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## 4 LOSS OF NATIONALITY

### HARALD WALDRAUCH

#### 4.1 Renunciation of nationality (mode L01)

Renunciation is the only mode of loss of nationality that exists in all EU15 states. A number of states – Austria, Denmark, France, Germany, Greece, the Netherlands and Sweden – even have two or more modes of renunciation targeted at specific groups of persons or their general rules of renunciation contain clauses for these groups. Below, we will first analyse the rules of renunciation that apply in the most general circumstances in each state (section 4.1.1) then, in a second step, we will look at rules applicable to certain groups of persons or under special circumstances (section 4.1.2). Concerning both general and special rules of renunciation, it can be stated that the rules in this area have changed little since 1985, especially when compared to many other areas of nationality law.

##### 4.1.1 General rules of renunciation

Voluntary loss of nationality by renunciation is possible in all states. The question is, are persons entitled to give up their nationality or are they dependent on some authority's discretion in this respect? In Austria (L01a), Ireland, Luxembourg, the Netherlands (L01a), Portugal and the United Kingdom, the renunciation becomes effective *ex lege* if all the conditions – including making the declaration of renunciation – are met. Possible official notifications are only declarative in nature. In the second group of states, comprising Belgium, Germany (L01a+b), Italy (L01a) and Spain, the loss does not become effective *ex lege*, but the authorities always have to grant the release from nationality if the conditions are met and they have to justify negative decisions. In all states within these first two groups, the conditions are unambiguous. This is in contrast to the five remaining states – Denmark, Finland, France (L01a), Greece (L01a) and Sweden – where the authorities have at least some discretion to refuse the release from nationality. Especially in France and Greece, it is not clear which criteria, apart from those mentioned in the law (see below), the authorities apply when denying the release. However, only in Greece do the authorities not have to justify their denial of a release from nationality. As we will see in section 4.1.2, however, under certain circumstances the authorities in Denmark, France, Greece and Sweden cannot deny the release from nationality. Only in Finland do the authorities always have discretion regarding whether to accept the renunciation.

In nine states, the declaration of renunciation has to be addressed to and/or is decided by a central authority, which is a Ministry (Denmark, Greece, Ireland, Luxembourg and the United Kingdom) or an authority subordinate to it (Finland, Portugal and Sweden), or the government itself (France). All states in which the release from nationality ultimately lies within the authorities' discretion are in this group of states. In Austria, the responsible authority is the provincial government where the target person has his or her residence or where he or she is enrolled in the nationality register. In Germany, the authority varies from one federal state to another. In the other four states, local authorities receive the declarations of renunciation, i.e. the Mayor (the Netherlands), or the local registry or consulate abroad (Belgium, Italy and Spain).

Which material conditions do persons wishing to renounce nationality have to meet? The most important requirement in all states is that *the person does not become stateless*. Some states distinguish between persons acquiring another nationality and persons who

already hold a second nationality. Germany has two different regulations in this context, one for each group of persons. In Austria (L01a), the person must have already acquired a foreign nationality – the assurance of a granting is not sufficient. Greece (L01a) requires that an applicant for release from nationality have been naturalised in a foreign state. The general rule in France (L01a) requires that the target person already hold a foreign nationality. All other states either require that the person hold or acquire a foreign nationality or simply that the person does not become stateless. Five states allowing a declaration of renunciation before the actual acquisition of a foreign nationality nevertheless stipulate that it be acquired within a certain period of time, otherwise the renunciation does not become effective. The period is one year in Germany (L01) and six months in the United Kingdom and (usually) in Denmark, while in Finland and Sweden the time limit is set by the authorities.

Beyond this main condition, no other requirement is prescribed in all states. First of all, this concerns *age requirements*. The target person must have attained majority age (or be emancipated) in about half of all EU15 states in order to be able to renounce nationality, which is the case in Belgium, Ireland, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom. In the Netherlands, however, a separate mode of renunciation exists for minors, which will be examined in the next section. In all other states, minors can also renounce nationality, even if the declaration to this end has to be made by the child's guardian. In Austria, minors aged fourteen and over must consent to the renunciation. *Residence abroad* is a precondition for renunciation only in Ireland, Italy (L01a) and Spain (since 1990).<sup>1</sup> However, there are special rules for nationals residing abroad in Austria, Denmark, France, Germany, Greece and Sweden, which we will analyse in section 4.1.2.

In five states, the target person's *liability for military service* is relevant. In Austria, men between the ages of eighteen and 36 who have not been declared unfit can only renounce their nationality if they have completed military service in Austria or in their other state of nationality. In Germany and Greece, release from nationality is also only possible if the person has no (further) military duties. The authorities in Denmark and Finland also refuse to release applicants from nationality if they are still liable to military service, but only if they do not reside abroad.

The person's *criminal record or ongoing criminal investigations* can be an obstacle to the loss of nationality by renunciation in three states. In Austria, proceedings following a crime punishable by more than six months imprisonment or a pending execution for such a crime prohibit renunciation. Ongoing investigations may prevent the release from nationality in Denmark. In Germany, renunciation in cases of the acquisition of a foreign nationality (L01a) is refused if detention of the applicant is ordered.

Some conditions are applied in only one or two states. In Spain and the United Kingdom, renunciation of nationality is impossible (Spain) or at least can be refused (United Kingdom) when the country is at war. In Germany, the person must not be in Germany's public service, whereas in Portugal, the renunciation only becomes effective when it is registered with the Central Registry Office. Last but not least, in Sweden the authorities may deny renunciation by nationals residing in the country if 'special reasons' exist, such as the applicant's intent to gain an unfair advantage in Swedish society, e.g. to avoid military obligations. Finally, only five states impose a fee on persons renouncing their nationality: it is 51 euros in Germany, 131 euros in total in Portugal (for the declaration of renunciation and for its registration), about 175 euros (120 British pounds) in the United Kingdom, up to 196 euros in Austria (depending on the province) and 400 euros in Finland.

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<sup>1</sup> Before the 1990 reform, renunciation in Spain was only foreseen at any time after emancipation for persons who had also been foreign nationals since minority, but residence abroad was not a condition.

**Table 4.1: General modes of renunciation of nationality (L01) in force at the end of 2004**

		Loss mechanism if conditions are met	Responsible authority	Negative decisions must be justified	Age limits	TP must not become stateless	Residence abroad	Mode of acquisition is relevant	Fee	Other conditions
AUT	L01a	Automatic	Provincial government	Not applicable	No	TP must have C3N: grant assurance is not sufficient	No	No	€ 0 – € 196.2	No military duties, no criminal procedure for certain crimes
BEL	L01	Authorities must grant release	Registrar or consulate (if abroad)	Yes	18+	Yes	No	No	No	No
DEN	L01	Discretion if TP resides in C1	Ministry of Integration	Yes	No	TP must have or acquire C3N within certain time	No	No	No	Possible obstacles: no military service yet; investigations against TP
FIN	L01	Discretion	Directorate of Immigration	Yes	No	TP must have or acquire C3N within certain time	No	No	€ 400	No release if TP resides in C1 and wants to evade military service
FRA	L01a	Discretion	French government	Yes	No	TP must have C3N	No	No	No	No
GER	L01a	Authorities must grant release	Varies between federal states	Yes	No	TP must acquire C3N within 1 year after release	No	No	€ 51	TP must not be in C1's public service, no military duties, no detention (ordered)
	TP must have C3N					TP must not be in C1's public service, no military duties				
GRE	L01a	Discretion	Ministry of the Interior	No	No	TP must have been naturalised in C3	No	No	No	No military duties
IRE	L01	Automatic	Ministry for Justice, Equality and Law Reform	Not applicable	18+	Yes	Yes, ordinary residence abroad	No	No	No
ITA	L01a	Authorities must grant release	Registrar or consulate (if abroad)	Yes	18+	Yes	Yes	No	No	No
LUX	L01	Automatic	Ministry of Justice	Not applicable	18+	Yes	No	No	No	No
NED	L01a	Automatic	Mayor	Not applicable	18+	Yes	No	No	No	No
POR	L01	Automatic	Central Registry Office (CRO)	Not applicable	No	Yes	No	No	€ 75 + € 56	Registration of renunciation in CRO
SPA	L01	Authorities must grant release	Judge in charge of civil register at place of birth	Yes	18+ or emancipated	Yes	Since 1990: yes, on regular basis	No	No	No release during war
SWE	L01	Discretion if TP resides in C1	Migration Board	Yes	No	TP must have or acquire C3N within certain time	No	No	No	If TP resides in C1, release may be denied in case of 'special reasons'
UK	L01	Automatic	Secretary of State	Not applicable	18+ or married	TP must have or acquire C3N within 6 months	No	No	£ 120 (~€ 175)	Release can be refused during war

Note: C1 = country under consideration, i.e. country whose nationality is renounced; C3 = foreign country; C3N = foreign national(ity); TP = target person.

#### 4.1.2 Rules for special cases

As mentioned in the introduction to this section on the renunciation of nationality, some states have more than one set of rules in this context. Regulations over and above the general regulations described above are of three sorts: 1) special rules for nationals with residence abroad; 2) rules for persons who acquired their nationality via a particular mode or in a particular way; and 3) other special rules.

1. Six of the states that do not require residence outside the state's territory nevertheless have *special provisions for persons with residence abroad*. In Denmark and Sweden, if persons residing abroad do not become stateless, their release from nationality is not tied to any other condition and no longer lies within the authorities' discretion. Discretion by the responsible Minister of Justice is also not possible in France for renunciations by certain nationals with usual residence abroad. Firstly, this concerns adults acquiring a foreign nationality, who can make a declaration of renunciation from the date of application for a foreign nationality until one year from its actual acquisition (L01b). The loss of French nationality becomes effective on the day the foreign nationality is acquired. Secondly, French nationals domiciled abroad must also be released from nationality if they have acquired a foreign nationality through marriage (L01f). Until conscription was abolished in 2001, the only additional condition for these two modes was that the person had no (further) military duties or was over the age of 35. Nationals of Austria and Germany, by contrast, must already have lived outside the state's territory for some time in order for special rules to apply. Austrian nationals who have had their main residence abroad for at least five years are released from nationality, even if they have not yet served in the army and even if criminal proceedings are pending against them (L01b). For German nationals with at least ten years of residence abroad, renunciation is possible even if they are in public service and even if they have not yet completed their military service (L01b). The last state with special rules for expatriates is Greece. Adult Greek nationals with residence abroad can be released from nationality if they no longer have any effective links to Greece (L01c). Residence abroad is not an explicit condition for a second special mode of renunciation in Greece, but it is obviously very likely in practice. Persons who entered the public service of a foreign state and who had to accept this state's nationality for this purpose may apply for release from Greek nationality (L01b). In both cases, however, applicants are not entitled to be released from nationality: the final decision still lies within the Interior Minister's discretion.
2. The second type of special regulation concerns persons who *acquired nationality in a particular way*, mainly as the children of foreign nationals at birth or while minors. Such rules exist in France, Greece and Italy. In France, youths can make a declaration of renunciation between six months before and one year after attaining the age of majority if they acquired French nationality at birth abroad by *ius sanguinis* (mode A01: birth to a French parent) (L01c), by double *ius soli* (A02: birth in France to a native-born foreign parent) (L01d) or by automatic filial extension (A14a: automatic acquisition of nationality by a minor if one parent acquires nationality) (L01e). Besides the main requirement that the person must have or acquire a foreign nationality, only one additional condition applies for each of these modes, which is that neither parent must have acquired French nationality while the person was a minor (L01c and L01d) or that the person was born abroad (L01e). If these conditions are met, a local judge or the Ministry of Justice (if the declaration is made abroad) has to grant the release from French nationality. In Italy, persons who became Italian nationals by automatic filial extension (A14) can also renounce their nationality after they have attained majority age if they hold or acquire a foreign nationality (L01c). In addition, Italy has a special rule for persons who acquired

Italian nationality by adoption as minors (A10a), but whose adoption was revoked after they came of age for a reason other than their own action. These persons can renounce their nationality within one year of their adoption being revoked if they have or acquire a foreign nationality (L01b). As in France and Italy, Greece also allows persons who became Greek automatically as minors because their parents were naturalised (A14) to renounce their nationality, but only within one year of coming of age and only if they hold a foreign nationality (L01d). Interestingly, this is the only mode of renunciation the Greek Minister of the Interior cannot refuse to accept. Last but not least, Greece also has the only rule<sup>2</sup> in this context which is not targeted at persons who acquired nationality in a particular way at birth or while minors. The regulation applies to women who acquired nationality automatically through marriage to a Greek man before the reform of the Nationality Code in 1984. They can be released from nationality if they have retained their original nationality but, again, the responsible authority – this time the Secretary General of the Region – can reject the release without giving reasons.

3. Finally, *other special modes of renunciation* exist that target neither persons residing abroad nor persons who acquired nationality in a particular way. Firstly, nationals who acquired a foreign nationality because they were adopted by a foreign national can apply for release from nationality in Greece if they have attained the age of majority and have no (further) military obligations in Greece (L01e). However, as for most other modes of renunciation in Greece, applicants are not entitled to be released from nationality in this case. The second regulation relevant in this context can be found in the Netherlands, where minors have been able to renounce Dutch nationality since 2003 if both parents are foreign nationals and the minor holds the parents' nationality (L01b). If these conditions are met, the renunciation becomes effective automatically.

#### **4.1.3 Summary**

The EU15 states can be grouped into several categories based on their regulations concerning the renunciation of nationality. Overall, renunciation is easiest in Belgium, Luxembourg, the Netherlands, Portugal and the United Kingdom because it is tied to the fewest conditions: no ensuing statelessness in any of the five states, majority age in Belgium, Luxembourg and the United Kingdom, the holding of the parent's nationality for minors in the Netherlands and the payment of a fee in Portugal and the United Kingdom. Renunciation is also easy in these states because the release from nationality has to be granted or even becomes effective automatically if all the conditions are met.

In Denmark, Ireland, Italy, Spain and Sweden, residence abroad is the main condition – besides the acquisition or possession of a foreign nationality and, occasionally, majority age – for a renunciation that becomes effective automatically or a release that has to be granted in all cases. In the two Nordic states in this group, renunciation is also possible if a domicile in the country is maintained. However, in this case, the release from nationality remains within the authorities' discretion and is tied to additional conditions.

The regulations in Austria and Germany also provide for an automatic loss or at least for an entitlement to the release from nationality, but the conditions for it are clearly more demanding than in the states mentioned above. The conditions are relaxed considerably only for expatriates after a certain period of residence abroad.

Finally, the release from nationality in Finland, France and Greece generally lies within the authorities' discretion. Certain expatriates and persons who acquired nationality as minors via specific modes are entitled to be released from nationality only in France.

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<sup>2</sup> It was in force from 1984 until 1986 and was then reintroduced in 2001.

**Table 4.2: Modes of renunciation of nationality (L01) for special groups of persons in force at the end of 2004**

		Loss mechanism when conditions are met	Responsible authority	Negative decisions must be justified	Age limits	TP must not become stateless	Residence abroad	Mode of acquisition is relevant	Fee	Other conditions
AUT	L01b	Automatic	Provincial government	Not applicable	No	TP must have C3N	5 years main residence abroad	No	€ 0 – € 196.2	No
DEN	L01	Authorities must grant release	Ministry of Integration	Yes	No	TP must have or acquire C3N within certain time	Yes	No	No	No
FRA	L01b	Authorities must grant release	Local judge or Ministry of Justice (if abroad)	Yes	18+	TP acquires C3N	Usual residence abroad	No	No	Renunciation possible for 1 year after acquisition of C3N. Before 2001: no military duties
	L01c				17.5 – 19	Yes	No	Ius sanguinis at birth (A01) abroad	No	Foreign parent did not become French during TP's minority
	L01d				17.5 – 19	Yes	No	Double ius soli (A02)	No	No parent must have become French during TP's minority
	L01e				17.5 – 19	Yes	No	Filial extension (A14a)	No	TP was born abroad
	L01f				No	TP has C3N due to marriage with C3N	Usual residence abroad	No	No	Before 2001: no military duties
GER	L01b	Authorities must grant release	Varies between federal states	Yes	No	Yes	10 years residence abroad	No	€ 51	No
GRE	L01b	Discretion of authorities	Ministry of the Interior	No	No	TP must have been naturalised in C3	No	No	No	TP is in foreign state's public service; no military duties
	L01c		Ministry of the Interior		18+	No	Yes	No		Since 2001: TP must have no effective links with C1
	L01d		Ministry of the Interior		18-19	TP must have C3N	No	Filial extension (A14)		No
	L01e		Ministry of the Interior		18+	TP acquired C3N by adoption	No	No		TP was adopted by C3N, no military duties
	L01f		Secretary General of the Region		No	Yes, woman must have retained C3N	No	By marriage with Greek man before 1984		TP must be a woman. Renunciation via this mode possible 1984-86 and since 2001
ITA	L01b	Authorities must grant release	Registrar or consulate (if abroad)	Yes	18+	Yes	No	By adoption (A10a)	No	Adoption revoked after minority, but not due to TP's actions; renunciation then within 1 year
	No						By filial extension (A14)	No		
NED	L01b	Automatic	Mayor	Not applicable	0-17	TP must hold parent's C3N	No	No	No	Both parents must be C3N. This mode exists since 2003
SWE	L01	Authorities must grant release	Migration Board	Yes	No	TP must have or acquire C3N within certain time	Yes	No	No	No

**Notes:** Mode of acquisition is relevant: the target person must have become a national via a certain mode of acquisition; C1 = country under consideration, i.e. country whose nationality is renounced; C3 = foreign country; C3N = foreign national(ity); TP = target person.

## 4.2 Loss of nationality abroad

### 4.2.1 Loss due to permanent residence abroad (mode L02)

The first reason for involuntary loss of nationality we examine is ‘permanent residence abroad’. As we will see, ‘permanency’, ‘residence’ and ‘abroad’ are defined in different ways in the EU15 states and the groups of persons targeted vary considerably as well.

Austria, Germany, Italy, Portugal and the United Kingdom do not have regulations concerning loss of nationality by any group of nationals in cases of prolonged residence abroad. In other words, even nationals born abroad who acquired nationality via *ius sanguinis* retain their nationality, no matter how long they stay abroad or whether they have ever been to their country of nationality at all. Nine of the other ten states can be divided into two groups. One group consists of Belgium, Denmark, Luxembourg and Sweden, where the regulations only target persons who not only have their residence abroad, but who were also born outside the state’s territory. By contrast, the relevant legal rules in Finland, France, Greece, Ireland and the Netherlands do not distinguish between persons born in or outside the country. Spain has three provisions: one of them affects only nationals born abroad, while the other two target certain nationals irrespective of their country of birth.

#### 4.2.1.1 Loss by nationals irrespective of their country of birth

We first focus on regulations that do not differentiate with respect to the target person’s country of birth. We thus do not consider actions to avoid the loss of nationality, which are summarised in section 4.2.1.3. The potentially most far-reaching provision can be found in the Netherlands. It stipulates that nationals lose their nationality *ex lege* if they have been residing outside the country or a Member State of the European Union for ten years after reaching the age of majority, unless the person is in the Netherlands’ public service or the service of an international organisation. The ten-year period is only interrupted by residence in the EU of at least one year. This means that, in theory, nationality even lapses if the person takes up residence in an EU state after residence outside the EU for more than nine years!

In Ireland, loss because of residence abroad only affects persons who are Irish by naturalisation other than on the basis of Irish descent and associations (acquisition mode A19), except if they are in Ireland’s public service. The Minister of Justice can withdraw their nationality if they have had their residence abroad or – in the cases of naturalised spouses of Irish nationals (A08b) – outside the island of Ireland for seven years without interruption. The Minister is under no legal obligation to avoid statelessness in this context. This reason for loss reflects the condition for naturalisation that the applicant must intend, in good faith, to continue to reside in Ireland (see section 3.3.1.17).

Two modes of loss in Spain target nationals born in or outside the country. Under the first rule, nationals with permanent residence abroad automatically lose their Spanish nationality three years after emancipation if they ‘exclusively use a foreign nationality’ that they acquired before emancipation (L02a). The second rule targets naturalised Spanish nationals who, for three years, ‘exclusively use the foreign nationality’, which they ‘renounced’<sup>3</sup> when naturalising in Spain (L02c). Residence abroad is not explicitly required for this second mode, but it is more or less impossible to prove the exclusive use of another nationality if the person lives in Spain. It has to be added, though, that both rules are

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<sup>3</sup> Spain asks persons applying for naturalisation to ‘renounce’ their previous nationality. However, no proof is required that applicants actually did lose their previous nationality; see section 3.3.1.11.

interpreted rather strictly, in the sense that almost anything can be used to prove that the person is not exclusively using another nationality. Before the loss can take place, evidence must be presented beyond any doubt of that 'exclusive use'.

Finland uses a concept resembling the 'exclusive use of a foreign nationality'. Finnish nationals lose their nationality *ex lege* upon reaching the age of 22 if they hold a second nationality and do not have 'a sufficiently close connection to Finland'. A close connection is deemed to exist if the person was born in Finland and is residing there when he or she turns 22 or if he or she has had residence in Finland or a Nordic country for at least seven years before that age. All others need to perform an action to counter the loss of nationality (see section 4.2.1.3). As in the Netherlands, nationality may occasionally be lost on the basis of this regulation even if the person has taken up residence in the country already!

The regulations in France are unique because the period of residence abroad that may trigger a loss of nationality is much longer than in any other country. The nationality of persons who are French by origin through descent from French nationals may be withdrawn by court judgement, if they have never had their usual residence in France, if their parents have been residing abroad for at least half a century and if neither they nor the parents have been considered French nationals by their entourage or by the French authorities (i.e. they do not have 'possession d'état'). This implies that the person has never applied for a passport, has never registered at a consulate or for elections and has never contacted French authorities in any other way, which would indicate that the person made use of a right as a French national. This provision is applicable, in principle, even if the person ends up stateless, but this is unlikely to occur. The court can also decide that the parents have lost nationality and that the target person has never actually been French.

Finally, Greece is a special case in this context. Currently, no legal rules are in force in Greece that provide for loss simply because of residence abroad: a regulation of this kind was abolished in 1998 (see section 4.2.1.6). However, another provision exists which was more accurately classified as an example of loss based on disloyalty, treason or a violation of the state's basic interests (L07), but which is only applied under the condition that the target person reside abroad. Under this rule, withdrawal of nationality is permitted if persons act against Greek interests or commit actions incompatible with their Greek nationality while residing abroad (for whatever duration). Authorities have full discretion in defining which acts are relevant in this context and they are also not obliged to prevent the occurrence of statelessness when making use of this provision.

#### 4.2.1.2 Loss by nationals born outside the state's territory

The regulations in Belgium, Denmark, Luxembourg and Sweden, as well as one regulation in Spain (L02b), only provide for loss of nationality by certain nationals born abroad. In all five cases, the loss occurs *ex lege* upon reaching a particular age if the target persons have spent certain periods of time abroad, but only if they do not end up stateless. Furthermore, the law in all five states includes fairly simple procedures to avert the lapse (see section 4.2.1.3).

In Belgium, Belgian nationality lapses for foreign-born nationals at the age of 28 if they have been resident abroad uninterruptedly since the age of eighteen. The regulation in Luxembourg is very similar, except for the time that has to be spent abroad: nationals born abroad lose their nationality upon reaching the age of 38 if they have had their residence abroad uninterruptedly since the age of eighteen. Being in the state's public service or certain equivalent services abroad does not lead to the loss of nationality in either state.

The basic principles of the Danish and Swedish rules are more or less the same. Nationals of these countries who were born abroad lose their nationality *ex lege* at the age of 22 if they have neither resided in Denmark/Sweden nor stayed there under circumstances indicating a special link or affiliation with the country. As in Denmark, examples of such a special link or affiliation can include a stay because of a long-term study programme, frequent

vacations, or to fulfil military service. In both states, residence in another Nordic country for at least seven years is regarded as equal to having had residence in the respective country at some point in the past. A period spent abroad in public service or working for an international organisation does not have to be mentioned explicitly in these two countries because this would be proof of a special link to the country.

Under the regulation in Spain, which is the only country specifically targeting the second generation born abroad (L02b), nationals who acquired nationality on the basis of *ius sanguinis* by birth abroad (acquisition mode A01) to a national who was himself or herself born abroad lose nationality automatically three years after emancipation, if they are nationals of the foreign state in which they reside. No loss occurs, however, when Spain is at war.

#### *4.2.1.3 Actions to prevent the loss of nationality*

Apart from taking up residence in the respective country, what actions can people take in order to prevent a loss of nationality via the modes described? In fact, certain actions to prevent loss are possible in all states and they are mostly not very intricate.

The legal rule in the Netherlands loses much of its edge with the qualification that nationality does not lapse if the target person acquires a declaration of possession of Dutch nationality or a Dutch passport every ten years. The measures to prevent a withdrawal of nationality are more demanding for naturalised nationals in Ireland after seven years of residence abroad. They can prevent this lapse by an annual registration of their name and a declaration of their will to retain nationality at a consulate or the Minister of Justice. Failing to do so is only accepted if a 'reasonable excuse' can be provided.

As mentioned before, actions to prevent the lapse of nationality in Spain because of the 'exclusive use of another nationality' (L02a+c) are manifold: people can, for example, cite the fact that they vote from abroad, use a Spanish passport or appear before a Spanish consulate. A loss of nationality by a person born abroad to a Spanish person born abroad three years after emancipation (L02b), by contrast, can be avoided by making a simple declaration of one's will to retain nationality at a civil or consular registry within the three years of emancipation. A simple declaration of one's will to retain nationality is also sufficient in Belgium and Luxembourg to avoid this loss. In Belgium, this declaration has to be made between the ages of eighteen and 28 and every ten years thereafter before the registrar of one's main place of residence or a diplomatic or consular mission abroad. In Luxembourg, the declaration has to be made between the ages of eighteen and 38 and every twenty years thereafter before the registrar of one's last place of residence in Luxembourg.

In Finland, nationals who do not meet any of the two residence requirements either have to submit a written statement to a Finnish diplomatic or consular mission or to their local registry office concerning their wish to retain Finnish nationality. Other ways to avoid loss are to have been issued a Finnish passport or to have completed military or alternative civil service in Finland. In the other two Nordic states, target persons wishing to retain nationality have to apply for permission to this effect before their 22<sup>nd</sup> birthday. In Denmark, applicants in practice have to specify their connection to Denmark and possibly demonstrate their knowledge of the Danish language. On the other hand, in Sweden, applications by the first generation born abroad generally seem to be approved, whereas the second generation has to prove its connections to the country.

In France, the condition for loss that the target person must not have 'possession d'état' implies that the action to prevent the loss is simply to obtain a certificate of French nationality. Finally, in Greece, the law does not contain any provisions concerning possible actions to prevent the loss of nationality via mode L07.

#### 4.2.1.4 Authorities' information duties and possibilities of appeal

Most states should have registers containing information on at least some of their nationals living abroad. Nevertheless, the duties of the authorities to inform persons of an imminent loss of nationality *ex ante* or a loss that has already taken place are lacking in Belgium, Denmark, Spain, Greece, Luxembourg, the Netherlands and Sweden, which is rather alarming. Frequent complaints about this have only led to a facilitation of reacquisition in Belgium. By contrast, in Finland, the Directorate of Immigration informs persons about the risk of losing their nationality and procedures to retain it. In Ireland, the Minister of Justice must notify the persons concerned of its intention to revoke the naturalisation certificate. Also, in France, the judge in charge of the withdrawal must inform the person concerned about the commencement of a procedure.

Possibilities for appeal of some kind against the loss of nationality or the decision not to grant permission to retain nationality exist in all states except Belgium. However, in Belgium, target persons may at least ask a court to relieve them from the consequences of not having made a declaration of their will to retain nationality if they can prove that they could not make that declaration before the age of 28 because of *force majeure*. Apart from Sweden (first instance: Migration Board; second instance: Aliens Appeals Board) and Spain (first instance: General Directorate of the Registrars and Notaries Public), the instance or instances of appeal are courts. With the exception of Greece (State Council), the competent courts are not courts of the last instance in the respective legal system.

#### 4.2.1.5 Relevance in practice

Do the regulations described have any relevance in practice? In particular, do the authorities make regular checks as to whether the nationality of certain nationals has lapsed or should be withdrawn?

In Denmark and Sweden, the authorities do not perform regular checks on whether nationality has lapsed. The issue comes up when expatriates apply for a new passport or for retention of nationality before the age of 22. Regular checks do not appear to be carried out in France or Ireland either. In Spain, none of the three modes of loss is very relevant in practice because no regular checks are carried out and because many facts can be presented to prove that a person was not making 'exclusive use of a foreign nationality' (L02a+c). In Belgium, according to the Foreign Ministry, the loss of nationality by persons born and residing abroad is one of the most important modes of loss, but statistics are lacking. As mentioned, the authorities in Finland regularly collect information from the population information system on persons who are multiple nationals. Persons about to lose nationality are informed of their imminent loss if they do not take one of the courses of action to prevent it. The Greek authorities still check regularly whether certain nationals living abroad should be deprived of their nationality. As indicated above, this mode (L07) was used by the authorities to withdraw nationality from politically undesirable persons residing abroad, especially activists for the rights of the Macedonian and Turkish minorities in Greece. Finally, no information on the practical relevance of this mode of loss of nationality is available for Luxembourg or the Netherlands.

#### 4.2.1.6 Changes since 1985

Finally, we turn to reforms since 1985. The six states with no current rules concerning loss of nationality because of permanent residence abroad have also had no regulations of this sort in force at any time over the past twenty years. No changes, at least none that deal with the modes' main principles, have taken place in Belgium or Luxembourg either.

In four states, the rules for loss by those permanently resident abroad have been tightened. This is especially true for Spain, where one mode (L02a) was only introduced in 1990 and the other two (L02b+c) in 2002. The only improvement was the introduction of the possibility of retaining nationality by declaration by persons targeted by mode L02a. In the Netherlands, before the implementation of the latest amendment in April 2003, nationality was lost *ex lege* based on residence abroad only if the target person had held residence abroad for ten years in the country in which he or she was born and of which he or she also was a national. By contrast, the new rule currently in force applies both to native-born nationals or nationals born abroad and to persons residing in any country outside the European Union. In addition, whereas any residence in the Netherlands could interrupt the period of ten years of residence abroad, this is now the case only for periods of residence of at least one year in any EU state. Besides the fact that residence in other EU states is equated with residence in the Netherlands, the only other liberalisation that came into force in 2003 concerned the possibility of retaining nationality by obtaining a passport-like document or a declaration of possession of Dutch nationality.

Finland also tightened its regulations with a reform that came into force in June 2003. Before that reform, automatic loss of nationality at the age of 22 was prevented if at any time in the past the person had been resident in Finland. No minimum duration was required for that residence. The actions to prevent loss were merely made less demanding: whereas, a declaration, the issue of a passport or military service is now sufficient, before the reform, a person had to apply to the Directorate of Immigration for permission to retain his or her nationality and had to prove a connection to Finland in that application (as is still the case in Denmark and Sweden). A fourth country, Ireland, also tightened its rules, where these were not made applicable to persons who were naturalised as spouses of nationals until 2001.

Amendments that mitigated the respective rules have been implemented in three states. In Denmark and Sweden, the rule that nationality can only be lost if the person does not become stateless was only introduced in 1999 and 2001 respectively. Most importantly, Greece abolished a regulation in 1998 after severe international criticism.<sup>4</sup> Under this regulation, the Greek authorities could deprive nationals not of Greek Orthodox descent ('allogenis') of their nationality if they abandoned Greek territory 'with no intention to return' (the interpretation of which was up to the authorities), even if they became stateless (L02) as a result. This regulation was also used extensively to withdraw nationality from politically undesirable persons, especially members of ethnic minorities. Even though residence abroad was a condition prescribed by law, withdrawal frequently occurred while the persons still resided in Greece. The persons affected did not even have to be informed of the imminent withdrawal and there was no action to prevent the withdrawal from taking place.

On the whole, the trend is inconclusive: Finland, Ireland, the Netherlands and Spain expanded the group of persons residing abroad who may lose nationality but, at the same time, new rules were introduced or existing rules liberalised concerning the possible actions to prevent the loss from becoming effective in all these states except Ireland. In Denmark and Sweden, on the other hand, amendments clearly relaxed the severity of the rules by making sure that target persons do not find themselves stateless. Finally, the abolition of the infamous art. 19 in Greece (L07) definitely improved the security of 'allogenis' from being deprived of nationality. However, since the nationality of Greeks residing abroad can still be withdrawn in cases of 'actions against Greek interests' (L02), the status of certain nationals residing abroad, especially those of ethnic minority descent, is still precarious.

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<sup>4</sup> For more details, see the country report on Greece in Volume 2.

#### **4.2.2 Loss due to entry into the service of a foreign state (modes L03, L04)**

Currently, six EU15 states provide for the loss of nationality (mainly by withdrawal) by a national who enters the public service of a foreign state (L04): Austria, France, Greece and Italy simply speak of (public) service for a foreign state; in Luxembourg, the ‘offence’ is the fulfilment of ‘national duties’ for a foreign state and in Spain loss is triggered by the exercise of a political office abroad.<sup>5</sup> However, the loss is tied to *additional conditions* in all states. In Austria, the authorities only withdraw nationality if they consider being in the public service of a foreign state as ‘substantially damaging the interests and reputation of the Republic’.<sup>6</sup> In Luxembourg, this mode of loss can only affect persons who are not nationals by birth. Furthermore, in France, Greece, Italy and Spain, the loss only becomes effective after the government or a ministry has asked the person to resign from the respective position and the person has refused to do so. In these four states, the persons affected therefore find out about the danger of losing their nationality and, in Luxembourg, the persons concerned also have to be notified of a procedure to withdraw nationality. This is in contrast to Austria, where nationals only have to be informed that their nationality has been withdrawn *ex post*. Last but not least, it should be stressed that, except in France – and then only since 1998 – persons may lose nationality via this mode in principle even if they end up stateless!

In France, Greece, Italy, Luxembourg and Spain, the same regulations can also be applied to *service in a foreign army*, or this reason for loss may even be mentioned explicitly (L03). However, three other states have special provisions that explicitly target military service in a foreign state. Austria’s nationality law contains the rule that Austrians lose their nationality *ex lege* upon entering the military service of a foreign state voluntarily, even if they end up stateless. ‘Voluntarily’ does not cover compulsory service in a state where the person also holds nationality. The rules in Germany and the Netherlands, which were introduced only in 2000 and 2003 respectively, provide for an automatic loss of nationality in the event of voluntary military service in a foreign state as well. However, in both states the loss can only occur if the person holds a second nationality; and in Germany this second nationality has to be of the state where the person serves in the army. In addition, in Germany, the loss does not take place if the service in a foreign army was permitted by the Ministry of Defence and, in the Netherlands, only service in the army of a hostile foreign state is relevant. The regulations in all three states are stricter than those of France, Greece, Italy, Luxembourg and Spain, however, because the persons concerned do not have to be warned about the imminent loss – the loss becomes effective *ex lege* if the conditions are met.

### **4.3 Loss of nationality in or outside the respective country**

#### **4.3.1 Loss due to acquisition of a foreign nationality (mode L05)**

Besides the condition of losing a foreign nationality when becoming a national of the respective state, the second measure to prevent the occurrence of multiple nationality is the provision of loss of nationality when acquiring a foreign nationality. It is interesting to note

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<sup>5</sup> Denmark also provides for loss of nationality if a person enters a foreign public service, but only if the person thus acquires the foreign state’s nationality. Therefore, the trigger for the loss is the acquisition of a foreign nationality (see section 4.3.1). Similar provisions existed in Sweden until 2001 and in Finland until 2003.

<sup>6</sup> In 2003, the case of an Austrian woman attracted public attention; she had spent her whole life in the Ukraine and her nationality was withdrawn because she had worked there as a teacher in a state school for three months in 1961 (*Der Standard*, 09.03.2003). While this was obviously interpreted as ‘substantially damaging the interests and reputation of the Republic’, the public service in a foreign state of a more famous Austrian national, i.e. Arnold Schwarzenegger, does not seem to meet this criterion.

that while, at the end of 2004, only Austria, Denmark, Germany, Luxembourg and the Netherlands still required most or (at least in principle) all persons wanting to acquire their nationality effectively to lose a foreign nationality (see section 3.2.1.2), more than twice as many states have provisions regarding the loss of nationality if a foreign nationality is acquired. This means, in particular, that even though persons who acquire nationality by naturalisation or declaration in Belgium, Greece, Ireland and Spain<sup>7</sup> do not have to lose their previous nationality, nationals of these states who acquire a foreign nationality may lose it under certain circumstances! Several bills have been introduced in parliament in Belgium recently that allow Belgians to retain their nationality even if they acquire a foreign nationality voluntarily.

Only Portugal and the United Kingdom either have never had rules concerning the loss of nationality upon acquisition of a foreign one or abolished them decades ago. Until recently, Sweden and Finland provided for the lapse of nationality if a foreign nationality was acquired voluntarily but, since mid-2001 (Sweden) and mid-2003 (Finland), they have accepted the occurrence of multiple nationality in all cases. The other eleven states either have rules that target nationals acquiring a foreign nationality in general or only the adults among them (see section **Error! Reference source not found.**), while five states have additional rules aimed at minors (see section 0). All of these rules are summarised in Table 4.1.

#### *4.3.1.1 Rules targeted at adults or persons irrespective of their age*

The regulations in Austria (L05a), Denmark (L05a+b), Germany (L05a), Greece and Ireland do not differentiate with respect to the target person's age, while the general rules in Belgium (L05a), France, Italy, Luxembourg (L05a), the Netherlands (L05a and L05d) and Spain apply to adults only. In nine of the eleven states, nationality lapses automatically if all the conditions prescribed by law are met. Only the laws in Greece and Ireland provide for a loss by withdrawal by the Minister of the Interior (Greece) or the Minister of Justice (Ireland). However, the rules in France and Italy (as well as special rules introduced in the Netherlands in 2003: L05d) only apply to nationals who acquire the nationality of certain states that ratified the 1963 Strasbourg Convention on Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality. Most parties to this Convention are EU15 states. Since the rates of acquisition of nationality of EU15 nationals are low in practically all EU15 states (see Chapter 6), these provisions in France and Italy are of limited practical relevance.

For most of these modes, the loss of nationality is limited to cases in which a *foreign nationality is acquired voluntarily*. This is true for Austria, Belgium, Germany (L05a), Greece, Ireland, Luxembourg (L05a) and Spain, as well as the Netherlands for the general mode (L05a). However, the definition of 'voluntary' is only clear for some states. In Austria, the acquisition of a foreign nationality resulting from lack of objection to the acquisition or from a declaration of intent not targeted primarily at the acquisition of a foreign nationality, such as marriage or taking up a position at a foreign university, does not lead to the lapse of Austrian nationality. A similar rule applies in Belgium, where nationality is not lost if the acquisition of the foreign nationality is the indirect consequence of certain other acts by the target person, e.g. marriage, the establishment of domicile, the creation of a business, or appointment to a public office. In Ireland, the law explicitly stipulates that nationality is only lost if the foreign nationality is acquired 'by any voluntary act other than marriage'. By contrast, Denmark provides for the loss of Danish nationality both if acquisition is voluntary (L05a) and if it is the indirect consequence of entering the public service of another state (L05b). The rules in France, Italy and the Netherlands (L05d) for persons acquiring the nationality of states that ratified the 1963 Strasbourg Convention in principle cover all forms

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<sup>7</sup> In Spain, persons becoming Spanish only have to make a fairly symbolic declaration that they renounce their foreign nationality. On the special case of France and Italy: see below.

of acquisition of a foreign nationality after birth. However, on the basis of the Second Protocol to the Convention from 1993, nationals of these three states no longer lose nationality upon acquisition of the nationality of any of the other three states if the person concerned is a spouse of a national of that other state, a second generation immigrant or a child acquiring nationality as a result of his or her parents becoming nationals.

With the exception of actions to prevent the loss of nationality (see further below), are there any *exemptions* from the loss of nationality or *further conditions* for it? In three states, the *country of residence* is relevant (or was until recently). Before 2000, the main condition for the lapse of nationality in cases of voluntary acquisition of a foreign nationality in Germany was that the person resided abroad. This '*Inlandsklausel*' was used by many immigrants in Germany to reacquire their previous nationality, which they had to renounce before naturalisation in Germany. To stop the 'abuse' of this regulation, it was changed in 1999. Since then, German nationality is lost upon acquisition of a foreign nationality even if a domicile in Germany is maintained. By contrast, in Italy, nationals who acquire the nationality of certain states that ratified the 1963 Strasbourg Convention still only lose their nationality *ex lege* if they also reside in that state. This requirement does not exist in France. In Spain, the loss of nationality becomes effective only three years after the foreign nationality was acquired, but only if the person resides abroad. However, no lapse occurs for persons acquiring the nationality of Latin American and some other states.

No *other condition* is applied in more than one state. In Ireland, loss in cases of residence abroad only applies to persons who acquired Irish nationality by naturalisation. Persons who are Irish through birth on the island of Ireland or by descent are not affected by it. Since April 2003, nationality is no longer lost via the general mode in the Netherlands (L05a) by persons who were born and live on the territory of the foreign state of which they acquire the nationality, by persons who had held their main residence in the respective foreign country for five years before reaching majority, or by persons who are married to a national of the state of which they acquire nationality. In Austria, an additional requirement concerns minors aged fourteen and over, for whom the loss becomes effective only if they have given their explicit consent to the acquisition of the foreign nationality. No further conditions or exemptions apply in Belgium, Denmark, Greece and Luxembourg.

The laws of only four states give people the chance to take certain *actions to avoid the loss of nationality*. The weakest of the four countermeasures exists in Ireland, where persons whose nationality is to be withdrawn can ask the Minister of Justice to transfer their case to the Committee of Inquiry to examine the reasons for the revocation. However, the final decision still lies within the Minister's discretion. This rather feeble measure contrasts with the situation in Spain. There, the lapse of nationality can be prevented by a declaration of intent to retain Spanish nationality addressed to the Central Civil Registry within three years of acquiring the foreign nationality. This possibility has existed since 2002 whereas, between 1990 and 2002, such a declaration did not prevent the loss of Spanish nationality.<sup>8</sup> Finally, Austria and Germany (L05a) allow people to apply for permission to retain nationality before a foreign nationality is acquired. The granting of this permission in Germany lies within the discretion of the authorities, which have to balance public and individual interests. Applicants in Austria have a right to be granted permission to retain Austrian nationality but the conditions for this are extensive and formulated in a very vague manner. This is more or less equivalent to the authorities having discretion in this respect. The permission must be granted if the foreign state agrees to the retention, if the person meets certain personal integrity criteria and if one of three additional conditions is met; these are that retaining nationality must be in Austria's interest because of the person's past and expected achievements, that the person has 'specifically relevant reasons', or – since 1999 – that the person is an Austrian

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<sup>8</sup> Before 1990 the loss could be prevented if the acquisition of the foreign nationality was due to emigration.

national by descent and has ‘specifically relevant reasons’ in his or her private or family life. These conditions leave the responsible provincial governments wide room for interpretation, which is materially similar to them having discretion to grant permission.

It must be added that the relevance of all these regulations hinges on whether the responsible authorities become aware that a foreign nationality has been acquired. It can be assumed that in many cases the authorities have no knowledge of it, especially if the person is careful not to give any hints. In most cases, therefore, the respective country’s authorities only find out about the acquisition of a foreign state’s nationality by chance. An exchange of information between states about their nationals acquiring nationality is provided for in the Additional Protocol to the 1963 Strasbourg Convention dated November 1977, which has been in force since 1983. However, only Belgium, Luxembourg, the Netherlands and Norway have ratified this protocol so far. Since nationals from EEA states rarely acquire the nationality of another EEA state (see Chapter 6), however, this Protocol is of rather limited relevance in practice.

#### 4.3.1.2 Rules targeted at minors

Only Austria, Denmark and the Benelux states have rules concerning the loss of nationality – in all cases by lapse – upon acquisition of a foreign nationality, that only apply to minors. In all cases, the lapse is limited to certain types of acquisition of a foreign nationality; in all cases, the loss is dependent on the child ultimately obtaining the same nationality as the parent. In Austria, a minor loses nationality not only in cases of voluntary acquisition of a foreign nationality, but also if he or she is the child of a person (who has custody of the child) who loses Austrian nationality as a result of acquisition of a foreign nationality and if he or she also acquires the foreign nationality *ex lege* (or already holds it) (L05b). In Denmark, where children also fall under the general rules of loss in cases of acquisition of a foreign nationality by explicit consent, application or entering a foreign public service (see modes L05a+b above), the loss also extends to a minor child if his or her parent loses Danish nationality for one of these reasons (L05c). In Belgium and Luxembourg, minors lose nationality if they acquire (or already hold) a parent’s foreign nationality as a result of a parent losing nationality by renunciation or voluntary acquisition of a foreign nationality (L05b=L11), or if they are adopted by a foreign national and thereby acquire this person’s nationality (L05c). The Netherlands has the longest list of types of acquisition of a foreign nationality by minors that can trigger a loss of nationality. Dutch nationality is lost by children upon acquisition of a foreign nationality by legal determination of paternity, acknowledgement or adoption (L05b), autonomous acquisition of the parent’s nationality (L05c) or simultaneous acquisition together with a parent if the parent acquires the foreign nationality voluntarily (L05e=L11a).

All these modes of loss are dependent on one important *additional condition*. If both (adoptive) parents have custody of the child, both of them must be foreign nationals. In addition, the Netherlands (as the state with the longest list of types of acquisition of a foreign nationality that lead to the loss of nationality) also has the longest list of exemptions from the general rules. All Dutch modes of loss targeted at minors are not applicable to children born and with residence in the foreign state of which they acquire nationality, to minors who have had their main residence in the respective country uninterruptedly for five years, or to children who are Dutch on the basis of the double *ius soli* regulation (acquisition mode A02).

Four of these five states do not give children (or their parents) the opportunity to take action to prevent the loss of nationality, e.g. by applying for permission to retain nationality. In Austria, it is theoretically possible to apply for the child’s retention of nationality independently of the parent, but this does not seem to happen in practice. In other words, either the parent applies for retention of Austrian nationality, in which case the child is included, or such an application is made neither for the parent nor for the child.

Finally, we have to mention the rule in Germany under which a person loses nationality if he or she acquires a foreign nationality by adoption, unless the other parent is still a German national (L05b). Strictly speaking, this rule does not apply only to minors but, in practice, minors are affected by this rule in the overwhelming majority of cases (even exclusively).

**Table 4.3: Loss of nationality due to acquisition of a foreign nationality (L05): overview of rules in force at the end of 2004**

	Target person is a minor	Target person is an adult
AUT	L05a: <i>Lapse</i> if TP acquires C3N by application, declaration or explicit expression of consent. APLN: application for permission to retain nationality	—
	L05b: <i>Lapse</i> if parent loses nationality via mode L05a, TP is unmarried child from marriage or born out of wedlock and custodian has agreed to acquisition.	
BEL	<ul style="list-style-type: none"> <li>• L05b: <i>Lapse</i> if TP's parent loses nationality due to renunciation or voluntary acquisition of C3N and TP holds that nationality or acquires it. APLN: None.</li> <li>• L05c: <i>Lapse</i> if TP is adopted by C3N and he or she holds his or her nationality or acquires it. APLN: None.</li> </ul> For L05b+c: no lapse if other parent with custody is still C1 national	L05a: <i>Lapse</i> if TP acquires C3N voluntarily on basis of formal legal act which was aimed at this acquisition. APLN: None
DEN	<i>Lapse</i> if TP acquires C3N by application or explicit consent (L05a) or by entering the public service of another state (L05b). APLN for both: None	
	L05c: <i>Lapse</i> if parent loses nationality via L05a or L05b, unless other parent with custody is C1 national	—
FIN	No (since 06/2003)	
FRA	No	<i>Lapse</i> if TP acquires C3N of state that ratified Strasbourg Convention. Certain exceptions for spouses of nationals and 2 <sup>nd</sup> generation. APLN: None
GER	L05b: <i>Lapse</i> if TP acquires C3N by adoption, unless the other parent is still C1 national. APLN: None	L05a: <i>Lapse</i> if TP acquires C3N by application. APLN: application for permission to retain nationality
GRE	<i>Withdrawal</i> possible if TP voluntarily acquires C3N. APLN: None	
IRE	<i>Withdrawal</i> possible if naturalised TP acquires C3N by voluntary act other than marriage. APLN: TP may apply to refer the case to the Committee of Inquiry for an inquiry on the reasons for the revocation	
ITA	No	<i>Lapse</i> if TP resides in and acquires C3N of state that has ratified Strasbourg Convention. Certain exceptions for spouses of nationals and 2 <sup>nd</sup> generation. APLN: None
LUX	<ul style="list-style-type: none"> <li>• L05b: <i>Lapse</i> if TP's parent loses nationality due to renunciation or voluntary acquisition of C3N and TP holds or acquires that nationality. APLN: None.</li> <li>• L05c: <i>Lapse</i> if TP acquires C3N by adoption, unless other parent with custody is C1 national. APLN: None</li> </ul>	L05a: <i>Lapse</i> if TP voluntarily acquires C3N. APLN: None
NED	<ul style="list-style-type: none"> <li>• L05b: <i>Lapse</i> if TP acquires C3N by determination of paternity, recognition, adoption. APLN: None.</li> <li>• <i>Lapse</i> if TP acquires C3N of his or her parent autonomously (L05c) or together with that parent if acquisition is voluntary (L05e). APLN: None.</li> </ul> L05b+c+e: no loss if other parent is national, or TP is born and lives in state of C3N, or has resided there for 5 years, or is national by double ius soli (A02)	<ul style="list-style-type: none"> <li>• L05a: <i>Lapse</i> if TP acquires C3N voluntarily, unless TP is born and lives in state of C3N, or resided there for 5 years before majority, or is married to national of this state. APLN: None.</li> <li>• L05d: <i>Lapse</i> if TP acquires nationality of state that ratified Strasbourg Convention. Certain exceptions for spouses of nationals and 2<sup>nd</sup> generation. APLN: None</li> </ul>

<b>SPA</b>	No	Lapse 3 years after voluntary acquisition of C3N (exc. Latin American states, AND, POR, PHIL, Equatorial Guinea) if TP resides abroad, but not if Spain is at war. APLN: declaration of will to retain nationality
<b>SWE</b>	No (since 07/2001)	

**Notes:** C1 national = national of respective state; C3N = foreign national(ity); codes L05a-L05e = ID of mode of loss/acquisition; TP = target person; APLN = action to prevent loss of nationality.

German mode L05b is not explicitly targeted only at minors, but it is mainly relevant to them.

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

### **4.3.2 Loss after a forced choice between two nationalities (mode L06)**

In this section, we look at provisions that force multiple nationals to opt for one of their nationalities at some point in their life and that provide for the loss of the nationality which was not chosen. In contrast to the rules described in the previous section, which stipulate that nationality is lost as soon as a foreign nationality is acquired, the regulations analysed here accept multiple nationality for a certain period of time and only later force persons to choose one of their nationalities.

Basically, only the rules in Germany fully meet the general definition for this mode of loss of nationality. The only other state's nationality law addressing the choice between two or more nationalities at a certain point in the life of a multiple national is Luxembourg. However, Luxembourg's law does not *itself* force multiple nationals to opt for one of their nationalities. It only stipulates that if an adult national is compelled by his or her other state of nationality to opt for one nationality, then Luxemburgish nationality lapses if the person opts for the foreign nationality. The thirteen other EU15 states do not have any relevant regulations in this context. In other words, these states may try to prevent multiple nationality from occurring in procedures to acquire nationality.<sup>9</sup> However, multiple nationality is permanently accepted once it arises and is explicitly not accepted only temporarily because release from the previous nationality could not be achieved before the acquisition of the respective country's nationality (because of the law in the state of previous nationality, or because of that state's slow or uncooperative bureaucracy).<sup>10</sup>

The respective German mode of loss was introduced with the 1999 reform. The regulation stipulates that multiple nationals who acquired German nationality by *ius soli* at birth (acquisition mode A02) or while under the age of ten on the basis of the transitional entitlement to naturalisation in 2000 (A05) are obliged to choose between their two (or more) nationalities after coming of age. If they declare their intention to retain the foreign nationality or do not make a declaration before the age of 23, German nationality is lost *ex lege*. It is only retained if the foreign nationality is renounced or otherwise lost before the age of 23, or if the person has been granted permission to retain German nationality alongside a foreign one. The application for this permission has to be made before a person's 21<sup>st</sup> birthday and it must be granted if the renunciation or loss of the foreign nationality is impossible or unreasonable, or if multiple nationality was accepted upon naturalisation. As a result of its age limits, this mode of loss of nationality will become relevant at the earliest in 2008 for persons who made use of the transitional entitlement to naturalisation (A05) and in 2018 for those who are Germans by *ius soli* at birth (A02). It remains to be seen, therefore, how relevant this mode of

<sup>9</sup> Only Austria, Denmark, Germany, Luxembourg and the Netherlands try to prevent the occurrence of multiple nationality after birth and request that applicants for naturalisation give up their previous nationality; see section 3.3.1.11.

<sup>10</sup> On modes of loss of nationality after a short period of time, see section 0.

loss will be in practice, especially how many persons will be permitted to retain both their German and foreign nationalities and whether it will in fact be politically feasible to force potentially tens of thousands of persons indirectly to give up their German nationality.

#### **4.3.3 Loss based on false information or other types of fraud in a nationality acquisition procedure (mode L09)**

One important reason for the loss of nationality is the fact that a person has given false or incomplete information in a procedure to acquire nationality or has acquired it by other fraudulent means. This reason usually (or exclusively) concerns persons who acquired nationality after birth. Together with the reason discussed in the next section, false information and other forms of fraud are reasons that in some states do not, in strictly legal terms, lead to a loss of nationality, but rather to a *nullification of the acquisition*. For comparative purposes, we nevertheless treat nullifications of acquisition as modes of loss of nationality because the same material reason may lead to a nullification of acquisition in one state and ‘only’ to a withdrawal of nationality in another. The decisive factor from a comparative point of view is that in all three cases – withdrawal or lapse and nullification of acquisition – a person who for some time has been treated as a national by the public authorities is deprived of this status. The legal consequences of these forms of loss of nationality, however, may be different, especially with respect to acts performed during the time the person was deemed a national.

The laws in all states except Greece, Italy and Sweden include regulations concerning the loss of nationality on the grounds of false information or other forms of fraud. The loss occurs by withdrawal in Denmark, Finland, France, Germany, Ireland, Luxembourg, the Netherlands and the United Kingdom, and by nullification of the acquisition in Austria, Belgium, Portugal and Spain. In Austria, Belgium and Germany, these regulations are not contained in the nationality laws or executive decrees themselves, but the withdrawal/nullification is possible on the basis of general laws regulating administrative procedures.

False information and other forms of fraud as grounds for loss of nationality have been on the political agenda in many EU15 states recently. The relevant rules were introduced in Denmark in 2002 and in Finland and the Netherlands in 2003. Significant cases in which nationality was withdrawn for this reason were decided by the Federal Administrative Court in Germany in 2003. In Belgium, two bills aimed at incorporating special rules into the Nationality Code concerning the withdrawal of nationality from persons who used fraudulent means to acquire it were recently introduced in parliament. The tightening of the rules in this area is clearly one of the main current trends with respect to the loss of nationality. This contrasts with the fact that – according to the information available – this mode of loss has been of little relevance in practice in those states where it has already been in force for some time. According to several provincial officials responsible for administering the nationality law in Austria, the reopening of naturalisation cases is rare. In Belgium, a public prosecutor, upon discovering that nationality was acquired by fraud, generally does not take any action to withdraw this nationality. The *Conseil d’Etat* in France is very strict when it comes to checking whether nationality should actually be withdrawn.<sup>11</sup> Only one case is known since 1981 in Portugal and, in Ireland, no evidence was found that the Minister has ever made use of the respective regulations at all. In addition, the authorities do not perform regular checks in any state.

Are these provisions applicable only to persons who *became nationals via a particular mode of acquisition*? In most states, this mode of loss is relevant for all persons who acquired

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<sup>11</sup> See also section 6.4.1 in Chapter 6 for statistics on loss of nationality for this reason in France.

nationality via any non-automatic mode of acquisition after birth. There are no such limits in Denmark and Portugal, but the respective rules in both states are irrelevant in practice for persons who became nationals *ex lege* at or after birth. Only in Spain, some non-automatic modes of acquisition after birth are not covered by these provisions, but they only concern very small groups of persons who normally acquire nationality by *ius sanguinis* or *ius soli* at birth.

Four states set *time limits* within which nationality may be withdrawn or the acquisition may be nullified. In Finland, the limit is five years, in the Netherlands generally twelve years and, in Spain, fifteen years from the acquisition of nationality, whereas in France, nationality may be withdrawn for two years after the fraud is discovered. The legal rules in all other states do not contain any time limits, which means that nationality can in principle be lost even after decades of having held nationality. It is interesting to note that the *avoidance of statelessness* is not prescribed by law for this mode of loss in Austria, Belgium, Denmark, France, Ireland, Luxembourg, the Netherlands, Portugal, Spain or the United Kingdom. Whether the person would become stateless – at the very least – has to be taken into account by the authorities in Germany, but the only state explicitly limiting the loss of nationality via this mode to multiple nationals is Finland. *Other conditions* for the applicability of the respective regulations are rare. In fact, the only additional condition in any of these states is that in the Netherlands nationality can be withdrawn on the grounds of false information or fraud only after the person has reached majority.

*Which authorities are responsible* for deciding whether to withdraw nationality or nullify its acquisition? In Austria (provincial government), Belgium (Public Prosecutor), Finland (Directorate of Immigration), Germany (varying regional authorities), Ireland (Minister of Justice), the Netherlands (Minister of Alien Affairs and Integration) and the United Kingdom (Secretary of State), the decision to start a procedure in this context and finally to withdraw nationality or nullify its acquisition is made by the same authority as that which decides cases of acquisition of nationality (or, in the Dutch case, prepares their decision). By contrast, in the other five states, withdrawal or nullification occurs in a judicial procedure. The responsible court is a district court in Denmark (the case follows a criminal procedure), the *Conseil d'Etat* in France (which is also the highest administrative court), a civil court in Luxembourg, the Court of Appeal in Lisbon in Portugal, and a civil or administrative court in Spain.

With the exceptions of Portugal and Spain, where the courts must nullify the acquisition of nationality if it was based on false information or fraud, the decision whether to deprive the person of his or her nationality lies within the *responsible authorities' discretion*. However, some of these states have rules which determine how the authorities shall apply their discretion. For example, in Denmark, Finland and Ireland, false information or fraud shall only lead to a withdrawal of nationality if it actually had an effect on the decision to grant nationality. In Denmark and Finland, all aspects of the person's situation shall be taken into account, including the culpability of his or her act and the proportionality of the withdrawal. In Germany, the responsible authority has to weigh public and private interests against each other.

Finally, in all twelve states the persons concerned *have to be informed* of the decision to start a withdrawal or nullification procedure so that they can express their views of the situation during the procedure. In addition, target persons can also *appeal* in all states against the decision to withdraw nationality or to nullify the acquisition.

#### **4.3.4 Loss due to non-compliance with conditions for the acquisition of nationality *ex post* (mode L10)**

It is conceivable that nationality may only be granted by the authorities under the explicit condition that the target person perform specific acts or meet particular other conditions *after* acquisition. What kind of post-acquisition conditions do the authorities impose on persons acquiring nationality and under what circumstances, if any, can nationality be lost again if these conditions are not fulfilled?

Conditional acquisition of this kind does not exist in most EU15 states. In general, states only apply conditions that have to be met *before* the acquisition of nationality can occur. Only Austria, Germany, Luxembourg and the Netherlands do occasionally grant nationality on condition that the person performs certain actions *after* acquisition. In all four states, this concerns renunciation of the foreign nationality if it was impossible to renounce it *ex ante*. However, nationality can be lost again only in Austria, Luxembourg and the Netherlands if the foreign nationality is not renounced after acquisition. Germany only imposes administrative fines in these cases. In Austria, the recently acquired nationality can be withdrawn if it was granted more than two but less than six years ago and if the person has retained his or her previous nationality for his or her own reasons. The authority has to inform the person of the impending withdrawal six months in advance. Nationality is then lost automatically after these six months, unless the person proves that the foreign nationality has been lost or that it was impossible or unreasonable to lose it. Similar regulations with different time limits are in force in Luxembourg. There, persons who could not renounce their previous nationality before acquiring Luxemburgish nationality by naturalisation or option have to do so *ex post*. The Minister of Justice may send the person a request for this purpose, after which he or she has two years to prove that the foreign nationality has been lost or, if the release from the previous nationality is not possible within that time frame, to declare that he or she wants to retain Luxemburgish nationality. If neither action is taken within the two years, nationality is lost *ex lege*. In the Netherlands, the Minister of Justice may deprive naturalised Dutch nationals of their nationality if they have not lost their previous nationality despite the fact that this was a condition for naturalisation. Unlike Austria and Luxembourg, the Dutch provisions do not set time frames within which the loss of nationality has to be proven, nor do they oblige the authorities to inform the persons concerned of the fact that their nationality is about to be withdrawn.

Since no statistics on loss of nationality exist in Austria or Luxembourg, it is difficult to make any statements about the actual importance of their respective modes of withdrawal in practice. By contrast, in the Netherlands, the withdrawal of Dutch nationality because of a failure to renounce a previous foreign nationality is important in practice. From 2002 to 2004, between seventeen and 102 persons annually lost their nationality for this reason.

#### **4.3.5 Loss due to loss of nationality by a parent (mode L11)**

We now turn to regulations concerning the loss of nationality by minors whose parents lose nationality. In France, Germany, Greece, Ireland, Italy, Portugal, Spain and the United Kingdom, a loss of nationality in itself has no effect on the nationality of the respective person's children. The last state to abandon such rules among these states was Spain in 1982.

Austria, Belgium, Denmark, Luxembourg and the Netherlands provide for a lapse of nationality by children of *parents who acquire a foreign nationality* in a certain way and therefore lose the respective state's nationality. However, this regulation only applies under two conditions: the children also acquire the parents' new foreign nationality (or already hold it) and the other parent is a foreign national as well. We have already described these modes of loss in section 0, so we do not have to repeat them in detail here. The types of loss of

nationality by the parent that trigger a loss by the child in this context are: loss based on the acquisition of a foreign nationality by application, declaration or explicit consent in Austria (L11=L05b); loss based on renunciation or voluntary acquisition of a foreign nationality in Belgium or Luxembourg (for both: L11=L05b); loss resulting from the acquisition of a foreign nationality by explicit consent, application or entering into a foreign state's public service in Denmark (L11a=L05c); loss because of the voluntary acquisition of a foreign nationality in the Netherlands (L11a=L05e).

However, four states (Finland, Sweden, Denmark and the Netherlands) also have or only have provisions regarding the loss of nationality by a child as a consequence of the *child's parent losing nationality for other reasons*. In all four states, however, the respective modes of loss of nationality only apply if the children do not end up stateless and if their other parent is a foreign national too. The laws in Denmark (L11b) and Sweden stipulate that the child of a person who loses nationality at the age of 22 because of permanent residence abroad (L02) loses nationality *ex lege*. However, this only occurs under three conditions: that the child derived Danish/Swedish nationality from the respective parent by *ius sanguinis* at birth, that the other parent is a foreign national, and that the child does not become stateless. In Finland, the only mode of loss that may lead to the loss of nationality of the respective person's children as well is if nationality was acquired by fraud (L09). However, this withdrawal of nationality is also tied to a number of conditions: the child must have derived Finnish nationality from the parent at or after birth, the other parent must not be a Finnish national and the child must have a second nationality. In addition, as for the parent, the withdrawal of nationality is possible only within five years of acquisition. In the fourth country to be mentioned in this context, the Netherlands (L11b), the loss of nationality also extends to minor children (L11b) if the parent loses Dutch nationality by a voluntary renunciation of nationality (L01a+b), long-term residence abroad (L02) or a failure to renounce a foreign nationality after naturalisation in the Netherlands (L10). However, the Netherlands also has the most exemptions from the general rules. In addition to the reasons mentioned above (statelessness would result, other parent is Dutch), Dutch nationality is not lost via this mode (L11b) by children who were born in the state of their second nationality and had residence there at the time they acquired that nationality, by children who have had their residence in the country of acquired nationality uninterruptedly for five years, or by children who became Dutch via the double *ius soli* rule (mode A02).

To summarise, the extension of a loss of nationality to children is the exception in the EU15 states, both because eight states do not have relevant rules at all and because the other seven states limit it to only certain modes of loss and make it dependent on additional conditions. Firstly, the modes of loss by the parents that may trigger a loss by their children are the acquisition of a foreign nationality and sometimes certain other modes as well. However, no modes are included that are the result of offences committed by the parent that are unrelated to the acquisition of nationality itself (e.g. service in a foreign army, treason, committing other crimes). Secondly, the main additional conditions for children to lose nationality as a result of loss by one of their parents is that they should not end up stateless and that the other parent should not be a national.

#### **4.3.6 Other modes of loss of nationality**

Below, we describe other modes of loss of nationality which were not selected for detailed description. The level of detail is therefore lower than for the modes described above.

#### 4.3.6.1 Disloyalty, treason or offences against the state (mode L07)

Nationality law is a core area of state sovereignty. In seven EU15 states, persons who violate the state's basic interests or endanger its security by committing acts such as disloyalty, treason, terrorism or crimes against the state may be deprived of their nationality. In Belgium, Denmark (since 2004), France and Luxembourg, nationality can be withdrawn only after a court decision, whereas in Greece, Ireland and the United Kingdom the withdrawal lies within the Justice or Interior Minister's discretion. The *offences targeted* are: serious violations of obligations as a citizen in Belgium; disloyalty and crimes against the state in Denmark; crimes against the basic interests of the state, terrorist acts, services to a foreign state which are incompatible with being a national and detrimental to the state's interests (L07a), or acting as if a national of a foreign state (L07b) in France; actions against the state's interests while residing abroad in Greece; failure in one's duty of fidelity to the nation and loyalty to the state in Ireland; failure to fulfil one's duties as a citizen (L07a) or an (attempted) violation of the laws on external and internal security of the country (L07b) in Luxembourg; and – since 2002 – actions that are seriously prejudicial to the vital interests of the United Kingdom or a British Overseas Territory. In the Netherlands, the introduction of regulations allowing the withdrawal of nationality in case of terrorism is currently also on the political agenda. Spain, on the other hand, outlawed the possibility to withdraw nationality from nationals other than 'by origin' in case of crimes against the external security of the state in 2002.

In some states, these modes of loss depend on the *way the person acquired nationality*. In Belgium, Luxembourg and Ireland as well as in France for all offences except acting as if belonging to a foreign state (L07b), only persons who acquired nationality after birth can be deprived of it. In France, this only applies for ten years after the acquisition. The same was true until 2002 in the United Kingdom, where nationality could only be withdrawn – on grounds of disloyalty or disaffection towards the Queen, or for assisting an enemy during wartime – if the person was a national by naturalisation or registration. By contrast, the current provisions in the United Kingdom, Denmark and Greece target all nationals, irrespective of how they became nationals. In addition, in Belgium, Greece, Ireland and Luxembourg, the withdrawal of nationality for the reasons mentioned is possible in principle even if the person concerned does not hold a second nationality. By contrast, in Denmark, France (since 1998) and the United Kingdom (since 2002), the occurrence of *statelessness* has to be avoided in these cases.

Finally, it has to be stressed that these modes of withdrawal of nationality seem generally to be of little relevance in practice in those states, where they have already been in force for some time. For example, in Belgium, the respective regulations have not been applied since they were introduced after the Second World War. The rules in Denmark and the United Kingdom have been in force only for a short period of time so that statements about their relevance are not possible yet. However, precisely because they were introduced only recently within the context of tighter anti-terrorism measures, it can be assumed that the authorities in these two states are determined also to apply them in practice. The only regulation which we know has been used frequently is the regulation in Greece (see section 4.2.1.1 and section 6.4.1 in Chapter 6).

#### 4.3.6.2 Other offences (mode L08)

While regulations regarding the withdrawal of nationality in cases of offences against the basic interests of the state were recently introduced in Denmark, made more restrictive in the United Kingdom and are currently being discussed in the Netherlands, the trend with respect to the loss of nationality on the grounds of other crimes is moving in the opposite direction. France abolished a provision in 1998 that allowed for the deprivation of nationality from persons who became French after birth on the basis of an expression of intent if they had been

sentenced to a prison term of more than five years. Similarly, in the United Kingdom, a rule was eliminated in 2002 that provided for the withdrawal of nationality from multiple nationals for five years after becoming British by naturalisation or registration if they had been sentenced to more than one year's imprisonment.

Despite the aforementioned reform in 1998, France is still one of two states in which certain crimes less serious than harming the state's vital interests may lead to the loss of nationality, but only if the target person holds a foreign nationality. However, the crimes are very specific: French nationality can be withdrawn from persons for ten years after they became French by naturalisation, reintegration or declaration if they commit certain crimes while in office (abuse of authority, corruption, bribery) or if they violate the laws on compulsory military service. The provisions in Luxembourg are considerably stricter. There, persons who are not nationals by descent can be deprived of their nationality, even if they end up stateless, after an irrevocable conviction leading to a criminal penalty or imprisonment for any crime which is one of a long list of crimes, including murder, robbery, concealment of stolen goods, fraud, breach of trust, misappropriation, forgery and giving false evidence. However, these modes of loss are rarely, if ever, applied in practice in France or Luxembourg.

#### 4.3.6.3 Other reasons for the loss of nationality

Finally, we come to other modes of loss of nationality, which are targeted at very special groups of persons or at very special circumstances.

Firstly, nationality may be lost in cases of *annulment of the filiation to a national* from whom the target person derived his or her nationality – including the acquisition via transfer of nationality by adoption (L13). Particular provisions exist in Finland (loss by withdrawal), Italy and the three Benelux states (in all cases: loss by lapse). In Belgium and Finland, these regulations are targeted at cases in which the filiation to a male national ceases to exist. In Italy, they concern the annulment of an adoption by an Italian national as a result of actions taken by the adoptee himself or herself. In Luxembourg and the Netherlands, the provisions allow the loss of nationality in cases of annulment of the filiation to a national. It has to be noted furthermore that in Italy the loss can occur at any time during the target person's life; in Finland it is limited to the first five years of a child's life or the five years after filiation to a national was established and, in the other three states, the respective provisions only apply to minors. An important additional condition in Belgium, Finland and Italy is that the person must not become stateless, whereas, in Luxembourg and the Netherlands, statelessness does not have to be prevented in these cases.

A second mode, which is also rarely applied in practice, is the loss of nationality because it is found that a person who acquired nationality at birth as a *foundling or as a person who would otherwise be stateless* (acquisition mode A03) does indeed hold a foreign nationality (L14). Firstly, it would appear that foundlings lose nationality automatically in all states but Greece, Portugal and Spain in cases where it can later be demonstrated that they are in fact foreign nationals. In all cases, this is based on a clause that nationality is acquired by children found abandoned on the state's territory *unless* or *until* it is proved that they did in fact acquire a foreign nationality at birth or that they were not born on the state's territory (if this assumption was the trigger for acquisition). It is unclear, though, within which period of time after acquisition this loss can occur in Austria, Denmark, Germany, Ireland, Italy, Sweden and the United Kingdom. Some other states do set certain time limits for these cases. In Belgium, France and Luxembourg, foundlings only lose nationality again if they acquire a foreign nationality before coming of age or when it is established that they already hold a nationality. In Finland, the age limit is five years and, in the Netherlands, loss can only occur within five years of the child being found abandoned. Secondly, regulations providing for the loss of nationality of persons who were born to stateless persons or who would otherwise have been stateless are much rarer. In fact, such provisions only exist in five states: in Austria,

Finland, France and Luxembourg exactly the same rules (or rules with at least the same material content) apply to these persons as to foundlings, when it is established that they did in fact acquire a foreign nationality at birth. In Belgium, the only relevant rule in this context targets children born to Belgian parents abroad, who only acquired Belgian nationality because they did not acquire a foreign nationality (acquisition mode A01d). They lose nationality if it becomes clear before their eighteenth birthday that they hold a foreign nationality.

Finally, we come to modes of loss of nationality that we could not classify as belonging to any one of the fourteen other modes of loss discussed above and which were therefore grouped together in the residual category of *other modes of loss of nationality* (L15).

- A unique rule exists in Ireland, where nationality may be withdrawn from a naturalised national who also holds the nationality of a state with which Ireland is at war.
- Belgium and the Netherlands provide for the lapse of nationality of minor unmarried children upon adoption by an alien if they already hold that parent's foreign nationality (and not just when they acquire it).<sup>12</sup> In the Netherlands, the same clause also applies to children of foreign nationals whose parentage is legally determined or acknowledged.
- Lastly, Austria, France and Portugal have rules regarding the withdrawal of nationality or the nullification of its acquisition (Portugal) in cases where nationality was acquired on the basis of incorrect facts, other than facts based on false information or fraud by the person concerned. In Austria, a procedure of granting nationality can be reopened (as can any other administrative procedure) if new facts or evidence come to light that could lead to a substantially different decision. Another possible condition for reopening a procedure in this context is if the responsible authority did not wait for a decision by another public authority, which was relevant to its own decision, assuming that it would not prevent the granting of nationality, but the final decision by that other authority was not as expected. However, the reopening of such a case and a subsequent annulment of the granting of nationality are only possible within three years of the authority's initial decision and only if the target person does not then become stateless. The *Code Civil* in France allows for the withdrawal of nationality by the *Conseil d'Etat* within one year of acquisition by naturalisation, reintegration or declaration if the target person no longer meets the conditions for the acquisition. However, since 1998, withdrawal has only been possible if statelessness is avoided. This contrasts with the rules in Portugal, where the Court of Appeal in Lisbon can declare the registration of nationality null and void not only if it was effected based on false information or fraud by the person concerned (L09), but also if it was based on a non-existent fact. In such cases, the person may even become stateless as a result. In all three states, however, these provisions are rarely applied in practice. For example, only four cases have been decided by the courts in Portugal since 1981 and in only two of those the outcome was a reversal of the registration of nationality as well as of all the effects based on it.

#### 4.4 Summary and conclusions

As indicated in section 2.5, we will try to summarise the information presented in the previous sections mainly by looking at important conditions across all modes of loss of nationality and by pointing out trends concerning recent developments in this area. Before doing so, we analyse the density of regulations concerning loss of nationality across countries. In the course of this summary we will also test whether common patterns or trends can be observed in states belonging to the same geographical and/or cultural group.

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<sup>12</sup> See modes L05c for Belgium and L05b for the Netherlands, in section 0.

#### **4.4.1 Density of regulations**

How many of the fifteen reasons in our typology are actual reasons for the loss of nationality in each EU15 state? What is the ‘density of regulations’ of loss of nationality? If we again leave aside consideration of multiple entries in each category, we can conclude that the density of provisions concerning loss of nationality varies even more than in the area of acquisition of nationality. The bandwidth runs from effective provisions in only three of our fifteen categories in Portugal to regulations which can be classified in twelve different categories of modes of loss in Luxembourg. This can be considered an interesting phenomenon: while both countries were at the low end of the spectrum concerning density of rules of nationality acquisition, they now occupy positions at opposite extremes of the scale. The Netherlands (ten), Austria, Belgium and France (all nine) are clearly above the average of 6.7 provisions in different categories, while the values in Denmark and Ireland (seven) and in Finland and Germany (six) are close to the mean. All other states are clearly below the average, with regulations classifiable in five (Italy, Spain) or four (Greece, Sweden and the United Kingdom) different categories of modes of loss of nationality.

It is interesting to note that the three Benelux states all have more varied modes of loss of nationality than the average of all EU15 states. Should the Dutch government proceed with its plans to introduce provisions regarding the loss of nationality in cases involving terrorist activities (L07), the gap between it and all other states in this respect will become even wider. At the other end of the scale are the four Southern European states – Greece, Italy, Portugal and Spain – which clearly have fewer modes of loss in the different categories of our typology. In a way, this low density of regulations concerning the loss of nationality is the flipside of policies in the Southern European states that aim to maintain links with all persons with the same ethno-cultural background as described in section 3.7.5.

#### **4.4.2 Frequency of certain reasons for the loss of nationality**

Only one mode of loss exists in all states, which is *loss by renunciation* (L01). In ten out of the fifteen states, renunciation always becomes effective *ex lege* if the conditions are met, whereas in Denmark, Finland, France, Greece and Sweden the authorities always (in Finland) or at least under certain circumstances have some discretion to refuse to grant release from nationality (see Table 4.4). Greece is unique in this context because the authorities there have discretion to refuse a release from nationality via all but one sub-mode.

Table 4.4: Modes of loss of nationality in EU15 states

	Renun- ciation	Lapse or withdrawal of nationality or nullification of its acquisition													
		Abroad				In the country or abroad									
		L01	L02	L03	L04	L05	L06	L07	L08	L09	L10	L11	L12	L13	L14
AUT	D	—	L	W	L	—	—	—	N	W	L	—	—	L	N
BEL	D	L	—	—	L	—	W	—	W	—	L	—	L	L	L
DEN	R/D	L	—	—	L	—	W	—	W	—	L	—	—	L	—
FIN	R	L	—	—	(L)	—	—	—	W	—	W	—	W	L	—
FRA	R/D	W	W		L	—	W	W/(W)	W	—	—	—	—	L	W
GER	D	—	L	—	L	L	—	—	W	—	—	—	—	L	—
GRE	R/D	(W)	W		W	—	W	—	—	—	—	—	—	—	—
IRE	D	W	—	—	W	—	W	—	W	—	—	—	—	L	W
ITA	D	—	L		L	—	—	—	—	—	—	—	L	L	—
LUX	D	L	W		L	L	W	W	W	W	L	—	L	L	—
NED	D	L	L	—	L	—	—	—	W	W	L	—	L	L	L
POR	D	—	—	—	—	—	—	—	N	—	—	—	—	—	N
SPA	D	L	L		L	—	(W)	—	N	—	—	—	—	—	—
SWE	R/D	L	—	—	(L)	—	—	—	—	—	L	—	—	L	—
UK	D	—	—	—	—	—	W	(W)	W	—	—	—	—	L	—

Notes: For definitions of modes L01 to L15, see section 2.2.2.

- D = Renunciation by declaration: renunciation becomes effective automatically or authorities cannot refuse the loss as soon as all conditions are met.
- R = Release from nationality: a public authority has discretion to refuse renunciation.
- L = Automatic lapse of nationality: nationality is lost automatically if all conditions are met.
- W = Withdrawal: loss of nationality requires an act by a public authority to become effective.
- N = Nullification of the acquisition of nationality: a public authority declares the acquisition of nationality null and void and that, from a legal point of view, the person has never held nationality.
- (...) = Modes of loss no longer in force, but in force at some point since 1985

In addition to renunciation, three other reasons may lead to a loss of nationality in at least ten states. Firstly, Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands and Spain currently have provisions concerning the automatic loss of nationality in cases of *acquisition of a foreign nationality* (L05), although in France and Italy the loss only concerns persons acquiring the nationality of certain European states that have ratified the 1963 Strasbourg Convention. In Greece and Ireland, by contrast, loss of nationality is not automatic, but the authorities *may* withdraw nationality under certain conditions when a foreign nationality is acquired. It is important to note that in Belgium, Greece, Ireland and Spain nationality may be forfeited upon acquisition of a foreign nationality even though persons acquiring nationality by naturalisation or declaration do not have to lose their previous nationality. The United Kingdom has almost always accepted multiple nationality, as have Portugal since 1981, Sweden since 2001 and Finland since 2003. Secondly, Greece, Italy and Sweden are the only countries where *providing false information or other types of fraud in procedures to acquire nationality* do not constitute grounds for the loss of nationality (L09). In the other states, the acquisition of nationality can either be reversed (Austria, Portugal and Spain) or nationality can be withdrawn by the authorities (all other states). Thirdly, twelve EU15 states provide for a loss of nationality when a person who acquired nationality at birth as a *foundling or as a person who would otherwise have been stateless*

(acquisition mode A03) is *found to hold a foreign nationality* (L14). Such provisions only seem to be lacking in Greece, Portugal and Spain.

*Permanent residence abroad for a certain period of time* (L02) and *service in a foreign army* (L03) may also cause a loss of nationality in more than half of all states. The former reason applies to persons born abroad in Belgium, Denmark, Luxembourg, Spain and Sweden, and to all nationals irrespective of their country of birth in Finland, Ireland, the Netherlands and Spain. With the exception of Ireland, the loss of nationality is automatic in all these states if certain conditions are met. Service in a foreign army, on the other hand, is a reason for withdrawing nationality in France, Greece and Luxembourg, whereas it is the cause of an automatic lapse of nationality in Austria, Germany (since 2000), Italy, the Netherlands (since 2003) and Spain.

All the other possible reasons for the loss of nationality only exist in fewer than eight EU15 states, with *treason, disloyalty and other crimes against the state* (L07) and the *loss of nationality by one's parents* (L11) being the most frequent among them. Both are defined by seven states as possible reasons for forfeiting nationality, in the former case mainly by withdrawal and in the latter mainly by automatic lapse. All other causes for the loss of nationality covered by our classification – *entering the non-military service of a foreign state* (L04); the *forced choice between the nationality of the respective state and a foreign nationality* (L06); *criminal offences* below the level of treason, disloyalty or similar (L08); *failure to meet the conditions for the acquisition of nationality ex post* (L10); and the *annulment of filiation to a national* (L13) – are included in the laws of only six states or fewer. The forfeiture of nationality as a result of a spouse's loss of nationality has even been ruled out for at least twenty years or more in all EU15 states.

#### **4.4.3 Recent trends concerning the loss of nationality**

We could not discern any trends with respect to the regulations concerning *renunciation of nationality* (L01). Amendments to nationality laws in EU15 states have rarely, if ever, dealt with these provisions. The opposite is true for loss after *extended residence abroad* (L02), with regard to which legislative activity has been considerable since the late 1990s. There is no clear trend in this area, however. Spain introduced its provisions only in 1990 and 2002 and Ireland (2001); Finland and the Netherlands (both 2003) expanded the groups of persons affected by their regulations. However, with the exception of Ireland, all these states also made it easier for the persons concerned to take actions to avoid this loss. On the other hand, Denmark (1999) and Sweden (2001) liberalised the rules considerably by limiting their applicability to multiple nationals. Even more importantly, in 1998 Greece eliminated the heavily criticised rule in its legal system, which stated that 'allogeneis', i.e. persons who are not of Greek orthodox descent, could be deprived of their nationality if they abandoned Greek territory 'with no intention to return'. This regulation was even applied if they then found themselves stateless.

Liberalisations outnumber new restrictions for only two modes of loss.

1. With regard to the *loss of nationality upon acquisition of a foreign nationality* (L05), Sweden (2001) and Finland (2003) abolished their respective provisions, while Austria (1999) and Spain (2002) have made it easier to retain nationality in this case; the reform in the Netherlands in force since 2003 introduced new exceptions to the applicability of the main rule of loss in this area. However, the Netherlands is also among the two states with new restrictions. With the same reform, a new rule of loss was introduced, which specifically targets persons acquiring the nationality of states that ratified the 1963 Strasbourg Convention. More importantly, with effect from 2000, nationality lapses in Germany upon acquisition of a foreign nationality even if the persons concerned retain

their residence in Germany. This new provision may especially affect up to 50,000 Germans of Turkish origin who reacquired their previous nationality.<sup>13</sup>

2. The trend is clearer in the second area, which comprises modes of loss in cases of *offences less serious than crimes against the state* (L08). Relevant rules targeting nationals who acquired nationality voluntarily after birth were abolished in France in 1998 and in the United Kingdom in 2002.

In other areas, however, the trend is clearly towards making the loss of nationality easier.

1. This applies to the withdrawal of nationality if it was acquired by *giving false information or by other fraudulent means* (L09). Denmark (2002), Finland and the Netherlands (both 2003) introduced new provisions concerning this offence recently. The Federal Administrative Court in Germany passed important rulings on such cases in 2003. In Belgium, two bills were recently introduced in parliament, which aim to incorporate provisions into the law that specifically deal with the withdrawal of nationality in cases where it was acquired by fraud. At present, withdrawal is only possible on the basis of the general rule that administrative decisions may be rectified in cases of fraud.
2. EU15 states have also shown heightened legislative activities in recent years, especially since 11 September 2001, regarding the forfeiture of nationality in cases of *treason or other crimes against the state* (including terrorism) (L07). The United Kingdom clearly tightened its regulations in 2002, Denmark introduced relevant provisions in 2004 and the Dutch government announced plans to introduce rules concerning the loss of nationality in the event of terrorist activities. The only counter-example is Spain, where the possibility of withdrawing nationality in cases of crimes against the external security of the state was abolished in 2002.
3. The loss of nationality in cases of military service for a foreign state (L03) is another area of increased restrictions. Rules have been introduced in this respect over the past six years in Germany (2000) and the Netherlands (2003).
4. Finally the *loss of nationality by a multiple national who is forced to choose one of his or her nationalities and opts for the foreign nationality* (L06) was only introduced in Germany in 2000. It has to be added, though, that consideration of this mode of loss was purely a result of liberalisation in the area of *ius soli* at birth (A02).

All in all, restrictive tendencies seem slightly to outweigh liberalising trends. The restrictions mainly concern the loss of nationality on the grounds of certain offences (foreign military service; crimes against the state; false information and fraud), with the exception of 'ordinary' criminal offences. However, there is no clear geographical pattern with respect to trends in the area of rules dealing with the loss of nationality. The only geographical area where tendencies in a certain direction clearly outweigh countervailing trends in all states is the British Isles. Amendments in the recent past in Ireland and the United Kingdom have made the withdrawal of nationality easier even though, in the latter state, the provisions concerning loss on the grounds of certain crimes have been abolished. In all other regions, the picture is mixed:

- Nordic states: the amendments in Sweden have definitely reduced the possibilities for losing nationality. In Denmark, the trend is clearly towards making the withdrawal of nationality easier in cases where certain offences are committed, while in Finland restrictive and liberalising legislative changes are fairly balanced;
- German-speaking states: the reform of the German nationality law, which came into force in 2000, only introduced new modes of loss or increased the risk of losing nationality via existing modes. The only noteworthy change in Austria, in 1999, made it easier to retain nationality in the event of acquisition of a foreign nationality;

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<sup>13</sup> See *Migration und Bevölkerung* Vol. 3/2005.

- Benelux states: the reforms of the nationality codes in Belgium and Luxembourg since the early 1990s have not modified the rules concerning the loss of nationality. In the Netherlands, however, amendments in the recent past have definitely brought about more new restrictions than merely rules to make the loss of nationality less likely;
- Southern Europe: while the rules for losing nationality have not been modified in Italy or Portugal, the only change in Greece was the abolition of an important mode of loss. In Spain, changes which increase the chances of losing nationality and changes that make retention easier have been fairly balanced since 1990.

#### **4.4.4 Conditions for the loss of nationality**

We close by looking at important conditions across all modes of loss of nationality, i.e. whether nationality may be lost only if statelessness does not ensue, if the persons concerned acquired nationality via a certain mode of acquisition, or if they currently reside abroad.

As Hailbronner describes in this volume, the ‘avoidance of statelessness is probably the oldest and most commonly recognised principle of nationality law’. But to what extent is this principle reflected in the EU15 states’ nationality laws? As can be seen in the top half of Table 4.5, the prevention of statelessness is still a long way from being prescribed explicitly in all states for all modes of loss of nationality. The only states where the loss of nationality can never leave a person stateless are Finland and Sweden, while this is specifically not imperative for several modes of loss in Austria, Greece, Ireland or Luxembourg. Leaving aside modes for which the acquisition (L05) or possession of a foreign nationality (L06, L14, in practice also L10) is the very reason for the loss, there is only one mode for which all states with appropriate rules explicitly prohibit the occurrence of statelessness, i.e. loss of nationality by a child resulting from the forfeiture of nationality by a parent (L11). Besides this, statelessness is avoided in almost all countries only in cases of a renunciation of nationality (L01). This is not explicitly prescribed by law for only one special mode of renunciation in Greece (L01c: persons with no substantial links to Greece). Persons also do not generally end up without nationality after a loss of nationality due to extended residence abroad (L02), but France and Ireland do not explicitly rule out statelessness in such cases.

More importantly, there are three offences that may cause a loss of nationality in more than half of all EU15 states with appropriate provisions even if the persons concerned do not hold a second nationality. Firstly, subsequent statelessness is explicitly outlawed when nationality is lost because the person enters the military (L03) and/or non-military service of a foreign state (L04) in France, Germany and the Netherlands, but not in Austria, Greece, Italy, Luxembourg or Spain. Secondly, statelessness also has to be avoided in the event of a withdrawal of nationality because of disloyalty, treason or other crimes against the state (L07) in three states, i.e. Denmark, France and the United Kingdom. However, Belgium, Greece, Ireland and Luxembourg do not prohibit a loss of nationality in these cases. Thirdly, the duty to prevent statelessness is the least binding when it comes to the withdrawal of nationality or the reversal of its acquisition because it was acquired on the basis of fraud (L09). Only Finland applies its provisions exclusively to multiple nationals in this context and, in Germany, the authorities at least have to consider whether statelessness is a justifiable outcome of the withdrawal. In the other ten states with relevant rules the persons concerned may end up with no nationality at all!

Table 4.5: Selected conditions for the loss of nationality

	Renun- ciation	Lapse or withdrawal of nationality or nullification of its acquisition												
		Abroad				In the country or abroad								
		L01	L02	L03	L04	L05*	L06*	L07	L08	L09	L10	L11	L13	L14*
<i>Mode of loss is dependent on the target person not ending up stateless</i>														
AUT	Y	—	N	N	Y	—	—	—	N	Y*	Y	—	Y	Y
BEL	Y	Y	—	—	Y	—	N	—	N	—	Y	Y	Y	Y
DEN	Y	Y	—	—	Y	—	Y	—	N	—	Y	—	Y	—
FIN	Y	Y	—	—	(Y)	—	—	—	Y	—	Y	Y	Y	—
FRA	Y	N	Y		Y	—	Y	Y/(N)	N	—	—	—	Y	Y
GER	Y	—	Y	—	Y	Y	—	—	N**	—	—	—	Y	—
GRE	Y/N	(N)	N		Y	—	N	—	—	—	—	—	—	—
IRE	Y	N	—	—	Y	—	N	—	N	—	—	—	Y	N
ITA	Y	—	N		Y	—	—	—	—	—	—	Y	Y	—
LUX	Y	Y	N		Y	Y	N	N	N	Y*	Y	N	Y	—
NED	Y	Y	Y	—	Y	—	—	—	N	Y*	Y	N	Y	Y
POR	Y	—	—	—	—	—	—	—	N	—	—	—	—	N
SPA	Y	Y	N		Y	—	(Y)	—	N	—	—	—	—	—
SWE	Y	Y	—	—	(Y)	—	—	—	—	—	Y	—	Y	—
UK	Y	—	—	—	—	—	Y	(Y)	N	—	—	—	Y	—
<i>Mode of loss is dependent on the target person's mode of acquisition of nationality</i>														
AUT	N	—	N	N	N	—	—	—	Y	Y	N	—	Y	Y
BEL	N	N	—	—	N	—	Y	—	Y	—	N	Y	Y	N
DEN	N	N	—	—	N	—	N	—	N	—	Y	—	Y	—
FIN	N	N	—	—	(N)	—	—	—	Y	—	Y	Y	Y	—
FRA	N/Y	Y	N		N	—	Y/N	Y/(Y)	Y	—	—	—	Y	Y
GER	N	—	N	—	N	Y	—	—	Y	—	—	—	Y	—
GRE	N/Y	(N)	N		N	—	N	—	—	—	—	—	—	—
IRE	N	Y	—	—	Y	—	Y	—	Y	—	—	—	Y	Y
ITA	N/Y	—	N		N	—	—	—	—	—	—	Y	Y	—
LUX	N	N	Y		N	N	Y	Y	Y	Y	N	Y	Y	—
NED	N	N	N	—	N/Y	—	—	—	Y	Y	Y	Y	Y	Y/N
POR	N	—	—	—	—	—	—	—	N	—	—	—	—	N
SPA	N	Y/N	N		N	—	(Y)	—	Y	—	—	—	—	—
SWE	N	N	—	—	(N)	—	—	—	—	—	Y	—	Y	—
UK	N	—	—	—	—	—	N	(Y)	Y	—	—	—	Y	—

Notes: Y = Yes; N = No; Y/N = generally Yes, but for some modes No; N/Y = generally No, but for some modes Yes; (...) = modes of loss no longer in force, but in force at some point since 1985;  
 \* = avoidance of statelessness by definition because acquisition or holding of a foreign nationality is the very reason for the loss; \*\* = Avoidance of statelessness at least has to be taken into account.

Our second question is: do the rules of loss make a difference with respect to the *way nationality was acquired*? As the lower half of Table 4.3 reveals, only in Portugal is the mode of acquisition irrelevant for all modes of loss of nationality. There is no reason for the loss of nationality where the method of acquisition is not relevant in at least one state. Leaving aside modes for which the method of acquisition is decisive by definition,<sup>14</sup> it is mainly relevant to loss of nationality if fraud was committed to acquire it (L09) and because of a failure to comply with conditions for its acquisition *ex post* (L10). The respective provisions in both cases apply almost exclusively to persons who became nationals voluntarily. In Denmark and Portugal, where there is no such explicit condition, the rules are most likely only relevant in practice to persons who also acquired nationality non-automatically. However, the way in which a person became a national is important for modes of loss based on other offences as well. Disloyalty, treason or other crimes against the state (L07) are reasons for the withdrawal of nationality in Belgium, Ireland, Luxembourg and in some cases also in France, only if the person concerned became a national voluntarily. On the other hand, the relevant rules in Denmark, Greece and the United Kingdom apply irrespective of the way in which nationality was acquired. France and Luxembourg, as the only two states with current rules concerning the forfeiture of nationality in cases of offences less serious than crimes against the state (L08), also limit their applicability to nationals who did not acquire nationality by birth. By contrast, where nationality may be lost because a person enters a foreign state's military (L03) or public service (L04), the respective provisions apply to all nationals in most states. The exception in this respect is Luxembourg, where only persons who are not nationals by birth can be affected.

The loss of nationality by children as a result of the loss by a parent (L11) is also only relevant to certain nationals in the majority of states, i.e. for children who acquired nationality from their parents (Nordic states) or who are not nationals on the basis of the double *ius soli* rule (Netherlands). By contrast, in Austria, Belgium and Luxembourg, the way in which nationality was acquired is irrelevant for this mode. The applicability of the three reasons for loss that exist in more than half of all states and that are probably of the greatest relevance in practice is rarely dependent on the mode of acquisition. A renunciation of nationality (L01) is possible for all nationals in all EU15 states, even if special rules exist for certain nationals in France, Greece and Italy. Among the ten states providing for a loss of nationality because a foreign nationality is acquired (L05), only Ireland and the Netherlands, in certain cases, limit their respective modes to naturalised nationals (Ireland) or nationals other than by double *ius soli* (the Netherlands). Additionally, loss because of extended residence abroad (L02) is explicitly applicable to certain nationals only in France (certain nationals *iure sanguinis*), Ireland (naturalised nationals) and in some cases also in Spain (naturalised nationals, certain nationals *iure sanguinis*).

Finally, which modes of loss are explicitly tied to the condition that the target person must currently hold *residence abroad*? We would expect that all the modes of loss we grouped together under the heading 'loss abroad' apply this condition, but this is not the case. As described in section 4.2.1, nationality may lapse in Finland, the Netherlands and Spain on the basis of rules regulating the loss of nationality after extended residence abroad (L02) even if the persons concerned have already taken up residence in the country (again). None of the eight states that provide for a loss of nationality because the person enters the service of a foreign state (L03+L04) explicitly requires that the person actually reside abroad, although this will most likely be the case (which is why we included these two modes under the heading 'loss abroad'). However, residence abroad is also not an explicit condition for most other modes of loss. Residence abroad is always a condition for renunciation of nationality

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<sup>14</sup> This concerns loss of nationality because the filiation to a national from which the target person derives his or her nationality is annulled (L13) and loss by foundlings and children who would otherwise be stateless, if it is subsequently established that they do hold a foreign nationality (L14).

(L02) only in Ireland, Italy and Spain, but six other states apply special rules for expatriates in this context. Beyond this, only two reasons for loss of nationality, at least in some states, carry the condition of current residence abroad. This concerns the loss upon acquisition of a foreign nationality (L05) in Italy and Spain and the withdrawal of nationality because of actions against the basic interests of the state (L07) in Greece. All other modes of loss of nationality in all states can occur even if the target person still resides in the country.