	No	No	1. Administrative Court, 2. <i>Conseil d'Etat</i>
GER	A06a	Naturalisation	Entitlement	Yes	Authorities determined by laws of federal states	Complaint possible after 3 months inactivity of authority	€ 255 for naturalisation	Yes	1. Authority that decided, 2. Administrative Court, 3. Administrative Appeal Court, 4. Federal Administrative Court
	A06b	Naturalisation	Discretion						
GRE	A06	Naturalisation	Discretion	No	Ministry of the Interior	None: no reaction to application required	€ 1,467.4 for naturalisation	Yes	No; reapplication after 1 year
IRE	A06	Naturalisation	Discretion	Yes	Ministry of Justice, Equality and Law Reform	No	€ 634.9 (€ 127) for naturalisation	Yes	High Court
ITA	A06	Naturalisation	Discretion	No	Ministry of the Interior (officially: President of the Republic)	730 days from application	Stamp duty of ~ € 11	Yes	Regional Administrative Tribunal or President; Reapplication after 1 year
LUX	A06	Naturalisation	Entitlement	Yes	Chamber of Deputies	No	No	No	Civil court
NED	A06a	Naturalisation	Entitlement	Yes	Immigration and Naturalisation Service (Ministry of Alien Affairs & Integration) (officially: Monarch)	1 year + 6+6 months from application	€ 229-344 for application + € 255 for naturalisation test	No	1. Authority that decided, 2. District Court, 3. Judicial Division of State Council
	A06b								
	A06c	Declaration	Entitlement		Municipal council / Mayor	13 + 13 weeks	€ 132 for declaration		
POR	A06	Naturalisation	Discretion	Yes	Ministry of the Interior	No, only for certain steps in procedure	€ 56 for registration	No	1. Lisbon Court of Appeal, 2. Supreme Court
SPA	A06	Residence (naturalisation)	Entitlement	In general, yes	Ministry of Justice following proposal by General Directorate of Registrars and Notaries Public	1 year from application	No	Yes	Administrative Court
SWE	A06	Application (naturalisation)	Discretion	Yes	Swedish Migration Board	No	SEK 1,500 (~ € 160) for application	No	Alien Appeals Board

	Mode	Acquisition by	Discretion / entitlement	Decisions justified	Decision-making authority	Max. duration of procedure	Fees	Oath of loyalty	Right of appeal to:
UK	A06	Naturalisation	Discretion	Yes	Secretary of State	No	£ 268 (~ € 400) for naturalisation + £ 40 (~ € 58) for knowledge test	Yes	1. Secretary of State, 2. Divisional Court of Queens Bench Division of High Court

3.3.1.9 Minimum age

In most states, the minimum age for all modes of acquisition of nationality discussed here, as a rule, is the age of majority, i.e. eighteen. Only Austria, Spain and Ireland (since 2005) do not set a minimum age, nor does Germany for naturalisation based on an entitlement (A06a). Applicants for discretionary naturalisation in Germany do not have to be of a certain age, but they must have the legal capacity to act, which generally means that they have to be adults. As mentioned several times above, only persons aged 65 or over are eligible for acquisition of nationality by declaration in the Netherlands (A06c).

3.3.1.10 Residence requirements

Most modes of acquisition after birth require current residence in the country and a certain duration of residence there in the past. In the context of general residence-based modes of acquisition, we look at the following conditions: 1) duration of residence, 2) residence without interruptions, 3) permitted absences and, 4) residence status.

1. The *required duration of residence* for the main modes of general residence-based acquisition of nationality in the EU15 states ranges from four to ten years. It is three years for naturalisation in Belgium (A06b), four years in Ireland, five years in France, Luxembourg, the Netherlands (A06a), Sweden and the United Kingdom, six years in Finland, seven years for acquisition of nationality by declaration in Belgium (A06a), eight years in Germany (A06a+b), nine years in Denmark and ten years in Austria (A06a), Greece, Italy, Portugal and Spain.⁴⁷ None of the EU15 states therefore goes beyond the maximum residence requirement allowed by art. 6 (3) of the ECN, even though only ten EU15 states have signed the ECN and only six have ratified it.⁴⁸ Five states have raised the required residence period since the early 1990s, i.e. Italy from five to ten years in 1992, Greece from eight to ten years in 1993, Portugal from six to ten years in 1994, Denmark from seven to nine years in 2002, and Finland from five to six years in 2003. In three states, the change was in the opposite direction. The required residence for an entitlement to naturalisation in Germany (A06a) was reduced from fifteen to eight years in 2000. The amendment in force in Luxembourg since 2002 halved the residence requirement from ten to five years. Finally, in Belgium, before May 2000 applicants for naturalisation (A06b) had to prove five years rather than the present three years of residence. The possibility of acquisition of nationality by declaration after seven years (A06a) was only introduced with that reform.
2. Austria and the Netherlands (A06a) require uninterrupted residence before the application and the decision to grant nationality, whereas in Denmark residence must be without interruption only before the passing of the naturalisation bill. In most other states, residence has to be uninterrupted immediately before the application. However, there are some exceptions. The law and decrees in Italy and Portugal do not require an uninterrupted stay and do not mention periods of absence. In Finland, six years of residence directly before the application are necessary, but two years of uninterrupted residence are sufficient if total residence since the age of fifteen adds up to eight years. Greece requires ten years of residence over the past twelve years. Absences for certain reasons (e.g. health) may be left out of consideration. In Ireland, only the final year before the application has to be without interruptions. The four years of required residence can be

⁴⁷ Any reductions of the required residence because of a special status (certain nationality, refugee status, etc.) are not mentioned here, but in the sections on modes of acquisition targeting persons with such a special status.

⁴⁸ For the list of states see footnote 15.

spread over the last eight years. In the Netherlands, if five years of residence right before the application cannot be proved (A06a), two years of uninterrupted residence are also sufficient if total residence in the past adds up to ten years (A06b).

3. Some states demanding uninterrupted residence have rules concerning *permitted absences*. Residence abroad can be taken into account for naturalisation in Belgium (A06b) if the person demonstrates the retention of ‘real links’ with Belgium. In Denmark, the total residence must always add up to nine years but absences of one year or two years in the event of a stay abroad for reasons involving education, military service or visits to sick relatives, are accepted. Certain absences are equated with residence in France, e.g. if the absence is for the purpose of service to France or an organisation that is of interest to France or if it is in a country with which France is in a customs union. In Germany, absences of six months do not interrupt the required residence period of eight years. Even in cases of longer stays abroad, former residence in Germany may be taken into account for a period of up to five years. In the United Kingdom, the total absence during the five years before the application must not exceed 450 days and, in the last year, it must be 90 days or less. In addition, certain absences may be disregarded, especially those that are unavoidable consequences of the nature of the person’s work. In Spain, the Supreme Court ruled in 1998 that short stays abroad do not interrupt the ten-year period provided the person’s centre of life remains in Spain. No clear rules on absences exist in Austria and Luxembourg.
4. The residence at the time of application and during the minimum duration of stay must be *legal* in most states and often it must also qualify as ‘*main*’ or ‘*habitual residence*’. In addition, some states call for a *certain residence permit* either at the time of application or even during some of the required period of residence. However, no states have indirect additional waiting periods, by demanding that the residence must be covered in total by a special residence permit, which can only be acquired after some time of residence.⁴⁹ In Austria, legal residence during the required residence period is not required by law, but applicants for naturalisation on the basis of granting (A06a-d) must have had their registered ‘main residence’ in Austria for the whole period. However, registering one’s residence in Austria does not require a certain residence permit – or a residence permit at all. Legal residence is not a condition for naturalisation in Belgium (A06b), but parliament never considers requests from applicants without the right to stay. Persons declaring their intent to acquire nationality (A06a) must be allowed to reside in Belgium indefinitely. The type of legal residence required to meet the condition of seven years’ main residence is unclear, however. In this context, some public prosecutors do not take into account residence as an asylum-seeker. In Denmark in the 1990s, only residence on the basis of a permanent permit was counted. However, since 1999, applicants have only needed a permanent permit at the time the naturalisation bill is passed; before then any residence permit is sufficient. In Finland, the applicant has to have been permanently resident and domiciled in Finland for the required residence period, which is however not to be equated with holding a permanent residence permit. According to jurisdiction by the French courts, applicants for naturalisation in France must have a stable and permanent residence, as well as their centre of family and professional relations in the country. Germany requires legal habitual residence for the whole period of residence, but belated applications for the renewal of a residence permit are left out of consideration. In addition, if the person is not an EEA national, residence must have been on the basis of certain permits for non-temporary purposes. In Ireland, illegal residence as well as residence as a

⁴⁹ This is in contrast to practice in a number of new EU Member States; see the papers presented at the IMISCOE Cluster B3 Workshop, *Citizenship Policies in the new EU Member States and Turkey*, 30 June - 1 July 2005, Institute for European Integration Research, Vienna.

student or an asylum-seeker do not count. Besides legal residence for the whole required residence period, the rules in the Netherlands demand a residence permit for a non-temporary purpose at the time of application for naturalisation (A06a+b). In Portugal, legal residence has only been required since 1994; before then, even times of undocumented residence were taken into account. Persons to be naturalised in Sweden must have a permanent residence permit and, throughout the required residence period they must have held (or already applied for) at least a ‘temporary residence permit for settlement’ – all other forms of legal or illegal stay do not count. Applicants for naturalisation in the United Kingdom must not have been in breach of immigration laws for the whole five-year period. During the final year of residence they must have held a permanent permit (‘indefinite leave to remain’). However, both conditions can be waived by the Home Secretary. All other states only ask for legal residence.

Finally, the required residence period for the *other modes of general residence-based acquisition of nationality* can be shorter, but tied to additional conditions – six years (four years for minors) in Austria in cases of ‘sustained personal and professional integration’ (A06b), or longer because applicants are given an entitlement to the grant – in Austria, fifteen years in cases of ‘sustained personal and professional integration’ (A06c), or 30 years without proof of integration (A06d), or it may be longer because the other conditions are facilitated, even if only for a small group – fifteen years for persons aged 65 or over in the Netherlands (A06c). In principle, for these additional modes of general residence-based acquisition of nationality, the same rules apply concerning the lack of interruption, legality and type of residence described above for the other modes in Austria and the Netherlands. However, the main condition of ‘sustained personal and professional integration’ for modes A06b and A06c in Austria, is generally interpreted as a requirement that the applicant hold a permanent residence permit.

3.3.1.11 Loss of previous nationality

The need to give up one’s previous nationality or its automatic loss upon acquiring a new nationality can be a serious deterrent for persons interested in acquiring a new nationality, especially for those for whom their current nationality is an important part of their identity, or those who have family ties to or material interests in their home country. It is therefore important to ask: which EU15 states still require that foreign residents wishing to acquire nationality renounce their previous nationality? Under which circumstances do they nevertheless accept the occurrence of multiple nationality for persons becoming nationals via any of the general residence-based modes of acquisition described in this section?

At present, Belgium, Finland, France, Greece, Ireland, Italy, Portugal, Sweden and the United Kingdom do not require applicants for the acquisition of nationality via any mode to renounce their previous nationality.⁵⁰ The last states to abolish this condition were Italy in 1992, Sweden in mid-2001 and Finland in mid-2003. However, in Italy since 1994, nationals of states that do not allow multiple nationality could be asked to obtain clearance (‘*svincolo*’) from the authorities of their state of origin to the effect that they had been informed of the application for naturalisation, which made the retention of a foreign nationality impossible. The Ministry of the Interior made little use of this clause, however, and it was finally abolished by decree in October 2004.

⁵⁰ However, according to the 1963 Strasbourg Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, nationals of states that ratified this Convention will lose nationality automatically in three of these nine states, i.e. Belgium, France and Italy. Other states that ratified the Convention and (still) apply its regulations concerning the prevention of multiple nationality are Austria, Denmark, Luxembourg, the Netherlands and Norway.

Spain occupies a special position among the other six states. Upon registering their naturalisation within 180 days of its notification by the authorities, applicants⁵¹ not only have to take an oath of allegiance before the civil registrar of their place of residence, they also have to ‘renounce’ their previous nationality. However, they do not have to deliver any proof that this renunciation actually has or will become effective. The need to ‘renounce’ one’s previous nationality in Spain is therefore basically only a symbolic gesture.⁵²

A general prohibition of multiple nationality resulting from the acquisition of nationality, which is also enforced effectively, only exists therefore in Austria, Denmark, Germany, Luxembourg and the Netherlands.⁵³ Nevertheless, all five states have rules for exemptions under certain conditions: they all accept the multiple nationality of recognised refugees as well as of nationals of states where renunciation is legally impossible. Beyond this, however, the level of detail and explicitness of rules concerning exemptions from the renunciation requirement vary considerably. The regulations in Luxembourg, Denmark and Austria are much vaguer and more general than those in Germany or the Netherlands.

In Luxembourg, multiple nationality is tolerated only for two more groups, i.e. nationals of states that generally refuse to grant a release from nationality, and persons whose request for release has not been answered by the foreign state’s authorities after one year. Denmark only has one additional regulation, i.e. that multiple nationality may be accepted if it ‘involves extreme difficulties to obtain release’ from the previous nationality. This may be relevant for nationals of states that generally refuse to grant release or that make it dependent on unacceptable conditions. A clear practice has not emerged so far, however, partly because the Parliamentary Standing Committee on Naturalisation can always waive the renunciation condition.⁵⁴ In Austria, applicants for naturalisation have to take any possible and ‘reasonable’ (*‘zumutbar’*) action to be released from the previous nationality; for refugees, this is generally accepted as not reasonable. The only explicit specification in the law of what is ‘unreasonable’ are payments for the release ‘that are out of proportion for the person alone or for his whole family’. Beyond that, it is only clear from a 1995 ruling by the Administrative Court that a renunciation of the former nationality cannot be reasonably expected if it entails a complete loss of the means of existence. In all other circumstances, each case is checked to see if it is possible and reasonable to take (further) action for release.

By contrast, decrees in Germany and the Netherlands lay down many exemptions beyond those for recognised refugees and persons for whom renunciation is legally impossible. For naturalisation based on an entitlement in Germany (A06a), the exemptions concern the following: nationals of states that generally refuse to grant a release from nationality if a request for release was filed; applicants who would have to pay a fee for release which is higher than one month’s income (at least about 1,280 euros); persons who would face substantial economic or financial disadvantages; cases where a decision on an application for release has not been taken after two years and cannot be expected in the next six months; nationals of other EU Member States in cases of reciprocity; applicants who received most of their education in Germany or who grew up there and reached the age of liability for military service; applicants aged 60 or over if multiple nationality is the only obstacle to naturalisation, if the release from nationality leads to disproportionate difficulties, and if the refusal of naturalisation would involve particular hardship; cases where the foreign state makes release conditional on the completion of military service or conditions beyond the

⁵¹ Exceptions apply to applicants from certain states; see section 3.5.1.

⁵² The retention of the previous nationality may lead to the loss of nationality later on, however; see section 4.2.1.

⁵³ In the Netherlands, the renunciation requirement was abolished in 1992, but reintroduced in 1997.

⁵⁴ For example, this happened in a case in which a person would have lost his pension in the country of origin.

applicant's control.⁵⁵ In the Netherlands, many of the same general groups of persons are exempt, i.e. nationals of states that generally refuse to release their nationals; persons for whom renunciation would be too costly or would lead to other substantial financial or economic losses; nationals of states which ratified the Second Protocol of the 1963 Strasbourg Convention or of states not recognised by the Netherlands; persons born in the Netherlands, the Netherlands Antilles or Aruba, or persons who had held residence in one of these territories for at least five years before reaching the age of majority;⁵⁶ spouses of Dutch nationals (see section 3.4.1); applicants who can renounce their nationality only after military service; persons who cannot be expected to contact the authorities of their state of nationality and those with other objective reasons. In addition, persons aged 65 or over who acquire nationality by declaration in the Netherlands (A06c) are always exempt from the renunciation requirement.

How is the avoidance of multiple nationality *enforced in practice*? In Austria, applicants can in principle only be naturalised after having lost their foreign nationality. The authorities issue 'assurances of naturalisation' to enable or facilitate the renunciation and applicants then have two years in which to prove that they have lost their foreign nationality. Those who can prove that they were unable to be released from their previous nationality or cannot reasonably be expected to take the necessary steps are naturalised under the condition that they renounce the foreign nationality as soon as this becomes possible. If the target person does not take the necessary steps after naturalisation, even though they are possible and reasonable, Austrian nationality can be withdrawn (see section **Error! Reference source not found.**). Germany also issues assurances of naturalisation, but only as part of procedures of discretionary naturalisation (A06b). The authorities may furthermore naturalise the applicant under the condition that he or she take the necessary steps to renounce the foreign nationality, but administrative fines are the only sanction for target persons who refrain from doing so. By contrast, applicants for naturalisation based on an entitlement (A06a) are naturalised at the latest two years after having applied for release from that nationality if no decision on the case can be expected within the next six months. In the Netherlands and Luxembourg, multiple nationality is accepted temporarily for persons who can renounce their foreign nationality only after having acquired Dutch nationality. However, this only applies on condition that they renounce their foreign nationality after naturalisation. If they fail to do so, they may lose their new nationality again in both states, under certain circumstances. Finally, for applicants who do not lose their foreign nationality automatically upon naturalisation in Denmark, the acquisition of nationality is made conditional upon release from their former nationality by a certain date (typically within two years), as specified in the bill passed by parliament. The deadline cannot be extended administratively, but the Parliamentary Standing Committee may exempt the person from the renunciation requirement and the applicant can be included subsequently in a new naturalisation bill.

3.3.1.12 Integrity clauses

A 'good character' and, especially, a (virtually) clean criminal record are central conditions for all general residence-based modes of acquisition of nationality in the EU15 states. However, it is difficult to compare the rules in this context, not only because the level of detail of the regulations and the authorities' scope of discretion vary considerably, but also because the criteria used to define offences which definitely or potentially prohibit the

⁵⁵ Rules concerning exemptions for applicants for discretionary naturalisation via mode A06b are much less extensive. As a general rule, much more depends on the authority's assessment of the circumstances in each case.

⁵⁶ However, the Dutch Minister of Alien Affairs and Integration proposed to abolish both exceptions.

acquisition of nationality are diverse and can be combined in a multitude of ways. Such criteria include crimes, other violations of the law or even more general ‘weaknesses of character’; type of offence; duration of prison sentence and the degree of a sentence in general; suspended or unsuspended sentences; only crimes listed in the criminal register or even those deleted from it and offences committed in the country or abroad. We therefore concentrate on the broad commonalities of the regulations in this area. The EU15 states can be divided into four groups with respect to regulations concerning the target persons’ integrity as a condition for general residence-based modes of acquisition of nationality: 1) states with vaguely defined conditions, 2) states applying schemes of graded waiting periods before the acquisition becomes possible following certain offences, 3) states in which certain offences *always* prohibit naturalisation, but where others *may* also occasionally be obstacles to acquisition, and 4) states that never consider offences of a certain type or under a particular threshold of severity.

1. The respective regulations in Ireland, Italy, Portugal and Spain are *very vague*. In Ireland, applicants for naturalisation have to be of ‘good character’ and in Portugal of ‘good moral character’, whereas in Spain ‘good civic conduct’ is required. In Italy, nationality law does not contain a relevant condition, but a ministerial decree specifies that applicants (as in Portugal and Spain) must submit certified extracts from the criminal register in Italy and from their country of origin. The authorities in all four states are more or less free to assess the evidence because neither the law nor a decree specifies which offences may – or always will – prohibit naturalisation. In Portugal, it is doubtful whether the rule for declarations after birth (see, for example, section 3.4.1), which states that the person must not have committed a crime punishable by a prison sentence of more than three years, applies here as well. In Spain, any type of criminal record seems to preclude the granting of nationality. However, the ‘good character’ clauses in both states seem to target criminal offences only. In Ireland, minor offences (e.g. minor driving offences, strict liability offences) seem unlikely to disqualify applicants from naturalisation. However, persons seeking naturalisation must also disclose all civil proceedings. Those reflecting badly on the applicant’s character (e.g. defamation proceedings, maintenance proceedings) could be taken into account by the Minister when exercising his or her discretion, although no practice has emerged in this context. No information is available on the criteria applied concerning the applicants’ character in Italy.

The regulations are not much clearer in Belgium. There, the public prosecutor has considerable leeway to oppose naturalisations (A06b) and declarations (A06a) based on ‘serious facts with respect to the person’, which leads to variation in the law’s application in practice. A circular from the Justice Minister in 2000 specified that not every conviction necessarily constitutes such a ‘serious fact’. Serious offences, violations of the security of the state, terrorism, espionage, clear refusals to comply with Belgian law or convictions abroad can all be taken into account, whereas less serious offences or those committed a long time ago may be excusable. Since all this is still vague, the possibility of acquiring nationality by declaration is devalued to some degree. For naturalisations, additional rules apply: even though it has wide discretionary power, the House of Representatives always rejects applications in cases of trafficking in drugs or people, paedophilia, serious or organised crime, participation in extremist movements, polygamy, marriages of convenience, and in cases of multiple adjournments of an application without visible progress by the applicant.

2. In Denmark, Finland (‘integrity requirement’: no ‘punishable acts’), Sweden (‘respectable life’) and the United Kingdom (‘good character’), detailed *schemes of graded waiting periods* are applied, which are laid down in decrees or circular letters. Firstly, all criminal acts punishable by imprisonment incur a waiting period – typically starting from the

beginning of the sentence – before naturalisation becomes possible. This period ranges from three years for a pardoned crime to eighteen years for one punished by two years imprisonment in Denmark; from one year for a suspended or minor unconditional sentence to a maximum of seven years in Finland; from three years for a conditional sentence to ten years for six years imprisonment in Sweden, with all higher sentences leading to an individual examination of the case; and from three years for imprisonment of six months or less (even if suspended) to fifteen years for a crime leading to a sentence of fifteen years imprisonment or more in the United Kingdom. Repeated offences may lead to longer waiting periods in all four states. Only in Denmark, certain crimes lead to permanent exclusion from naturalisation, i.e. those punishable by two years imprisonment or more, which makes Denmark the most restrictive state in this group. Secondly, all states also apply waiting periods (WP) in the event of certain fines or other official penalties. These include fines of 3,000 Danish crowns (~ 400 euros) or more, all fines for drink-driving, all fines or warnings for drug abuse and withdrawals of charges under explicit conditions in Denmark (two to four years WP); fines of twenty daily rates or more for offences such as forgery or traffic offences in Finland; crimes punishable by fines of 30 to 100 daily rates (one to three years WP) in Sweden; and fines, driving disqualifications, court orders, conditional discharges and probation, hospital or community service orders in the United Kingdom (one to two years WP). Thirdly, although the authorities in all four states have considerable discretion, certain offences do not seem to be relevant. These include most fines of less than DKK 3,000 in Denmark; fines of (considerably) less than twenty daily rates in Finland and less than 30 daily rates in Sweden; and fixed penalty notices not issued in a court in the United Kingdom. The British Home Secretary also applies a graded scheme of time periods after which offences no longer need to be declared in naturalisation applications (but convictions of at least 2.5 years imprisonment must always be declared). However, the Home Secretary also requires that applicants declare drink-driving offences and civil proceedings that have led to a court order against the applicant. Fourthly, apart from the offences mentioned above and, occasionally, the ability and willingness to meet financial obligations (see section 3.3.1.13), Denmark, Finland, Sweden and the United Kingdom do not seem to interpret the ‘good character’ and ‘integrity’ clauses as covering wider aspects of the applicants’ general personality or morality.

3. Austria, France and Greece have clear rules concerning *offences that always prohibit naturalisation*.⁵⁷ In Austria, these are undeleted convictions leading to more than three months (until 1998: six months) imprisonment for deliberate or youth crimes, or for financial offences.⁵⁸ Naturalisation is ruled out in France in cases of unsuspended sentences of six months imprisonment, for crimes against the fundamental interests of the nation or for acts of terrorism, if these are still listed in the criminal register. In Greece, naturalisation is denied to anyone who has been convicted – no matter when and regardless of the sentence – of any crime which is part of a long list of crimes, including deliberate homicide, trafficking in drugs or aliens, fraud, as well as false certification, forgery or crimes involving antiquities. In addition, applicants must not have been sentenced to more than one year in prison in the past ten years. However, in all three states, offences below the thresholds may also lead to a rejection of applications because the decision ultimately lies within the authorities’ discretion and because additional conditions apply. In France, the law requests a ‘decent life and manners’ and a circular

⁵⁷ The absence of an expulsion order or a ban on residence in the country, which is an explicit condition in many states (e.g. Austria, Belgium, Denmark, France and Greece), is not mentioned here because legal residence is almost always required for acquisition and this condition is therefore sometimes not mentioned separately.

⁵⁸ Deletion occurs three to fifteen years after serving the sentence; life sentences cannot be deleted.

demands ‘civic and loyal behaviour towards French institutions’. The authorities in Greece may obtain all the evidence necessary to form an opinion on the applicant’s ‘morals and personality’. In Austria, the Administrative Court ruled that the authorities can also refuse the granting on the basis of the general public order and security clause (see section 3.3.1.17) in cases of, for example, certain crimes deleted from the criminal register, the use of illegal drugs, offences not punishable by imprisonment or a fine, certain actions that are the result of mental illness, or serious or repeated traffic offences. However, offences that did not lead to a conviction are unlikely to prohibit the granting in cases of mode A06c after fifteen years of residence and mode A06d after 30 years of residence, because applicants have a right to naturalisation in these two cases.

4. In Germany, Luxembourg and the Netherlands, only *offences above a certain threshold* are obstacles to acquisition. Nationality law in Luxembourg only rules out naturalisation in cases involving sentences entailing a temporary forfeiture of electoral rights. However, this only applies for the duration of this forfeiture, as well as – permanently – if the applicant was sentenced for (attempted) ‘serious crimes or offences’ or for endangering the internal or external security of the state. In the Netherlands, naturalisation (A06a+b) or acquisition by declaration (A06c) is only denied in cases of sentencing to imprisonment, community service and fines of more than approx. 450 euros imposed by the courts, the police or the public prosecutor, but only if they have occurred in the past four years. Finally, in Germany a right to naturalisation (A06a) still applies to applicants who have been sentenced to pay a fine not exceeding 180 daily rates, to certain measures according to the law on juvenile courts, or to a suspended prison sentence of six months or less, if the sentence was remitted after probation. If these limits are exceeded, each case is decided individually regarding whether the crime will be taken into account; deleted crimes are never relevant, however. The rules for discretionary naturalisation (A06b) are more complicated and leave considerable room for discretion. In this case, all criminal offences are considered that may lead to expulsion according to a certain article of the Act on Residence, which concerns any breaches of legal provisions, court rulings or official orders, except isolated or minor violations. In addition, no reason for an expulsion may exist under a number of other articles of the Act on Residence, which not only cover sentences of a certain severity (unsuspended conviction or two years of youth custody) or for certain crimes (smuggling of people, breach of public peace during a demonstration, drug dealing etc.), but also, for instance, providing false information in procedures to acquire a residence permit.

3.3.1.13 Financial situation and professional status

The financial situation and professional status of those wishing to acquire nationality via any of the general residence-based modes is completely irrelevant in only two states, i.e. Belgium and the Netherlands. In these states, neither applicants for naturalisation nor persons wishing to acquire nationality by declaration have to deliver any proof that they are able to provide for their own livelihood or that they are in employment. Before the reform in 2000, applicants for naturalisation in Belgium still had to provide information concerning their occupation, means of subsistence and property on the application form.

By contrast, the nationality laws of five states explicitly address the financial situation of applicants for naturalisation. In Austria, their livelihood has to be sufficiently ensured or they must prove that they are not responsible for financial hardship. In most provinces, social welfare standard rates are used as benchmarks; e.g., in Vienna the required income is about 150 per cent of the standard rate. According to rulings of the Administrative Court, long-standing employment is not required, but payments from unemployment insurance or claims

to maintenance have to be taken into account as well. Applicants can only be blamed for their financial hardship if they are not seriously looking for a job. In Finland, persons applying for naturalisation have to provide a reliable account of their income and they must not have failed to provide maintenance or meet their pecuniary obligations under public law. For discretionary naturalisation in Germany (A06b), applicants need secured subsistence for themselves and their family members who are entitled to maintenance and this livelihood has to be secured permanently from their own income, fortune or a claim to maintenance without making demands on social welfare. Since 2005, exceptions are possible to avoid hardship or for reasons in the public interest. The rules for naturalisation based on an entitlement (A06a) are basically the same, with the exception that persons under the age of 23 and those not responsible for drawing social welfare are exempt from the subsistence requirement. In Greece, the law demands that applicants for naturalisation submit tax statements or a copy of their taxed income for the last fiscal year, but Greek law is silent on the standards of appreciation applied. In Portugal, proof of one's means of subsistence without falling back on social benefits has to be produced. In general, applicants need to have an income from employment, their own business or a pension, which at least corresponds to the minimum income defined by law.

In four more states, conditions concerning the applicant's financial situation are introduced in decrees, circular letters or other legal sources beyond the Nationality Act itself. In Italy, a ministerial decree from 1994 specifies that applicants must submit a certified copy of the income declaration for the last three years or a certification issued by the Direct Taxes Office. The criteria applied in assessing the person's financial status are unclear, however. The same is true for Spain, where applicants have to show that they dispose of sufficient means of subsistence, but they are free to choose which documents to produce. By contrast, the rules in Denmark, which were tightened in 2002, are very detailed. They rule out naturalisation in cases of overdue debts to the state with respect to various social benefits to be paid back, child maintenance that the state advanced to the applicant, payments for day care, housing loans to be paid back, and taxes and duties, unless the person cannot be blamed for the debt due in this regard. In addition, applicants have to make a solemn declaration concerning any debts to the state of more than 50,000 Danish crowns (~ 6,700 euros) and concerning the receipt of social assistance for an aggregate period exceeding one year within the past ten years. Lastly, in Luxembourg a certificate concerning the amount of taxes to be paid and an extract from the mortgage register must be submitted with the naturalisation request.

A stable financial situation and professional status are not explicit conditions for naturalisation in the four remaining states, but they may be relevant for other conditions. In France, an application for naturalisation has to be supplemented by, among other things, some proof of income. The stability of income and employment is then relevant in the context of the residence requirement (see section 3.3.1.10) for determining whether applicants have the centre of their professional life in France. In Ireland, persons filing a request for naturalisation also have to submit some documentation from the Revenue Commissioner regarding tax affairs, as well as bank statements and pay slips for the previous three months. These documents, as well as questions of bankruptcy and serious debt, do not seem to be relevant to the exercise of the Minister's discretion, however, especially when assessing the applicant's 'good character'. Nonetheless, the Minister has frequently refused applications in cases of long-term dependence on social welfare. Sweden abolished an explicit condition concerning means of subsistence in 1976. Under the condition that he or she must 'lead a respectable life', however, the applicant's overall situation and way of life are assessed and any unpaid taxes, debts or alimonies may thus affect the chances of naturalisation. In any case, certificates concerning the receipt of social welfare, unemployment benefits, study grants or

other non-taxed forms of income, as well as a certificate from the employer or one's own business showing occupation over the previous year have to be submitted with the application. Lastly, documents required for a naturalisation request in the United Kingdom include a letter from employers confirming dates of employment, wage slips, or official letters confirming payment of income tax and National Insurance contributions. For the non-employed, letters from the Benefits Agency confirming receipt of Jobseeker's Allowance, Income Support and other benefits are required. All this evidence can then become relevant when assessing the applicant's 'good character'.

3.3.1.14 Language proficiency

Knowledge of the official language of the respective country is also a frequent condition for the acquisition of nationality after birth, especially via general residence-based modes of acquisition. In a number of states, however, language skills are neither an explicit condition for acquisition, nor do they seem to play a role in the naturalisation or declaration procedure in practice. This is the case in Belgium (A06a+b), Ireland, Italy and Sweden. Before the reform of the nationality code in 2000 in Belgium, however, linguistic proficiency in one of the country's official languages was relevant in proving the 'will to integrate', which was a main condition for naturalisation. In addition, persons aged 65 and over acquiring nationality by declaration in the Netherlands (A06c) also do not have to prove any knowledge of Dutch.

In all other EU15 states as well as in the Netherlands for naturalisation (A06a+b) required knowledge of the official language (or languages) is either implied indirectly in a general integration clause (Spain), or it is an explicit condition mentioned in secondary law (Denmark, the Netherlands) or the relevant law itself (all other states). The language requirement has been in effect at least since the beginning of our period of investigation in 1985 in all but two states. In Austria, it was only introduced in 1999, although even before then the authorities in some provinces checked German skills when evaluating the applicant's 'general behaviour' and his or her level of integration. In Germany, an entitlement to naturalisation (A06a) has only been dependent on sufficient knowledge of German since 2000, whereas for discretionary naturalisation, language skills have always been required.

In most states, it is the main or only national language in which applicants for naturalisation must be proficient. However, in the United Kingdom, they must have sufficient knowledge of English, Welsh or Scottish Gaelic. In Luxembourg, knowledge of French, German or Luxemburgish is required and, since 2002, also in any case a basic knowledge of the Luxemburgish language. In particular, the required basic knowledge of Luxemburgish, which is rarely used in the industries in which many immigrants work, proved to be a major naturalisation obstacle for many applicants, especially those with a poor education.⁵⁹

In Austria, France, Germany, Greece and Spain, language skills are mainly tested in an interview by the official checking the conditions or, in the case of Greece, by a special Naturalisation Commission. However, additional writing and reading tests are sometimes applied by the authorities in some Austrian provinces and in some German states in cases of a right to naturalisation (A06a). In addition, also varying from one federal state to another, in Germany certificates from language schools or regular educational institutions can be used to obtain dispensation from any test. In all five states, however, the personal circumstances of applicants seem to be taken into account when assessing their language skills.

The main proof of language proficiency in Denmark, Finland, Luxembourg, Portugal and the United Kingdom is a certificate from a designated language school. In Denmark and the United Kingdom, this constitutes a tightening of the rules compared to the situation before the reforms in 2002 and 2004 respectively, when the language skills of applicants for

⁵⁹ See section 3.1.3 of the country report for Luxembourg in volume 2.

naturalisation were still assessed in an interview. With the exception of Portugal, further definitions of the required level of proficiency exist. Denmark demands general tests carried out by language centres (levels one and two), modular tests to prepare for the labour market, a Test of Danish as a Second Language (tests one and two) conducted by (adult) education centres, or the Higher Preparatory Examination in Danish. Finland asks for proficiency at level three out of six (six being the most advanced) of the general language examination, or satisfactory oral and written skills in the National Language Examination. Luxembourg requires 'sufficient' active and passive knowledge of one of the three official languages and 'basic' knowledge of Luxemburgish. In the United Kingdom, applicants must be able to fulfil their duties as citizens and to mix with the people with whom they live and work, which now requires a certified knowledge of English for Speakers of Other Languages (ESOL) at entry level three or above.⁶⁰ All five states also accept certificates from general educational institutions as substitutes for special language certificates and three have special rules in this respect. In Denmark, applicants must have passed grade nine or ten in a Danish public school and obtained grade six or above in each discipline. In Finland, they must have completed basic education with Finnish or Swedish as a native tongue. In the United Kingdom, educational qualifications which can only be obtained by someone who speaks 'good English' are substitutes for an ESOL certificate. Applicants in Portugal can also prove their knowledge of Portuguese with a document written, read and signed in the presence of a notary or certain public officials. A similar rule exists for applicants with English as a first language in the United Kingdom who can prove their language skills by certification before a designated notary, solicitor or public official.

Before April 2003, the applicant's knowledge of Dutch in the Netherlands (A06a+b) was also usually tested in an informal oral interview and it rarely gave grounds for refusing an application. Since then, the Netherlands has become the only EU15 state with a specifically designed language test for applicants for naturalisation. Together with the 'societal orientation' test (see section 3.3.1.15), the language test is part of the 'naturalisation test', which has to be taken before the actual application and which has to be paid for separately (see section 3.3.1.7). It lasts about four hours and tests the person's ability to read, write, speak and understand Dutch to a degree which is the same as the level aimed at in the integration programme offered to new immigrants. A substitute for this test is a certified knowledge of Dutch at secondary school level, a certificate on civic integration according to the respective law of 1998, or a letter from a municipal executive stating that one's level of Dutch has been deemed sufficient to be exempt from earlier attendance of integration programmes for newcomers.

Can other relevant persons within the context of general residence-based acquisition of nationality be exempt from the language requirement? No explicit exemptions are provided for in Austria, Greece, Luxembourg or Spain. In France (refugees) and Portugal (spouses of nationals, lusophone applicants, applicants with special achievements for or in the service of Portugal), the exemptions are only relevant for other modes of acquisition according to our typology. In all other states, the language condition may be waived for persons with certain mental or physical conditions or handicaps, even if in some states (especially the Netherlands) obtaining the necessary documents to prove the condition or handicap may be difficult and costly. Finally, in Germany and the United Kingdom (no longer in Denmark since 2002), exceptions are also possible for elderly applicants.

⁶⁰ From November 2005 onwards, applicants who have passed the test on knowledge of life in the United Kingdom (see section 3.3.1.15) do not have to take a separate language test.

3.3.1.15 Knowledge of the country

In most cases, the official rationale for the requirement that future nationals have a certain level of language proficiency is that they should be able to communicate on a par with the authorities and their fellow citizens, have access to essential information in their new country of nationality, integrate into and participate in society, and/or that they meet their duties as citizens. In some states, however, a certain level of *knowledge of the country and its society* beyond language skills is already a condition for naturalisation. Additionally, they require that applicants prove this knowledge in a test or interview, or they demand documentary evidence to this end.

No conditions of this kind apply for general residence-based modes of acquisition in Austria, Belgium, Finland, Ireland, Italy, Luxembourg or Sweden. Knowledge about the respective country also does not seem to be relevant for meeting other conditions in any of these states. The same holds for naturalisations based on an entitlement in Germany (A06a) and for declarations by persons aged 65 and over in the Netherlands (A06c), but not for other modes of general –residence-based naturalisation in these two states. On the basis of the clause that the authorities should consider ‘the extent of integration of the alien’, some Austrian provinces applied tests of this kind in the 1990s, but they do not seem to be used any longer.

In Portugal and Spain, knowledge of certain aspects of the respective country is not required directly by law, but it may become relevant for meeting other conditions. For naturalisation in Portugal, applicants must demonstrate an ‘effective connection to the Portuguese community’, for which, among many other things, knowledge of Portuguese culture, history or society can be relevant. To prove this, any documentary evidence or any other legal proof is admissible, which is checked on a case-by-case basis. In Spain, persons requesting naturalisation have to show ‘sufficient social integration into Spanish society’, for which any circumstance demonstrating adaptation to Spanish culture and Spanish lifestyle, including knowledge of the Spanish language, is taken into account. No formal instructions are given to judges conducting the interview to test this integration but, according to information collected directly from a judge, the DGRN tries to exercise increasing control in this context and encourages judges to ask questions about Spanish history and society.⁶¹

This leaves six EU15 states – Denmark, France, Greece and the United Kingdom, as well as Germany for discretionary naturalisation (A06b) and the Netherlands for naturalisation (A06a+b) – where a certain knowledge of the future country of nationality is explicitly required for naturalisation via some or any of the general –residence-based modes of acquisition. In four of these states, the respective condition was introduced only recently, i.e. in Denmark with the naturalisation circular of June 2002, in the United Kingdom with the NIAA 2002, in the Netherlands with a special Royal Decree accompanying the implementation of the reform of the Nationality Act in April 2003 and, in France, with the amendment to the *Code Civil* in November 2003. In Denmark, applicants for naturalisation must have a certain knowledge of Danish society, culture and history. France requires knowledge of the ‘rights and duties conferred by French nationality’. In Germany, applicants for discretionary naturalisation (A06b) need a certain familiarity with the public order in Germany. The condition in Greece is sufficient knowledge of Greek history and Greek culture. In the Netherlands, knowledge of the Dutch political system, society and Dutch institutions must be demonstrated. Finally, in the United Kingdom the law requires sufficient knowledge of various aspects of life in the United Kingdom.

How is this knowledge tested? Clear guidelines are lacking for discretionary naturalisation in Germany (A06b), but it can be assumed that knowledge of the German

⁶¹ See section 3.3.1.16 for more details on the integration requirements in both states.

public order is tested in most federal states, together with the applicant's language skills in an informal oral interview. In Greece, knowledge is tested together with language proficiency in an interview before the Naturalisation Commission. A special book is published by the Ministry in order to help applicants to prepare for this interview, but the criteria applied are still unclear. Currently, applicants for naturalisation in France have to demonstrate their knowledge of the rights and duties of French nationals in an oral test during an informal interview with an official at the *préfecture*. However, a proposal in early 2005 suggested introducing 20-30 minute interviews to test the applicant's language skills, knowledge of rights and duties and his or her assimilation in general in special 'Assimilation Evaluation Offices'. In Denmark, the required knowledge has to be demonstrated in the same way as the language skills (see section 3.3.1.14). In the Netherlands, the so-called 'societal orientation', which is the first part of the overall 'naturalisation test', takes about 45 minutes to answer and contains 40 multiple-choice questions. Questions asked in the test deal with the Dutch polity as well as employment, income and financial matters, residence, health care, transport and traffic in the Netherlands. Only persons passing this test successfully can take the language test. The content of the exam is not published and there are no official methods of preparing for it. As a result of this insecurity over the standards applied and also because the test is relatively costly (see section 3.3.1.7), the number of applications for naturalisation between 2002 and 2004 effectively fell by two-thirds.⁶² Finally, in the United Kingdom, testing started in November 2005. The knowledge required is comparatively detailed and covers history, law, politics, society and manners in the United Kingdom.⁶³ Applicants can prepare for the test with the help of a 150-page book called *Life in the United Kingdom: A Journey to Citizenship*. Applicants either have to take a computer-based test at a regional learning centre, during which they have to answer 24 multiple-choice questions, or attend 'ESOL-with-citizenship' classes to prove that knowledge.

3.3.1.16 Proof of 'integration' or 'assimilation'

Regulations regarding the acquisition of nationality also often contain explicit requirements regarding proof of general 'integration' or 'assimilation' into the respective country's society, which at times go beyond all the conditions mentioned so far (especially language skills and knowledge of the country). In our sample, however, this is the case only in the minority of states. No such clauses exist in Belgium, Denmark, Finland, Greece, Ireland, Italy, Sweden or the United Kingdom. Moreover, there are no indications that criteria which can be included under the heading of 'integration' or 'assimilation' and which go beyond those mentioned in the previous sections are always relevant for the authorities when exercising their discretionary powers. In Belgium, a relevant clause ('will to integrate') was abolished in 2000 because in practice its consistent application in a non-abusive way proved impossible. Since then, the willingness to integrate is assumed to be demonstrated by the fact that the person has applied for naturalisation (A06b) or made the declaration to acquire nationality (A06a). Certain general residence-based modes of acquisition of nationality in three more states are also not dependent on the target person's integration or assimilation. This concerns naturalisation by entitlement in Germany (A06a), the declaration by older persons in the Netherlands (A06c) and naturalisation based on an entitlement after 30 years of residence in Austria (A06d).

In Luxembourg, the law requires applicants for naturalisation to demonstrate 'sufficient integration', but it also specifies that language proficiency in particular is relevant

⁶² See the country report on the Netherlands in volume 2 concerning this point.

⁶³ See, e.g., Jordan, M. (2 November 2005), *Pub Manners, Boxing Day All Part of Being British. Would-Be Citizens Cram for New Exam*, The Washington Post.

in this context. In practice, the integration requirement does not seem to be interpreted as going beyond language skills. In Germany, according to the administrative guidelines, applicants for discretionary naturalisation (A06b) must be ‘integrated into German living conditions’ but, as in Luxembourg, they also add that language skills in particular are relevant in this context. We have no information, however, as to whether other aspects of integration are taken into account by the authorities in the federal states.

As mentioned in the previous section, Spain requires that persons to be naturalised show ‘sufficient social integration into Spanish society’. Judges leading the investigations not only test the applicants’ language skills and knowledge of Spain in this context, they also enquire about their family and social relationships in Spain, professional and recreational activities and what they like or dislike about Spanish culture. In the same vein, when judging whether applicants have an ‘effective connection to the Portuguese community’ in Portugal, the Ministry of the Interior takes into account many things, including language skills and knowledge of Portugal, but also affinity to traditional Portuguese values, the duration of residence, employment, school attendance, family relationships, membership of cultural institutions or sports clubs, or ownership of property in Portugal. All in all, these clauses in Spain and Portugal leave much room for discretion. Against this background, the fact that applicants who meet the conditions are entitled to naturalisation in Spain is more or less obliterated.

Besides the special case of Austria (see below), two more states apply integration or assimilation clauses. In the Netherlands, a general condition for naturalisation (A06a+b) is a sufficient level of integration into Dutch society. Before April 2003, this was basically interpreted as requiring sufficient oral language skills. Since then, the main test for integration is the ‘naturalisation test’ described in the previous two sections. However, even if applicants have passed the naturalisation test, certain grounds still exist for the authorities to reject the granting of nationality on the basis of the integration requirement, i.e. polygamy, legally invalid foreign acts of repudiation⁶⁴ as well as other forms of behaviour that indicate a refusal by the applicant to ‘form part of Dutch society’. In France, a circular issued in 2000 requires that applicants show good ‘social and cultural integration’, but it is unclear how this is assessed in practice. Beyond this, France is the only state explicitly requiring ‘assimilation’ into the country’s society. The law states that this involves knowledge of the French language and the ‘rights and duties conferred by French nationality’ in particular. However, the authorities also check the acceptance of French values and polygamy is seen as a main indicator that this is not the case. Despite the public controversy over this issue, wearing a headscarf was ruled an invalid reason for rejecting naturalisation by the Administrative Tribunal.

Lastly, in Austria, two integration clauses are applied, one of which is used to define two of the four general residence-based modes of acquisition of nationality (A06b+c). Firstly, in procedures of discretionary naturalisation (A06a+b), the authorities shall be guided by considerations based on the common good, the public interest and – which is relevant in this context – the extent of the applicant’s integration, taking due account of the person’s general conduct. The authorities regularly consider various areas of integration in this respect – these have also been approved by the Administrative Court – including criminal record and more general good character, professional integration and language skills, as well as family relationships, personal relationships and contacts with Austrian nationals and their residence status and right to take up employment. Secondly, the main condition for the two modes of granting nationality introduced in 1999 (A06b+c) is ‘sustained personal and professional integration’. Under this condition, the required residence for discretionary naturalisation can

⁶⁴ Such as a form of dissolution of marriage in Islamic countries.

be reduced from ten to four years (minors) or six years (adults) (A06b) and, for naturalisation, based on an entitlement from 30 to fifteen years (A06c). According to the comments on the government bill 1998, this sustained integration at least involves a permanent residence permit, a secured right of access to the labour market and lasting personal ties to Austria (e.g. the family lives there or children go to school in Austria). In addition, the Administrative Court ruled that this ‘sustained personal and professional integration’ requires more than can be expected from a foreign national with the same duration of residence.

3.3.1.17 Other conditions

For certain general residence-based modes of acquisition, a number of other requirements have to be met. The most frequent additional condition is that the *acquisition of nationality must not violate the central interests of the state*, especially the maintenance of public order and national security. Explicit clauses of this kind exist in six states, but in most other states a veto on acquisition on public or national security grounds is generally possible on the additional basis of more general ‘good character’ clauses.⁶⁵ In Austria, the authorities have to judge on the basis of the ‘general behaviour so far’ if applicants have an affirmative attitude towards the Republic and are no danger to public law, order and security or to any other public interest mentioned in Art. 8 (2) of the ECHR. In addition, the person must have no relations with foreign states that would harm the interests of the Republic if nationality were granted.⁶⁶ Since 2002, cases of applicants deemed a national security threat by the Police Intelligence Service in Denmark are directly referred to the Parliamentary Standing Committee on Nationality. Naturalisation in Finland is ruled out if well-founded reasons exist to suspect that this will jeopardise the security of the state or public order, or if it conflicts with the state’s best interests for some other reason. In Spain, the Ministry of Justice can deny nationality on the grounds of public order or the national interest. In Sweden, when assessing whether an applicant has led and can be expected to lead a respectable life, the Migration Board hears the National Police Board and the application may be rejected on grounds related to public safety or the safety of the realm. Last but not least, Germany again has the most elaborate clauses in this context. The authorities can reject applications, even in cases of an entitlement (A06a), if there is a justified suspicion that the applicant supports anti-constitutional movements, subversive activities or international terrorism, or if there is a reason for expulsion based on endangering the constitutional order or the security of the Federal Republic. Also, with regard to public security, the law prohibits the discretionary naturalisation (A06b) of applicants whose political activities have been restricted by the authorities.

Beyond clauses regarding the public order, national security or other state interests, all the other conditions not mentioned so far only exist in three or fewer states:

- A related condition is that the granting of nationality must *not endanger relations with other states*. In Portugal, the applicant’s naturalisation must not be undesirable from the perspective of the relationship with his or her country of origin or other countries and the Ministry of Foreign Affairs must provide relevant information. In Luxembourg, the naturalisation must be compatible with the person’s obligations towards his or her country of origin and no problems must arise in this context. However, neither the law nor

⁶⁵ For example, the condition that there must be no ‘serious facts with respect to the person’ (Belgium), that the applicant must be of ‘good character’ (Ireland, United Kingdom), display ‘civic and loyal behaviour’ towards the institutions of the state (France), be of good ‘morals’ (Greece) or must lead a ‘respectable life’ (Sweden).

⁶⁶ The Administrative Court judged that the following are valid reasons for a refusal of naturalisation on the basis of this clause: pending criminal procedures abroad, close relations with a country against which the United Nation’s Security Council has imposed sanctions or membership of a foreign secret or intelligence service.

jurisprudence gives examples of obligations which need to be fulfilled towards the country of origin;

- In Ireland and the United Kingdom, applicants must *intend to settle in the respective country after naturalisation*. In the United Kingdom, however, persons intending to enter Crown Service or certain other services are exempt from the requirement to intend to settle in the country. In addition, in Finland, applicants are excluded from naturalisation if they intend to settle abroad and this intention goes hand in hand with the main purpose of naturalisation – to take advantage of the rights attached to Finnish nationality;
- Austria and the Netherlands have special regulations with respect to the *former nationality status* of the person concerned. In the Netherlands, persons acquiring nationality by declaration (A06c) must not have acquired Dutch nationality by declaration before. By contrast, in Austria, the rules address the reason why the applicant is a foreign national. Persons to be granted nationality on the basis of an entitlement after fifteen (A06c) or 30 years of residence (A06d) must not have lost Austrian nationality in the past by renunciation (mode of loss L01a+b) or withdrawal (L04 and L10). In practice, the conditions in both states do not seem to be relevant to many applicants;
- Two other states have rules that deal with matters of *health*. In France, the law contains a health requirement, but the applicant's state of health is only one element that can play a role in the overall assessment of a case. In the United Kingdom, the condition that applicants must be of 'full capacity' implies that they must be of 'sound mind';
- Germany is the only state where applicants for discretionary naturalisation (A06b, which is much less important in practice) must prove that they have *accommodation*;
- Even though all states require some documents that prove the applicant's identity, Finland and Sweden are the only states that make *proof of identity* a central condition. In Finland, the approved period of residence starts only once the applicant has given an account of his or her identity (the period before that may be approved in certain cases). In Sweden, for persons of unclear identity, the required residence period is eight instead of five years;
- Finally, in the United Kingdom, applications for naturalisation must be *supported by two referees*. The referees must have known the applicant for at least three years, be British citizens aged 25 or over, be unrelated to the target person (or to each other), not be his or her legal agent and they must not have been convicted of a crime leading to imprisonment in the past ten years. The referees must declare that the applicant is of good character and has sufficient knowledge of English, Welsh or Scottish Gaelic.

Table 3.5: Basic residence-based modes of acquisition (A06) in force at the end of 2004 – material conditions

	Mode	Min. age	Required years of residence	Residence status / permit	Loss of previous nationality	Clean criminal record	'Good character' clause	Financial situation checked	Language skills	Knowledge about C1	Integration or assimilation clause	Other conditions
AUT	A06a	No	10	'Main residence', no particular permit	Yes	Detailed rules of application	'General behaviour' so far is evaluated	Yes, explicit condition	Yes	No	Integration evaluated	No relations with other states detrimental to interests of C1; public order and security clause; A06c+d: no withdrawal or renunciation of Austrian nationality
	A06b		4 (minors), 6 (adults)								'Personal and professional integration'	
	A06c		15								No	
	A06d		30								No	
BEL	A06a	18	7	'Main residence', permit to stay in C1 indefinitely	No	No 'serious facts with respect to person', but certain rules of application only for A06b	No	No	No	No	No	No
	A06b		3	'Main residence'								
DEN	A06	18	9	PRP	Yes	System of waiting periods	No	Yes, explicit condition	Yes	Yes	No	Public order and security clause
FIN	A06	18	6	No particular permit, but permanent residence and domicile	No	System of waiting periods	No	Yes, explicit condition	Yes	No	No	Public order and security clause, clear identity
FRA	A06	18	5	No particular status / permit	No ¹	Detailed rules of application	'Decent life and manners', 'civic and loyal behaviour'	No, but can be relevant for residence condition	Yes	Yes	'Social and cultural integration', 'assimilation into French community'	Health check
GER	A06a	No	8	PRP or certain limited residence permit	Yes; many exceptions	Detailed rules of application	No	Yes, explicit condition	Yes	No	No	Public order and security clause
	A06b	(18)	8							Detailed rules of application	Yes	'Integration into German living conditions'
GRE	A06	18	10 of last 12	No particular status / permit	No	Detailed rules of application	'Personality' is checked	Yes, explicit condition	Yes	Yes	No	No
IRE	A06	18 (until 2004)	4 of last 8	Residence as asylum seeker or student not counted	No	'Good character', but no rules of application		Income proof required	No	No	No	Intent to settle in C1
ITA	A06	18	10	No particular status / permit	No ¹	No rules of application	No	Income proof required	No	No	No	No
LUX	A06	18	5	No particular status / permit	Yes	Partly detailed rules of application	No	Income proof required	Yes, incl. Luxembourgish	No	'Sufficient integration', esp. language skills	Compatibility with obligations towards state of origin

	Mode	Min. age	Required years of residence	Residence status / permit	Loss of previous nationality	Clean criminal record	'Good character' clause	Financial situation checked	Language skills	Knowledge about C1	Integration or assimilation clause	Other conditions
NED	A06a	18	5	Permit for non-temporary purpose	Yes; many exceptions	Detailed rules of application	No	No	Yes	Yes	'Sufficient integration'	No
	A06b		10									
	A06c	65	15	No particular status / permit	No				No	No	No	No
POR	A06	18	10	No particular status / permit	No	'Good civic character', but no rules of application		Yes, explicit condition	Yes	Relevant for integration	'Effective links to Portuguese community'	No undesirability in view of relations to other countries
SPA	A06	No	10	No particular status / permit	Yes, but no proof required	'Good civic conduct', but no rules of application		Yes, explicit condition	Yes	Relevant for integration	'Sufficient social integration'	Public order and security clause
SWE	A06	18	5	PRP	No	'Respectable life'; system of waiting periods		May be relevant for 'respectable life'	No	No	No	Public order and security clause, proof of identity
UK	A06	18	5	PRP 1 year before application	No	'Good character'; system of waiting periods		May be relevant for good character	Yes	Yes	No	2 referees must support application; intent to settle in C1; of 'sound mind'

Notes: C1 = country under consideration; PRP = permanent residence permit; ¹ = except for nationals of states that ratified the Strasbourg Convention.

3.3.2 Socialisation-based acquisition of nationality (mode A07)

The second type of basic residence-based acquisition of nationality is acquisition via modes targeted at persons who have spent a considerable part of their life as a minor in the country, but who were not (necessarily) born there. Art. 6 (4) f. of the ECN also requires such facilitated socialisation-based modes of acquisition for ‘persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of eighteen, that period to be determined by the internal law of the State Party concerned’.

Unlike non-nationals born on their territory, whose acquisition of nationality after birth is facilitated in some way in all EU15 states except Germany (although in Denmark and Sweden this is only the case for stateless persons), eight states do not currently provide for the independent acquisition of nationality by persons who immigrated while minors, i.e. Greece, Ireland, Italy, Spain and the United Kingdom, as well as ECN state parties Austria, Germany and Portugal. Germany did facilitate the naturalisation of young foreign nationals between the ages of sixteen and 23 from mid-1993 until the end of 1999.⁶⁷ However, the 1999 reform abolished this mode because the conditions of the new general residence-based naturalisation (A06a) are now the same as, or more liberal than, those of the old socialisation-based mode.

The seven remaining EU15 states have ten modes of acquisition of nationality for persons who immigrated as minors or were generally socialised in those states. Two of these modes were introduced only recently, i.e. the respective mode in the Netherlands in April 2003 and one mode in Sweden (A07a) in July 2001. As we will see below, however, some of these modes are only relevant to relatively small groups of persons. We will look at modes that apply to minors and those that are individually relevant to persons after they have reached the age of majority.

3.3.2.1 Acquisition during while a minor

Only France and Sweden specifically facilitate the independent acquisition of nationality by *minor* immigrants who have spent some time in the country. However, in France, the respective mode only covers a small group of minors, i.e. unaccompanied children who have been taken into care and raised in France. They can become French by declaration while minors if they have received a French education for at least five years in a public or private institution, or if they have been taken into care and raised by a French national for five years or by a French social welfare institution for three years. The residence requirements of five and three years for the last two options were only introduced in late 2003. No further conditions apply. The declaration has to be made before a local court by the child’s legal guardian, but the child has to give his or her approval from the age of thirteen onwards. The declaration can only be denied within six months of being received by the court, but it can also be contested by the public prosecutor after it has become effective in cases of fraud or if the conditions have not been met.⁶⁸

By contrast, in Sweden, all unmarried minors can acquire nationality by simple notification to the County Administrative Board (Nordic citizens) or the Migration Board (all other persons) if they have spent the past five years – or three years if they are stateless – in Sweden (A05a). The only other material condition is that the child hold a permanent residence permit. However, Nordic citizens do not need a special permit and EEA nationals

⁶⁷ The conditions for this right to naturalisation were eight years of residence, an unlimited residence permit, a practically clean criminal record, the renunciation of the previous nationality and, especially, attendance at a German school for at least six years, four of which had to be in a school for general education (A07).

⁶⁸ For more details, see the remarks on the French modes A05b+c in section 3.2.2.5.

only need a temporary permit valid for at least five years. The notification, which costs 175 Swedish crowns (~ 19 euros), has to be made by the child's guardian, but children aged twelve and over must give their consent.

3.3.2.2 Acquisition after minority

The acquisition of nationality by persons who immigrated as minors is facilitated more frequently after they have reached the age of majority. In six cases, persons are entitled to acquire nationality via a simplified declaratory *procedure*, which means a declaration in Denmark (A07c/A18a), Finland and the Netherlands, an option in Belgium and Luxembourg and a notification in Sweden (A07b). With the exception of the declaration in Finland (Directorate of Immigration) and the notification by nationals of non-Nordic states in Sweden (Migration Board), the responsible authorities deciding on these modes are mainly regional or local authorities, i.e. the local registrar in Belgium, the head of the regional authority in Denmark, the mayor in the Netherlands and the County Administrative Board in cases of notification by Nordic nationals in Sweden. Only two modes of acquisition in Denmark (A07a+b) are via discretionary naturalisation by parliament.

The possibility of becoming a national via four of the eight modes is *limited to a few years* immediately after reaching the age of majority, i.e. to two years in Sweden (A07b), four years in Belgium and five years in Finland and Denmark (for mode A07c). For the other four modes, the target persons can only be adults.

The way in which states define the *main condition for these modes of acquisition* varies greatly. This requirement is that of *having spent some time while a minor in the country*. The most demanding condition is that imposed in the Netherlands: target persons must have resided in the Netherlands legally without interruption from the age of four until nationality is finally granted. The minimum residence requirement thus amounts to at least fourteen years. Having attended school in the Netherlands is not an explicit condition, but it is obviously unavoidable. School attendance in the respective country is also not explicitly prescribed for four modes in other states. In Belgium, young adults must have had their main residence in the country for at least one year before the age of six, for one year immediately before the declaration and between the ages of fourteen and eighteen or for nine years in total. For a declaration in Denmark (A07c/A18a), target persons must demonstrate at least ten years of residence, five of which have to be within the past six years. Finland also requires ten years of residence in total but, in this case, the last two years have to be uninterrupted. In Sweden, persons becoming nationals by notification since 2001 must have lived in the country since the age of thirteen or, if they are stateless, since the age of fifteen (A07b).⁶⁹ Unlike these four modes, having spent some time in a school in the country is the main condition of eligibility for the three remaining modes. For discretionary naturalisation in Denmark, after having reached the age of eighteen, target persons must either have immigrated before the age of fifteen and any education they have received in Denmark must be of a 'Danish nature' (A07a) *or* they must have resided in Denmark for at least four years and have received a 'substantial part of their general or professional education' in Denmark, which means at least three years of 'Danish' education, unless this is completed earlier by an examination or test (A07b). Lastly, the most demanding explicit schooling requirement can be found in Luxembourg. Target persons born abroad must have received their entire compulsory education in Luxembourg in order to be eligible for acquisition of nationality by option, which means eleven years of schooling according to this state's law. In addition, they have to fulfil the

⁶⁹ Before July 2001, acquisition by notification was possible between the ages of 21 and 23 if the person had been resident for at least ten years, five of which had to be since the age of sixteen.

general residence condition for all options, i.e. residence in the country in the year before making use of the option and five consecutive years of residence at some point in the past.

The three modes with explicit schooling requirements also have the most extensive *additional conditions*. As already pointed out for mode A05, even if the procedure of acquisition by option in Luxembourg is facilitated insofar as the Ministry of Justice (rather than the parliament) makes the final decision, basically the same conditions have to be met as for a naturalisation. The option requires a virtually clean criminal record, sufficient knowledge of one official language and at least a basic knowledge of Luxemburgish, no conflicts that may arise with respect to obligations towards the state of origin and loss of the foreign nationality. In Denmark, too, all the general conditions for naturalisation by parliament have to be met for a naturalisation via modes A07a and A07b. This means, in particular, that applicants must pay an application fee, hold a permanent residence permit, have a clean criminal record, have no overdue debts to the state, demonstrate knowledge of the Danish language and of Danish society, culture and history and, in particular, lose their previous nationality.⁷⁰

The conditions for the other five modes are much less extensive. Besides the residence requirement, acquisition by notification in Sweden (A07b) is only tied to two conditions, i.e. a permanent residence permit and the payment of a fee (both conditions are the same as for mode A07a; see section 3.3.2.1). Apart from a fee – 300 euros in Finland and 132 euros in the Netherlands – the only other important condition in Belgium, Finland and the Netherlands basically concerns the person’s integrity. In Belgium, acquisition can only be vetoed by the public prosecutor in cases of ‘serious facts with respect to the person’, which mainly concerns criminal convictions. In the Netherlands, persons acquiring Dutch nationality by declaration must not have been sentenced to imprisonment, community service or certain fines over the past four years.⁷¹ In Finland, the person must not have any prison sentence on record (since June 2003) and must not have lost Finnish nationality in the past because of fraud during the acquisition procedure. Finally, the conditions for a declaration in Denmark (A07c/A18a) are easier to meet than those for a naturalisation. The only two conditions that applied to both acquisition by declaration and by naturalisation until quite recently were the absence of any entry in the criminal register (which, however, can also contain certain fines, dropped charges, warnings and guilty sentences with an annulled punishment of up to ten years) and the absence of an expulsion order. In July 2004, however, an amendment of the law introduced the requirement that loss of the previous nationality be demonstrated and, most importantly, this mode has since then no longer been open to all foreign nationals, but only to nationals of other Nordic states.

Table 3.6: Socialisation-based modes of acquisition of nationality (A07): overview of rules in force since 1985

	Type of acquisition	Age	Residence	Other conditions
BEL	Option	18-22	1 year before age 6, 1 year before declaration and between ages 14-18 or 9 years in total	No ‘serious facts with respect to person’
DEN	A07a: Discretionary naturalisation	18+	Arrival before age 15	If educated, this must be of Danish nature; other conditions: see mode A06 (see sect. Error! Reference source not found.)

⁷⁰ For more details on these conditions in Luxembourg and Denmark, see section 3.3.1.

⁷¹ For more details on these clauses in Belgium and the Netherlands, see section 3.3.1.12.

	A07b: Discretionary naturalisation	18+	4 years	At least 3 years education of a Danish nature; other conditions: see mode A06 (see sect. Error! Reference source not found.)
	A07c / A18a: Declaration	18-23	10 years, 5 of which in last 6 years	No criminal record (A07c); since 05/2004: only for Nordic nationals, loss of previous nationality (A18a)
FIN	Declaration	18-23	10 years, last 2 years uninterrupted	No prison sentence, no loss of Finnish nationality due to false information, fee. Before 06/2003: no integrity clause
FRA	Declaration	-18	a) 5 years; b) 3 years; c) 5 years	Child is taken into care and raised in C1: a) for 5 years by French national; b) for 3 years by French welfare institution; or c) has received French education for 5 years. Consent of child over age 13 is required. Before 12/2003: no required residence for b) or c)
GER	07/1997-1999: Entitlement to naturalisation	16-23	8 years	PRP, no criminal record of certain kind, loss of previous nationality, 6 years in German school, 4 of which in school offering general education, fee
LUX	Option	18+	1 year prior to option and 5 years uninterrupted beforehand	Birth abroad, all compulsory schooling in C1, loss of previous nationality, language skills, no serious criminal record, no obligations in country of origin
NED	Declaration (since 04/2003)	18+	Uninterruptedly since age 4	No criminal record of certain kind, TP has not acquired nationality by declaration before, fee
SWE	A07a: Notification (since 07/2001)	-18	5 years	PRP (except Nordic + EEA-nationals), consent of child over age 12, fee
	A07b: Notification	18-20	Since age 13	PRP (except Nordic + EEA-nationals), fee. Before 07/2001: Notification at age 21-23, 10 years residence, 5 of which since age 16

Notes: PRP = permanent residence permit; other abbreviations: see Table 3.1.

States not listed in this table do not have (and have not had since 1985) relevant rules.

3.4 Family relation-based modes of acquisition of nationality after birth

In this section, we look at various modes of *transfer of nationality* and *extension of acquisition of nationality*. The former is defined as any automatic or non-automatic acquisition of nationality, which depends on a relative already *being* a national. By contrast, an *extension* is any acquisition by a target person, which is dependent on or the automatic result of the simultaneous acquisition by a relative (especially parent or spouse), who is the principal person acquiring nationality. The most important reference persons becoming nationals in this context are parents and spouses. Below we will therefore mainly focus on transfers and extensions of acquisitions of nationality to foreign children and spouses.

3.4.1 Spouses of nationals (mode A08)

Spouses of nationals are the first group mentioned in Article 6 (4) of the ECN as persons whose acquisition of nationality shall be facilitated by state parties. In fact, all EU15 states do have special rules in this respect. We will focus on the main modes of spousal transfer and

leave out any regulations that are targeted at spouses of very special groups of nationals⁷² or rules that were in force only transitionally at some point since 1985.⁷³

Before going into the details of the current provisions, it has to be stressed that gender-specific rules in this context had already been abolished in most EU15 states before the beginning of our period of investigation (1985-2004). The last states to abolish regulations that only facilitated acquisition of nationality by foreign women married to nationals were the Netherlands, at the beginning of 1985, and Ireland and Luxembourg in 1986. In addition, the automatic acquisition of nationality by a foreign person (woman) upon marrying a national is no longer provided by any states. Most EU15 states have had relevant regulations at some point; the last two states to abrogate them were Portugal in 1981 and Greece in 1984.

3.4.1.1 *Type of acquisition*

One method of facilitation is to concede spouses the right to acquire nationality via a declaratory procedure instead of subjecting them to a naturalisation procedure. Such facilitated procedures are available for spouses of nationals in Belgium (A08a+b: option), France (A08a: declaration), Luxembourg (option), the Netherlands (A08a: declaration) and Portugal (declaration). Before 30 November 2002, Ireland also gave spouses the option to acquire nationality by declaration (A08a), but only if the Irish spouse had not become Irish (before or after the marriage) by naturalisation, as a token of honour or by post-nuptial declaration himself or herself. Since then, this mode has only been available to persons who married before that date, but only transitionally for three years. In a few other states, spouses of nationals are at least given an entitlement to naturalisation if they meet the conditions. In Austria (A08a+b) and Italy, this is in contrast to most other applicants for naturalisation, whereas in the Netherlands (A08b: naturalisation for persons not eligible for declaration), Spain and Germany, spouses are entitled to naturalisation in the same way as applicants without family ties to a national. The remaining states, i.e. Denmark, Finland, Greece (A08a), Sweden, the United Kingdom (A08a) and – except cases falling under the transitional mode A08a – Ireland (A08b) neither give spouses of their own nationals the option to acquire nationality via a simplified declaratory procedure, nor do they grant them an entitlement to be naturalised. In other words, facilitation in these states does not concern the procedure itself, but only the material conditions. Finally, spouses not meeting the conditions for a declaration in France can also acquire nationality by discretionary naturalisation under facilitated conditions (A08b).

3.4.1.2 *Conditions specific for spousal transfer*

Besides the condition that the spouse currently be married to a national, most states also demand a certain *duration of marriage* and/or that the married couple have already maintained – either before or during marriage – a *common life and/or household* for some time. A certain duration of marriage is prescribed in twelve states and normally ranges from one to three years. A common household of six months to three years is stipulated in six states, in some cases combined with a certain duration of marriage. Often, these marriage or common household/life requirements are associated with certain *residence conditions*. This is true for fourteen states, which have requirements of six months to at least six years, although in some states no residence is required under certain circumstances. Lastly, the laws in six

⁷² This concerns two modes: the right to naturalisation in Austria (A08c), available to spouses of persons who fled Austria for political reasons during the Nazi era and who (re)acquired nationality via modes A16e and A21b; and naturalisation via mode A08b in Greece, which targets spouses of Greek diplomats.

⁷³ The only rule in this respect was the entitlement to registration as British citizens for women married since before 1983 to a British citizen (A08b). This regulation was in force from 1983 until the end of 1987.

states make a distinction with respect to the *time when nationality of the respective country was acquired* by the spouse, i.e. whether it was acquired before or after the marriage or before or after a common household was established. A summary of the rules can be found in Table 3.7.

The rules in Austria, Belgium, Denmark, France, Italy, the Netherlands and Sweden target spouses at different stages of their residence and/or marriage or common household:⁷⁴

- Austria requires one year of marriage and four years of residence, or two years of marriage and three years of residence (A08a). In both cases, the Austrian spouse does not need to have held nationality for the whole period of marriage. However, if the Austrian spouse has already held nationality for at least ten years, the foreign spouse does not have to reside in Austria at all if the marriage has already lasted for five years (A08b). For both modes, the marriage must not be subject to a judicial separation, either by divorce or otherwise, and the married couple must be living together at the time of application (a condition since 1999);
- The law in Belgium does not stipulate a certain duration of marriage, only that it has to be effective at present. Beyond that, the married couple must have lived together in Belgium – before or after the Belgian spouse became a national – for three years (A08a) or, if they have only lived together for between six months and three years, the foreign spouse must have had a residence permit for at least three months’ validity over the past three years (A08b);⁷⁵
- In Denmark, the required residence period of eight, seven or six years depends on a duration of marriage of one, two or three years respectively, where one year of cohabitation before the marriage is the equivalent of marriage. A common household is required at the time of application and the Danish spouse must also have held nationality for at least three years;
- For the acquisition of nationality by declaration in France (A08a), either one year of residence plus two years of marriage and a ‘common emotional and material life’ with a French national are necessary or, if the target person has a shorter period or no residence in France, three years of marriage and a common life are required.⁷⁶ In both cases, the reference person does not need to have been French for the whole period of marriage. A third way to acquire nationality is by discretionary naturalisation, to which no requirements regarding duration of marriage, common household or residence apply (A08b);
- Spouses of nationals in Italy are entitled to naturalisation either after six months of residence or three years of marriage, whichever comes first. A common household is not required, but the marriage must not have ended in divorce, annulment, dissolution or separation. If the application is based on the duration of marriage, the Italian spouse does not have to prove that he or she has held nationality for the whole period of marriage;
- In the Netherlands, three years of marriage and a common household are required for naturalisation (A08b). It does not matter whether the Dutch spouse has acquired nationality before or after marriage or whether or not the couple lives abroad, as long as

⁷⁴ Rules regarding permitted absences during the required residence period (especially in Belgium, Denmark, Germany and Spain) will not be mentioned, unless they deviate substantially from the rules described in section 3.3.1.10.

⁷⁵ These two modes were introduced only with a reform of the law in August 1993. Before then, spouses of Belgian nationals had the option to acquire nationality after six months of marriage.

⁷⁶ However, the respective rules have changed frequently: between September 1998 and November 2003, residence was not a requirement but one year of marriage and a common household were required; between 1994 and August 1998, the law required two years of marriage and a common household; before 1994, six months of marriage were sufficient.

the parties do not live in the target person's country of nationality. However, if they do reside in the Netherlands, a common household before marriage also contributes to the three year-requirement. Foreign spouses can also acquire nationality by declaration, but this requires a duration of marriage of at least three years and fifteen years of residence (A08a);

- Lastly, according to rules of practice, naturalisation is possible in Sweden after three years of residence as well as two years of marriage and a common household with a Swedish national, who must hold nationality for that whole period.⁷⁷ However, a person married to a Swedish national for at least ten years and living abroad, except in his or her state of nationality, can be exempt from the residence requirement, but only if strong ties to Sweden are proven (e.g. frequent visits, strong desire to be naturalised).

With the exception of the United Kingdom, where neither the law nor rules of practice contain relevant rules, all other states only stipulate a certain duration of marriage and/or a common household. The duration of marriage is one year in Spain, two years in Germany and three years in Ireland (A08a+b), Luxembourg and Portugal. A common household must have existed for three years in Finland and Luxembourg, whereas in Portugal no common household is necessary and, in Germany, Ireland and Spain, the married couple only needs to live together at the time of application. However, some states that do not require a certain duration of a common household try to ensure that the common life is not being maintained solely for the purpose of being eligible for acquisition of nationality. In Germany, the entitlement to naturalisation is limited insofar as the authorities can deny applications in cases of a marriage of convenience or a failed marriage which only continues formally. Ireland (A08b) demands that the Irish spouse submit an affidavit to the Minister that the married couple is in fact living together as husband and wife. In Spain, the couple must not be legally or de facto separated. The legislation in Portugal and Sweden, as well as in Ireland, prescribes that for acquisition by declaration (A08a) the reference person must hold nationality for the whole prescribed period of marriage or common household, whereas in Finland, Germany, Luxembourg and Ireland, it is irrelevant to naturalisation (A08b) whether the spouse acquires nationality before or after marriage. With the exceptions of Portugal and Ireland for the expiring mode A08a, all states mentioned in this paragraph also demand that the foreign spouse have already resided in the country for some time. The residence condition is one year in Spain and in Ireland for naturalisation (A08b); three years in Germany, Luxembourg and the United Kingdom (with no more than 270 days absence); in Finland it is four years without interruption or six years in total since age fifteen, the last two years without interruption.⁷⁸

Greece has to be mentioned separately in this context. Before a reform in late 2004, the law did not stipulate a certain duration of marriage, but only that marriage to a Greek national was 'taken in account' for the naturalisation. Since then, an applicant can be naturalised after three years of marriage (the Greek spouse must have held nationality upon commencement of marriage), but only if he or she has a common child born in wedlock with the Greek national. Hence, this mode of acquisition is no longer open to all foreign spouses.

A number of states make an exception to the residence requirements if the period spent abroad is due to the fact that the spouse who is a national is in the public service of the respective state or works for some other institution or company abroad, which is deemed to be in the interests of the state. Such regulations exist in Austria, Denmark, France, Germany, Ireland (A08b, since 2004), Luxembourg and the United Kingdom.

⁷⁷ The requirements were lowered in 1989 from three (one year for Nordic nationals) to two years of residence and from four (two for Nordic nationals) years to three years of marriage and a common household.

⁷⁸ The Finnish rule cited was introduced in 2003. Before then, the law only stated that exceptions could be made regarding the required duration of residence for persons with a Finnish spouse.

3.4.1.3 General conditions

Leaving aside the main requirements regarding the duration of marriage, common household, nationality held by the reference person and/or residence by the target person: What other conditions do spouses of nationals have to meet for the acquisition of nationality?

Firstly, in states where the type of acquisition (naturalisation or declaration) as well as the powers of the authorities to deny the acquisition (discretion or not) are the same in procedures for foreign spouses of nationals as for general residence-based applicants (A06), the additional conditions – including, if applicable, fees to be paid and the need to lose the previous nationality – are mostly the same too. This is true in Belgium (A08a+b), Denmark, Finland, France (for mode A06b), the Netherlands (for mode A08b), Spain, Sweden and the United Kingdom. The same is true of Germany, where foreign spouses are entitled to naturalisation, even if they have to meet the more demanding conditions applied in procedures of discretionary naturalisation (A06b). In Greece, spouses of nationals must also fulfil all general naturalisation requirements but, as mentioned, they must have a child born in wedlock as well. In Ireland, basically the same conditions also apply to spouses of nationals (A08b), with one exception: while the general naturalisation fee in Ireland is roughly 635 euros, foreign spouses of nationals only have to pay 127 euros.

Secondly, in Austria and Italy, where regular applicants are subject to the authorities' discretion, but spouses of nationals are entitled to naturalisation, certain conditions beyond the residence requirements are also facilitated for the latter group. In Austria, the federal and provincial fees foreign spouses have to pay in naturalisation procedures total between 631 euros and 1,547 euros and are therefore slightly lower than those for 'normal' applicants (between 841 euros and 1,878 euros). Since the granting does not lie within the authorities' discretion, the applicant's 'extent of integration' is also not evaluated. The rules for general residence-based naturalisation in Italy are not restrictive because they stipulate many demanding conditions, but because they are very vague and leave much room for administrative discretion. This contrasts with the well-defined rules for naturalisation of spouses of nationals. Besides the marriage or residence requirement, foreign spouses of Italian nationals only have to have no convictions for crimes of a certain type in Italy (crimes against the state, the republic, the constitution or political rights and crimes punishable by at least three years prison) or abroad (non-political crimes punishable by more than one year of imprisonment if the sentence is recognised in Italy), they must be no threat to Italy's security; and they must swear an oath of loyalty within six months of the naturalisation being approved. However, the procedure is also facilitated because nationality can be granted by the Interior Minister, whereas, for a regular naturalisation, the final decision is made by the Italian President.

Thirdly, even though the five remaining modes provide for acquisition via facilitated declaratory procedures, the general conditions to be met for them are not always less demanding than those for general residence-based naturalisation. This is particularly true of the right to acquire nationality by option in Luxembourg, for which basically all the general conditions for naturalisation have to be met, including a more or less clean criminal record, the loss of the previous nationality, sufficient knowledge of one official language and a basic knowledge of Luxemburgish. In the same vein, in Portugal acquisition by declaration by the foreign spouse of a Portuguese national can be contested by the public prosecutor before the Court of Appeal in Lisbon within one year of the declaration for many reasons. These include not only crimes punishable by more than three years of imprisonment, but also the lack of an 'effective connection to the Portuguese community' (see section 3.3.1.16) and public service or voluntary military service for a foreign state. In any case, nationality can only be acquired definitely by registration in the civil register if one year has passed since the declaration

without objection from the public prosecutor. The total cost of the acquisition is 131 euros. In addition, acquisition by declaration in France (A08a) is tied to comparatively many conditions beyond the required marriage, common household and residence conditions. First of all, the same integrity clause applies as for naturalisation (no sentences of six months' imprisonment for offences against France's fundamental interests or for acts of terrorism) and, since a reform in late 2003, spouses of nationals must prove sufficient knowledge of French as well. However, the government can also oppose the acquisition of nationality for reasons of 'unworthiness' or 'assimilation defects' within one year of the declaration being accepted as complete by the authorities. 'Assimilation defects' can be present if the target person rejects 'the French way of life', e.g. by living in polygamy. 'Unworthiness' is just as difficult to grasp and allows the responsible Ministry of Social Affairs considerable room for interpretation.

By contrast, the declaratory procedures in Ireland and the Netherlands (both: A08a) are tied to far fewer conditions. In addition to the requirements of marriage and the duration of nationality held by the Irish spouse, the acquisition of nationality by declaration in Ireland before December 2002 was only tied to two more conditions, i.e. that the Irish spouse has not acquired nationality by naturalisation, as a token of honour or by post-nuptial declaration himself or herself, and that a fee for the acquisition of nationality be paid (currently: 127 euros). However, between then and the end of November 2005 this rule only applied to marriages concluded before 30 November 2002 and is now invalid. Finally, for an acquisition of nationality by declaration in the Netherlands (A08a), target persons must only meet three additional conditions. They need to have paid a declaration fee (132 euros), they must not have acquired Dutch nationality by declaration before and they must meet the same integrity criteria as those applied in a naturalisation procedure (no conviction leading to imprisonment, community service or certain fines in the past four years). All the other requirements for naturalisation do not apply, in particular, the need to pass a naturalisation test and to renounce the previous nationality. The declaration must be addressed to the mayor of one's place of residence and is also decided by the mayor.

3.4.1.4 *Unmarried and homosexual partners*

Are all of these modes of acquisition only open to persons legally married to a national of the respective state, or can some of them also be used by unmarried heterosexual partners and/or by homosexual partners? If so, does their partnership have to be registered with the authorities or do unregistered relationships also count?

Only Finland, Sweden and the Netherlands also open up their facilitated modes of acquisition of nationality to *unmarried heterosexual companions*, whereas in all other states even the registered foreign partners of nationals (e.g. persons who concluded a '*pacte civil de solidarité*' in France) are not given preferential treatment in nationality matters. In Finland and Sweden, foreign nationals living with nationals in a relationship 'resembling marriage' can be naturalised under the same conditions as foreign spouses. In the Netherlands, the right to acquire nationality by declaration after fifteen years of residence (A08a) can be used under the same conditions by unmarried partners, but only if they live in a registered partnership (which has existed since 1998). By contrast, the right to naturalisation after three years of marriage is not only open to registered partners (A08b) but, since April 2003, also to persons living in a 'sustained relationship' with a Dutch national (A08c) if they have cohabited with him or her for at least three years in the Netherlands.

Surprisingly, more than twice as many states allow the *homosexual partners* of their nationals to acquire nationality. In Finland, Sweden and the Netherlands, the same rules apply to unmarried heterosexual and homosexual partners. Since the introduction of registered

partnerships in 1989, Denmark regards registered homosexual partners as equal to married couples. However, foreign nationals can only enter into such a registered partnership if they have permanent residence in Denmark and, most importantly, if their state of origin accepts registered homosexual partnerships too, which limits its applicability to nationals of a few Western states. Germany introduced a registered homosexual partnership bill in August 2001, which can also be applied to nationals of states that do not recognise such a partnership. Since then, it has been possible for the registered homosexual partners of German nationals to be naturalised under the same conditions as married spouses. Belgium legalised homosexual marriage in 2003 but until a circular letter of January 2004 only nationals of states that recognised same-sex marriage could marry. However, all homosexual foreign spouses of Belgian nationals can now make use of the right to acquire nationality by declaration (A08a+b) under the same conditions as heterosexual spouses. Finally, Spain legalised homosexual marriage in July 2005, so that homosexual foreign spouses are now also entitled to be naturalised after one year of marriage and residence.

Table 3.7: Main modes of transfer of nationality to spouses of nationals of the respective state (A08) in force at the end of 2004

	Mode	Acquisition by	Discretion / entitlement	(Duration of) Marriage	(Duration of) Common household	(Duration of) Residence in C1	(Duration of) Spouse being national	Fees	Loss of previous nationality	Other conditions
AUT	A08a	Granting (naturalisation)	Entitlement	a) 1 year;	Current	a) 4 years;	Current	€ 588 for appl. and € 43-959.3 for acquisition	Yes	Same as for regular naturalisation (A06a), except integration not to be evaluated
	b) 2 years;			b) 3 years						
	A08b			5 years		No	10 years			
BEL	A08a	Option	Entitlement	Current	3 years	3 years	Current	No, except local stamp duties	No	Same as for regular declaration (A06a)
	6 months				3 years with permit valid >= 3 months					
DEN	A08	Naturalisation	Discretion	a) 1 year;	Current	a) 8 years;	3 years	DKK 1,000 (~ € 134) for application	Yes	Same as for regular naturalisation (A06)
				b) 2 years;		b) 7 years;				
				c) 3 years		c) 6 years				
FIN	A08	Naturalisation	Discretion	Current	3 years	4 years, or 2 if 6 yrs. since age 15	Current	€ 400 for application	No	Same as for regular naturalisation (A06)
FRA	A08a	Declaration	Entitlement	a) 2 years;	a) 2 years;	a) 1 year;	Current	No	No	No criminal record of certain kind, knowledge of French, no 'unworthiness' or 'defective assimilation'
	A08b	Naturalisation	Discretion	b) 3 years	b) 3 years	b) No	Current	No	No	Same as for regular naturalisation (A06)
GER	A08	Naturalisation	Entitlement	2 years	Current	3 years	Current	€ 255 for acquisition	Yes; many exceptions	Same as for discretionary naturalisation (A06b)
GRE	A08a	Naturalisation	Discretion	3 years	No	3 years	Current	€ 1,467.4 for acquisition	No	Common child within wedlock; otherwise same as for regular naturalisation (A06)
IRE	A08a	Declaration	Entitlement	3 years	Current	No	3 years	€ 127 for acquisition	No	Until 29/11/2005: marriage before 30/11/2002, Irish spouse not national by naturalisation, post-nuptial declaration or as token of honour
	A08b	Naturalisation	Discretion	3 years	Current	1 year	No	€ 127 for acq.	No	Same as for regular naturalisation (A06)
ITA	A08	Naturalisation	Entitlement	a) 3 years;	No	a) No;	No	Stamp duty of ~ € 11	No	No convictions for certain serious crimes, no danger to security of the Republic
				b) current		b) 6 months				
LUX	A08	Option	Entitlement	3 years	3 years	3 years	No	No	Yes	Same as for regular naturalisation (A06)
NED	A08a	Declaration	Entitlement	3 years	No	15 years	No	€ 132 for declaration	No	No criminal record of a certain kind, no acquisition of nationality by declaration before
	A08b			3 years		No		€ 229-344 for appl., € 255 for naturalisation test	No	Same as for regular naturalisation (A06)
	A08c	Naturalisation	Entitlement	No	3 years	3 years	No		No	3 years sustained relationship; otherwise: same as for regular naturalisation (A06)
POR	A08	Declaration	Entitlement	3 years	No	No	3 years	€ 75 for declaration, € 56 for registration	No	Effective link to Portuguese community, no crime punished with > 3 yrs prison, no public or voluntary military service for foreign state
SPA	A08	Residence (naturalisation)	Entitlement	1 year	Current	1 year	1 year	No	Yes, but not to be proved	Same as for regular naturalisation (A06)
SWE	A08	Application (naturalisation)	Discretion	a) 2 years;	a) 2 years;	a) 3 years;	a) 2 years;	SEK 1,500 (~ €160) for appl.	No	Same as for regular naturalisation (A06)
				b) 10 years	b) 10 years	b) No	b) 10 years			

	Mode	Acquisition by	Discretion / entitlement	(Duration of) Marriage	(Duration of) Common household	(Duration of) Residence in C1	(Duration of) Spouse being national	Fees	Loss of previous nationality	Other conditions
UK	A08	Naturalisation	Discretion	Current	No	3 years	No	£ 268 (~ € 400) for acq. + cere.	No	Same as for regular naturalisation (A06)

Notes: acqu. = acquisition, appl. = application, cere. = citizenship ceremony.

3.4.2 Extension of acquisition of nationality to children (mode A14)

When foreign persons acquire nationality, can their children acquire nationality at the same time or do they have to wait until the parent has acquired nationality before they can do so? If they can in fact acquire nationality simultaneously, what type of acquisition is it and which conditions have to be met?

Ireland, Portugal and Spain neither provide for simultaneous procedures of acquisition of nationality for children and their parents, nor do they provide for minors to become nationals *ex lege* as soon as one or both of their parents acquire nationality. In other words, in these three states children can apply for naturalisation (Ireland: A09, Spain: A09b) or make use of the right to acquire nationality by declaration (Portugal: A09) or option (Spain: A09a) only *after* at least one parent has acquired nationality (see section 3.4.3.1).

3.4.2.1 Automatic modes of acquisition

In eight of the twelve other states – Belgium, Denmark (A14a+b), France (A14a), Germany (A14b), Greece, Italy, Luxembourg (A14a) and Sweden (A14a) – minor children become nationals *ex lege* under certain conditions when their parents acquire nationality. The laws in seven of these states provide for an automatic acquisition irrespective of the parent's mode of acquisition. The exception is Sweden, where *ex lege* acquisition is limited to the children of parents acquiring nationality via certain modes of notification.⁷⁹ However, the minor children of persons being naturalised do not become nationals *ex lege*. Whether or not they are naturalised is decided in the parents' naturalisation procedure (see below).

Automatic acquisition frequently depends on the child being in the custody of the parent acquiring nationality (Belgium, Denmark, Germany, Luxembourg and Sweden) or at least having the same residence as that parent (France, Italy). Furthermore, automatic acquisition only occurs if the child is not yet married or emancipated in any other way before the age of majority (Belgium, France, Greece, Sweden and Germany daughters only)). In addition, the laws in Denmark and Sweden also explicitly require the child to hold residence in the country. Due to the cohabitation condition, the child's residence in the country is indirectly required in France and Italy because most modes of acquisition there presuppose legal residence in the country. In the four other states, minor children even acquire nationality automatically if they live abroad.

Finally, three states have additional conditions. Firstly, in Denmark in cases of acquisition by declaration it must be proved that the acquisition will cause the child to lose the nationality of other countries unless the other parent of the child retains his or her nationality and shares custody of the child. In cases of acquisition by naturalisation, parliament may exclude the child from the naturalisation bill if the child has a criminal record (which only concerns children aged fifteen and over). There is only one other possibility for acquisition not to take place, i.e. if a child aged twelve or over refuses to give his or her consent. Secondly, for automatic acquisition to become effective in France, the child has to be mentioned in the naturalisation bill/decreed or declaration. Thirdly, the *ex lege* extension of naturalisation to minor children in Germany can also be prevented by excluding them from the naturalisation decree. In the majority of cases, the responsible authorities do make use of

⁷⁹ These are: notification by minors born abroad to a Swedish father (A01b/A04a); minors after five years of residence (A07a); persons with residence since the age of thirteen between the ages of eighteen and twenty (A07b); certain former nationals (A16a+c); Nordic nationals by descent after five years of residence (A18b).

this authorisation⁸⁰ which means that, in general, minors have to undergo a naturalisation procedure themselves (see below).

3.4.2.2 *Non-automatic modes of acquisition while minors*

In Germany (A14a) and Sweden (A14b), not all children of persons becoming nationals acquire nationality automatically because children of persons undergoing naturalisation are (in Germany, mostly) dependent on a non-automatic extension of naturalisation. In Austria, Finland, the Netherlands and the United Kingdom, children never become nationals *ex lege* and therefore always have to undergo an acquisition procedure themselves. In Austria, this is an extension of granting (A14a-c)⁸¹, in Finland an extended naturalisation (A14a+b), in the Netherlands an extension of acquisition by declaration (A14a) or naturalisation (A14b) and, in the United Kingdom, it is acquisition by registration (A14).⁸² A similarly unspecific clause exists in Sweden, where, ‘in a decision concerning naturalisation it shall also be decided whether the applicant's unmarried children under the age of eighteen shall acquire Swedish citizenship’. Again, the law does not further specify the criteria to be applied. Any statements below regarding Sweden are therefore also based on rules of practice.

In the majority of these states, some of the same *general conditions of eligibility* apply as for automatic modes of acquisition, i.e. that the parent acquiring nationality must have custody of the child (Finland, Germany and Sweden) and must sometimes also live in the same household with the child (Germany). In Austria, a custody requirement only applies if the child has not yet been legitimised and if the person acquiring nationality is the child’s father. In the United Kingdom, the Home Secretary tries to prevent conflicts over the custody of the child by requiring that both parents give their consent to the extension of the acquisition to a child. The Netherlands does not have relevant regulations.

In all six states, the *residence requirements* for children to whom the acquisition of nationality is extended are eased. Only Austria does not require residence at all. In all other states, the child at least has to reside in the country at present. In the United Kingdom, only a vague rule states that for ‘older children, particularly those approaching eighteen’, consideration is given to the time they have spent in the country. Likewise, a rule of practice in Sweden is that naturalisation can be extended to children under the age of fifteen after ‘a comparatively short time in Sweden’, but a residence requirement of three years applies to older minors. Children acquiring nationality via an extended declaration in the Netherlands (A14a) must be domiciled in the country; they do not need a certain duration of residence, however. The same is true for an extension of naturalisation in the Netherlands (A14b), but only if the child is younger than sixteen; older children need three years of residence prior to the application. Similarly, children requesting an extension of naturalisation in Finland do not need longer residence if they are younger than fifteen (A14a). However, children above that age must have been domiciled in Finland for the past four years, or for six years since the age of seven with the last two years uninterrupted (A14b). Lastly, in Germany (A14a), minors may be naturalised with their parent(s) if they have resided in the country for the past three years or for half of their lives (children younger than six).

Most of the six states also facilitate acquisition in other ways. Like the principal person, children are *entitled* to acquire nationality by extension of the declaration (A14a) or naturalisation (A14b) in the Netherlands. However, among the states where naturalisation lies

⁸⁰ See Chapter 6 in this volume, on statistical developments.

⁸¹ For Austria, we leave two very special modes of acquisition (A14d-e) out of consideration.

⁸² The British rule taken into account here is the provision, which is not further specified in the BNA, that the Secretary of State has absolute discretion to register any minor as a national upon application. Accordingly, the conditions for this mode are only vague rules of practice.

within the authorities' discretion, Austria is the only state that grants a right to the extension, whereas in Finland and Sweden (A14b) it is still a matter of discretion. In Germany, children do not have a right to extension of naturalisation (A14a), even though applicants meeting the conditions are entitled to the main general residence-based naturalisation (A06a).

Despite an entitlement and the absence of a residence requirement, the *other material conditions* for the extension of naturalisation in Austria are still demanding. Children have to meet all the general conditions, including loss of the foreign nationality (A14a), unless the parent's naturalisation is 'in the special interest of the Republic' (A24b; mode of extension: A14c). In addition, Austrian nationality must not have been withdrawn from them. The only clause that does not apply is that the applicant's level of integration is evaluated.⁸³ For children aged fifteen or over in Finland (A14b), all the general conditions for naturalisation apply except for the reduced residence requirement. However, children younger than fifteen (A14a) do not have to demonstrate language skills and the rules concerning their integrity are also irrelevant. With the exception of the eased residence condition, for an extension of naturalisation in Germany (A14a) the same conditions have to be met as for a regular naturalisation based on an entitlement (A06a). However, minors also benefit from the general rule that applicants under the age of 23 do not need to prove sufficient means of subsistence. The extension of naturalisation in the Netherlands (A14b), by contrast, is facilitated more thoroughly. Co-naturalised children do not have to prove their knowledge of Dutch or the Netherlands in the 'naturalisation test', nor do they have to lose the previous nationality. The only remaining condition then concerns the criminal record, but only if the child is sixteen or over. Apart from the fact that it is a declaratory procedure, for which the mayor is responsible, the material conditions for an extension of acquisition by declaration to minor children in the Netherlands (A14a) are not necessarily more liberal than those for an extension of naturalisation. The declaration can only be extended to children aged sixteen or over if they are no threat to the 'public order, public decency or the safety of the Kingdom', which means that they have to meet the general criminal record requirements. For an extension of naturalisation in Sweden (A14b), besides the residence requirement, the child's criminal record may be taken into consideration. In the United Kingdom, the main additional condition for an extension of acquisition to a child by discretionary registration, but again only for 'older children', is the absence of criminal convictions in the recent past. However, according to the Secretary of State's guidance notes, the child's connections to the United Kingdom are also considered, as is the question of where the child's future is likely to be.

Two additional aspects of the procedure are worth mentioning. Firstly, apart from in the United Kingdom, minor children over a certain age have to give their *explicit consent* to the acquisition of nationality: in Finland and Sweden the age limit is twelve years and in the Netherlands it is sixteen. In Austria, since 1999, youths aged fourteen and over even have to file their own application and, in Germany, the same applies to minors who are sixteen or seventeen years old. Secondly, unlike automatic modes of acquisition, which are free of charge in all states, the extension of acquisition by declaration or naturalisation is dependent on the *payment of a fee* in four of the six states. The fee is 400 euros for the application in Finland, 51 euros for naturalisation in Germany and 200 British pounds (~ 290 euros) for registration in the United Kingdom. In Austria, federal and/or regional fees for the application (13 euros), the assurance of granting (0-87 euros) and/or for the granting itself (0-247 euros) have to be paid, which can add up to between 13 euros and 296 euros for a minor (A14a), and 13 euros and 260 euros for an adult handicapped child (A14b). No fees are due for minors in the Netherlands or Sweden.

⁸³ For details on the general conditions for naturalisation in Austria and other states mentioned, see section 3.3.1.

3.4.2.3 *Non-automatic modes of acquisition for non-minors*

Finally, four states also have special rules for the extension of acquisition to children who are no longer minors. In two of these states, the rules basically apply to all adult children. France enables the extension of naturalisation to children of age under the same conditions as for a regular naturalisation (i.e. A06), but applicants do not need five years of residence in the country (A14b). In Luxembourg, adult children can acquire nationality by option if their parents become nationals (A14b). The conditions for this option are the same as for other options described in previous sections, i.e. loss of previous nationality, a virtually clean criminal record, sufficient knowledge of one official language and in any case a basic knowledge of Luxemburgish and no obligations towards the state of origin that could lead to problems.

By contrast, the rules in Austria and the Netherlands are only relevant to certain children over the age of eighteen. In Austria, naturalisation can only be extended to children of age who are severely handicapped and who therefore cannot provide for themselves and require special care (A14b). The other conditions are the same as those for minors, except that the child and the parent to be naturalised have to live in the same household, or the parent has to be under a legal obligation to provide for the child and must also fulfil that duty. Finally, the relevant rules for children in the Netherlands only target children who attain the age of majority during the procedure of naturalisation or acquisition by declaration. They can be naturalised under basically the same conditions as those that apply to an extension of naturalisation (A14b).

3.4.3 *Other family relation-based modes of acquisition of nationality*

3.4.3.1 *Transfer of nationality to children of nationals after birth (mode A09)*

The children of nationals usually acquire nationality at birth (A01) or on the basis of rules of *ius sanguinis* after birth if one parent was already a national at the time of the child's birth (A05). However, parents frequently acquire nationality only after the child's birth. In addition, some states' rules target the children of nationals irrespective of when the parent acquired nationality. Therefore, we will look at these two types of provision in this section, i.e. rules for the foreign children of persons who either did not hold the respective state's nationality when the child was born or whose nationality at that time is irrelevant. In doing so, we distinguish between rules for the following cases: 1) legitimised minor children of nationals; 2) children whose filiation to a national is established; 3) minors who cannot acquire nationality by filial extension because the respective parent is a national already; 4) other rules targeted at minors or persons irrespective of their age; and 5) other rules for adult children of nationals.

1. *Legitimation*: Some states provide for an automatic acquisition of nationality by minors through legitimation, which occurs when the two parents – in this case a foreign mother and a father who is a national – marry. Rules of this kind exist in Austria, Greece, Sweden and the United Kingdom. The provisions in these states differ from those in Denmark and Finland⁸⁴ insofar as, in the latter states, the father must already have held nationality at the time of the child's birth whereas, in the four states mentioned above, acquisition by legitimation occurs even if the father was still a foreign national at that time. The only

⁸⁴ These are the only two other states where the legitimacy of birth still makes a difference with respect to *ius sanguinis*; see section 3.1.1. In Greece, the legitimacy of birth has been irrelevant for *ius sanguinis* at birth since 1984, but the Greek Nationality Code still contains a rule concerning the acquisition of nationality upon legitimation.

additional condition in Austria is that children aged fourteen and over and their guardians have to consent to the acquisition of nationality. The laws of Germany and the Netherlands also provided for an *ex lege* acquisition of nationality upon legitimation before July 1998 (Germany) and April 2003 (Netherlands). However, since then legitimised children have to make a declaration to acquire nationality. In Germany, this declaration can be made after three years of legal habitual residence by persons born before July 1993 if they are not yet 23 years old and their father is German. In the Netherlands, the declaration can be made in the name of legitimised children if they have been raised and cared for by the father after legitimation for an uninterrupted period of three years.

2. *Establishment of filiation*: As was described in section 3.2.1.2, the acquisition of nationality may occur *ex lege* upon the establishment of a child's filiation to a national. According to the information available, it seems that the respective rules in Italy and the Netherlands described in that section apply both to children of parents who were already nationals at the time of their children's birth and to children of parents who acquired nationality only after their children's birth. By contrast, in all other states, the applicability of the rules described is dependent on the parent having already been a national at the time of the child's birth.
3. *Impossible filial extension*: Austria, Denmark, France and Ireland have special rules for children for whom filial extension of acquisition of nationality is impossible because the respective parent has acquired nationality already. Of course, this is only relevant where minors do not always acquire nationality *ex lege* as soon as one of their parents becomes a national (see section 3.4.2.1). However, in all these cases, children have to undergo naturalisation, for which usually only the general residence requirement is relaxed. Austria gives these minors a right to be naturalised even if they do not hold residence in Austria. They must however meet more or less the same conditions as children to whom the granting of nationality is extended (see mode A14a). Minors who cannot be naturalised with their parents in Denmark may be naturalised independently. For this, they have to meet the same conditions as for a regular (A06) or socialisation-based naturalisation (A07a+b), except that they do not have to document their knowledge of the Danish language and history if they are still under twelve years old. With respect to the required residence, this means that the child must either have received three years of schooling in Denmark and have had four years of residence there, or he or she must meet the regular condition of nine years of residence. France allows the discretionary naturalisation of the children of persons who became French by naturalisation, reintegration or declaration. For this, the only relaxed condition is that they must reside in France at present, rather than for a certain period of time. In Ireland, the Nationality Act simply stipulates that a certificate of naturalisation may be granted if the applicant is a naturalised Irish national acting on behalf of his or her minor child – the Minister of Justice has full discretion in this respect.
4. *Other rules (mainly) for minors*: Four more states have other provisions (mainly) for the minor children of nationals, irrespective of when the parent acquired nationality. The conditions for all these modes are also rather demanding. However, some of these rules even apply to persons who are not actually children of nationals, but who are merely in their custody. In Finland, the naturalisation of minors living with a Finnish parent or guardian is possible after a shorter residence period (no specific duration of residence for children younger than fifteen; four to six years of residence for older children; two years for the children of former nationals or Nordic nationals). Furthermore, they do not have to demonstrate language skills when under the age of fifteen but, beyond that, all the conditions for regular naturalisation apply. The Netherlands allows children to acquire

nationality by declaration if they are in the joint custody of two persons, at least one of whom is a Dutch national, if they have been taken care of for at least three years and if they do not reside in their state of nationality. In Portugal, minor children or incapacitated adult children of nationals may acquire nationality by declaration without any residence requirement. However, the public prosecutor may oppose the acquisition in particular because of a lack of ‘effective links to the Portuguese community’ (see section 3.3.1.16) and crimes punishable by more than three years of imprisonment. In Spain, persons who are or were under the ‘*patria potestas*’ of a Spanish national (including the children of naturalised persons) can acquire nationality by declaration, for which only an oath of loyalty, the symbolic ‘renunciation’ of the previous nationality (except for nationals of some states) and entry in the Civil Register are required. In addition, for persons (most likely minors) who have been under the guardianship of a Spanish national or institution for two years, the residence requirement for naturalisation is reduced from ten years to one year. All the other conditions for regular naturalisation still apply, however.

5. *Adult children of nationals*: Finally, Belgium, Finland and France also facilitate the acquisition of nationality by the adult children of their own nationals. In Belgium, adult persons born abroad can acquire nationality by declaration if, at the time of the declaration, at least one parent is a Belgian national. Children of age whose parents already have or are about to acquire nationality can be naturalised in France even if they have taken up residence in the country only recently. All other conditions are the same as for a regular naturalisation, however. In Finland, the respective provision is only transitional in nature: if at least one parent acquired Finnish nationality other than by naturalisation and was already a Finnish national on 1 June 2003, then his or her adult foreign children can acquire nationality by declaration until May 2008. The only additional condition is that the target person must not have lost Finnish nationality by renunciation in the past.

3.4.3.2 *Transfer of nationality to adopted children of nationals (mode A10)*

Among other things, Article 6 (4) of the ECN also requires that states facilitate the acquisition of nationality by children who are adopted by one of their nationals. Most EU15 states do in fact have special rules for this group of persons, except Austria. The nationality law of this state does not contain any clause which directly refers to adopted children. This means that adopted children of Austrian nationals have to rely on more general modes of acquisition of nationality, e.g. the rule applying to children for whom an extension of nationality is impossible because the respective parent is already an Austrian national (see section 3.4.3.1).

In the fourteen other states, foreign minors – at least under certain circumstances – *acquire nationality automatically* upon adoption by one of the states’ nationals or at a certain point in time thereafter (in the Netherlands: three months after adoption becomes effective). Important additional conditions for the *ex lege* acquisition in this context include:

- in Denmark, Finland and Sweden, the child must be younger than twelve years old;
- in Belgium, the child must either be stateless or have been born in the country or born abroad and adopted by a Belgian national born in Belgium;
- in Luxembourg, the child must be stateless or lose the previous nationality upon adoption;
- in France, the adoption must have been an ‘*adoption plénière*’ (rather than an ‘*adoption simple*’);
- in Portugal, the public prosecutor must not challenge the acquisition of nationality in a judicial procedure on the grounds of no ‘effective links to the Portuguese community’, a prison sentence of more than three years or voluntary service for a foreign state; and

- in general, the adoption, if it occurred abroad, must also be in accordance with national law.

In Germany, Greece, Ireland, Italy, the Netherlands, Spain and the United Kingdom, almost all foreign minors adopted lawfully by a national acquire nationality automatically. In most of the other seven states, minors who did not become nationals *ex lege* upon adoption are given the chance to acquire nationality under facilitated conditions. Only Sweden does not have special rules targeted especially at adopted children. However, any foreign child can acquire nationality upon notification by his or her guardian after five (or, for stateless children, three) years of domicile in Sweden (see section 3.3.2.1). In Belgium, minors born abroad and adopted by Belgians who were themselves born abroad can acquire nationality by declaration within five years of adoption. In Finland, persons adopted after reaching the age of twelve can become nationals by declaration, for which no time limit is set. Minors who were adopted by a national in France via an ‘*adoption simple*’ can acquire nationality by declaration during minority. In Luxembourg, persons adopted as minors who did not lose their previous nationality can only acquire nationality by option after reaching majority. This requires, among other things, five years of residence, language skills, no conviction for certain crimes, and the loss of the previous nationality. In Denmark, children who did not become Danish *ex lege* upon adoption – either because they were over the age of twelve or because of other, more formal reasons – can only acquire nationality by naturalisation as minors, for which basically all general conditions have to be met (see modes A06 and A07b). The only exception is that no duration of residence is required for children under the age of twelve, or only two years of residence for those over twelve.

However, some states also target persons adopted by nationals in other ways. Firstly, Italy and Portugal provide for facilitated acquisition of nationality by naturalisation (Italy) or declaration (Portugal) by persons adopted before the current rules came into force in the early 1980s. Sweden had comparable rules for an acquisition by notification between July 2001 and June 2003. Secondly, four states also have special provisions for persons adopted by nationals after they reached the age of majority. They can acquire nationality by declaration in Belgium between the ages of eighteen and 22 if they have resided in the country for between four years (between the age of fourteen and eighteen) and nine years. In Spain, they can become nationals by making use of an option right within two years of the adoption. In Italy and the Netherlands, they can be naturalised, for which – except for the residence condition (five years in Italy, no requirement in the Netherlands) – the general conditions for naturalisation (see A06) have to be met.

3.4.3.3 Relatives of former or deceased nationals (mode A12)

States often also facilitate the acquisition of nationality by persons who are relatives of persons who were nationals in the past or who held nationality at the time of their death. Two different types of provision can be distinguished in this context.

Firstly, the acquisition of nationality often depends on a reference person (especially a parent or a spouse) who is a national and who has to meet certain conditions. However, although such rules are mainly targeted at relatives of nationals who are still living, states frequently have *additional clauses* that also allow relatives of deceased nationals to make use of the respective provisions if they meet the conditions at the time of their death. In Spain, for example, the entitlement to naturalisation for foreign spouses of nationals also applies to persons who were married to Spaniards at the time of the latter’s death if, immediately before the death, the conditions for naturalisation were met. Rules of this kind are of secondary interest to us, however, and we did not record their frequency exhaustively.

Secondly, the nationality laws of five states *specifically target children or grandchildren of deceased or former nationals*. Such rules were the main reason for defining this special mode of acquisition of nationality. However, the analysis showed that, in practice, considerable overlap exists between these provisions and rules targeting persons with a cultural (ethnic, linguistic and/or religious) affinity to the respective state (A19). In theory, it would be possible to differentiate between provisions referring to descent from a *specific* ancestor who was a national and modes of acquisition targeting persons who are members of a certain cultural group more generally. However, in practice, cultural affinity is frequently defined on the basis of descent from a former national. Whether a specific regulation shall be classified as a mode based on descent from a former or deceased national (A12) or as a mode based on cultural affinity (A19) is therefore difficult to decide. The only criterion could be how precisely the law defines which ancestor is relevant in this context (with more precise rules to be classified as examples of mode A12) but, in practice, this standard was also of little help. We therefore decided to analyse provisions, which we initially classified as modes of acquisition based on descent from a former or now deceased national, together with cultural affinity-based modes of acquisition in section 3.5.2. This allows us to look at regulations in parallel, which may sometimes be distinguishable on the basis of how the target group is defined but which, in most cases, were designed for more or less the same reason, i.e. to maintain contacts with and/or reintegrate persons with an ancestry originating in the respective country.

3.4.3.4 Extension of acquisition of nationality to spouses of foreign nationals acquiring nationality (mode A13)

Austria, Belgium, France, Germany and Luxembourg not only give spouses of persons who already are nationals privileged access to nationality, but they also have special rules for an *extension of acquisition of nationality to spouses*, i.e. a facilitated acquisition of nationality by spouses of persons who are acquiring nationality at the same time. In the other ten states, the spouses of persons acquiring nationality have to rely on other, more general modes of acquisition.

Leaving aside very special cases,⁸⁵ the spouses of persons to be granted nationality in Austria have to meet more or less the same material conditions as the spouses of Austrian nationals. They are entitled to the granting of nationality if they have been married to the principal applicant for one or two years and have resided in Austria for four or three years respectively or, if they have already been married for five years, they can be naturalised without a residence requirement. In addition to these conditions, all the general requirements for naturalisation have to be met (especially loss of previous nationality, means of subsistence, no criminal convictions of a certain kind and language skills), except that the spouse's integration does not have to be evaluated by the authorities. In addition, naturalisation is slightly less expensive for spouses (230-1,364 euros, depending on the province and the person's income).

Belgium also applies the same provisions to spouses of nationals and to spouses of persons who are only just about to acquire nationality. A certain duration of marriage is not required, but a spouse wishing to acquire nationality by making use of an option must have lived in Belgium with the principal applicant for three years, or at least for six months if he or she has held a residence permit valid for at least three months in the past three years. Again, as for other declaratory procedures in Belgium, the acquisition of nationality can only be

⁸⁵ This concerns the spouses of persons who are naturalised by the federal government because of their special achievements (A24b) and spouses of persons who acquire nationality upon taking up office at a university (A25).

prevented by the public prosecutor in cases of ‘serious facts with respect to the person’ (which mainly concerns convictions for serious crimes).

The only facilitation for spouses of foreign nationals in France, Germany and Luxembourg is also a reduction of the required residence period but, unlike Austria and Belgium, these states do not require a certain duration of marriage or a common household. In France, a spouse can be naturalised with a principal applicant immediately after taking up residence in the country, but all the other conditions are the same as for a regular naturalisation. In Germany, the law only specifies that less than eight years of residence are sufficient for co-applying spouses and the administrative guidelines state that four years of residence are sufficient if the marriage has already lasted for two years. However, naturalisation remains within the authorities’ discretion, and, as in France, all the other general conditions for naturalisation apply. Finally, in Luxembourg the required residence for spouses of persons who acquire nationality by naturalisation or option is reduced from five to three years. The other conditions are, again, the same as for a regular naturalisation or option after five years.

3.4.3.5 Transfer of nationality or extension of its acquisition to other relatives

Other relatives of nationals or of persons acquiring nationality besides children and spouses are not the target of special rules for the acquisition of nationality in any EU15 states. This includes siblings and other relatives who are not direct descendants, as well as parents and grandparents. In other words, family relation-based modes of acquisition are reserved for spouses and occasionally partners, as well as children and sometimes grandchildren of nationals or persons who are about to acquire nationality.

3.5 Affinity-based modes of acquisition of nationality after birth

States often give privileged access to nationality to persons who have an affinity to the country, which is not based on a family relationship with a living person. Besides an affinity based on having held nationality of the state in the past (see section 3.5.3.1), the most frequent affinities states refer to are holding the nationality of a particular foreign state (A18) or being of a certain cultural (ethnic, linguistic and/or religious) background (A19). Nationality- and cultural affinity-based modes of acquisition must be analysed in close connection for two reasons. Firstly, states frequently combine criteria of nationality and culture in their rules on the acquisition of nationality. Secondly, in most cases, nationals of certain states are also favoured on the presumption that they are culturally similar to the native population. The only difference is that, whereas for the first mode the holding of a particular nationality is enough to ascertain cultural similarity and to warrant privileged access to nationality, for the second mode the simple fact of holding a particular nationality is not sufficient or may even be irrelevant in proving cultural affinity.

Only the Netherlands and the United Kingdom⁸⁶ do not privilege certain nationalities or persons with a particular cultural affinity (including persons who have nationals as ancestors) to the country with respect to the acquisition of nationality. The facilitation of acquisition of nationality based on affinity in these two states therefore mainly concerns former nationals (A16; see section 3.5.3.1) and, in the United Kingdom, persons with a

⁸⁶ From 1983 to 1988, the United Kingdom entitled nationals of Commonwealth states who were in the service of the Crown or other institutions to be registered as British citizens, but this was relevant for few persons only.

special nationality status (A17; see section 3.5.3.3). Legal provisions in the other thirteen states:

- either give only nationals of certain foreign states privileged access to nationality (Austria, Finland, Italy and Sweden); or
- they also (Belgium, Denmark, France, Germany, Luxembourg, Portugal and Spain) or only (Ireland) target persons with a certain cultural affinity; or
- they contain combined nationality and culture requirements (France, Germany and Greece).

We will now look firstly at modes of acquisition for which the main or only affinity-based condition is being a national of a particular foreign state (section 3.5.1). Then we will focus on rules that use cultural affinity – including descent from a national – as the primary explicit requirement, even if nationality of a certain state is an additional condition (see section 3.5.2).

3.5.1 Acquisition of nationality based on a specific nationality (A18)

We are mainly interested in modes of acquisition for which not only the material conditions are facilitated, but also the procedures (i.e. declaratory procedures or naturalisation based on an entitlement instead of discretion). However, general residence-based modes of acquisition are taken into account as well if important conditions – e.g. duration of residence, loss of previous nationality, integration – do not apply or are relaxed for nationals of certain states.⁸⁷ Nine states relax certain naturalisation requirements for persons of particular foreign nationalities, but only three of these also provide for additional declaratory procedures. With respect to the nationalities they favour, we can group these nine states into three clusters:

1. *EU/EEA states*: Only Austria, Germany and Italy facilitate the naturalisation of nationals of other *EU states* and Austria also favours nationals of EEA states that are not members of the EU. All three states introduced their provisions during our period of investigation: Italy in 1992, Austria in 1999 and Germany in 2001. In other words, the facilitation of EU nationals' acquisition of nationality is a recent phenomenon, which occurred only after the integration of the EU intensified in the late 1980s and early 1990s;
2. *Nordic states*: Denmark, Finland and Sweden favour nationals of other Nordic states, both by relaxing the conditions for naturalisation and by allowing Nordic nationals to acquire nationality by declaration. All facilitated modes of acquisition in these states are based on a common Nordic agreement and have been in existence for decades, apart from a special mode of declaration for persons born in Denmark, which was open to all nationalities before 2004 (A07c/A18a);
3. *Colonial or cultural ties*: France has special rules for (former) nationals of territories over which France has *ever* exercised sovereignty. Portugal favours nationals of Portuguese-speaking states; Spain facilitates the acquisition by nationals of Spanish-speaking states, other former colonies and other states deemed culturally similar, i.e. nationals of Latin American countries, Andorra, the Philippines, Equatorial Guinea and Portugal. The facilitated modes of acquisition in France and Spain have been in force since long before the beginning of our period of investigation in 1985. The rules in Portugal that now apply

⁸⁷ However, special rules will be overlooked: 1) if some conditions simply cannot apply to certain foreign nationals; or 2) if they are the result of multilateral agreements. An example of case 1 exists in Denmark and Sweden, where Nordic or EEA nationals do not need a permanent residence permit because they are always granted other permits. An example of case 2 exists in the Netherlands, where nationals of state parties to the Second Protocol to the Strasbourg Convention do not have to renounce their previous nationality before naturalisation.

to nationals of lusophone states were the general rules for all foreign nationals before 1994.

Table 3.8 contains an overview of the special rules for foreign nationals of designated states.

3.5.1.1 *General residence-based modes of acquisition with relaxed conditions*

When we first look at general –residence-based modes of acquisition, for which certain conditions are relaxed for nationals of the states listed above, it becomes clear that in all states except Germany the only or main form of facilitation is a *reduction of the required residence period*: it has been reduced:

- from ten to four years in Austria and Italy for EU (EEA) nationals;
- from nine to two years in Denmark (A18c), from six to two years in Finland (A18a) and from five to two years in Sweden (A18a) for Nordic nationals;
- from ten to six years in Portugal for nationals of Portuguese-speaking states;
- from ten to two years in Spain for nationals of Spanish-speaking states, former colonies or culturally similar states; and
- for (former) nationals of territories over which it has ever exerted sovereignty, France only demands legal residence at the time the naturalisation decree is signed.

Spain is the only state in this group that relaxes an additional condition: nationals from the states mentioned above do not have to ‘renounce’ their previous nationality. The reduced residence requirement is the only relaxation of the conditions in comparison to the general residence-based modes of acquisition (see section 3.3.1) in all other states, but two states have special rules regarding how compliance with certain conditions can be proved. In Denmark (A18c), the completion of elementary school in either Norway or Sweden is sufficient proof of a knowledge of the Danish language and Danish society, culture and history. Nationals of Finland and Iceland, by contrast, have to prove their knowledge in the same way as applicants from non-Nordic states. In Portugal, nationals of lusophone countries can be exempted from the need to provide documentary evidence of their knowledge of the Portuguese language and their ‘effective connection to the Portuguese community’. However, they still have to meet this material requirement – although they will obviously find it much easier to meet.

Lastly, in Germany, naturalisation by entitlement is facilitated insofar as applicants do not have to lose their previous nationality before naturalisation if they are nationals of an EU state that does not require German nationals to lose their nationality upon naturalisation. In other words, loss of the previous nationality is not a condition in cases of reciprocity.

3.5.1.2 *Special procedures*

Denmark (A18a+b), Finland (A18b) and Sweden (A18b) are the only EU15 states that do allow nationals of designated foreign states, i.e. those of other Nordic states, to acquire nationality via a simplified declaratory procedure. Denmark even offers Nordic nationals two modes of acquisition by declaration: one is open to persons between the ages of eighteen and 23 who have spent some time as minors in Denmark (A18a/A07c), whereas the other mode targets all adult Nordic nationals irrespective of their age when they came to Denmark (A18b). We will concentrate on the latter mode (A18b) here because the former – which has no longer been open to all foreign nationals since May 2004– has already been described in section 3.3.2.2.

The declaration/notification has to be addressed to a regional authority in Denmark (county governor, prefect of Copenhagen, High Commissioner of the Faeroe Islands or Greenland) and Sweden (County Administrative Board), while in Finland the responsible authority is the same as for naturalisation procedures, i.e. the Directorate of Immigration. The acquisition is

free of charge in Denmark but, in Finland, a fee of 300 or 275 euros (applicants aged 65 and over) is due. In Sweden, the notification costs 475 Swedish crowns (~ 50 euros).

The *material conditions* for these three modes of acquisition of nationality are very similar. Most importantly, all three states limit eligibility to persons who are nationals of another Nordic state other than by naturalisation, i.e. Nordic nationals by descent. In all three states, the target persons must be adults and they must have completed a certain period of legal residence immediately before the declaration/notification, which is five years in Sweden, six years in Finland (before June 2003: seven years) and seven years in Denmark. Another area of similarity is that, from the list of frequently applied requirements, all three states only have rules concerning the target person's criminal record, i.e. that he or she must not have been sentenced to imprisonment or some other form of detention during the required period of residence. Finally, the main and – apart from the required residence – only area in which the three states do not apply the same rules concerns the condition under which previous nationality is lost. As mentioned, this condition has no longer been applied in Sweden since July 2001 and in Finland since June 2003, which leaves Denmark as the only Nordic EU15 state that still requires the previous nationality to be either lost automatically (Norwegian nationals) or renounced (Finnish, Icelandic and Swedish nationals).

Table 3.8: Overview of major affinity-based modes of acquisition of nationality

	Reacquisition (A16)		Nationals of certain states (A18)	Persons with cultural affinity (A19/A12)			
	Residence required	No residence required		Language	Religion	Culture, descent: residence required	Culture, descent: no residence req. or return policy
States with no cultural affinity-based modes of acquisition							
AUT	Gen: N	Spec: E, D	EEA states: N	—	—	—	—
FIN	Gen: D, N, Spec: D	Spec: D	Nordic states: E, N	—	—	—	—
NED	Gen: D	Gen: E; Spec: D	—	—	—	—	—
SWE	Gen, Spec: D	Gen: N	Nordic states: E, N	—	—	—	—
UK	—	Spec: D, N	—	—	—	—	—
States with cultural affinity-based modes requiring residence							
BEL	Gen: D	—	—	—	—	Youths descended from nationals: D	—
DEN	Gen: N; Spec: D	—	Nordic states: D, N	—	—	Youths descended from nationals; Southern Schleswigans: N	—
FRA	Gen: N; Spec: D	Spec: D	Former colonies / territories: N	Francophone: N	—	—	—
ITA	Gen, Spec: D, <i>ex lege</i>	Spec: D	EU states: N	—	—	Descendants of nationals by birth: D	—
LUX	—	Spec: D, N	—	—	—	Descendants of nationals by origin: D	—
States with cultural affinity-based modes not requiring residence or being part of a 'repatriation' policy							
GER	—	Gen: N; Spec: E	EU states: N	German speaking: N	—	—	(<i>Spät</i>)Aussiedler in ex-SU: <i>ex lege</i> ; descendants of Germans: N
GRE	—	Spec: D	—	—	—	'Homogeneis': N	Pontian Greeks in ex-SU: N; 'Homogeneis': <i>ex lege</i>
IRE	—	Spec: D	—	—	—	—	Irish descent or associations: N

POR	—	Gen: D, <i>ex lege</i>	Lusophone states: N	—	—	Descendants of nationals, members of Portuguese communities: N
SPA	—	Gen: D, N	Latin American states: E Former colonies, culturally close states: E	Sephardic Jews: E	Descendants of nationals: E	Descendants of native-born nationals: D

Notes: Gen = modes of reacquisition for former nationals in general;

Spec = modes of reacquisition for special groups of former nationals, e.g. those who lost nationality by marriage or while minors, or former nationals by origin;

D = acquisition via a declaratory procedure;

E = entitlement to naturalisation;

N = discretionary naturalisation.

3.5.2 Acquisition based on cultural affinity

As explained in section 3.4.3.3, in our analysis of modes of acquisition of nationality based on cultural (ethnic, linguistic or religious) affinity (A19), we will also take into account provisions that favour persons who are descended from a former or deceased national (A12), because these two modes frequently overlap. Applying a wider concept of cultural affinity in this sense, we can conclude that the regulations concerning a facilitated acquisition of nationality by persons with a cultural affinity to the respective state are much more varied than those targeting foreign nationals of certain states. The regulations differ with respect to:

- the defining conditions persons must meet, i.e. whether they must have a particular *language or religion* or a more general *cultural, ethnic or descent background*;
- whether or not they also have to *be from a certain country or territory*; and
- whether the acquisition of nationality requires *residence in the country* or can also occur *abroad*, or takes place abroad, but with a *clear view to ‘return’* to the country of nationality.

Table 3.9 summarises the combinations of these conditions that occur in the EU15 states.

Table 3.9: Types of cultural affinity-based modes of acquisition of nationality

Persons ...		Acquisition of nationality occurs ...		
		in the country	abroad, but with a view to return	abroad or country of residence is irrelevant
with a particular <i>language</i> from certain countries or territories		France (A19), Germany (A19c)		
with a particular <i>religion</i>		Spain (A19)		
with a particular <i>culture, ethnicity or descent</i>	irrespective of their country or territory of origin	Belgium (A12), Denmark (A12), Greece (A19a), Italy (A12a-c), Luxembourg (A12), Spain (A12c)		Germany (A12), Greece (A12, A19b), Ireland (A19), Portugal (A19), Spain (A12a) 1992-1997: Italy (A12d)
	from certain countries or territories	Denmark (A19)	Germany (A19a), Greece (A19c)	

3.5.2.1 *Persons with a particular linguistic or religious affinity*

Regulations for persons of a particular native language or religion are rarer than those requiring descent from a national or a more comprehensive cultural or ethnic background. As we saw in section 3.5.1, a language criterion may underlie the definition of states whose nationals have privileged access to nationality, as is the case in Portugal and Spain. However, here we look at rules for which nationality alone is not sufficient or is even irrelevant in proving a particular linguistic affiliation. In the same vein, a person's religion may also be an important indicator of membership of a particular cultural or ethnic group, but religion is not an explicit criterion in the context of the rules described in the next three sub-sections.

Only two states target persons on the basis of their linguistic affinity and both of these require applicants for naturalisation to be natives of certain countries. France allows persons who are nationals of francophone states to be naturalised immediately upon taking up residence in France, but only if their first language is French and if they received their primary education in that language (A19). Germany is the second country with relevant provisions. There, German-speaking nationals from Liechtenstein, Austria or other areas in Europe where German is an official or colloquial language can acquire nationality by discretionary naturalisation after four rather than eight years of residence (A19c). In both states, all the other general conditions for naturalisation have to be met by these applicants, but the language requirement is of course irrelevant in practice.

Leaving aside a rule applying to a very small group of monks in Greece (see section 3.5.3.3), we are left with only one state, Spain, that facilitates the acquisition of nationality by persons with a particular religion. Sephardic Jews can be naturalised after two years of residence (instead of ten), but all other regular conditions for naturalisation still apply (A19). Forms of accepted proof of being a Sephardic Jew include the language used in the family, the person's surname or the inclusion of oneself or one's ancestors in the list of Sephardic families protected by Spain (with relations to Egypt and Greece) in the Royal Decree of 29 December 1948.

3.5.2.2 *Persons of a particular culture, ethnicity or descent residing in the country*

The second type of regulation in this context relates to rules for persons of a particular cultural background and/or descent from a former or deceased national, who have already taken up residence in the country *and* who do not come from a particular country or territory. This last condition sets them apart from modes discussed in the next two sub-sections insofar as these rules are not just targeted at a diaspora in certain parts of the world, but at descendants of (former) nationals more generally, wherever they originate.

Belgium, Denmark, Greece, Italy, Luxembourg and Spain have special rules for such persons.⁸⁸ In all states except Greece, the main criterion is defined concretely as descent from a parent or grandparent who was a national. The most liberal rules can be found in Italy: since 1992, children or grandchildren of Italians by birth can acquire nationality via a simple declaration either when they perform their military or civil service in Italy (A12b), or within one year of reaching the age of majority if they have lived in Italy for two years as minors (A12c). In addition, all children or grandchildren of Italians by birth can be naturalised after three rather than ten years of residence (with all other general conditions applying) (A12a). In Belgium, persons born abroad to former Belgians and foreign-born persons adopted by someone who was a national before or at the time of the target person's birth can acquire nationality by declaration within four years of reaching the age of majority (A12). The main

⁸⁸ We omit a very special rule in Germany here which concerns certain persons who were excluded from various collective naturalisations in the years 1938 to 1943 for racial reasons (A19g).

requirement is that they have lived in Belgium in the year preceding the declaration and can prove nine years of residence in total or uninterrupted residence between the ages of fourteen and eighteen. If these conditions are met, the acquisition can be opposed by the public prosecutor only because of ‘serious facts with respect to the person’ (i.e. mainly serious crimes). The special rules in Luxembourg apply to persons born abroad to former ‘*Luxembourgeois d’origine*’ who were born in the country before 1920. They can become nationals by option, which presupposes five years of residence and that the person fulfil all the conditions for regular naturalisation (loss of previous nationality, language skills, no criminal record of a certain kind, etc.) (A12).

The other three states at least relax certain conditions for naturalisation. Denmark gives adult aliens who immigrated before the age of twenty the chance to be naturalised after two years of residence (instead of nine). They furthermore do not need to hold a permanent residence permit if at least one of their parents was a Danish national by birth (A12). Spain allows persons born abroad to be naturalised after one year of residence (instead of ten) if one of their parents or (since 2002) grandparents was a Spanish national (A12c). In both states, all the other general conditions for naturalisation apply. Lastly, in Greece, ‘homogeneis’ living in the country can be naturalised without having to prove a certain duration of residence (A19a). The concept of ‘homogeneis’ combines ‘Greek origin’ and ‘Greek national consciousness’. Target persons are supposed to be of Greek descent, be native Greek speakers, and demonstrate national consciousness through a knowledge of Greece, participation in national events abroad and social contacts with Greece. Language skills and knowledge of the country, which are regular conditions for naturalisation, thus become the main criteria for eligibility. This mode is mainly relevant to ‘homogeneis’ who cannot meet the conditions for acquisition of nationality by ‘definition’ or via the special procedure for Pontian Greeks described below.

3.5.2.3 Persons of a particular culture, ethnicity or descent irrespective of their country of origin or residence

Three Southern European *states*, plus Germany and Ireland, give persons of a particular cultural background and/or persons descended from (former) nationals privileged access to nationality, even if they live abroad. Regulations of this kind are part of a broader policy designed to maintain ties to the national diaspora abroad, which also includes rules concerning the facilitated reacquisition of nationality by former nationals (see section 3.5.3.1).

In Greece, nationality is acquired when it is proven that an ancestor – no matter in which generation – was a Greek national (A12). The main proof of this is that the ancestor was registered in the rolls of a Greek municipality or community. Due to the fact that, since 1984, *ius sanguinis* has had a retroactive effect and is unconditional, i.e. it is dependent neither on the gender or marital status of the respective Greek parent nor on the country of birth (see section 3.1.1), this procedure only serves to *establish* that such applicants – and in fact all descendants of the respective ancestor – *are* Greek nationals in this context. Consequently, it is referred to as acquisition by ‘definition of Greek nationality’. Since 1995, these procedures have been administered by the regions, but the exact requirements are not defined by law. It has to be added that, unofficially, special rules apply to descendants of Greek nationals belonging to an ethnic minority insofar as their cases are handled by the Ministry of the Interior.⁸⁹ For ‘homogeneis’ residing abroad who cannot acquire nationality via the definition procedure because no entry can be found for an ancestor in a municipal or community roll, the possibility of a discretionary naturalisation exists after application to the

⁸⁹ For more details on this procedure of definition, see section 4.2.1 in the Greek country report in volume 2.

Greek consul in the place of residence. The consul then has to certify the applicant's Greek origin and 'Greek national consciousness' (A19b).

Two of the other four states have equally flexible rules for the acquisition of nationality. In Ireland, the Minister of Justice has full discretion to waive any condition, including residence in the country, for persons of 'Irish descent' or 'Irish associations' (A19). The first concept only seems to require a certain cultural affinity to Ireland, whereas 'Irish associations' have been defined since 2005 as requiring a relationship 'by blood, affinity or adoption' to a person who is or is entitled to be an Irish citizen (i.e. most persons born in Ireland who have not yet performed an 'act that only an Irish citizen is entitled to do'). The law in Portugal contains a similar rule: in naturalisation procedures, the Interior Minister can exempt persons with Portuguese ancestry and persons belonging to a Portuguese community abroad from the requirements of residence, fluency in Portuguese and the existence of 'effective links to the Portuguese community' (A19). However, the last two conditions are of course of central importance for establishing that the person belongs to a Portuguese community abroad.

The regulations in Germany and Spain specifically target persons with at least one parent who was a national. Germany gives persons descended from or adopted by a former national the chance to acquire nationality by discretionary naturalisation if they reside abroad and if there is no reason for an expulsion (i.e. mainly criminal convictions and other offences) (A12).⁹⁰ In addition, the authorities generally require applicants to lose their previous nationality. Spain only targets persons with at least one parent who was a Spanish national and was born in Spain, but makes their acquisition of nationality very easy by giving them an option right irrespective of where they reside (A12a). The only other conditions for this acquisition by option, which was introduced in 2002, are an oath of loyalty, a (symbolic) 'renunciation' of the previous nationality and entry into the civil register.

Lastly, Italy had a transitory programme in force for the acquisition of nationality by declaration by former nationals (A16h), their children and grandchildren from 1992 to 1997 (A12d), which was used by more than 160,000 persons.

3.5.2.4 Persons of a particular culture, ethnicity or descent in certain countries

Finally, we turn to provisions that are targeted only at a country's diaspora in particular countries or territories. In practice, these rules either apply to persons who have already taken up residence in the country or who acquire nationality abroad, but who clearly intend to immigrate to their new country of nationality.

The first provision to be mentioned here, and the only one requiring a certain duration of residence in the country, is the Danish regulation that persons who were born in Southern Schleswig (Germany) can be naturalised after two (instead of nine) years of residence if they are 'Danish-minded'. This means that they have attended a Danish school and have demonstrated an affinity with Danish society during their residence in Southern Schleswig after attaining the age of majority (A19). The main criterion for this mode is therefore more cultural in nature, rather than requiring proof of descent from a national. Persons meeting these conditions do not have to provide further evidence of their knowledge of the Danish language and Denmark.

The regulations in Germany and Greece that facilitate the re-migration of a population defined via ethno-cultural criteria are of more relevance. Since 1953, Germany has applied

⁹⁰ We again omit some German provisions of uncertain relevance, i.e. the discretionary naturalisation of ethnic Germans who are not 'Aussiedler' or 'Vertriebene' in the sense of Germany's Basic Law (A19e) and the naturalisation by entitlement of ethnic Germans meeting the above criteria who belonged to the German *Wehrmacht*, were displaced and did not acquire a foreign nationality (A19f).

rules for the ‘return’ and acquisition of nationality by ‘Germans without German nationality’ – ‘*Aussiedler*’ (repatriates), ‘*Spätaussiedler*’ (late repatriates) and ‘*Vertriebene*’ (expellees) – from the (former) Soviet Union, who have suffered expulsion or discrimination because of their German descent. An ethnic German is defined by law as somebody ‘who has professed the German national traditions in his country of origin if this profession is confirmed by criteria such as descent, language, education and culture’. When the immigration of ethnic Germans increased sharply after 1989, the rules for their immigration and acquisition of nationality changed frequently. Until 1999, ‘*Aussiedler*’ and, later, ‘*Spätaussiedler*’ were entitled to naturalisation after having been admitted to Germany (A19d). However, since 2000 they have acquired nationality *ex lege* as soon as they receive a document certifying their status (‘*Spätaussiedlerbescheinigung*’), the precondition for which is completing the procedure for entry to Germany in their country of origin (A19a). Besides the fact that the annual entry quota is not yet exhausted, acceptance into the entry procedure requires proof of the profession of German traditions, of family transmission of the German language to the target person and, for persons born after 1923, proof of descent from a German national or an ethnic German. The language skills are examined in an oral test, in which the person must demonstrate that he or she is able to hold a basic conversation in German. Spouses and children of accepted ethnic Germans are entitled to entry to Germany as well but, since 2005, they have also had to demonstrate at least a basic knowledge of German.⁹¹ It has to be added that persons acquiring nationality this way do not have to renounce their previous nationality.

In 1990, Greece introduced a special naturalisation procedure for ‘Greeks of Pontian origin’ from the (former) Soviet Union, who left Turkish territory before October 1924 and their descendants (A19c). Until 2001, status as a Pontian Greek could be proven by any document that verified descent from a Greek national before a Greek consulate in a successor state of the former Soviet Union. However, documents were often unavailable and ‘solemn declarations’ were accepted too, which made the procedure prone to corruption. Since then, proof of one’s Greek origin is no longer sufficient. The person concerned now has to convince a consular commission that he or she is a ‘homogenis’, which also requires ‘Greek national consciousness’. Evidence of this consciousness includes knowledge of Greek history, culture and customs, contact with the Greek consulate, participation in Greek national events or contacts with relatives and friends in Greece. Knowledge of the Greek language is welcome, but it is not required for acceptance as homogenis. The consular commission’s report is sent to the region where the person plans to settle. There, another commission, one member of which is a representative of a homogeneis association, issues another opinion. Persons accepted as homogeneis can immigrate to Greece and request naturalisation at the regional authority. Those naturalised via this special procedure acquire Greek nationality retrospectively from 1930 or 1923, depending on whether they or their Greek ancestors left Turkish territory before October 1912 or between that date and October 1924.⁹²

3.5.3 Other affinity-based modes of acquisition of nationality

3.5.3.1 Former nationals (mode A16)

The reacquisition of nationality is only one of five modes of acquisition in our typology for which all EU15 states have at least one rule. In fact, the density of regulations in this area is by far the highest. Apart from Belgium, Ireland and Luxembourg, all other states have two or more different provisions that give former nationals privileged access to nationality.

⁹¹ For more details, see section 3.2 of the country report for Germany in volume 2.

⁹² For further details, see section 3.2.2 of the country report for Greece in volume 2.

Facilitating the reacquisition of nationality is often an important part of a general policy to maintain ties with emigrants, their descendants and communities of the same ethno-cultural background abroad. Other elements of such a policy are, of course, the special modes of acquisition described in sections 3.5.1 and 3.5.2. Quite frequently, the regulations in this area are not targeted simply at all former nationals, but rather at persons who lost nationality via particular modes of loss and/or under particular historical circumstances. We can distinguish the following eight types of provisions in this context:

1. *Rules for persons who lost nationality by marriage*: Seven states have special rules for women who lost nationality on the basis of now-defunct clauses which provided for a loss upon acquisition of a foreign nationality through marriage to an alien. The reacquisition occurs by declaration in France (A16b), Greece (A16a), Italy (A16e), Luxembourg (A16b), the Netherlands (A16c) and Portugal (A16b) and by granting based on an entitlement in Austria (A16d). None of these states requires residence in the country, but two states apply additional conditions. In Austria, reacquisition is only possible if the marriage to the alien is no longer effective, if naturalisation is applied for within five years of termination of the marriage and if the most general naturalisation conditions are met (including loss of the foreign nationality). In France, women must have maintained cultural, professional, economic or family ties to France and they must not have been convicted of certain crimes. No additional material conditions exist in Greece, Italy, Luxembourg or the Netherlands nor, since 2004, in Portugal. Reacquisition in Portugal even has a retroactive effect, so that children born to a woman who lost Portuguese nationality after the child's birth can acquire nationality by simple declaration.
2. *Rules for persons who lost nationality upon acquisition of a foreign nationality other than by marriage or because of a more general prohibition of multiple nationality*: France also applies its rules for persons who lost nationality by marriage to those who lost it because they acquired a foreign nationality in some other way (A16b). The same is true in Portugal for losses that were registered in the Civil Registry (A16c). If the loss was not registered, then nationality is actually reacquired automatically (A16d). The United Kingdom gives persons who renounced British citizenship in order to acquire a foreign nationality a right to reacquire it by registration, which is conditional only on the fact that nationality was not acquired by registration before (A16a). Finland also allows for easy reacquisition by declaration, but only for the five years commencing in June 2003 (A16e). Similar transitional rules had been in force in Italy for five years commencing in 1992 (A16f) and in Sweden for two years from mid-2001 onwards (A16d).
3. *Rules for persons who lost nationality as minors*: Special provisions for persons who lost nationality as minors only exist in three states. Austria grants persons who lost nationality as minors for reasons other than withdrawal a right to be naturalised within two years of reaching the age of majority, even if they reside abroad. However, they still have to meet almost all the other general conditions for naturalisation (A16c). Having already applied a transitory rule to this end between 1984 and 1986 (A16c), Greece introduced a clause in 2001 that allows persons born to a Greek mother to reacquire nationality by option if they lost it through legitimation by a foreign father (A16b). Portugal allows persons who lost nationality while minors to reacquire it by declaration after reaching majority age (A16a). However, the reacquisition only becomes effective if the public prosecutor does not oppose it within one year of the declaration for the reasons listed under point 1 above.
4. *Rules for persons who lost nationality through residence abroad*: As we will see in section 4.2.1, expatriates can lose nationality after certain periods of residence abroad under certain circumstances in ten EU15 states. However, only two states provide for modes of reacquisition targeted at these persons in particular. Finland allows persons born abroad who lost Finnish nationality because of insufficient connections to Finland to

reacquire it by declaration, but only if they did not receive sufficient information on the possibilities for retaining nationality in advance (A16c). France also gives persons whose nationality was withdrawn because they lived abroad for more than 50 years after their ancestors emigrated the chance to reacquire nationality by declaration. However, this right is dependent on the maintenance of cultural, professional, economic or family ties to France or on service in the French army (A16c). Beginning in early 2001, the Netherlands also gave persons who lost nationality after ten years of residence abroad the chance to reacquire it by declaration, but this rule was only in force for about two years (A16d). In all other states with comparable modes of loss (Belgium, Denmark, Greece, Ireland, Luxembourg, Spain and Sweden), persons who lost nationality after long periods of residence abroad can only reacquire it on the basis of the general rules for reacquisition (see point 8 below).

5. *Rules for persons who lost nationality under particular historical circumstances:* Separate modes of reacquisition for persons who lost nationality under particular historical circumstances are fairly rare. Austria entitles persons who were Austrian nationals before 9 May 1945 to reacquire nationality by notification if they had to leave Austria because of persecution under the Third Reich or because they stood up for a democratic Austria (A16e). This reacquisition is not dependent on secure income, the loss of the foreign nationality or (since 1993) residence in Austria, but target persons must meet the general integrity and public order and security requirements. By contrast, Germany gives former nationals who acquired a foreign nationality following political, racial or religious persecution during Nazi rule, as well as their descendants, an unconditional entitlement to re-naturalisation (A16b+c). Lastly, in Greece, former nationals can reacquire nationality by option if they fled the country as political refugees during the civil war between 1946 and 1949 (A16d). However, this option right only applies to persons of Greek origin ('homogeneis').⁹³
6. *Rules for persons who lost nationality and became nationals of a particular state:* Four states have special provisions for former nationals who acquired the nationality of certain foreign states. In Denmark (A16a), Finland (A16d) and Sweden (A16c), former nationals who became nationals of a Nordic state can reacquire nationality by declaration if they re-establish residence in the country. However, Denmark makes the reacquisition dependent on two additional conditions, i.e. that the target person was a Danish national by birth and that the foreign nationality is lost before or upon reacquisition. In the fourth country, Italy, the 'reacquisition' by 'former' Italians who are now Argentine nationals is in fact automatic as soon as they resume residence in Italy (A16g). However, Italian nationality is not really lost upon becoming Argentine, it only becomes *dormant*, which is why this is more a case of 'revitalisation' of nationality rather than of reacquisition.⁹⁴
7. *Rules for other special groups of former nationals:* A few other modes of reacquisition that are targeted at somewhat special groups of persons should be mentioned before coming to more general modes in this context. Firstly, former members of the French parliament, the former French Commonwealth Assembly or the Economic Council as well as their family members who have lost French nationality can reacquire it by simple declaration after establishing residence in France (A16d). Secondly, persons who lost Italian nationality based on public civil or military service in a foreign state can reacquire nationality by declaration after two years of residence in Italy, provided that they have left their position in the foreign state (A16d). Thirdly, the United Kingdom gives persons with

⁹³ For more details on the definition of this concept, see section 3.5.2.2 ff.

⁹⁴ For more details, see the country report on Italy in volume 2.

a ‘qualifying connection’⁹⁵ to the United Kingdom, as well as their spouses, a right to be registered as British citizens if they were entitled to reacquire nationality before 1983 (A16c). Persons with such a ‘qualifying connection’ who were not entitled to reacquire nationality before 1983 can at least become British citizens by discretionary registration (A16d).

8. *General rules of reacquisition*: The most general rules that exist in each state, which are not targeted at any of the groups of persons mentioned above, nevertheless occasionally exclude persons who lost nationality via particular modes. Greece and Portugal do not have general rules in this sense because all modes of reacquisition are targeted at the particular groups of persons listed above. However, since renunciation is the only ‘real’ mode of loss of nationality in Portugal,⁹⁶ the rules for persons who renounced Portuguese nationality in order to acquire a foreign nationality mentioned under point 2 above are the most general in this country – and these rules are as liberal or even more so than those in other countries described below. By contrast, most of the thirteen other states actually have two or three modes of reacquisition that do not cater to any group mentioned above. Some states have *very liberal rules of reacquisition* for former nationals, especially if they have resumed residence in the country. Besides the rules in Portugal, the most far-reaching regulations are those in Italy, in force since 1992, under which former nationals⁹⁷ reacquire nationality *ex lege* after one year of residence in the country (A16c). However, they can reacquire nationality even earlier if they declare their intent to do so and take up residence within one year thereafter (A16b) or if they are in Italy’s public service – even abroad – and declare their intent to become Italian (A16a). If they are not in public service, reacquisition can only be prevented on serious grounds by the Interior Minister after consulting the Council of State. All of these rules are still more ‘restrictive’ than those in force in the years 1992-97, when former nationals (and their children and grandchildren) could reacquire nationality by simple declaration, even if they did not reside in Italy (A16h). This was the most important mode of acquisition in these years. However, reacquisition is very easy in other states too. Nationality can be reacquired by simple declaration after one year of residence in Belgium (A16) and the Netherlands (A16a: since 2003) and after two years in Finland (A16b) and Sweden (A16a: since 2001). All four states apply additional conditions, however, regarding unacceptable types of loss of nationality (Belgium: no loss because of violation of duties as a national; Finland: no loss because of fraud in a procedure to acquire nationality; the Netherlands: no withdrawal because the foreign nationality was not lost after becoming Dutch), the time spent in the country in the past (Finland and Sweden: ten years in total), the residence status (the Netherlands: no objections to indefinite stay; Sweden: permanent residence permit), the person’s integrity (Belgium: the public prosecutor can oppose acquisition because of ‘serious acts’) and/or the age of the person (all four states: majority age). Former nationals who do not meet these conditions can at least be naturalised after two years of residence in Finland (A16a) and without a residence requirement in the Netherlands (A16b), but all the other conditions for regular naturalisation apply in both states. In Sweden, by contrast, all the general conditions for naturalisation can now be waived for former nationals, effective since 2001 (A16b).

⁹⁵ For instance, the person, his or her father or father’s father was born in the United Kingdom, or was naturalised there, or was registered as a citizen of the United Kingdom and Colonies in the United Kingdom or certain other states.

⁹⁶ If nationality was registered on the basis of false information provided by the target person or on the basis of some other non-existent fact, nationality is not withdrawn or lost automatically, but its acquisition is annulled.

⁹⁷ The only persons excluded from reacquisition are those who were nationals by adoption if it was withdrawn based on their behaviour and persons who lost nationality because they supported a foreign state during war.

Four states make the applicability of their rules for *reacquisition dependent on how former nationals originally acquired nationality*. Denmark allows reacquisition by declaration after two years of residence, but only if the person was Danish by birth and had lived in Denmark for ten years while a minor (A16a). Others can only reacquire nationality by naturalisation, for which the residence requirement of nine years can be waived (A16b). Reacquisition is even easier in Ireland and Spain for some former nationals. Persons who renounced Irish nationality can reacquire it by simple declaration, but only if they were born on the island of Ireland (A16). In Spain, former nationals ‘by origin’ who reside in the country can reacquire nationality by declaration (A16a). Since 2002, this reacquisition has not required renunciation of the foreign nationality and, for the children of emigrants, it is also independent of residence in Spain – emigrants themselves were exempted from this condition in 1995. Former Spaniards other than ‘by descent’ can also make such a declaration, but their reacquisition requires the consent of the government (A16b). In Luxembourg, the rules for reacquisition after a loss of nationality other than by marriage exist only for former nationals ‘by origin’. They have to undergo a special naturalisation procedure, for which no residence is required, but all the other general naturalisation conditions apply. The Justice Minister then makes a decision on the basis of the opinion of the local council where the target person last resided in Luxembourg (A16a).

The general rules of reacquisition are more demanding in the other four states. Austria entitles former nationals who lost nationality other than by withdrawal or renunciation to be naturalised after one year of residence (A16b). On the other hand, persons who renounced nationality or lost it other than by withdrawal have been able to reacquire nationality since 1999 by discretionary granting after between four (minors) and six years (adults) of residence (A16a). However, for both modes, applicants have to meet more or less all the other general conditions for naturalisation, including the need to lose the foreign nationality. In France, former nationals can acquire nationality by discretionary ‘reintegration’. Almost all the conditions for regular naturalisation must be met for this mode, except that applicants do not have to be adults and they only need a current domicile in France, but no extended residence. Germany allows former nationals to acquire nationality by discretionary naturalisation if they reside abroad, if there is no reason for an expulsion (i.e. mainly criminal convictions and other violations of law) and, in most cases, only if they also lose their previous nationality (A16a). Finally, in the United Kingdom, former nationals who renounced British citizenship for reasons other than acquisition of a foreign nationality (these persons can acquire nationality by declaration: see point 2 above) have to rely on the vague clause, which is not further specified, that the Secretary of State has absolute discretion to register any such person as a British citizen (A16b). Persons who lost British citizenship for other reasons (especially disloyalty or similar offences as well as fraud in the nationality acquisition procedure) cannot acquire nationality on the basis of any special rule for former nationals.

Table 3.10 summarises which states apply which regulations on the basis of this typology.

Table 3.10: Types of reacquisition of nationality (A16)

	1. Marriage	2. Acquisit. foreign nat.	3. During minority	4. Residence abroad	5. History	6. Particular foreign nat.	7. Other groups	8. General
Residence in the country IS required								
AUT								A16a+b
BEL								A16
DEN						A16a		A16a+b
FIN						A16d		A16a+b
FRA							A16d	A16a

GER								
GRE								
IRE								
ITA						A16g	A16d	A16b+c
LUX								
NED								A16a
POR								
SPA								
SWE						A16c		A16a
UK								
Residence in the country IS NOT required								
AUT	A16d		A16c		A16e			
BEL								
DEN								
FIN		A16e		A16c				
FRA	A16b	A16b		A16c				
GER					A16b+c			A16a
GRE	A16a		A16b(+c)		A16d			
IRE								A16
ITA	A16e	(A16f)						A16a
LUX	A16b							A16a
NED	A16c			(A16d)				A16b
POR	A16b	A16c+d	A16a					
SPA								A16a+b
SWE		(A16d)						A16b
UK		A16a					A16c-d	A16b

Note: For explanation of types of reacquisition see the typology above in this section.
 (...) = Transitional modes in force at some point after 1985, but not in force anymore.

3.5.3.2 Persons presumed to have been nationals for some time (mode A20)

In rare cases, persons are treated as nationals but, after some time, it is established that from a legal point of view they do not hold nationality. There are many possible reasons for such an incorrect presumption, including mistakes by the authorities (e.g. wrongful registration) or incomplete information about the status of a particular person (e.g. a person acquired nationality *ex lege* in another country and thereby lost his or her original nationality, but neither the authorities nor the person himself or herself were aware of the acquisition). The question is: What happens when it emerges that the person concerned is not in fact a national? Is he or she given the chance to acquire nationality under facilitated conditions or is nationality even acquired *ex lege* after having been presumed a national for a certain time?

One aspect of this problem is that some states limit the time within which a wrongful granting or attribution of nationality can be reversed. Provisions of this kind exist in Austria and France whereas, in Portugal, the law does not set a time limit for the reversal of a false registration of nationality (see section 4.3.6.3).

However, more important in this context is that five states have special regulations that allow for the acquisition of nationality by persons who have been wrongfully considered nationals for a certain time. The most liberal provisions in this context can be found in Spain, where the possession and uninterrupted use of Spanish nationality for ten years in good faith leads to *ex lege* acquisition by ‘possession’ or ‘use of status’, if the nationality was entered in the Civil Registry. The same uninterrupted ten-year period of possession of the status as a national applies in Belgium and France, but acquisition there is not automatic but requires a declaration. In France, this declaration is not tied to any other condition. In Belgium, however, it can only be made within one year of discovery of the ‘possession of Belgian status’ as not legally founded and the declaration can be opposed by the public prosecutor (as can all other declarations) because of ‘serious facts with respect to the person’.

In the two other states, Finland and Germany, the acquisition of nationality by persons wrongfully presumed to have been nationals for some time is more challenging because it can only occur by discretionary naturalisation. In Finland, adult applicants who have been regarded wrongly and through no fault of their own as Finnish nationals for at least ten years can be naturalised after two years of residence if the presumption of nationality has had serious consequences related to the rights and obligations of a Finnish national. However, even though these persons do not have to prove language skills, the other conditions are the same as for regular naturalisation. Germany also applies basically the same conditions as in a regular discretionary naturalisation (A06b), except that persons who have so far been treated as Germans by the authorities, but who have difficulty proving their German nationality do not need to prove eight years of residence or hold a certain residence permit.

3.5.3.3 Other affinity-based modes of acquisition

Some states also accept other affiliations to the country as reasons for privileged access to nationality. These include the holding of a special nationality status with restricted citizenship rights (A17). However, such statuses only exist in the United Kingdom in the form of the ‘British Overseas Territories Citizenship’ (before 2002: ‘British Dependent Territories Citizenship’), ‘British Overseas Citizenship’ and the statuses of ‘British Subject’, ‘British Protected Person’ and ‘British National (Overseas)’.⁹⁸ Since we are interested in comparative aspects here, it therefore makes little sense to describe all of these regulations in detail because they are more or less unique. Moreover, these rules often apply to very special subgroups only and have changed frequently over the past twenty years. Suffice to say that British Overseas Territories Citizens acquired British citizenship automatically in February 2002 if they were living in any Overseas Territory. All other statuses are entitled to be registered as British citizens after five years of residence in the United Kingdom (but their immigration to the United Kingdom is controlled) and all but British Overseas Nationals have a right to be registered as British citizens, wherever they live, if they do not hold another nationality. A number of other rules are targeted at various subgroups of these five citizenship categories.

All remaining affinity-based modes of acquisition of nationality cannot be classified in any other category described in section 3.5. The affinities referred to in this context are:

- *Links to a predecessor state*: Since 1999, Austria has allowed nationals of successor states of the Austro-Hungarian Empire to be naturalised without a residence requirement if they were forced to flee Austria during Nazi rule or supported a democratic Austria. Italy gave persons born before July 1920 on the territory of the Austro-Hungarian Empire, as well as their children, the right to acquire nationality by simple declaration for five years following the entry into force of the new Nationality Act in 1992;
- *Tertiary education in the country*: In France, persons who have studied successfully at a French university for at least two years can already be naturalised – under the otherwise general conditions – after two years of residence;
- *Taking up a religious office*: A special case of religion-based acquisition of nationality exists in Greece, where monks become Greek automatically upon taking up their duties at the monasteries of Mount Athos. This mode can only be explained by the strong links between the concept of Greek nationality and the Greek Orthodox religion;⁹⁹
- *An unused option to acquire nationality*: Spain gives all persons who at some point in time had the right to opt for Spanish nationality, but did not make use of it in time, the

⁹⁸ For more details on which persons these categories comprise, see the British country report in volume 2.

⁹⁹ See the country report for Greece in volume 2 concerning this issue.

right to apply for naturalisation if they have spent the year before application in the country. All the other general conditions for naturalisation still apply;

- Finally, three states have *more generally defined provisions*. In Austria, applicants can be naturalised after four (minors) or six (adults) years of residence (all the other general conditions still apply) if they have ‘especially relevant reasons’ other than those mentioned explicitly in the law.¹⁰⁰ The authorities in Germany can naturalise applicants residing abroad who meet all the other conditions for a discretionary naturalisation (A06b) if special connections to Germany justify this. Finland facilitates the naturalisation of persons who have ‘strong ties to Finland’ because of their long residence or some other reason, by reducing the residence condition to two years and exempting them from the language requirement. However, they also have to meet one of four additional conditions: besides having been considered a national for some time (section 3.5.3.2), the person must also find it unreasonably difficult to be engaged in full-time work in Finland without Finnish nationality, the applicant must be aged 65 or over and have extremely pressing reasons for wishing to be naturalised, or there must be other special or urgent reasons.

3.6 Other modes of acquisition of nationality after birth

3.6.1 Persons with special achievements (mode A24)

It is obvious that an important – if not *the most* important – factor determining nationality policies is whether or not the granting of nationality is beneficial for the country. However, besides investment-based modes of acquisition (see section 3.6.2.4), this link between the granting of nationality and its utility is most straightforward for modes of acquisition that are dependent on achievements for the respective state in the past and/or in the future. The questions are: Do states in fact make the granting of nationality dependent on specific achievements? If so, which achievements do the respective provisions target and which additional conditions do target persons have to meet before they can be granted nationality?

At the end of 2004, the nationality laws and relevant decrees in the three Nordic states, Belgium, the Netherlands, Spain and the United Kingdom did not explicitly and specifically provide for an achievement-based acquisition of nationality. Sweden abandoned a respective provision in 2001 because the applicants’ utility to society should no longer influence the granting of nationality. The new law now allows the waiving of naturalisation conditions for ‘special reasons’, but achievements alone no longer seem to be a sufficient reason for facilitated naturalisation via this rule.¹⁰¹ In the Netherlands, by contrast, the clause that naturalisation requirements can be relaxed in ‘special cases’ is still used for naturalisation in cases of exceptional services to the state. Outstanding achievements, however, are not explicitly mentioned in the law in this context, which is why this mode was classified instead in the residual category of other modes of acquisition (A27, see section 3.6.2.4).

We can group the relevant provisions in the remaining eight states into three clusters: 1) rules that give the authorities full discretion to waive all general naturalisation requirements; 2) modes of acquisition for which no duration of residence but at least some other general conditions are required; 3) regulations that do demand a certain duration of residence.

¹⁰⁰ The law lists the following reasons: being a former national (A16c), special achievements (A24a), personal and professional integration (A06b), refugee status (A22), nationality of an EEA state (A18) and birth in Austria (A05a).

¹⁰¹ See section 3.6.2.4.

1. *Full discretion for the authorities:* The laws in Greece, Ireland, Italy and Luxembourg give the authorities a free hand to grant nationality with no prior residence and without applying any other condition to persons with past or expected future achievements. In Greece, the President can, at the recommendation of the government, naturalise a person who has rendered extraordinary services to the Greek state or whose naturalisation serves important Greek interests (A24a). The President of Ireland may grant nationality ‘as a token of honour’ to a person or his or her child or grandchild who, in the opinion of the government, has achieved ‘signal honour or rendered distinguished service to the nation’. In Italy, the President – at the recommendation of the Interior Minister, with the consent of the Foreign Minister and after consulting the Council of State – may grant nationality ‘to an alien who has rendered distinguished services to Italy, or whenever outstanding public interests are concerned’. The parliament in Luxembourg may waive all conditions for adult persons who ‘have rendered exceptional services to the State’. Persons who have benefited from these special rules are mainly writers and artists in Greece, top athletes, artists and benefactors in Ireland, sportsmen in Luxembourg and various personalities (politicians, academics, scientists, persons working in humanitarian projects, writers, actors and artists) in Italy.
2. *No residence requirement:* A further three states apply no residence requirement but do not relax other general conditions. If Austria’s federal government certifies that an applicant’s naturalisation is ‘in the Republic’s special interest’ because of his or her ‘outstanding achievements’ in the past and those expected in the future, then the authorities can waive the requirements of residence, sufficient means and loss of the previous nationality, but not the conditions concerning criminal convictions and language skills (A24b). The law no longer lists certain achievements, as it did before 1999 (science, commerce, arts or sports), but most cases of naturalisation via this clause seem to concern top athletes. Portugal facilitates the naturalisation of persons who have rendered or are called to render ‘relevant services to the Portuguese state’ by allowing their exemption from the residence requirements as well as the conditions of proof of language skills and effective links to the Portuguese community, but not from the integrity clause. As in Austria, this clause is mainly used to naturalise top athletes. The rules in the third state, France, give the authorities less freedom. Persons who have rendered ‘exceptional services to France’ or whose naturalisation is in France’s special interest can be naturalised without any residence requirement but, in principle, all the other conditions do still apply (A24a).
3. *Residence required:* France has two more provisions which require a certain duration of residence. Applicants who ‘have rendered or could render important services to France’ because of their capabilities and talents can be naturalised after two years of residence (A24b). Francophone aliens who ‘contribute to the reputation of France and its international economic relations’ based on their high skills can be naturalised after five years if they are nominated by the Foreign Minister (A24c). In both cases, the general naturalisation conditions do apply.

Three states at least reduce the required residence for persons with special achievements. Firstly, Austria not only has a rule for persons of ‘outstanding achievements’ nominated by the federal government (A24b) but, since 1999, the nationality law also allows for the granting of nationality after four (minors) or six (adults) years of residence to persons with past and expected future ‘special achievements’ in the fields of science, commerce, the arts or sports, for whom no recommendation from the federal government is required (A24a). Unlike rule mentioned under point 2, no other general condition is relaxed for applicants for this mode of naturalisation. Secondly, since 2001, discretionary naturalisation has been possible in Germany on the basis of

administrative guidelines after less than eight, but at least three years of residence (where all the other general conditions for discretionary naturalisation still apply) if a ‘special public interest’ exists. This concerns, in particular, applicants ‘who shall be won over to an activity in the interest of Germany’, e.g. in the field of science, research, trade and industry, the arts, culture, media, sports or public service. The special public interest has to be confirmed by the highest authority at the federal or state level or, in the case of an athlete, by a sports association. Finally, Greece also allows for the discretionary naturalisation of athletes in Olympic sports with the right to participate on the Greek national team after five (instead of ten) years of residence over the past twelve years (A24b). However, in contrast to naturalisation based on extraordinary services, applicants for this mode of naturalisation do in principle have to meet all the other requirements applied to general residence-based naturalisation (A06).

3.6.2 Other persons

3.6.2.1 Recognised refugees (mode A22)

As Hailbronner explains in his contribution to this volume, under Article 34 of the 1951 Geneva Convention relating to the Status of Refugees, contracting states ‘shall as far as possible facilitate the assimilation and naturalization of refugees’, especially by expediting naturalisation procedures and reducing costs and charges for them. In addition, Article 6 (4) g of the ECN also obliges state parties to facilitate the acquisition of nationality by refugees. These duties mean that the authorities have to ‘take into account the particular situation of refugees in applying domestic law’. This may concern problems with respect to procuring certain documents normally required for naturalisation, difficulties in meeting language requirements and the condition relating to loss of the previous nationality.

We cannot answer questions concerning the recognition of refugees’ special situations in practice, but we can at least ask: Do the nationality laws and decrees of the EU15 states contain any clauses that explicitly facilitate the acquisition of nationality by refugees? In fact, all states except the Netherlands, Portugal and the United Kingdom do have special clauses that explicitly make the acquisition of nationality easier for recognised refugees according to the Geneva Convention. Although it does not openly target refugees, the Netherlands also facilitates refugees’ naturalisation because the rule that the previous nationality does not have to be renounced if the applicant cannot be expected to contact the authorities of his or her state of nationality is implicitly targeted at refugees. The main facilitation of refugees’ acquisition of nationality in eleven of these states – the exception being Luxembourg – with explicit rules for this group of persons is a *reduction of the required residence*. It is reduced:

- from ten to four years in Austria,
- from three to two years for naturalisation in Belgium (until 2000: three years);
- from nine to eight years in Denmark;
- from six to four years (or six years since the age of fifteen, with the last two years uninterrupted) in Finland;
- from eight to six years in Germany for a discretionary naturalisation (A22a);¹⁰²
- from ten to five years in Greece, Italy and Spain; and
- from five to four years in Sweden.

¹⁰² Germany also has a special rule concerning the facilitated naturalisation of foreign refugees on the territory of Germany after World War II who could not return to their countries of origin (A22c); see *Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet*. Between 2000 and 2004, 100- 300 persons annually still acquired nationality in this way.

In France and Ireland, refugees can even be naturalised without having to prove a certain duration of residence. In the former state, this is explicitly stipulated in the law, whereas in Ireland this derives from the fact that the Minister has absolute discretion to grant naturalisation to refugees without applying any of the statutory conditions. It is interesting to note that, in Austria (1999), Finland (2003), France (1993), Germany (2001), Greece (2001) and Sweden (1999), these special provisions were only introduced fairly recently.

In which other ways do states facilitate the access of refugees to nationality? First of all, all those states that normally require some proof of loss of the *previous nationality* make exceptions for refugees. In Denmark and Luxembourg, refugees are explicitly excluded from this requirement. The authorities in Germany can make exceptions to the condition that previous nationality be lost in procedures of discretionary naturalisation (for which the residence requirement is also reduced: A22a). In procedures of naturalisation based on an entitlement (A22b), refugees are always exempted from this requirement. In Austria and the Netherlands, refugees are regularly exempted from this condition on the basis of the general provision that loss does not have to be proved if contacting the authorities in the state of origin cannot reasonably be expected of the applicant. Only Spain does not have special rules for refugees in this respect but, as was described in section 3.3.1.11, the requirement that the previous nationality be ‘renounced’ is more or less only symbolic in this country and applicants do not have to provide any legal proof that the loss of nationality has actually become legally effective.

In Austria, Belgium, Denmark, Greece, Italy, Spain and Sweden, refugees do not receive any *further preferential treatment* in comparison to applicants for general residence-based naturalisation (see section 3.3.1). By contrast, three states make further concessions with respect to the material conditions applied. In France, refugees do not have to prove their knowledge of French; in Luxembourg they do not have to prove that they have no further obligations towards the country of origin that might lead to problems and, in Ireland, as mentioned above, the Minister *may* exempt refugees from any regular requirement. In addition, two states provide for certain procedural facilitations that relate to the provisions of the Geneva Convention cited above. The Finnish Nationality Act explicitly guarantees that applications from refugees will be processed expeditiously. In Germany, the administrative guidelines require the responsible authorities to facilitate and expedite procedures of discretionary naturalisation and to take into consideration problems with respect to the procurement of required documents. Finally, despite the fact that the Geneva Convention explicitly demands this, it seems – even though we do not have systematic information for all states on this point – that none of the states exempts refugees from naturalisation fees.

3.6.2.2 *Stateless persons or persons of unclear nationality (mode A23)*

A provision similar to Article 34 of the 1951 Refugee Convention is Article 32 of the 1954 Convention relating to the status of stateless persons. Furthermore, the same Article of the ECN that requests contracting states to give refugees privileged access to nationality also obliges them to facilitate the naturalisation of stateless persons. The 1999 recommendation by the Council of Europe also recommends a reduction of statelessness by allowing stateless persons to become nationals under facilitated conditions. How do the EU15 states take this principle into account?¹⁰³

First of all, in section 3.2.2.1 we saw that five EU15 states have special rules for the acquisition of nationality after birth for *stateless persons born on their territory*. In Austria, they have the right to be naturalised between the ages of eighteen and twenty if they have

¹⁰³ We are not dealing here with children born on the respective state’s territory who acquire nationality automatically at birth if they would otherwise be stateless; for rules concerning these persons, see section 3.1.3.2.

resided in the country for ten years. In Belgium, native-born persons who become stateless while minors acquire nationality *ex lege*. In Denmark, stateless minors born in the country can be naturalised without a residence requirement, and stateless adults born in the country have a right to be naturalised between the ages of eighteen and 21.¹⁰⁴ Since 2001, it has been possible for stateless children below the age of five who were born in Sweden to be registered as nationals by their parents if they live in the country on the basis of a permanent residence permit. In the United Kingdom, stateless persons below the age of 22 are entitled to be registered as British citizens if they were born in the country and have lived there for the five years prior to applying for registration. In Austria, these are the only regulations providing for privileged naturalisation for stateless persons. In the United Kingdom, only two other special groups are entitled to be registered as citizens, i.e. stateless children born abroad to a British citizen after three years of residence and persons with any British nationality status who were resident in Hong Kong before February 1997, who do not have any other nationality and would otherwise be stateless.

Secondly, in Belgium, Denmark (since 1999), Finland, Germany (since 2001), Greece, Ireland, Italy and Sweden, the same provisions that allow refugees to acquire nationality under facilitated conditions also apply to stateless persons, which means most importantly that the residence requirement for naturalisation is reduced by between one and five years (see section 3.6.2.1). The same is true for France (since 1993) except that, while refugees never have to prove language skills, this only applies to stateless applicants once they have lived in France for fifteen years. In addition, the Netherlands has special rules that apply only to stateless persons. Since 2003, it has been possible for them to be naturalised after three (instead of five) years of residence, with the other conditions being the same as for a regular naturalisation. However, persons who have been stateless since birth can acquire Dutch nationality more easily by declaration. The only material conditions for this are three years of residence and a virtually clean criminal record for the past four years. Therefore, to summarise, ten EU15 states facilitate the acquisition of nationality by stateless persons irrespective of where they were born.

Thirdly, Sweden has additional rules for *stateless children and youths*, which supplement the rules described above. Stateless minors can acquire nationality via notification by their parents (the child's consent is required over the age of twelve) if they have a permanent residence permit and have lived in the country for at least three years. Secondly, stateless persons between the ages of eighteen and twenty can become nationals by notification if they hold a permanent residence permit and have been domiciled in Sweden since the age of fifteen (rather than thirteen for non-stateless youths – see section 3.3.2.2).

This leaves us with Luxembourg, Portugal and Spain, which do not facilitate the acquisition of nationality after birth by stateless persons in any way. Stateless persons in these states therefore have to rely on general modes of acquisition. As pointed out above, however, two more states only give certain stateless persons privileged access to nationality, i.e. Austria (for those born in the country) and the United Kingdom (for stateless persons born in the country, and stateless children of British citizens or persons with a special nationality status).

3.6.2.3 Persons in the public service (mode A25)

States frequently make the possession of nationality a precondition for access to posts in the public service. However, if foreign nationals do have access to (certain positions in) the public service, their acquisition of nationality is sometimes facilitated. We can distinguish three different rules in this context: 1) provisions that target foreign nationals in the public

¹⁰⁴ This is subject to the condition that the person concerned has neither been convicted of an offence against national security nor been sentenced to imprisonment for five years or more on a criminal charge.

service in general; 2) regulations for persons in certain jobs in the non-military public service; and 3) provisions for persons in the respective state's military service.

1. *Public service in general*: In the four states where it is provided for by law, facilitated acquisition of nationality for persons in the respective state's *general public service* always remains within the authorities' discretion. Often, this is tied to additional conditions beyond those applied to regular naturalisation. In Germany, the administrative guidelines since 2001 have allowed for discretionary naturalisation in case of a 'special public interest' after less than eight but at least three years of residence. A 'special public interest' can refer, among other things, to that the applicant being retained in or recruited to the public service. The rules in Ireland and the United Kingdom are only targeted at foreign nationals who are or have been in the state's public service abroad.¹⁰⁵ In Ireland, the Minister has absolute discretion to waive any condition for the naturalisation of applicants who are or have been in Ireland's public service abroad, whereas, in the United Kingdom, the naturalisation of a person in Crown service or some other designated service abroad requires the applicant to have already spent at least five years in that service and to intend to stay in that post.¹⁰⁶ Lastly, in Italy, foreign nationals can be naturalised (with the other conditions being the same as for regular naturalisation) after five years in Italy's public service in the country or abroad. However, former Italian nationals who accept a public office for the state can reacquire nationality by simple declaration without any further conditions.
2. *Certain positions in the public service*: Austria is the only state that gives privileged access to nationality only to persons in *particular positions in the public service*. Since August 1998, nationals of states not belonging to the EEA have acquired nationality *ex lege* upon taking up office as a professor at an Austrian university, the Academy of Arts or an Arts College; before that date, the automatic acquisition of nationality affected all foreign nationals. Assuming any other public office in Austria already requires Austrian nationality.
3. *Military service*: Finally, France, Greece and Italy define *military service* as a particular reason for the acquisition of nationality under considerably relaxed conditions. Greece has the most far-reaching provisions in this context. There, all volunteers who become officers of the Greek army acquire nationality automatically, as do persons of Greek origin ('homogeneis') who enter a military school. In addition, 'homogeneis' who join the army voluntarily in wartime or by conscription can acquire nationality by making use of an option right to this effect. Secondly, the regulation to be cited for Italy in this context also applies to foreign nationals with only a cultural affinity to the state: former nationals serving in the Italian army can recover their Italian nationality by simple declaration. By contrast, the rules in France are neither directed only at persons with a certain cultural or national background, nor do they provide for automatic acquisition or acquisition via a simple declaratory procedure. In the first instance, foreign nationals who have served in the French army can be naturalised under the general conditions, but they do not have to meet the residence requirement of five years. Secondly, foreign nationals who have served in the French army and were wounded on a mission or an operational engagement can be naturalised if they apply for nationality and are recommended by the Minister of Defence.¹⁰⁷

¹⁰⁵ Until 2004, naturalisation was also possible in Germany for applicants in Germany's public service abroad.

¹⁰⁶ In addition, persons with certain special nationality statuses (except British Overseas Nationals) who have been in Crown or some other designated service in an Overseas Territory can be registered as British citizens.

¹⁰⁷ If the person died while in the army's service, his or her cohabiting minor children can apply for naturalisation.

On the whole, therefore, eight states – the three Benelux countries, the three Nordic countries and the two Iberian countries – do not explicitly favour the acquisition of nationality by foreign nationals who are in their military or non-military service. However, it is of course possible for these persons to be naturalised on the basis of regulations concerning the privileged naturalisation of persons with special achievements for the respective state described in section 3.6.1. Such provisions do not exist in Belgium, Denmark, Finland or Spain, however.

3.6.2.4 Other modes of acquisition (modes A26 and A27)

We conclude this overview by looking at modes of acquisition of nationality that were either classified as examples of money- or investment-based modes of acquisition (A26) or included in the ultimate residual category of other modes (A27).

If we exclude general modes of acquisition based on special achievements in the area of trade and business more generally (see section 3.6.1), then we have to conclude that rules that make the acquisition of nationality conditional upon the target person disposing of or investing a certain amount of money in the country are rare in the EU15 states. In fact, only Ireland had a relevant naturalisation scheme in force from April 1989 until April 1998. This scheme allowed persons investing considerable amounts of money in Ireland (at first an average of £ 0.5 million, later at least one million pounds) to be naturalised after initially two and, later, five years of residence on the basis of purported ‘Irish associations’.¹⁰⁸ This scheme was abolished in 1998, but a review group was charged with investigating the effects of the scheme and possibilities for introducing new rules for investment-based naturalisation. However, because it received severe public criticism, the Irish Nationality and Citizenship Act 2004 did not include a new rule for this kind of naturalisation and it made it clear that investment-based naturalisation is no longer possible on the basis of ‘Irish associations’.

Finally, five states allow a discretionary granting of nationality in situations not covered by any other mode. In four of these states, naturalisation is possible under *exceptional circumstances* that are not defined any further. The administrative guidelines in force since early 2001 in Germany allow an early discretionary naturalisation after at least three years of residence if a ‘special public interest’ exists. This public interest is not limited to special achievements (A24) or public service for Germany (A25) – the authorities have discretion in this respect. In Spain, the government has full discretion to naturalise applicants under ‘extraordinary circumstances’ without applying a residence requirement, but the law does not define what these circumstances might be. In the Netherlands, naturalisation is possible ‘in special cases’ without requiring a certain duration of residence, integration or loss of the previous nationality. No further definition of such ‘special cases’ is provided, but the clause is used for naturalisations serving Dutch interests or on humanitarian grounds. In Sweden, applicants may be naturalised even if they do not meet the general conditions (especially five years of residence) for ‘special reasons’ other than those mentioned explicitly in the law. This naturalisation based on ‘special reasons’ replaced naturalisation based on special achievements in 2001, because the idea of making naturalisation dependent on whether or not it is advantageous to Sweden was considered outdated. This means that the current ‘special reasons’ mainly concern the applicants’ personal situations, not their potential benefits to Sweden. Lastly, we also have to classify the rule here which states that the Secretary of State in the United Kingdom has absolute discretion to register any minor as a British citizen upon application. We have already discussed this provision in the context of filial extension of nationality (see section 3.4.2), but it is not only relevant to minors acquiring nationality together with their parents. Since a person can usually only record special achievements for

¹⁰⁸ For more details on this scheme, see section 2.5 in the country report for Ireland in volume 2.

society or be of special use to society after having attained majority age, the grounds on which the Home Secretary makes use of his or her right are related to the child's personal situation.

3.7 Summary and conclusions

It is obvious that we cannot summarise the results for all modes of acquisition of nationality here. Rather, the main aims of this concluding section are to establish central patterns and trends with respect to procedures and material conditions for the most important modes of acquisition or types of modes (i.e. birthright-based, residence-based, family relation-based, affinity-based modes and other modes), to look at the differences with respect to the emphasis states place on certain modes of acquisition compared to others, to test whether there are regional patterns, and to classify states' policies of attributing and granting nationality. Before doing so, however, we will analyse the density of regulations in the EU15 states.

3.7.1 Density and frequency of different regulations

We merged modes A12 (acquisition by relatives of former or deceased nationals) and A19 (cultural affinity-based acquisition) because both are based on the concept of descent in most cases. We can now ask: in how many of the 26 categories according to our typology do states actually have specific provisions? Considerable differences are evident with respect to the *density of regulations* in the EU15 states. At one end of the spectrum are Germany and France, both of which currently have provisions that can be classified as examples of twenty of the (now) 26 different modes of acquisition (see Table 3.9). At the other end of the spectrum are Luxembourg, the Netherlands and Portugal, whose nationality regulations explicitly only target thirteen groups of persons underlying our types of modes of acquisition. All other states occupy the middle ground with slightly more (Austria, Belgium, Finland, Greece, Italy and Spain) or slightly fewer (Denmark, Ireland, Sweden and the United Kingdom) than the mean of 15.7 different modes according to our classification scheme.

It is hard to explain this variation in the density of regulations across the whole spectrum of modes of acquisition at this point. From a methodological point of view, it has to be mentioned that certain regulations were classified twice because they met the defining criteria of more than one mode of acquisition, but this fact did not affect the results systematically. Beyond that, it can be hypothesised that the following factors are relevant in this context, without claiming to be exhaustive. Firstly, if a state (or the government of the day) accepts its history of immigration and tries to find various means to legally integrate immigrants and their descendants by means of nationality acquisition, the chances increase that a variety of different modes of acquisition targeting various groups of persons are provided. France has already accepted immigration as a fact for some time, while governments in Germany have refused to do so for many decades. However, the SPD-Greens coalition that assumed office in 1998 brought about changes in this respect. These were seen in the new nationality law that came into force in 2000 and the administrative guidelines that have been effective since early 2001. Both the law and the guidelines cater to various different groups of foreign nationals. Secondly, a tradition of trying to maintain contacts with emigrants and a diaspora, which is defined as belonging to the same ethnic group as the respective state's majority population, frequently leads to the inclusion of legal rules that allow former nationals (A16), relatives of deceased or former nationals (A12) or persons with a specific cultural affinity to the country (A19) to acquire nationality under facilitated

conditions. Thirdly, legal traditions may have a role to play in this context as well, insofar as a tradition of providing executive authorities with detailed guidelines increases the chances of the inclusion of numerous regulations for different target groups. On the other hand, in states where the executive traditionally has more room for discretionary decisions and/or in which conditions for eligibility to certain rights are not defined in great detail in the law, the provision of numerous modes of acquisition in the state's nationality law becomes more unlikely.

Despite the variations in the overall distribution of modes of acquisition, some modes exist in all EU15 states. The core of each state's nationality law is regulations targeted at children born to parents who are nationals (*ius sanguinis* at birth, A01); persons with a certain period of residence without any other special status (A06); spouses of nationals (A08); former nationals (A16) and foundlings and/or children born in the state's territory who would otherwise be stateless (A03). However, three more modes are currently provided in the laws of all states but one in some way or another. These are acquisition *iure soli* after birth (A05), even though a few states only target persons born stateless on their territory with their respective provisions; the transfer of nationality to children of nationals, irrespective of whether they were already nationals at the time of the child's birth (A09); and modes of acquisition targeted especially at children adopted by nationals (A10).

On the other hand, for two categories in our typology we could find no example in any EU15 state, specifically for the transfer of nationality to relatives other than spouses (including non-married partners) and children (A11), as well as the extension of the acquisition of nationality to relatives outside the core family (A15). An investment-based mode of acquisition of nationality (A26) has existed only in one state in our sample since 1985, in Ireland, but was abolished in 1998. In one more category, only one state has an entry, i.e. the United Kingdom in the category of modes of acquisition targeted at special nationals with restricted citizenship (A17). This is for the simple reason that only this state defines statuses of special nationality that do not confer full citizenship rights on their holders.

Table 3.11: Overview of modes of acquisition of nationality in the EU15 states in force at the end of 2004

	At birth			After birth																						
	ISa	ISo	FSI	ISa	ISo	BRBMA		Family relation-based modes							Affinity-based modes					Other targeted modes						
	A01	A02	A03	A04	A05	A06	A07	A08	A09	A10	A11	A13	A14	A15	A16	A17	A18	A19/ A12	A20	A21	A22	A23	A24	A25	A26	A27
AUT	A	—	A	(D)	N/[A]/ [E]	N/E	—	N	A/E/ [N]	—	—	N/[D]	E/[A]	—	E/N/D	—	N	—	N	N	N	[E]	N	[A]	—	—
BEL	A/D	A/D	A	D	D/[A]	D/N	D	D	D	A/D	—	D	A	—	D	—	—	D	—	—	N	N/A	—	—	—	—
DEN	A	—	A	A/N	[N]	N	D/N	N	N	A/N	—	—	A/D	—	D/N	—	D/N	N	—	—	N	N	—	—	—	—
FIN	A/D	—	A	A/D	D	N	D	N	D/N	A/D	—	—	N	—	D/N	—	D/N	—	N	N	N	N	—	—	—	—
FRA	A	A	A	—	A/D	N	[D]	D/N	N	A/D	—	N	A/[N]	—	D/N	—	N	N	D	N	N	N	N	N	—	—
GER	A/D	A	A	D	(E)	E/N	(E)	E	D/(A)	A	—	N	N/[A]	—	N/E	—	E	N/A/ [E]	N	N	E/N	N	D	N	—	N
GRE	A	—	A	[D]	N	N	—	N	A	A	—	—	A	—	D	—	—	A/N	—	A	N	N	N	A/D	—	—
IRE	A/D	D/(A)	A	D	D	N	—	N/[D]	N	A	—	—	—	—	D	—	—	N	—	—	N	N	N	N	(N)	—
ITA	A	—	A	—	D/N	N	—	E	A/[D]	A/[N]	—	—	A	—	A/D	—	N	D/N	—	D	N	N	N	N/D	—	—
LUX	A	—	A	—	D	E	D	D	—	A/D	—	D/E	A/D	—	E/D	—	—	D	—	—	E	—	N	—	—	—
NED	A	A	A	(D)	D	E/D	D	E/D	A/D/ [E]	A/[N]	—	—	E/D	—	D/E	—	—	—	—	—	—	E/N	—	—	—	N
POR	A/D	D	A	D	D	N	—	D	D	A/[D]	—	—	—	—	D/A	—	N	N	—	—	—	—	N	—	—	—
SPA	A	A	A	D	E/[D]	E	—	E	E/D	A/[D]	—	—	—	—	D/N	—	E	D/E	A	E	E	—	—	—	—	N
SWE	A/D	—	A	D	[D]	N	D	N	A	A/(D)	—	—	N/D	—	D/N	—	N/D	—	—	—	N	N/D	(N)	—	—	N
UK	A/D	A	A	D	D	N	—	N/(D)	A	A	—	—	N	—	D/N	D/N/ [A]	(D)	(N)	—	—	—	D	—	N/E	—	N

Notes: For definitions of modes A01 to A27, see section 2.2.1. No examples were found of modes A11 and A15.

ISa = Ius sanguinis.

ISo = Ius soli.

FSI = Modes of acquisition at birth targeted at foundlings and children who would otherwise be stateless.

BRBMA = Basic residence-based modes of acquisition.

A = Automatic (*ex lege*) acquisition of nationality.

D = Acquisition by Declaration (or Notification, Registration, Option, or similar): facilitated procedure and conditions requiring a declaration (notification, etc.) Acquisition is mostly automatic (no approval by authorities required) when all conditions are met.

E = Entitlement to naturalisation: application by the person required, but authorities have to grant nationality if all conditions are met.

- N = Acquisition by Discretionary Naturalisation: application required and granting lies within the authority's discretion.
- (...) = Codes in round brackets indicate transitional modes of acquisition or modes no longer in force, but in force at some point since 1985.
- [...] = Codes in square brackets indicate modes of acquisition that are obviously relevant only to small or very special groups of persons relative to the overall group of persons defined by the respective mode of acquisition.

3.7.2 Birthright-based modes of acquisition of nationality

Ius sanguinis is the main rule of attribution of nationality at birth in all EU15 states although, in the United Kingdom, the acquisition of nationality by children born in the country to nationals is defined, for historical reasons, as *ius soli* rather than *ius sanguinis* (as in all other states). Decisive variables for nationality acquisition *iure sanguinis* at birth can be 1) whether the birth occurred in or out of wedlock; 2) the country of birth (in the country or abroad); 3) the sex of the parent who is a national. For births abroad, the following may also be relevant: 4) where the parents were born (in the state of nationality or abroad); 5) what the parents' reason for residence abroad is; and 6) how the parents acquired nationality.

The automatic acquisition of nationality at birth *iure sanguinis* is independent of these criteria in France, Greece, Italy, Luxembourg, the Netherlands and Spain, but children born out of wedlock must be acknowledged by the father. Germany had the same rules until 1999 but since 2000 it has only been possible for children born abroad to German parents who were themselves born abroad after 1999 to become German by declaration. In Belgium, Ireland and Portugal, the parents' marital status is irrelevant and all children born in the country and some born abroad are nationals *ex lege*, while all others can acquire nationality by declaration under certain conditions. The Nordic states attribute nationality to all children born to at least one national, except to those born abroad to an unmarried male national and a foreign mother. In Finland and Sweden, however, they can acquire nationality by simple declaration (in Denmark they can only be naturalised, for which no residence requirement applies). The country of birth is irrelevant in Austria, but if only one parent is a national, the child only becomes Austrian if the birth is in wedlock or the mother is a national. Finally, the rules of *ius sanguinis* at birth in the United Kingdom are complicated, not merely because acquisition by birth to a national in the state's territory is defined as *ius soli*. In all cases, children acquire nationality *iure sanguinis* only if the parents are married or if the mother is British. In addition, children born abroad to a national only become British *ex lege* if the parent works abroad in the public service or if he or she is a national 'otherwise than by descent' (which mainly covers native-born persons).

Numerous *modes of acquisition iure sanguinis after birth* target the children of persons who were nationals at the time of their child's birth. These cover, firstly, the above modes of acquisition by declaration or registration immediately or after birth secondly, provisions for the acquisition of nationality by children not covered by the general rules; thirdly, transitional regulations after a change in the principles of *ius sanguinis* and, fourthly, rules of acquisition by legitimation or a belated establishment of filiation to a national. The acquisition of nationality by almost all of these modes occurs automatically or by simple declaration or registration. While the most relevant rules for *ius sanguinis* are those of *ex lege* acquisition of nationality *at birth*, *ius soli*, to which we turn now, is handled differently.

All states provide for the automatic acquisition of nationality by children born in the state's territory and/or by children presumed to have been born there (foundlings) if they would otherwise be stateless (A03). However, leaving these special cases aside, it is obvious that the overall relevance of the acquisition of nationality *iure soli* is lower than the relevance of *ius sanguinis*. The children of foreign parents born in Austria, Greece, Italy, Luxembourg and the three Nordic states cannot acquire the nationality of these states at birth or immediately thereafter. Even the facilitation of acquisition of nationality after birth by native-born foreigners is fairly exceptional in these states. Apart from rules for stateless minors,

Denmark and Sweden have no provisions that target this group in particular.¹⁰⁹ Austria and Greece only reduce the residence requirement for naturalisation (which is fairly long in both states) for children born in the country. In the other three states, on the other hand, native-born foreign nationals can acquire nationality via a declaratory procedure as soon as they come of age, even if the requirements for this acquisition in Italy (uninterrupted residence since birth, only one year for application) and Luxembourg (all regular naturalisation conditions) are quite demanding. The most liberal rule for acquisition *iure soli* after birth among these seven states can be found in Finland (six years of residence, no convictions).

The other eight states provide for *ex lege* acquisition of nationality at birth or at least for an opportunity to acquire it immediately after birth. The criteria used to define eligibility for acquisition *iure soli* at birth are: 1) the parents' duration of residence at the time of the child's birth; 2) their residence status; 3) their country of birth; and 4) the sex of the parent who has to meet conditions 1 to 3; 5) whether the birth occurred in or out of wedlock. France, Spain and the Netherlands provide for a more or less unconditional acquisition of nationality at birth by the third generation, i.e. children of foreign nationals who were themselves also born in the country. In Belgium, the third generation also acquires nationality *ex lege*, but the second generation can also be registered as nationals immediately after birth. However, the parents must meet certain residence requirements (five and ten years) for these modes. The remaining four states do not differentiate between the second and third generation. In Germany and the United Kingdom, the children of foreign parents can acquire nationality *ex lege* at birth, in Ireland they can become nationals simply by applying for a passport (or by performing some other 'act that only an Irish citizen can do') and, in Portugal, they can be registered as nationals immediately after birth. In all four cases, however, residence requirements apply either directly (Ireland: three years; Germany: eight years; Portugal: six to ten years) or indirectly (Germany and the United Kingdom: one parent must have a permanent residence right).

Regulations facilitating native-born foreigners' acquisition of nationality *after* birth are also much more common in these eight states. Only Ireland and Portugal do not have additional rules for aliens born in the country who did not meet the conditions for acquisition at or immediately after birth. However, those who did meet them can use their right to acquire nationality without time restrictions. Spain at least gives them a right to be naturalised after one year of residence. However, the most liberal provisions for native-born children can be found in the remaining four states. In Belgium and the United Kingdom, they can acquire nationality via simple declaratory procedures while minors or thereafter, for which mainly residence requirements apply. The Netherlands entitles them to become Dutch by declaration after coming of age in cases of uninterrupted residence since birth. France allows their acquisition of nationality by declaration from the age of thirteen and even provides for automatic acquisition of nationality upon reaching the age of eighteen if five years of residence can be proved.

How have the rules for birth-right based modes of acquisition developed over the past twenty years and especially over the past decade? Except for transitional rules that may have expired, the *rules of ius sanguinis* have not changed substantially in Austria, Belgium, France, Greece, Ireland, Italy or Portugal since 1985. In most other states, *ius sanguinis* was made more inclusive, especially by extending the group of eligible children to those born out of wedlock. This was the case in Luxembourg in 1987 and in Denmark, Finland, Sweden and the United Kingdom in 1999 or thereafter. More restrictive rules were only introduced in three states: they concerned children whose filiation to a national was not established at the time of birth in Spain (1990: *ex lege* acquisition only if filiation is established while a minor) and the

¹⁰⁹ But as all other minors in Sweden, whether born in the country or not, they can become Swedish nationals by simple notification after five years of residence (A07a).

Netherlands (2003: if acknowledgement of paternity occurs after birth, acquisition is no longer *ex lege*, but requires three years' caring for the child and a declaration). These rules furthermore concerned children legitimised by marriage in the Netherlands (2003: same rules as for acknowledgement of paternity) and, in Germany, children born abroad to nationals who were themselves born abroad in (2000).

Ius soli provisions have changed much more frequently and at times also more drastically. However, developments do not follow a regional pattern and they have occasionally been contradictory even within single states. Amendments in the seven states without rules of *ius soli* at birth were rare and mostly restrictive in nature. Denmark, Sweden and Greece did not change their respective rules. Since 1992, Italy has required continuous legal residence since birth for the right to acquire nationality by declaration after reaching the age of majority. As with regular naturalisations, Luxembourg has also applied stricter language requirements for acquisitions by option since 2001. An integrity requirement was introduced for the declaratory procedures in Finland (no prison sentence) in 2003. Austria facilitated the naturalisation of native-born foreign nationals in 1999 by reducing their required residence to four (minors) or six years (adults). However, in November 2005, the conservative Austrian government introduced a tough new nationality law into parliament, which also prescribes six years of residence for minors born in Austria, even if they are given an entitlement to naturalisation for the first time. However, the general tightening of conditions (see section 3.7.3) will apply to them too.

The balance of changes in the other eight states is more mixed. An unequivocal trend towards liberalisation could only be observed in Belgium (*ex lege* acquisition for the third generation and an option right for the second generation were introduced in 1991; a further liberalisation of the option right occurred in 2000) and the United Kingdom (*ius soli* has also applied in overseas territories since 2002 and legitimacy of birth is irrelevant). Spain made the rules of double *ius soli* slightly more restrictive in 1990 (filialion must be established while a minor), but the clearest example of increased restriction is Ireland, where foreign parents have to prove three years of residence since 2005 in order for their children to acquire nationality *iure soli*. Finally, both liberalisations and new restrictions have been introduced in the other states over the past decade. The most radical change occurred in Germany, where *ius soli* at birth was introduced in 2000, but the rules of eligibility were tightened again in 2004 (the parents' required residence permit is now always tied to integration requirements). In France, a conservative government made *ius soli* much less inclusive between 1994 and 1998, but a socialist government reintroduced the old rules in a slightly more liberal version in 1998. However, in 1998 and then again in 2003, the possibilities for the public prosecutor to reverse the acquisition were extended. In the Netherlands, the 2003 amendments to the rules concerning double *ius soli* (certain residence requirements, but the grandfather can now also be the reference person) and acquisition of nationality by declaration after reaching majority age (an integrity clause was introduced, but the application period is no longer limited) included both liberalising and restrictive elements. Last but not least, Portugal raised the residence condition for non-lusophone parents of children born in the country from six to ten years in 1994. In July 2005, however, the socialist government introduced a new law in parliament which includes *ex lege* acquisition of nationality by the third generation and a right for the second generation to acquire nationality by declaration, irrespective of the parents' residence status.

We can therefore summarise the trends with respect to birthright-based modes of acquisition as follows: firstly, the rules of *ius sanguinis* remained relatively stable but changes that did occur mainly brought about increased inclusiveness. Secondly, in the majority of cases, states without rules of *ius soli* at birth made their rules of *ius soli* after birth more

restrictive. Thirdly, in states with rules of *ius soli* at birth, changes did not follow a clear pattern.

3.7.3 Residence-based modes of acquisition of nationality

What are the conclusions we can draw from the analysis of general residence-based modes of acquisition?

Firstly, laws and decrees in most states still contain vague clauses that give the authorities – often considerable – room for discretion and interpretation. Obscure conditions are most frequent in definitions of the required ‘good character’ (e.g. ‘good civic character’, no ‘serious crimes’, ‘decent life and manner’, ‘civic and loyal behaviour’, ‘respectable life’) and ‘integration’ (e.g. ‘sufficient social integration’, ‘effective links’, ‘assimilation’). Unclear clauses are also applied in states that give applicants, at least under certain circumstances, a right to acquire nationality. This is in particular true for Austria (entitlement after fifteen years with proof of ‘sufficient personal and professional integration’, ‘general behaviour so far’); Belgium (‘no serious facts with respect to the person’); Luxembourg (‘sufficient integration’, no ‘serious crimes’) and Spain (‘good civic conduct’, ‘sufficient social integration’). Since 2003, the integration of applicants for naturalisation in the Netherlands has been checked in a standardised test but, because its content is not disclosed, the concrete requirements also remain unclear. All in all, the clearest conditions for naturalisation based on an entitlement are found in Germany, even if they are not always the most liberal.

Secondly, it is essential that we focus on more than just the conditions for acquisition that are stipulated in the countries’ nationality acts. In a number of states, important conditions are only contained or further specified in ministerial decrees, circulars or regulations (especially France, Greece, Italy, Netherlands, Portugal, Spain and the United Kingdom), administrative guidelines (Germany), or other texts (e.g. an agreement between the main parties in parliament in Denmark). These types of secondary law are often modified more frequently than the laws themselves, so that inferring continuity of the conditions from the continuity of the law may be misleading. In addition, if even secondary law is not very helpful for finding out which criteria are actually used by authorities applying their discretion, the required documents submitted may provide additional hints. In particular, laws and decrees often do not prescribe that the target person needs to have sufficient means of subsistence, but the authorities still demand that pay slips or tax returns be supplied (e.g. Ireland, Italy and Luxembourg).

Thirdly, it may be misleading to evaluate which states’ rules are more liberal and which are more restrictive on the basis of the list of material conditions applied. Ireland and Italy in particular are cases in point where the short list of material conditions in laws and decrees could lead to the conclusion that – leaving the required residence aside – the acquisition of nationality is easy in these two states. However, as the country reports in Volume 2 and the chapter on statistical developments in this volume demonstrate, this is obviously not true. Two additional considerations must be taken into account: firstly, how much discretion do the authorities have to grant or deny naturalisation? And, secondly, is there an *effective* right of appeal that can be used to enforce naturalisation, or can the right of appeal only prevent extreme abuses of administrative discretion? No right of appeal whatsoever exists in the naturalisation procedures in Belgium (in contrast to acquisition by declaration), Denmark or Greece. The available evidence indicates that the right of appeal is also rather ineffective in Ireland, Italy and the United Kingdom. Austria’s Administrative Court generally annuls decisions in naturalisation cases only if the authorities do not justify their decisions in any comprehensible way, but the discretion given to them is still wide.

Fourthly, some obvious trends emerge concerning general residence-based acquisition of nationality over the past twenty years and, in particular, over the past five to ten years.

1. The first trend is a *spreading acceptance of multiple nationality*, which is now generally allowed in all states but Austria, Denmark, Germany, Luxembourg, the Netherlands and Spain. In Spain, however, the effectiveness of nationality loss is not checked by the authorities and the government in Luxembourg plans to allow multiple nationality in early 2006. The last states to abolish the ban on multiple nationality were Italy (1992/2004), Sweden (2001) and Finland (2003). In these three states, pressure from emigrants to be allowed to retain nationality when naturalising abroad seems to have been more decisive than concerns about the integration of immigrants in this respect. In 2000, Germany introduced many exemptions from the condition that previous nationality be lost before naturalisation.
2. Another trend concerns tests of the *applicants' knowledge of various aspects of the respective country*, which were recently introduced in Denmark (2002), France (2003), the Netherlands (2003) and the United Kingdom (2002, effective from November 2005). In total, six states now require such knowledge, at least for some of their general residence-based modes of acquisition (also: Greece and Germany for discretionary naturalisations, but not those based on an entitlement). In two more states, it is an important indicator of the required attachment to or integration into the country (Portugal, Spain). The trend seems to be continuing because in March 2005 the Luxembourg Minister of Justice announced the drafting of a bill that will render the attendance of courses on language, culture and civics obligatory for applicants for naturalisation. The reform of Austria's nationality law to come into force in 2006 includes a compulsory written (multiple-choice) test on the 'democratic order and the history of Austria and the respective province'.¹¹⁰
3. Furthermore, all states but Belgium, Ireland, Italy and Sweden now explicitly require *proficiency in the country's official language(s)*. Two of the other states introduced explicit language conditions only in 1999 or thereafter (Austria, Germany for naturalisation based on an entitlement) and four states have tightened the requirements since 2002 (Denmark, Luxembourg, Netherlands and the United Kingdom). The only state to abolish language skills as a requirement for the acquisition of nationality was Belgium in 2000. The trend towards tighter restrictions seems bound to persist. It can, for example, be seen in the amendment of the Austrian Nationality Act to come into force in 2006, which standardises and raises the required skills in German language tests.
4. A fourth trend is to make the *acquisition free of charge*. This happened recently in Belgium, France (both in 2000) and Luxembourg (2002). However, in the Netherlands and the United Kingdom, the total costs for naturalisation have actually gone up considerably – or will do so in the near future – because applicants have to pay for naturalisation tests. Despite the fact that the fees for naturalisation in Austria are already among the highest in all the EU15 states, the reform of Austria's nationality law in late 2005 also included a substantial fee increase.

Developments in all other areas do not reveal clear trends. Since 1990, the *required residence period* has been raised in five Southern European and Nordic states by one to five years (Italy in 1992, Greece in 1993, Portugal in 1994, Denmark in 2002, Finland in 2003), but lowered in

¹¹⁰ § 10a (1) 1 of the law.

The contents of the test will be regulated by the Ministry of the Interior and the provincial governments (history of the province) on the basis of the curriculum for the fourth grade of secondary school (*Hauptschule*). Topics to be covered are the structure and relevant institutions of the Republic of Austria, basic civil rights and liberties, possibilities for legal protection, electoral rights and the historical development of Austria and the respective province; §10a (4).

three others by two to seven years (Belgium and Germany in 2000, Luxembourg in 2001). The reform discussed in Portugal since June 2005, however, would reduce the required period of stay for non-lusophone foreign nationals from ten to six years. No clear trend can be discerned regarding the target person's *integrity or 'good character'* either, in particular because the evaluation criteria are often not very transparent. However, all states check at least the applicant's criminal record and some states (e.g. Austria in 1999 and 2005; Denmark in 2002) made the respective rules more restrictive. *Sufficient means of subsistence* are an explicit condition in seven EU15 states, but they can be relevant in three more states and at least three additional states require documents on income, taxes paid, debts and/or social benefits received. The only states without any such conditions are Belgium and the Netherlands. General *integration and/or assimilation clauses* exist for at least some general residence-based modes of naturalisation in seven states but, as with the subsistence-requirement, we could not discern a clear trend or even much change in the recent past.¹¹¹ The only state to have abolished such a regulation was Belgium in 2000. Last but not least, most states still neither provide for a general residence-based acquisition of nationality via a *declaratory procedure*, nor have they abandoned *discretionary decisions* in this context. However, at least two states have given certain persons an additional right to be naturalised (Austria: A06c) or the option to acquire nationality by declaration (the Netherlands: A06c). Other states have gone even further. Belgium introduced the possibility of acquiring nationality by declaration after seven years of residence in 2000 and Germany gave applicants an entitlement to naturalisation (A06a) in 1991 and further liberalised the respective regulations in 2000. Portugal will join those states that grant a right to acquire nationality via the general residence-based procedures (Belgium, Germany, Luxembourg, the Netherlands and Spain) should the reform pending in parliament be passed.

Fifthly, no clear regional trends were observed. Among the Nordic states, Denmark tightened its rules considerably but Finland and Sweden liberalised theirs by accepting multiple nationality. Conflicting trends also occurred in the Benelux states. The Netherlands made naturalisation markedly more difficult, while Belgium and Luxembourg generally moved in the opposite direction. The same is true in the German-speaking states, where the reform in Germany brought about a clear liberalisation of naturalisation in 2000, while Austria's reform of 1999 introduced new restrictions – and the planned reform will go much further in this direction. Until recently, the clearest regional trend seemed to be in Southern Europe, where only Spain has refrained from making the general rules for naturalisation more restrictive since the early 1990s. The proposed liberalisation in Portugal will counter this trend, however.

Finally, special *socialisation- or residence-based modes of acquisition of nationality for persons who immigrated while minors* or for minors irrespective of where they were born only exist in less than half of all states. In most cases, this acquisition under facilitated conditions can only occur after reaching the age of majority, but is then generally realised via declaratory procedures (Denmark is an exception). Leaving aside provisions in France that are directed at unaccompanied minors, such rules only exist in the three Nordic countries and the three Benelux states. The main criterion for these modes of acquisition is residence while a minor for between three and fourteen years duration and, in some cases, – directly or indirectly – a certain duration of school attendance in the country. The most liberal rule in this context can be found in Sweden. It allows all minors with a permanent residence permit to acquire nationality by simple notification by their parents after five years of residence (three if

¹¹¹ However, the changes in Austria also contain a tougher general integration clause. When deciding on applications for naturalisation – even on those based on an entitlement – the authorities shall also test the applicant's 'orientation towards the social, economic and cultural life in Austria and towards the basic values of a European democratic state and its society'.

they are stateless) in the country (A07a). This means that children who were born in Sweden or who immigrated at a very young age may become nationals even before they start school. There is also no clear trend for these modes of acquisition. The Netherlands introduced its provisions only in 2003. Germany abolished a similar mode in 2000 because the new general residence-based naturalisation has the same or more relaxed requirements. Some states tightened their rules considerably (Denmark especially by reserving the right to acquire nationality by declaration in 2004 for Nordic nationals only; France in 2003 by introducing residence requirements), while others relaxed the conditions (Finland and Sweden allowed multiple nationality and Sweden reduced the required residence from ten to five years).

3.7.4 Family relation-based modes of acquisition of nationality

Family relation-based acquisition of nationality was for a long time limited to the transfer of nationality to spouses and children of nationals as well as to the extension of acquisition of nationality to spouses and children of persons acquiring nationality themselves. These persons are still the main or even the only relatives in all EU15 states to whom special provisions apply with respect to the acquisition of nationality.

Foreign spouses of nationals (A08) no longer acquire nationality *ex lege* and special rules for spouses no longer only apply to women marrying male nationals. The last such provisions were abolished in the mid-1980s. However, all EU15 states facilitate the acquisition of nationality by spouses of nationals in some way. Belgium, France, Luxembourg and Portugal, as well as the Netherlands under certain conditions, allow spouses to acquire nationality via declaratory procedures. Austria and Italy grant them a right to naturalisation that regular applicants do not have; Germany, the Netherlands and Spain entitle the spouses of nationals to naturalisation – in the same way as regular applicants. This means that only the three Nordic states, Greece, Ireland and the United Kingdom always refer this group to discretionary naturalisation under slightly relaxed conditions. The main criteria used to define eligibility are the durations of 1) residence, 2) marriage, 3) a common life or household and/or 4) the period of time the reference person has held nationality so far. The residence requirement for spouses usually ranges from one to four years, but it is at least six years in Denmark. Austria, France, Italy, the Netherlands, Portugal and Sweden do not always require even a certain duration of residence or residence at all after longer durations of marriage or common life. The required duration of marriage or common life in these cases mostly ranges from one to three years, but can be five (Austria) or ten years (Sweden) in cases where the residence requirement is waived. Only the United Kingdom never requires a certain duration of marriage. The only relevant criterion is that the foreign spouse prove the necessary residence. Where no right to acquisition by declaration is granted, the general conditions for naturalisation by spouses are mostly the same as those for regular applicants. The most important exceptions in this context are Italy (far fewer conditions for spouses), the Netherlands (no loss of previous nationality required) and Greece (privileged treatment only if the spouse and the national have a common child).

Reforms since the early 1990s have mainly brought new restrictions. In many states, new or tougher general conditions for naturalisation – especially concerning knowledge of the country (Denmark, Greece) or the language (Austria, Denmark and Luxembourg) or both (the Netherlands, United Kingdom) – were made applicable to spouses of nationals as well. However, changes also affected the conditions or procedural aspects of the acquisition of nationality for this particular group. Belgium introduced a residence condition of three years in 1993. Denmark raised the required residence period from four to six years to six to eight years (depending on the duration of marriage) in 2002. France introduced a residence condition of one year and raised the required duration of marriage from one to two years in

2003. Since then, French legislation has also required that spouses prove language skills. In 2004, Greece limited facilitated naturalisation to spouses who have a child with a Greek national. Ireland abolished the right of spouses to acquire nationality by declaration in 2002. Since 1994, Portugal has asked spouses for proof of 'effective links to the Portuguese community'. Counter-examples are rarer: Sweden lowered the required residence and marriage periods by one year each in 1989. Finland specified the requisite condition of residence and common life in 2003, which made the conditions more transparent. The Netherlands granted a new right to acquire nationality by declaration to long-term residents (after fifteen years) in 2003. The trend towards restricting the acquisition of nationality by spouses of nationals, which is often motivated by the aim to combat 'marriages of convenience', appears set to continue, however. The reform referred to in Austria, which came into force in 2006, raised the required residence period from three or four to six years and the duration of marriage from one or two to five years.

On the other hand, the transfer of nationality to partners is also the one area in the context of family relation-based modes in which rights of acquisition have been broadened in the more or less recent past. Various states have given unmarried heterosexual and homosexual partners of nationals the chance to acquire nationality under the same or comparable conditions as spouses. Heterosexual and homosexual companions who live with nationals in relationships 'resembling marriage' can be naturalised under the same conditions as spouses in Finland (since 2001), Sweden (since 1976 for heterosexual, since 1994 for same-sex partners) and the Netherlands (since 1998). Denmark (since 1989), Germany (since 2001), Belgium (since 2004) and Spain (since 2005) treat registered homosexual partners or spouses in the same way as heterosexual spouses with respect to access to nationality. While all EU15 states provide for special provisions for spouses of nationals, rules concerning the facilitated *extension of acquisition of nationality to spouses* of foreign nationals who are about to acquire nationality themselves (A13) only exist in Austria, Belgium, France, Germany and Luxembourg. The main or even only relaxation of conditions in all five states involves a reduction of the required residence by two (Luxembourg) to seven years (Austria), but Austria and Germany make this dependent on a certain duration of marriage of at least one to two years. In all other states, persons who apply for naturalisation together with their spouses have to meet the general conditions.

Children of nationals generally acquire nationality by *ius sanguinis*. However, most states also have specific provisions for children of persons who became nationals after the child's birth or for children of nationals in general, irrespective of when they acquired nationality (A09), as well as for persons adopted by nationals (A10). Apart from rules for adopted children – all EU15 states except Austria provide for an automatic acquisition of nationality by minors upon adoption by a national under certain circumstances – little can be said about these modes of acquisition in comparative terms because they target rather diverse groups of persons. Italy and the Netherlands have special rules for persons whose filiation with a national is established after birth, and Austria, Greece, Sweden and the United Kingdom provide for an *ex lege* acquisition of nationality by persons legitimised by marriage between their parents. In both cases, the parent's nationality at the time of the child's birth is irrelevant (which is in contrast to acquisition by legitimation or establishment of filiation elsewhere). Eight states give foreign minors in the custody of nationals the option to be naturalised under facilitated conditions (Austria, Denmark, Finland, France and Ireland) or to acquire nationality by declaration (the Netherlands, Portugal and Spain). Belgium and France even allow the adult children of nationals to acquire nationality under relaxed requirements.

Of greater relevance in practice are regulations concerning the *simultaneous acquisition of nationality by minors and their parents* (A14). Only Ireland, Portugal and Spain do not have such provisions in their laws, which means that minor children can only acquire

nationality (via the modes mentioned above) as soon as one of their parents has become a national. By contrast, in Belgium, France, Greece, Italy and Luxembourg, minors in the custody of and/or living with a person acquiring nationality always become nationals *ex lege*.

In Denmark, Germany and Sweden, this is the case at least in certain situations. In Austria, Finland, the Netherlands and the United Kingdom, the extension of acquisition to children is never automatic, but has to be applied for. Most states do not require a certain duration of stay. Only Germany always demands three years of residence, while Finland, the Netherlands, Sweden and the United Kingdom only require a certain duration of residence (three to four years, duration not specified in the United Kingdom) for children approaching the age of majority. Beyond conditions that aim to prevent conflicts over the child's custody (the principal applicant must have custody of or cohabit with the child, or both parents must give their consent), usually only few other requirements apply to the extension of acquisition of nationality. Exceptions in this respect are Austria, Finland and Germany, where nearly all minors have to meet all the general naturalisation conditions. Additional conditions in other states mainly concern older minors' criminal records. Co-naturalised children in Denmark and the Netherlands as well as children acquiring nationality *ex lege* in Luxembourg do not even have to give up their previous nationality.

With the exception of reforms of the general conditions for naturalisation that also affected the extension of acquisition of nationality to children in Austria, Finland and Germany, legislative activity in this area has been rather scarce in the past ten to twenty years. Minor changes only occurred in Austria (minors aged twelve or older have had to file their own application since 1999) and the Netherlands introduced the special mode of extension of acquisition by declaration in 2003, which does not require a certain duration of residence. In this context, the proposals by the Austrian government in September 2005 are completely out of line. Not only would all the new restrictive requirements mentioned in section 3.7.3 apply to co-applicant children as well, but the government even plans to deny children aged ten to fourteen who did not score highly in German over the past year the right to the extension of naturalisation, unless they pass the general German language and societal knowledge tests designed for adults. The initial version of this proposal was the target of massive public criticism, but was modified only slightly. The new version the government introduced in parliament still makes Austria by far the most restrictive country in this respect.

3.7.5 Affinity-based modes of acquisition of nationality

Approaches to affinity-based modes of acquisition of nationality vary widely among the EU15 states. Some even put more emphasis on affinity-based modes than on family relation-based and residence-based modes of acquisition. The reasons for this can be found in traditions of emigration and recent histories of immigration, pressure from emigrant communities abroad, the existence of ethnic diasporas with which the state wants to maintain contact or even 'repatriate' and in strongly ethnicised conceptions of nationality.

The greatest differences can be observed with respect to modes of acquisition of nationality based on cultural affinity (i.e. religious, linguistic, ethnic, or cultural more broadly) (A19); in this context, we also took into account modes that are based on family ties to former or deceased nationals (A12). However, strong disparities also exist regarding policies for promoting the reacquisition of nationality by former nationals (A16) and acquisition by nationals of specific states (A18). The whole extent of the variety of affinity-based modes of acquisition can only be appreciated if all three types of modes are examined simultaneously. On the basis of their approaches with respect to cultural affinity-based modes of acquisition, we distinguish three different groups of five states each: 1) states with no cultural affinity-based modes of acquisition; 2) states with cultural affinity-based modes,

which require that the target person has residence in the country; and 3) states with cultural affinity-based modes, which do not require residence in the country and/or pursue a policy of 'repatriation' (see also Table 3.12).

1. Austria, Finland, the Netherlands, Sweden and the United Kingdom do not facilitate the acquisition of nationality only because the applicants have a certain religious, linguistic or cultural background. However, three of these states give nationals of particular foreign states privileged access to nationality after a certain period of residence. The two Nordic states traditionally entitle nationals of other Nordic states to acquire nationality by declaration or notification after five (Sweden) or six years (Finland), while in Austria nationals of other EEA states can be naturalised on a discretionary basis after four (rather than ten) years of residence since 1999.

Finland, the Netherlands and Sweden give former nationals a right to regain nationality by declaration or notification, but only if they prove one to two years of residence, if they have lost nationality for certain reasons or if they are nationals of certain states (in Finland and Sweden: Nordic nationals). In the United Kingdom, an unconditional right to reacquire nationality by registration is only open to persons who renounced British citizenship in order to acquire a foreign nationality and, in Austria, a right to reacquisition by notification only applies to persons who fled Austria during Nazi rule. Even though none of these states encourages the reacquisition of nationality by former nationals on a larger scale, recent reforms have nevertheless made reacquisition easier in these states. Sweden (2001) and Finland (2003) accepted multiple nationality after pressure from emigrant groups, which now also benefits former nationals who reacquire nationality. The same two states introduced transitional rules for persons who lost nationality due to the former ban on multiple nationality. Finally, three states introduced new modes of reacquisition. This concerns reacquisition by notification after two years of residence in Sweden (2001) or by declaration after one year in the Netherlands (2003) and the possibility of reacquiring nationality via discretionary naturalisation after four (minors) or six years of residence in Austria (1999).

2. The defining commonality among the second group of states (Belgium, Denmark, France, Italy and Luxembourg) is the fact that all of them facilitate the acquisition of nationality by persons with a certain cultural affinity to the state, but mostly only after the person has taken up residence in the country. In France, francophone persons with a French education can apply for naturalisation immediately after taking up residence and, in the other four states, certain descendants of former or deceased nationals can acquire nationality via a declaratory procedure (Belgium, Italy and Luxembourg) or naturalisation (Denmark) after two to four years of residence. In addition, what also sets Denmark apart from the other two Nordic EU15 states is that it facilitates the naturalisation of certain foreign nationals with a cultural affinity to the state, i.e. 'Danish-minded' persons from Southern Schleswig, by reducing their required residence to two years.

A mode of acquisition targeting nationals of certain foreign states underlines the cultural approach in France. Persons from territories over which France has exercised sovereignty at any time can apply for naturalisation immediately after entering the country. By contrast, in Denmark (Nordic nationals) and Italy (EU nationals), privileged access to nationality after a certain period of stay is not based on colonial ties for nationals of certain foreign states, but on membership of the same union of states.

Lastly, the granting of rights to reacquire nationality to persons with residence abroad is also less widespread in these states. Only France, Italy and Luxembourg give certain former nationals living abroad the right to regain nationality by declaration, while Belgium and Denmark only grant such rights to some former nationals after certain

periods of residence. However, the rules for reacquisition in Italy, which are by far the most generous in this group, definitely have the potential to re-attract emigrants. Former Italian nationals either acquire nationality *ex lege* or by declaration immediately upon re-establishing domicile in the country or after a maximum of one year of residence. The rules were even more liberal from 1992 to 1997, when former nationals (and their descendants) were given the right to (re)acquire nationality by simple declaration, even if they resided abroad. Although Italy now mainly demands residence in the country for the modes in question, it has much in common with the third group of states because it actively encourages the acquisition of nationality by former nationals and their descendants – and the rules for reacquisition are much more relevant in practice than the ones for general residence-based acquisition of nationality.¹¹² It is also the only country in this group where important liberalising changes have occurred especially in this area since the early 1990s.

3. The third group of states, comprising Germany, Greece, Ireland, Portugal and Spain, is the most coherent. The main commonality of these states is that they all have policies of granting nationality to ethnic diasporas or descendants of former or deceased nationals abroad. Germany and Greece also facilitate the acquisition of nationality by descendants of nationals or persons with the same ethnic background more generally, but their main policies in this context are aimed at ‘repatriating’ ethnic diasporas from the former Soviet Union. Greece started its return programme for Pontian Greeks in 1990, while Germany introduced its policy for *Aussiedler* in the 1950s, even though the numbers of repatriated persons increased markedly only after 1989. However, in the late 1990s and early 2000s, both states tightened the initially very liberal rules of acquisition of nationality to some degree. By contrast, Ireland and especially Portugal and Spain target descendants of nationals and/or persons with an affinity to the country irrespective of where they reside. Spain introduced an additional option right to acquire nationality for children of native-born Spanish nationals only in 2002 and relaxed the conditions for naturalisation by descendants of nationals in the same year, while the respective modes of acquisition in Portugal (naturalisation of persons with Portuguese ancestry or members of Portuguese communities abroad under very relaxed conditions) and Ireland (naturalisation of persons of Irish descent or association) have already been in place much longer.

These policies facilitating the acquisition of nationality by persons with a cultural affinity to the country are complemented in all five states by modes of reacquisition of nationality for former nationals who (with certain exceptions) do not require residence in the country. The most liberal approaches in this context are those in Ireland, Portugal and Spain. Ireland allows all persons who initially became Irish by birth in (Northern) Ireland to reacquire nationality by simple declaration without any further condition. In Portugal, persons who renounced nationality (since 1981 the only mode of loss) in order to acquire a foreign nationality can reacquire it easily by declaration or occasionally even *ex lege*; since 2004 the public prosecutor can no longer oppose reacquisition. Spain grants the right to reacquire nationality by simple declaration to former Spanish nationals ‘by origin’ (other former nationals can be naturalised). Over the past fifteen years, this mode of reacquisition has increasingly been liberalised by abolishing the one-year residence requirement (1990), by exempting the largest group of former nationals, i.e. emigrants (1995) and their children (2002) from the residence requirement altogether; and by no longer demanding a renunciation of the previous nationality (2002).

Finally, three of these states also take an approach directed at nationals of specific foreign states to foster the acquisition of nationality by persons with a cultural affinity to

¹¹² See also Chapter 6 in this volume, on statistical developments.

the country. Portugal gives nationals of lusophone states and Spain grants nationals of Latin American states, other former colonies and certain neighbouring countries privileged access to naturalisation, while Germany reduced the required residence period for persons from German-speaking countries.

On the whole, together with Italy, the five states in the third group clearly place the strongest emphasis on affinity-based modes of acquisition of nationality. Especially in the Southern European states, facilitation of the acquisition of nationality based on cultural affinity takes clear precedence over residence-based modes of acquisition – to a lesser extent this was also true in Germany before the reform that came into force in 2000. Furthermore, the possibilities for affinity-based acquisition of nationality were extended in most of these states since the early 1990s, even though some states have also introduced certain new restrictions in their repatriation policies since the late 1990s (Germany *and* Greece) or discontinued very liberal transitional reacquisition programmes (Italy). However, as we saw above, none of the other EU15 states made the acquisition of nationality by persons with certain affinities to the country markedly more difficult and some even made it much easier (especially for former nationals).

Table 3.12: Overview of major affinity-based modes of acquisition of nationality

	Reacquisition (A16)		Nationals of certain states (A18)	Persons with cultural affinity (A19/A12)			
	Residence required	No residence required		Language	Religion	Culture, descent: residence required	Culture, descent: no residence req. or return policy
States with no cultural affinity-based modes of acquisition							
AUT	Gen: N	Spec: E, D	EEA states: N	—	—	—	—
FIN	Gen: D, N, Spec: D	Spec: D	Nordic states: E, N	—	—	—	—
NED	Gen: D	Gen: E; Spec: D	—	—	—	—	—
SWE	Gen, Spec: D	Gen: N	Nordic states: E, N	—	—	—	—
UK	—	Spec: D, N	—	—	—	—	—
States with cultural affinity-based modes requiring residence							
BEL	Gen: D	—	—	—	—	Youths descended from nationals: D	—
DEN	Gen: N; Spec: D	—	Nordic states: D, N	—	—	Youths descended from nationals; Southern Schleswigans: N	—
FRA	Gen: N; Spec: D	Spec: D	Former colonies / territories: N	Francophone: N	—	—	—
ITA	Gen, Spec: D, <i>ex lege</i>	Spec: D	EU states: N	—	—	Descendants of nationals by birth: D	—
LUX	—	Spec: D, N	—	—	—	Descendants of nationals by origin: D	—
States with cultural affinity-based modes not requiring residence or being part of a 'repatriation' policy							
GER	—	Gen: N; Spec: E	EU states: N	German speaking: N	—	—	(<i>Spät</i>)Aussiedler in ex-SU: <i>ex lege</i> ; descendants of Germans: N
GRE	—	Spec: D	—	—	—	'Homogeneis': N	Pontian Greeks in ex-SU: N; 'Homogeneis': <i>ex lege</i>
IRE	—	Spec: D	—	—	—	—	Irish descent or associations: N

POR	—	Gen: D, <i>ex lege</i>	Lusophone states: N	—	—	Descendants of nationals, members of Portuguese communities: N
SPA	—	Gen: D, N	Latin American states: E Former colonies, culturally close states: E	Sephardic Jews: E	Descendants of nationals: E	Descendants of native-born nationals: D

Notes: Gen = modes of reacquisition for former nationals in general;

Spec = modes of reacquisition for special groups of former nationals, e.g. those who lost nationality by marriage or while minors, or former nationals by origin;

D = acquisition via a declaratory procedure;

E = entitlement to naturalisation;

N = discretionary naturalisation.

3.7.6 Other modes of acquisition of nationality

We conclude this comparison by turning to the residual group of other modes of acquisition. Regulations covered by this heading include modes of acquisition for persons with special achievements for the country (A24) and for persons in the state's public service (A25). Eight states currently have provisions of the first type and seven states facilitate the acquisition of nationality by the second group of persons. Furthermore, we looked into rules that grant privileged access to nationality to persons who dispose of or are willing to invest certain amounts of money in the country (A26). However, since Ireland abolished a similar scheme in 1998, no EU15 state currently provides for the possibility of 'buying' a passport. Due to the fact that all of these modes are of very limited relevance in practice, however, we do not intend to describe them any further in this short version of the comparison.

From a normative perspective, the most important modes in this residual category are those targeted at recognised refugees (A22) and stateless persons (A23). Twelve EU15 states – the exceptions being the Netherlands, Portugal and the United Kingdom – do facilitate the acquisition of nationality by *refugees*, in particular by reducing the required duration of residence, in comparison to regular naturalisation, by one to six years or by waiving it completely (France, Ireland). The required residence period for refugees is two years in Belgium, four years in Austria, Finland and Sweden, five years in Greece, Italy and Spain, six years in Germany and eight years in Denmark. With the exception of proof of having lost the previous nationality, which is generally not required in any state, the relaxing of other conditions for naturalisation is rather the exception. Interestingly, despite the fact that international law has demanded the facilitation of their naturalisation ever since the 1951 Geneva Refugee Convention, Austria, Finland, France, Germany, Greece and Sweden only introduced special rules for refugees in 1999 or later. However, under a new law in Austria, which came into force in early 2006, the residence requirement for refugees has been raised from four to six years. However, refugees are also being given an entitlement to naturalisation for the first time.

Last but not least, all states except Luxembourg, Portugal and Spain facilitate the acquisition of nationality after birth by stateless persons. Austria, Belgium, Denmark, Sweden and the United Kingdom give native-born stateless persons privileged access to nationality while minors or shortly after attaining majority age. However, Belgium, Denmark, Finland,

Germany, Greece, Ireland, Italy and Sweden also allow stateless persons to acquire nationality under virtually the same conditions as recognised refugees. The Netherlands permits them to be naturalised after three years of residence or, if they have been stateless since birth, to acquire nationality by declaration. The general trend since the early 1990s in this area is also one of liberalisation. Beyond the changes for refugees mentioned above, which are also relevant to stateless persons, this is due to the fact that new modes of acquisition were introduced in Sweden and the Netherlands in 2001 and 2003 respectively.