

## EUDO CITIZENSHIP Policy Brief No. 3

### *Loss of Citizenship*

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*The loss of citizenship receives less attention than its acquisition, but is an important aspect of citizenship law.*

*The most significant principles governing loss of citizenship are the requirement that there should be a genuine connection between the citizen and the country of citizenship, and the avoidance of statelessness.*

*All of the 33 countries studied have provisions both for automatic loss (lapse) of citizenship or withdrawal of citizenship by the state, and for voluntary renunciation by citizens. The grounds and procedures for loss vary widely between countries.*

*Among European countries, there is some limited convergence in this area. For example, it is increasingly widely accepted (by 21 of the 33 countries studied) that the voluntary acquisition of another citizenship does not in itself constitute the loss of a genuine connection and thus grounds for automatic loss or withdrawal of citizenship.*

*There is a trend towards providing for loss of citizenship in cases where there has been fraud in the process of acquisition, even if this leads to statelessness. 25 countries have provisions for loss on this ground, and in 19 of these apply even if this leads to statelessness.*

*Finally, while many countries have longstanding, though rarely invoked, provisions for loss based on behaviour that is criminal or damaging to the interests of the state, a new trend is emerging towards broader provisions for loss on the grounds of actions deemed contrary to the public good.*

Considerably less attention has been paid to how citizenship may be lost than to how it is acquired; yet loss of citizenship is an important aspect of citizenship law. There are many ways in which this can come about. Citizenship can be lost when a state provides for lapse or withdrawal of citizenship under certain conditions, or when a citizen voluntarily renounces it. The primary rationale for loss of citizenship is the absence of a genuine link with the state, for example because of permanent residence abroad. Many citizenship laws also provide for loss if there has been fraud in the course of acquiring citizenship. Some states have provisions for depriving people of citizenship in cases where their behaviour is considered to demonstrate disloyalty towards the state. Unfortunately, states generally keep statistical records only on naturalisations but not on withdrawal and renunciations of citizenship. We can therefore merely list the legal provisions for citizenship loss without knowing in how many cases these are applied.



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*The opinions expressed in this text do not necessarily reflect the position of the European Commission.*

## *1 Varieties of loss of citizenship in Europe*

All 33 countries studied have provisions for loss of citizenship under certain conditions.<sup>1</sup> There is remarkable variation across these states. The most important principles governing loss of citizenship are the requirement of a genuine connection with the country and the prevention of statelessness. There is less clarity or agreement on what constitutes the presence or absence of a genuine connection, and whether and in which cases citizenship may be lost even if this gives rise to statelessness.

### *International legal norms with respect to loss*

International documents include a limited number of concrete rules with respect to loss. The Universal Declaration of Human Rights (1948) states that no one may be arbitrarily deprived of her or his nationality, and guarantees the right of a person to change her or his nationality, in both cases without specifying details. The 1961 Convention on the Reduction of Statelessness forbids loss of citizenship in some cases where the consequences of such loss would be statelessness. In the European context, the 1963 Strasbourg Convention on Reduction of Cases of Multiple Nationality (RCMN) prescribes voluntary acquisition of citizenship of another state as a ground for automatic loss. The 1997 European Convention on Nationality (ECN), which develops the first comprehensive list of acceptable grounds for loss, allows rather than obliges states to provide for loss in case of voluntary acquisition of another citizenship. 23 of the countries studied have signed the ECN, but only 15 have ratified it, often with reservations on the articles relating to loss. Nevertheless, one can observe some influence of the ECN on the grounds for loss of citizenship in several of the countries which are parties to this Convention

### *Grounds for loss*

The grounds for loss found in these states in 2010 fall into two broad categories: involuntary loss, either automatically (lapse) or at the initiative of the state (withdrawal) (points 1 to 8 below) and voluntary renunciation at the initiative of the citizen (point 9). The eight grounds for involuntary loss of citizenship involve either the recognition that a genuine connection with the state is absent or are a sanction for specific behaviour. Some provisions can be looked at from both perspectives: for example, loss due to voluntarily joining the military force of another state (point 4), or due to voluntary acquisition of another citizenship (point 1).

1) Voluntary acquisition of another citizenship: twelve countries maintain this ground for loss: Austria, the Czech Republic, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, the Netherlands, Norway, Slovakia and Spain. In most cases, the procedure is automatic, but in some cases the state has discretion with respect to withdrawal, as for example in Ireland (where the procedure only applies to naturalised citizens) and Latvia. In some countries, such as Germany, the Netherlands and Spain, significant exceptions are provided for.

2) Permanent residence abroad: this is a ground for loss in 13 countries (Belgium, Cyprus, Denmark, Finland, France, Iceland, Ireland, Malta, the Netherlands, Norway, Spain, Sweden and Switzerland). There are significant differences with respect to procedures (lapse or withdrawal), personal scope (applicable only to persons born abroad or to all citizens), statelessness (applicable only to dual citizens or to all citizens), age (whether there is an age limit), and the possibilities for citizens to take actions to prevent loss of citizenship. This can apply to citizens who have previously lived in the state and who have emigrated, as well as to those who have acquired citizenship by descent and have never lived in the state in question.

Some countries do not provide for loss of citizenship on grounds of either voluntary acquisition of another citizenship or permanent residence abroad (Bulgaria, Greece, Hungary, Italy, Moldova, Poland,

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<sup>1</sup> The 33 countries covered by this brief are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom.

Romania, Slovakia and Turkey). Although long-term residence and naturalisation abroad are in themselves not sufficient indicators for a loss of a genuine link, these countries appear less concerned about retention of citizenship by those who may have little effective connection with the country.

3) Fraud or non-renunciation of another citizenship: 26 countries explicitly provide for fraud in the procedure of acquiring citizenship as a reason to revoke citizenship. Only seven countries (Croatia, the Czech Republic, Iceland, Italy, Poland, Slovakia and Sweden) have no fraud provision. Of the countries with loss provisions due to fraud, all except France and Luxembourg allow for such revocation even when this leads to statelessness. Since, even in cases of fraud, a genuine connection may have been built up over time, many countries establish time limits beyond which fraud cannot cause loss of citizenship; these range from 1-2 years (France) to 15 years (Spain). In eight countries naturalisation can be revoked when a naturalised citizen does not divest herself or himself of another citizenship.

4) Voluntary military service and foreign non-military public service: four countries provide for automatic loss of citizenship, if a citizen voluntarily enters the military service of a foreign state (Austria, Germany, Spain) or, more specifically, of a hostile state (the Netherlands); others provide for withdrawal to be determined by the state (Estonia, France, Latvia, Lithuania, Moldova). In some cases other public service for a foreign state is also considered a ground for loss (Austria, Denmark, Estonia, France, Greece, Italy, Slovenia and Turkey).

5) Seriously prejudicial behaviour: 14 countries have provisions for loss based on behaviour contrary to the interests of the state (Belgium, Bulgaria, Cyprus, Denmark, Estonia, France, Ireland, Lithuania, Malta, Moldova, Romania, Slovenia, Switzerland and the United Kingdom). In eight countries (Belgium, Bulgaria, Estonia, France, Ireland, Lithuania, Malta and Romania) these apply only to naturalised citizens. In seven countries there is no provision to ensure that loss in these cases does not lead to statelessness (Austria, Belgium, Estonia, Ireland, Lithuania, Malta and Switzerland). These provisions are problematic because their formulation leaves a large degree of discretion for national authorities; however, they are not applied very often.

6) Loss of a family relationship: only ten states have specific regulations for loss of citizenship in the case of adoption by a foreign citizen, or of the annulment of maternity, paternity or adoption (Belgium, Finland, Germany, Italy, Luxembourg, Moldova, the Netherlands, Norway, Romania and Switzerland).

7) Loss of citizenship by parents: 15 countries do not foresee the extension of loss from parents to minor children (Cyprus, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Moldova, Portugal, Spain and the United Kingdom), although the ECN permits this in the case of voluntary renunciation by parents. The countries with the widest provisions for extending parental loss to children are Austria, Belgium, Denmark, the Netherlands and Norway.

8) Loss of a conditional citizenship: citizenship can be lost in the case where required conditions are not fulfilled. This arises specifically in the case of Germany, where a child of foreign parents gaining citizenship at birth by *ius soli* can retain German citizenship only by surrendering the other citizenship between the ages of 18 and 23.

9) Voluntary renunciation: persons who reside permanently abroad and have acquired another citizenship must have the right to renounce their previous citizenship, as specified by the ECN (Article 8). All 33 countries provide for citizens to voluntarily renounce their citizenship, with certain conditions protecting against statelessness and some limitations for those living in the state (as allowed by the ECN). Here too there are great variations in conditions and provisions. In some countries citizenship can be renounced by a simple declaration. Many non-European countries refuse, however, to release their citizens. Immigrants from most Arab, several Asian and a few Latin American states cannot renounce their citizenship of origin when they apply for naturalisation. In these cases, dual citizenship is generally accepted even by European countries that otherwise do not tolerate it.

### *Loss of citizenship and multiple nationality*

While all countries accept dual citizenship when this arises through descent, only 21 countries allow it in the case where their citizens voluntarily acquire another citizenship. In many of these countries, relevant loss provisions were abolished relatively recently (see section 2 below on Trends in Loss Provisions). Voluntary acquisition is not a ground for loss in Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Hungary, Iceland, Italy, Luxembourg, Malta, Moldova, Poland, Portugal, Romania, Slovakia, Sweden, Switzerland, Turkey, and the United Kingdom. Twelve countries maintain voluntary acquisition as a ground for loss: Austria, the Czech Republic, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, the Netherlands, Norway, Slovakia and Spain. Some of these countries, such as Denmark and Norway, always impose loss in this case, while others allow for some exceptions. Germany, for example, makes an exception for acquiring the citizenship of a Member State of the European Union. The Netherlands, inspired by the exceptions mentioned in the 1993 Second Protocol to the 1963 RCMN Strasbourg Convention, makes an exception for persons who acquire the citizenship of the country in which they were born, and also for persons who acquire the citizenship of the country of their spouse.

### *Differential treatment among citizens with respect to loss*

In a number of countries provisions for loss do not apply uniformly to all citizens. For example, in Estonia and Ireland only naturalised citizens are subject to loss on the ground of voluntary acquisition of another citizenship and in Austria naturalised citizens are excluded from some exceptional options to retain citizenship. In a considerable number of countries, only naturalised citizens are subject to loss of citizenship on the ground of behaviour contrary to state interests (Belgium, Bulgaria, Estonia, France, Ireland, Lithuania and Malta), foreign military or public service (Spain) or permanent residence abroad (Cyprus, Ireland, Malta). This is contrary to the prohibition of discrimination between citizens by birth and by naturalisation in Art. 5(2) ECN. In other cases, citizens with a certain ethnicity or descent are not subject to loss because of permanent residence abroad (Ireland).

In a different type of case, some countries do not apply certain provisions for loss with respect to residence or citizenship within the EU. For example, permanent residence abroad but within the EU is not a ground for loss in the Netherlands. In Germany, children of foreign citizens who gain German citizenship by *ius soli* do not have to renounce their other citizenship at majority, if it is that of an EU Member State.

### *Marriage, family relationships and children*

While formerly citizenship was considered to apply on a unitary basis to members of a family, so that spouses and children gained or lost citizenship along with (normally) the husband and father, this is no longer the case. Under the ECN, neither marriage nor the dissolution of a marriage can automatically affect the citizenship of a spouse; nor can a change or loss of citizenship by a person affect the citizenship of the spouse. Minor children, however, may still lose their citizenship with their parents, when these have committed fraud in the naturalisation procedure. This is generally not the case where citizenship is lost because of actions demonstrating disloyalty to the state.

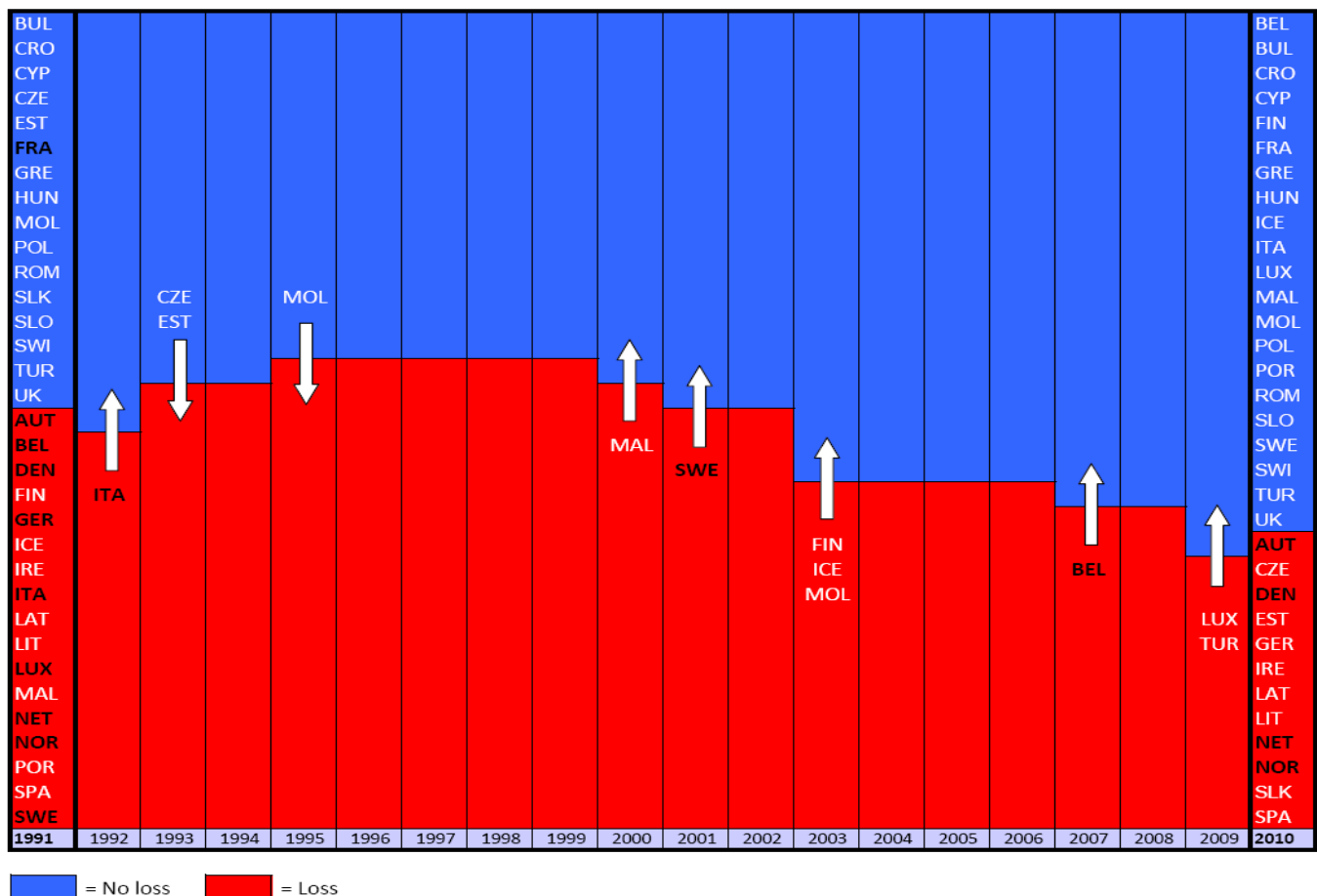
### *Statelessness*

Although prevention of statelessness is a central principle governing citizenship laws, some grounds for loss of citizenship can be applied even at the risk of statelessness. These grounds concern mainly cases of fraudulent acquisition and of behaviour contrary to the interest of the state. Naturalisation achieved by fraud may be considered as not having led to a proper change of legal status, so that denying citizenship in these cases is an act of nullification rather than of withdrawal.

## 2 Trends in provisions for loss of citizenship

1) A growing acceptance of multiple citizenship. It is increasingly rare that emigrants who acquire another citizenship automatically lose their original citizenship. By abolishing this loss provision, countries accept that a person may have close ties with more than one country that are sufficiently strong to justify the possession of more than one citizenship. From 1991 to 2010 the number of states that withdraw citizenship in case of voluntary acquisition of another citizenship has shrunk from 17 to twelve. Over the same period, the number of states adhering to the relevant chapter of the 1963 Strasbourg Convention on Reduction of Multiple Nationality has gone down from ten to four. Germany and Sweden denounced the Convention in 2002, Belgium in 2008, France and Luxembourg in 2009 and Italy in 2010.

### Loss of citizenship when acquiring a foreign citizenship



Note: Black letters indicate states adhering to chapter 1 of the 1963 Strasbourg Convention, which prescribes loss in case of voluntary acquisition of the citizenship of another state adhering to the Convention.

2) A trend towards provisions for loss due to fraud, even if this leads to statelessness. This was reinforced in the EU context by the judgment in the 2010 *Rottmann* case, in which the European Court of Justice allowed such a withdrawal, while recognising the implications for EU citizenship. The Court prescribed that national courts must consider the proportionality of withdrawing citizenship in such cases when it leads to statelessness.

3) A trend towards loss as a sanction for serious crimes and terrorism. In the United Kingdom, since 2003, citizenship may be withdrawn from dual citizens, if they have committed acts which are seriously prejudicial to national interests, and, since 2006, it can be withdrawn if this is considered by the Secretary of State to be conducive to the public good. Legislation introduced in the Netherlands in 2010 allows citizenship to be withdrawn at ministerial discretion from dual citizens convicted of a crime that

has seriously harmed the essential interests of the state. In summer 2010, the government of France has proposed adding attacks on policemen or public officials to acting against the national interest as grounds for withdrawal of citizenship from naturalised citizens.

### **3 Policy recommendations**

- 1) The fundamental principles governing provisions for loss of citizenship should be the absence of a genuine link and avoiding statelessness.
- 2) Voluntary acquisition of another citizenship or long term residence abroad should not be considered sufficient grounds for withdrawal of citizenship. Where states maintain long term residence abroad as a reason for loss, they should allow the persons concerned to maintain their citizenship through a declaration of interest.
- 3) Fraud may be a warranted ground for loss of citizenship, but provisions should take account of the time elapsed since the grant of citizenship, and other considerations that may mean that a genuine connection with the country has been established. A maximum time-limit of ten years should thus be considered.
- 4) There should be no discrimination with regard to loss of citizenship on ethnic grounds, or between those who are citizens from birth and those who have naturalised.
- 5) In case of the loss of a family relationship due to annulment or revocation of maternity, paternity or adoption, a time limit of no more than ten years should be established to recognise the connection with the country that a child has developed.
- 6) In case of parents' loss of citizenship due to sanctions, children who retain a genuine connection with the country should not also automatically lose their citizenship. If parents lose citizenship on the basis of loss of a genuine link, there should be an independent examination whether the same reason applies to the child as well. If parents renounce the citizenship of their children on their behalf, these children should have the opportunity to reacquire the lost citizenship at majority.
- 7) Citizens residing permanently within their state of citizenship should be deprived of their citizenship only in the most serious cases. Acquisition of a foreign citizenship alone should not be a reason for withdrawing citizenship from persons who do not have a residence abroad.
- 8) Long term residence abroad may be a condition for renunciation of citizenship, but should not lead to withdrawal from the first generation of emigrants, unless such persons can prevent loss through a declaration of interest or some other action. Permanent residence abroad is, however, an appropriate ground for citizenship withdrawal from second or third generation external citizens by descent, unless they have resumed residence or documented their genuine connection with the country in another manner. Such withdrawal from later generations who have inherited citizenship *iure sanguinis* prevents the indefinite transmission of citizenship to those without a genuine link to the country. We recommend that loss of citizenship occurs at the earliest five years after reaching the age of majority.
- 9) EU Member States in which permanent residence abroad is a ground for loss of citizenship should make an exception for residence in another EU Member State.
- 10) All citizens living permanently abroad should have the possibility of renouncing their citizenship, if this does not lead to statelessness.
- 11) Loss of citizenship, whether voluntary or involuntary, involves a fundamental change in a person's relation to a state and rights and duties that emerge from this relation. For this reason, it is of great importance that a) the reasons for withdrawal or lapse and the conditions of renunciation are specific and not open to wide discretion; b) the persons concerned should have adequate opportunities to appeal against involuntary loss, before the withdrawal becomes effective; and c) renunciation of citizenship should not be inhibited by administrative procedures or fees.