

Imiscoe Policy Brief

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

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

Minimum standards for citizenship policies of the EU Member States

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

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

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

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

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

- Policies on acquisition or loss of nationality in sending and receiving states impact on each other. For example, EU states that require renunciation of a previous nationality as a condition for naturalisation still tolerate dual nationality if the state of origin refuses to release its citizens. The effect of this policy is to consolidate illiberal citizenship laws, e.g. in Arab states. A contrasting example is Turkey which facilitated naturalisation of its expatriates in 1995 by introducing a 'pink card' that allows former nationals to retain citizenship rights in Turkey. This reform led to rising rates of naturalisation in Austria and Germany.
- Becoming the national of a Member State entails the rights of Union citizenship to settle and take up employment in all other Member States. Some governments are therefore increasingly concerned about easy access to nationality in other countries. In the Republic of Ireland, *ius soli* acquisition by birth in the territory was reformed in 2004 after a Chinese mother had used it in order to acquire Union citizenship for her daughter and a right to legal residence for herself in Britain. Several Member States (Ireland, Germany, Greece, Spain, Portugal and Italy from 1992 to 1997) have also created Union citizens outside EU territory by offering their nationality to descendants of emigrants or to co-lingual and co-ethnic populations in other countries. Coordination within the EU could avoid two undesirable effects: (1) a competition between states to raise the hurdles for naturalisation of immigrants, and (2) a generous awarding of Union citizenship to populations living abroad who may then settle in other Member States.
- Free movement of EU citizens may come into direct conflict with nationality laws in two cases. (1) When national laws provide for a loss of citizenship after some years of residence abroad, Union citizens may lose their status merely because they have made extensive use of their right to live in another Member State. In order to avoid this paradoxical effect the Dutch law was reformed so that now residence in the EU no longer leads to automatic loss of Dutch nationality after ten years. (2) When naturalisation requires a long period of continuous residence in one Member State, third country nationals who extensively use their right under directive 2003/109/EC to migrate within the Union may find their access to full citizenship blocked. We therefore recommend that periods of residence spent in other Member States should count towards naturalisation.

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

Main results of the project

The results of the project will be published in two volumes with Amsterdam University Press. They include:

- a report on international and European law
- a comparative analysis of 27 modes of acquisition and fifteen modes of loss of nationality across all countries for the period between 1985 and 2004
- a comparative assessment of statistics
- reports on the status of nationals with restricted rights, of third country 'denizens', and of quasi-citizens
- a comparative report on the implementation of nationality laws
- separate reports on each countries' policies.

(1) Trends in nationality legislation

In the 1990s several authors saw a general trend of convergence towards more liberal citizenship policies in the EU. In our study we find persistent diversity in many areas and contrasting trends in specific groups of countries towards

- more liberal laws (in Belgium, Germany, Finland, Luxembourg, Portugal and Sweden)
- persistent restrictive policies in Mediterranean states with large scale recent immigration (in Italy, Greece and, to a lesser degree, Spain)
- and a remarkable new trend towards raising the hurdles for naturalisation in countries with sizeable settled immigrant populations (in Austria, Denmark, France, the Netherlands and the United Kingdom)

(2) Naturalisation of first generation immigrants

Residence requirements for naturalisation by first generation immigrants vary between three and four years in Belgium and Ireland respectively and ten years in Austria, Italy and Spain. Apart from proof of sufficient income and of a clean criminal record, there is a trend towards requiring knowledge of a dominant language (all countries except Belgium, Ireland, Italy and Sweden) and of the country's history or constitution (Austria, Denmark, France, Germany, Greece, the Netherlands, United Kingdom).

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

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

(3) Dual nationality

Only five countries still try to enforce renunciation of a previous nationality (Austria, Denmark, Germany, the Netherlands and Luxembourg). Among these, Germany and the Netherlands allow for many exceptions and Luxembourg is currently considering general toleration of dual nationality. The number of multiple nationals is growing rapidly in all Member States not merely because of toleration in naturalisations, but also because all countries accept dual nationality when it arises from descent of parents with different nationality or from the combination of *ius soli* (birth in the territory) and *ius sanguinis* (descent from a foreign national). The German law of 1999, however, requires dual nationals who are German by *ius soli* to choose between one of their nationalities until the age of 23.

(4) Second and third generations

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

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

(5) Spouses and gender discrimination

All fifteen states facilitate the acquisition of nationality by spouses of persons who are already nationals. Five countries (Austria, Belgium, France, Germany and Luxembourg) also provide for the extension of naturalisation from a principal applicant to the spouse. Several states, however, currently attempt to restrict family reunification rights of established immigrants. This trend has recently also hit nationality law. Spouses enjoy fewer privileges and exemptions with regard to general conditions of naturalisation. Since 1993 requirements concerning their residence or the duration of marriage have been raised in Austria, Belgium, Denmark and France.

Constraining access to citizenship for spouses will in most cases discriminate indirectly against women. We have also found some remaining forms of explicit gender discrimination in nationality laws. All fifteen countries have now gender-neutral *ius sanguinis* from both the father's and the mother's side. However, past gender discrimination in this respect has not been corrected consistently. Only Luxembourg introduced a fully retroactive option for nationality for these children in 1986, whereas in Austria and the Netherlands they could only make their claims within a transitional period.

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

(6) Refugees

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

(7) EU citizens

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

(8) Kin groups

The common assumption that citizenship in Europe has become largely disconnected from ethnic identity is undermined by the fact that a majority of Member States give privileged access to nationality to groups with whom they share specific affinities derived from former colonial ties, the same language or an ethnic identity. As mentioned above, Germany, Greece, Ireland, Portugal, Spain and Italy (until 1997) have granted their nationality on grounds of cultural or ethnic affinity even to persons residing abroad.

(9) Emigrants

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

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

Emigrants who have lost their citizenship may often reacquire it under a simplified procedure. Reacquisition of nationality by former citizens is fairly easy in Austria, Belgium, the Netherlands, Finland, Portugal and Sweden. Apart from Denmark, Greece and Ireland, all states allow expatriates who retain their nationality to participate in elections in their homelands. This indicates that EU states promote strong transnational ties among their own emigrants, although they frequently regard political involvement in the homeland as an obstacle for the integration of immigrants in their territory.

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

(10) Denizenship and quasi-citizenship

In most Member States, the rights attached to permanent residence status granted under national law have remained unchanged since 2000. However, the general tendency in recent years has been to make it more difficult to acquire this status and more easy to lose it. So far, the adoption of Directive 2003/109/EC on the status of long-term resident third country nationals appears to have had the perverse effect of making access to denizenship status more difficult, with the introduction of a language and integration requirement or of longer residence requirements, as in Austria, France and the Netherlands. The UK, where the directive does not apply, has also adopted such conditions. Facilitation of access to this status occurred only in Spain.

Alongside the growing numbers of non-nationals with nearly full citizenship, there are still several groups of nationals who do not enjoy full citizenship, including British nationals from overseas territories who are subject to immigration control and Danish nationals who must have held their nationality for 28 years in order to enjoy full rights to family reunification. A pending bill in the Dutch parliament would even impose integration tests on large numbers of naturalised citizens.

Prospects for reform

The NATAC recommendations for reform favour the political inclusion of long-term immigrants and their descendants in the political community of receiving societies, while respecting at the same time the external ties linking emigrants to their countries of origin.

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

Our moderate optimism is based mainly on two arguments:

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

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

The introductory chapter and the full set of recommendations in the forthcoming book publication can be downloaded at:

http://www.eif.oeaw.ac.at/downloads/projekte/NATAC_summary.pdf

Full results of the NATAC project will be published in two volumes:

Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (eds.)

ACQUISITION AND LOSS OF NATIONALITY.

POLICIES AND TRENDS IN 15 EUROPEAN STATES

vol. 1: Comparative Analyses, vol. 2: Country Analyses

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For more information on the project, please contact: wiebke.sievers@oeaw.ac.at.