



European Citizenship at a Crossroads

Enhancing European Cooperation on Acquisition and Loss of Nationality

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1. Introduction

Are the Member States of the European Union (EU) free to take their own decisions concerning the acquisition and loss of nationality? European citizenship has progressively become the fundamental status of Member States' nationals. Holding the nationality of a Member State constitutes the 'master key' to European citizenship. While the conditions for the acquisition and loss of nationality fall formally within member states' national competences, their autonomy has been progressively remodelled as a result of international and European Union cooperation.

The lawfulness and legitimacy of EU Member States' decisions in laying down the grounds of acquisition and loss of nationality must be exercised

'in due regard' of Union law. National decisions must comply with general principles of EU law and take into consideration their impact on citizenship of the Union. Member states' actions are also subject to a set of international and regional legal instruments which lay down comprehensive standards and provide a supranational framework of accountability and of protection for individuals.

There is a significant 'knowledge gap' regarding the rules and practices applicable to the loss of nationality across the EU Member State and existing European and international legal standards and principles. The ILEC project (Involuntary Loss of European Citizenship: Exchanging Knowledge and Identifying Guidelines for Europe) has aimed to close this gap by:



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First, stimulating the exchange of knowledge and carrying out a comparative inventory of the 28 EU Member States' regulations and practices concerning involuntary loss of nationality;

Second, examining the implications of international and EU standards and principles and increasing case law by supranational tribunals (Court of Justice of the European Union and the European Court of Human Rights) for Member States' decisions; and

Third, identifying 'promising' practices and a set of policy recommendations and common guidelines for policy-makers and practitioners in the EU, aimed at better safeguarding the rights enshrined in Union citizenship without encroaching on Member States' competences and sovereignty.

This policy brief starts by synthesising the key research findings of the ILEC Project. It then raises the question of what the EU should do in light of these findings and identifies a set of policy priorities and recommendations for the new Juncker European Commission.

2. The ILEC Project: Four Key Research Findings

First: EU Member States are only in principle autonomous in regulating the grounds of acquisition and loss of their nationality. They are subject to a set of international and European standards and principles limiting their discretion and margin of maneuver over decisions related to loss of nationality.¹ These decisions are subject to supranational scrutiny and accountability by European institutions. Member states are also bound to take account of the impact of their nationality decisions on EU law and the general principles of the European legal system, as well as their obligations towards European institutions and other EU Member States.

Member states' decisions on acquisition and loss of nationality are subject to a set of international and European standards limiting their discretion.

The effects of their domestic decisions on the rights inherent in citizenship of the Union, and enshrined

in the EU Charter of Fundamental Rights, is of particular relevance and concern. Member states also have obligations under multilateral international treaties and standards that impose legal obligations in the area of loss of nationality and which have been developed under the auspices of the United Nations and the Council of Europe (de Groot, 2013). The correct and effective implementation of these international principles and regional standards by Member States constitutes a key challenge.

The effective and consistent implementation of transnational standards constitutes a key challenge, with a common-level playing field lacking

Second, a cross-EU comparison of Member States' laws and practices on loss reveals that there are significant differences in the level of protection provided by EU Member States to European citizens in questions related to the loss of nationality and EU citizenship.² EU citizens may benefit from a higher or lower level of protection depending on their nationality.

This patchwork of legal provisions on loss of nationality and EU citizenship leads to discriminatory or uneven treatment between nationals of EU Member States regarding the conditions and level of protection in cases of involuntary loss or quasi-loss. Fundamental rights enshrined in the EU Charter of Fundamental Rights, in particular non-discrimination (Article 21 EU Charter) and effective remedies/procedural guarantees (Article 47 EU Charter) are negatively affected.

The fragmented and differentiated framework of Member States' legal regimes and administrative practices lead to discriminatory treatment of EU citizens depending on which Member State's nationality they hold.

Third, some EU Member States' actions have the consequence of evading the effective applicability and implementation of international and EU (supranational) standards and principles. A case in point is the increasing use of the idea of 'quasi-loss' when depriving individuals of their nationality and Union citizenship.³ The term 'quasi-loss' refers to

¹ G.R. de Groot (2013), "Survey on Rules on Loss of Nationality in International Treaties and Case Law", CEPS Paper in Liberty and Security in Europe No. 57, CEPS, Brussels, August.

² G.R. de Groot, and M. Vink (2014), "Loss of Nationality", CEPS Paper in Liberty and Security in Europe, CEPS, Brussels (forthcoming).

³ G.R. de Groot and P. Wautelet (2014), "Reflections on Quasi-Loss of Nationality in Comparative", International

situations in which a person who assumed that they possessed the nationality of a country is confronted with the discovery that (s)he never held the nationality of that country.

Even though the authorities may argue that the person never acquired this nationality, the person will experience this as the loss of their nationality. The boundaries between the legal categories of 'loss' and 'quasi-loss' are often blurred in many EU Member States. This leads to a gap in protection for EU citizens. Here also citizens' fundamental rights are at stake, in particular access to effective remedies (procedural guarantees) and non-discrimination on the basis of nationality.

There is an increasing use of 'quasi-loss' constructions in cases of deprivation of nationality which leads to a gap in protection for EU citizens.

Fourth, Member States' decisions on loss and quasi-loss of nationality need to consider their consequences for Union law, and therefore to comply with general principles of EU law (e.g. Court of Justice of the European Union in the Rottmann Case C-135-08).⁴ ILEC research has shown the relevance of the principle of sincere or loyal cooperation when Member States' decisions have repercussions for their obligations under the Treaties and towards the EU institutions, and to other Member States.⁵ This includes domestic actions affecting the very concept or substance of citizenship of the Union. Because of this principle, stipulated in Article 4.3 TEU, Member States are required to facilitate the achievement of the Union's tasks and to refrain from measures that could jeopardise the attainment of the Union's objectives. Member states are obliged to inform and consult other Member States and the European institutions prior to the adoption of measures on the loss or acquisition of nationality.

The EU general principle of sincere cooperation calls on Member States to inform and consult European institutions before adopting measures on loss or acquisition of nationality.

3. What role for the EU? Priorities for the next European Commission

The ILEC project has been funded by the Directorate-General Justice (DG Justice) of the European Commission. The final phase of the project has coincided with the establishment of the new Juncker Commission. One of the main changes in this new Commission has been the nomination of a First Vice-President, Frans Timmermans, responsible for the rule of law and the EU Charter of Fundamental Rights. Věra Jourová has been nominated as the new Commissioner for Justice, Consumers, and Gender Equality (DG Justice). The Justice Commissioner is still responsible for matters of citizenship. However, unlike her predecessor, she does not have 'Citizenship' as part of her official title.⁶ This responsibility has been given to Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and 'Citizenship' (DG Home Affairs).⁷

This new EU institutional setting calls for careful consideration when putting forward policy suggestions for enhancing EU cooperation in questions of nationality and European citizenship. Moreover, any future action needs to be based on 'lessons learned' from other EU policy domains and European coordination frameworks.

Any future action to enhance European cooperation on acquisition and loss of nationality needs to be based on lessons learned from other EU policy domains.

The European Agenda for Integration of third country nationals constitutes, for instance, a case in

and European Perspectives," CEPS Paper in Liberty and Security in Europe No. 66, CEPS, Brussels, August.

⁴ Case C-135/08 *Janko Rottmann v. Freistaat Bayern*, 2 March 2010. J. Shaw (ed.) (2011), "Has the European Court of Justice Challenged Member State sovereignty in Nationality Law?", EUI Working Papers, RSCAS 2011/62, EUDO Citizenship Observatory, Florence.

⁵ S. Carrera (2014), "How much does EU Citizenship Cost? The Maltese Citizenship-for-Sale Affair", CEPS Paper in Liberty and Security in Europe No. 64, CEPS, Brussels, April.

⁶ S. Carrera and E. Guild (2014), "The Juncker Commission: A New Start for Justice and Home Affairs Policy?", CEPS Essay, CEPS, Brussels, September. Other citizenship-related matters regarding 'communication to citizens' have been moved from DG Communication and given to Tibor Navracsics, the new Commissioner for Education, Culture, Youth and Citizenship.

⁷ This citizenship dimension will mainly include 'reaching out to citizens' under the 'Europe for Citizens' programme' (http://eacea.ec.europa.eu/citizenship/index_en.php).

point. This Agenda has moved Europeanisation forward through ‘soft law/policy coordination’ which has allowed for the exchange of information and the transfer to EU policy arenas of Member States’ integration policies, some of which have a restrictive nature (civic integration tests and mandatory programmes in immigration and citizenship law), and their promotion at Union level. This experimental form of European cooperation has also posed challenges from the perspective of democratic accountability and the rule of law.⁸

This policy brief argues that enhancing European cooperation on acquisition and loss of nationality and EU citizenship should avoid this. Any future EU action should be tightly linked to current EU legal competences in these domains, and focus on three main priority areas:

Priority 1: Addressing the consequences of the legal patchwork of Member States’ regulations and administrative decisions on the loss of fundamental rights as an EU citizen, in particular those of non-discrimination and effective remedies/procedural guarantees contained in the EU Charter of Fundamental Rights;

Priority 2: Monitoring and ensuring compliance by Member States in their obligations towards European institutions and other Member States, on the principle of sincere and loyal cooperation provided in Article 4.3 TEU; and

Priority 3: Ensuring more effective implementation of multilateral international treaties, with the EU becoming a more active promoter of these international and regional human rights standards and principles, and their effective and consistent implementation by EU Member States.

How to take these priorities forward? The EU should establish a more effective mechanism for the exchange of information regarding national

regulations and policy measures in areas related to nationality, when they affect Union citizenship and their obligations to other Member States and the Union. The new European Commission should re-launch and re-visit the 2006 Council decision on the establishment of a mutual information mechanism concerning Member States’ measures in the areas of asylum and immigration.⁹

The EU Mutual Information Mechanism should be re-launched and re-visited by the new European Commission.

This decision was adopted on the basis of Article 74 in the Treaty on the Functioning of the European Union (TFEU), which aims at ensuring administrative cooperation between Member States in domains related to an Area of Freedom, Security and Justice. This decision was meant to set up a mutual information mechanism (MIM) and consultation between EU Member States about domestic measures related to migration where these measures are likely to have an impact on other Member States or on the European Union as a whole. Unfortunately, this mechanism has not been properly used since its creation in 2007.¹⁰

A better exchange of information is not only a pre-requisite in building an Area of Freedom, Security and Justice based on mutual trust between the participating states and European institutions. Such a mechanism could also prove helpful in monitoring and overseeing the implementation of the principle of sincere and loyal cooperation by EU Member States in questions of nationality, citizenship and migration.

The operational rules of the 2006 decision should be revised and made more effective to ensure a binding, rapid and non-bureaucratic channel of exchange of communication between Member States’ authorities. The scope of the decision should be also expanded to include questions related to acquisition and loss of nationality, and their

⁸ S. Carrera (2014), “Integration of Immigrants in EU Law and Policy: Challenges to Rules of Law, Exceptions to Inclusion”, in L. Azoulai and K. de Vries (eds), *EU Migration Law: Legal Complexities and Political Rationales*, Oxford: Oxford University Press; S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, (2009). S. Carrera and A. Wiesbrock, “Civic Integration of Third Country Nationals: Nationalism versus Europeanisation in the Common EU Immigration Policy”, CEPS Paper in Liberty and Security in Europe, (2009). E. Guild, K. Groenendijk and S. Carrera (2009),

Illiberal Liberal States: Immigration, Citizenship and Integration in the EU, Surrey: Ashgate.

⁹ Council decision 2006/688/EC of 5 October 2006, OJ L 283/40 of 14.10.2006.

¹⁰ The last evaluation took place in the end of 2009. European Commission, Report pursuant to Article 4 and Article 5 of the Council Decision of 5 October 2006 on the establishment of a mutual information mechanism concerning member states’ measures in the areas of asylum and immigration, COM(2009) 687, 17.12.2009.

implications for citizenship of the Union, as these also bring up questions related to human mobility.

The scope of the MIM should be expanded to include questions related to citizenship of the Union and fundamental rights.

In the context of a revised decision, and as part of a new MIM, the European Commission should appoint a standing European committee of experts in nationality law, European citizenship and fundamental rights.¹¹ The standing committee would ensure a constant independent monitoring of Member States' regulations and practices on issues related to nationality, with relevance for citizenship of the Union and the EU Charter of Fundamental Rights. The experts of the Committee would issue Member State reports on legal and policy developments, issues raised by these in light of European jurisprudence, and open questions related to international standards and citizenship of the Union and the EU Charter.

A standing committee of experts in nationality law, European citizenship, and fundamental rights should be established to strengthen the MIM with independent academic knowledge.

The results of the country expert reports would be presented at an annual European platform on European citizenship and fundamental rights coordinated by the First Vice-President of the European Commission, with the close participation of the LIBE Committee of the European Parliament.

A European platform on EU citizenship and fundamental rights would be organised as part of an annual colloquium.

The patchwork of national legislation and practices as regards loss of nationality leads to discriminatory treatment between EU citizens based on their nationality. This fuzzy and fragmented set of national legal regimes, along with the use of informal approaches such as situations of 'quasi-loss', pose problems in respect of effective remedies, procedural guarantees and access to justice by EU citizens confronted with states' decisions that interfere with, limit or withdraw EU citizenship rights. The impact of Member States'

decisions on loss and acquisition of nationality on EU citizens' fundamental rights should be therefore at the heart of EU-level discussion.

Priority should be given to assessing the impact of national decisions on nationality issues on EU citizenship fundamental rights.

The following people should be invited to the annual European platform on European citizenship: representatives of the national authorities of all Member States responsible for nationality law policy and decisions in the field of nationality; representatives of the Council of Europe engaged in legal questions of nationality; representatives of the International Commission of Civil Status; representatives of the Statelessness Unit of the UNHCR; representatives of NGOs engaged in nationality and statelessness issues; and other academics engaged in research in comparative nationality law and statelessness issues in European and beyond.

Based on the enhanced exchange of information, the findings highlighted by the country reports prepared by the European Committee of experts, the European Commission would assess the compatibility of national measures with EU law and put forward recommendations for amendments and developments in nationality matters with relevance for fundamental rights of European citizens.

The European Commission would issue recommendations to address Member States' nationality laws or practices in contravention with Union law.

The EU should conclude a strategic partnership with key international institutions involved in the development and accountability of international and regional standards in the areas of loss and acquisition of nationality, in particular the UN and the Council of Europe. The EU should also promote these standards by Member States, in particular when these have implications for EU law and general principles.

The annual platform could be a sub-component of a wider European policy cycle on fundamental rights,¹² which could potentially feed into the

¹¹ The European Commission has already envisaged in its 2014 work programme funding "Meetings of network of experts on Union citizenship". Refer to European Commission, Implementing Decision concerning the adoption of the work programme for 2014 and the financing for the implementation of the Rights, Equality

and Citizenship Programme COM(2014) 2557, 24.4.2014, p. 18.

¹² A policy cycle on fundamental rights has been proposed by the European Parliament Report on the situation of fundamental rights in the European Union (2010-2011), December 2012 (EP Fundamental Rights 2012 Report)113, and the European Agency for

European Semester of Economic Governance. The results of this exercise could also contribute towards the obligation by the Commission to report to the European Parliament, the Council and the European Economic and Social Committee on the application of the Treaty provisions dealing with 'non-discrimination and citizenship of the Union' enshrined in Article 25 TFEU. This could complement the annual reporting exercise on immigration and asylum carried out by DG Home Affairs.¹³ Such an initiative would fit as one of the key components of Vice-President Timmermans' initiative to organise an annual colloquium on the state of play of fundamental rights in Europe.¹⁴

References

ILEC Publications

- Carrera, S. (2014), "How much does EU Citizenship Cost? The Maltese Citizenship-for-Sale Affair: A breakthrough for sincere cooperation in citizenship of the union?", CEPS Paper in Liberty and Security in Europe No. 64, CEPS, Brussels, April (www.ceps.eu/book/how-much-does-eu-citizenship-cost-maltese-citizenship-sale-affair-breakthrough-sincere-cooperat).
- de Groot, G.R., (2013), "Survey on Rules on Loss of Nationality in International Treaties and Case Law", CEPS Paper in Liberty and Security in Europe No. 57, CEPS, Brussels (www.ceps.eu/system/files/No%2066%20ILEC%20-%20Quasi-loss%20of%20nationality.pdf).
- de Groot, G.R. and M. Vink (2014), "A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union", CEPS Paper in Liberty and Security in Europe No. 75, CEPS, Brussels, December.
- de Groot, G.R. and P. Wautelet (2014), "Reflections on Quasi-Loss of Nationality in Comparative, International and European Perspectives", CEPS Paper in Liberty and Security in Europe No. 66, CEPS, Brussels, August

(www.ceps.eu/system/files/No%2066%20ILEC%20-%20Quasi-loss%20of%20nationality.pdf).

Other Publications

- Carrera, S. (2009), *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Leiden: Martinus Nijhoff Publishers.
- Carrera, S. (2014), "Integration of Immigrants in EU Law and Policy: Challenges to Rules of Law, Exceptions to Inclusion", in L. Azoulay and K. de Vries (eds), *EU Migration Law: Legal Complexities and Political Rationales*, Oxford: Oxford University Press.
- Carrera, S. and A. Wiesbrock (2009), "Civic Integration of Third Country Nationals: Nationalism versus Europeanisation in the Common EU Immigration Policy", CEPS Paper in Liberty and Security in Europe, CEPS, Brussels.
- Carrera, S. and E. Guild (2014), "The Juncker Commission: A New Start for Justice and Home Affairs Policy?" CEPS Essay, CEPS, Brussels.
- Carrera, S., E. Guild and N. Hernanz (2013), *The Triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU: Towards an EU Copenhagen Mechanism*, CEPS Paperback, CEPS, Brussels.
- Guild, E., K. Groenendijk and S. Carrera (2009), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Surrey: Ashgate.
- Shaw, J. (ed.) (2011), "Has the European Court of Justice Challenged Member State sovereignty in Nationality Law?", EUI Working Papers, RSCAS 2011/62, EUDO Citizenship Observatory, Florence.

Fundamental Rights (FRA) http://fra.europa.eu/sites/default/files/fra_submission_on_the_future_of_eu_justice.pdf See also S. Carrera, E. Guild and N. Hernanz (2013), *The Triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU: Towards an EU Copenhagen Mechanism*, CEPS Paperback, CEPS, Brussels.

¹³ Refer for instance to 22/05/2014 - Communication from the Commission to the European Parliament and the Council - 5th Annual Report on Immigration and Asylum

(2013) (COM(2014) 288 final) accompanied by the Commission staff working document (SWD(2014) 165 final). The rest of the Annual Reports are available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/index_en.htm

¹⁴ Refer to European Parliament, Commitments made at the hearing of Frans Timmermans, Briefing, Policy Department C, European Parliament, October 2014.



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