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BIRTHRIGHT CITIZENSHIP: TRENDS AND REGULATIONS IN EUROPE

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Birthright citizenship

Trends and regulations in Europe

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Terminology

In this paper we use the term 'citizenship' to refer to the legal relation between a person and a state, as recognised in international law. This status is often also referred to as 'nationality', particularly in international legal documents, and whenever citing directly from such documents, or from national laws, we cite the term as used in the original document. The terms 'citizenship' and 'nationality' are thus generally used as synonyms (see also EUDO Citizenship Glossary). We also refer to State, State Party, Contracting Party, or Member State, with capital letters, only when citing directly from international or national legal documents. In all other cases we use 'state', 'contracting state', 'member state', or 'country', without capital letters.

Reference system

In this paper we use short-hand references when referring to relevant articles from national legislation. First, in line with the European Bulletin on Nationality (English edition), we use abbreviations when referring to the 33 countries included in this comparative study:

AUT = Austria;[1] BEL = Belgium; BUL = Bulgaria; CRO = Croatia; CYP = Cyprus; CZE = Czech Republic; DEN = Denmark; EST = Estonia; FIN = Finland; FRA = France; GER = Germany; GRE = Greece; HUN = Hungary; ICE = Iceland; IRE = Ireland; ITA = Italy; LAT = Latvia; LIT = Lithuania; LUX = Luxembourg; MAL = Malta; MOL = Moldova; NET = Netherlands; NOR = Norway; POL = Poland; POR = Portugal; ROM = Romania; SLK = Slovakia; SLN = Slovenia; SPA = Spain; SWE = Sweden; SWI = Switzerland; TUR = Turkey; UK = United Kingdom.

Second, in line with the reference system used in the online legislative databases on modes of acquisition and modes of loss of citizenship, which can be found at the website of the EUDO Citizenship Observatory (www.eudo-citizenship.eu), we only include the articles of the citizenship law currently in force in a specific country. For example 'NET 15(1)(b)' refers to article 15, paragraph 1, lit. b of the Netherlands Nationality Act, as currently in force. The consolidated version of the citizenship law of each country can be found at the 'Country Profile' page at the website of the EUDO Citizenship Observatory. We include occasional references to old legislative provisions in footnotes, with specific mention of the year of enactment of the statute involved.

[1] The European Bulletin on Nationality uses the abbreviation AUS for Austria. We prefer the more common abbreviation of AUT.

We apply a similar system for references to articles from the European Convention on Nationality. For example, 'ECN 7(2)' refers to article 7, paragraph 2 of the European Convention on Nationality.

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This report draws on previously published, though comprehensively updated work by the authors (De Groot 2001, 2002, 2005; Vink and De Groot 2010). This report could not have been written without the detailed information provided by the country experts involved in the EUDO Citizenship Observatory. We also thank persons working in national administrations who have provided additional information on legislative practices, as well as Rainer Bauböck, Iseult Honohan and Jo Shaw for feedback on drafts of this paper.

1 Birthright citizenship

Citizenship should indicate a genuine link between a state and a person. This doctrine was famously formulated by the International Court of Justice in its 1955 *Nottebohm* decision:

> According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties (ICJ Reports 1955 (4), p. 23).

The citizenship law of a state provides rules determining under which conditions the citizenship of the state involved is attributed by operation of law to persons who are deemed to have a genuine link with this state or can be acquired, by registration, declaration or by naturalisation, by persons who claim that they have a genuine link with a country, based on birth, marriage, residence, etcetera. Citizenship laws also specify how citizenship is lost, automatically, by voluntary renunciation, or by withdrawal (see De Groot and Vink 2010 for a comparative overview on the loss of citizenship).

In line with the Universal Declaration of Human Rights, Art. 15 (1), everyone is entitled to a nationality. However the Universal Declaration does not indicate which conditions entitle a person to a certain citizenship (see Marescaux 1984 : 18-24). The fact that most, if not all, citizenship laws typically start with setting out the rules of attribution of citizenship at birth, and only later on in these documents specify rules concerning, for example, declaration and naturalisation procedures, and loss of citizenship, signifies a hierarchy of importance. Birthright citizenship is the main allocation mechanism to ensure that everybody is a citizen of at least one state. Within the international state system, citizenship laws, and specifically the birthright provisions, function as a key classifying mechanism and they determine, in principle for all persons born into this world, to which state each person 'belongs'. In practice this system is not without significant anomalies, as indicated by the phenomena of statelessness (no citizenship) and multiple citizenship (two or more citizenships). Yet within the current system, where each state is sovereign to determine its own citizenry, the global set of birthright citizenship regulations comes closer to meeting the 'empty' citizenship guarantee of the Universal Declaration than anything else.

This does not mean, of course, that birthright provisions are normatively straightforward. From the 'genuine link' perspective mentioned above, this system works as a self-fulfilling prophecy: the mere fact that citizenship is an exclusive social good produces the outcome where most persons will indeed remain very closely tied during their whole life to the same political community to which they were 'allocated' at birth. Even in today's mobile and globalised world, most people die in the same country in which not only they are born, but their parents as well. From a more abstract normative point of view, however, this distribution may appear relatively arbitrary, in the sense that the place where one happens to be born, or the citizenship that one's parents happen to have, determine the fundamental status of one's citizenship, usually for the remainder of one's life. Given that citizenship is an instrument of social closure, in terms of determining access to the scarce social goods of welfare and security, the consequences of the accidental circumstances of birth, or 'the birthright lottery', can hardly be overstated (Shachar 2009).

Rather than a normative discussion of principles of birthright citizenship, however, this study aims to present a comparative analysis of the rules across European countries on the acquisition of citizenship by virtue of birth, either by descent from a citizen or by birth at the territory of a state. Systematic comparative analysis of existing rules is a basis for informed debate on the underlying principles. The study also aims to present legislative trends during

the last thirty years, going back in principle to the early 1980s, though occasionally also referring to deeper historical roots of past and current policies.

We observe two broad trends in birthright citizenship policies across Europe since the early 1980s.

> (a) Although it was the mid-1980s before most states fully realised the principle of gender equality, there is a clear trend toward completing the equal treatment of women and men with regard to descent-based citizenship attribution. In Central and Eastern Europe, equal treatment largely took place by virtue of post-war Soviet inspired legislation, whereas in Western Europe this was accomplished a few decades later. In the 1990s equal treatment has focused specifically on children born out of wedlock, adopted or born abroad. With regard to the latter category there are also some counter-movements towards limiting the application of *ius sanguinis*.
>
> (b) There is a clear process of convergence between countries with *ius soli* and *ius sanguinis* traditions. While traditional *ius sanguinis* countries (Belgium, Germany, Greece) have introduced or extended *ius soli* provisions for second- and third-generation immigrants, classic *ius soli* countries (the UK, Ireland) have limited these provisions. Despite this converging trend, *ius soli* remains hotly contested, particularly in the context of debates of multiple citizenship, not only in countries such as the Baltic States with sizeable national minorities, but also in Western Europe (Austria, Denmark, Norway).

Birthright citizenship is symbolically important, but it is certainly not the only way of acquiring citizenship (see Goodman 2010b for an extensive comparative report on naturalisation policies in Europe; see also Waldrauch 2006 for an earlier comparative overview on European regulations on acquisition of citizenship). Yet, whereas naturalisation policies tend to receive most political and scholarly attention, it is obvious that rules on naturalisation are superfluous for those categories of persons who already acquire the citizenship of a country *ex lege* or can acquire this citizenship by declaration of option. Therefore, all discussions on different naturalisation policies should take place in the light of the grounds for *ex lege* acquisition of citizenship in the countries involved. Accordingly, in the comprehensive typology that we use as a comparative grid for this project we distinguish thirty-three modes of acquiring citizenship (see Vink and Bauböck 2010).

In this paper we focus largely on the first five modes of acquisition and analyse the wide variety of regulations on the different modes of birthright-based acquisition of citizenship that can be found across European countries (see Box 1 for an overview of relevant modes of acquisition). Because it is related to these provisions, we also discuss provisions regarding citizenship acquisition following adoption (mode A10). We focus exclusively on the legal similarities and differences between countries, within the framework of international law, and leave broader political debates aside (but see, for example, Honohan 2010b on the theory and politics of *ius soli* in Europe; and Bauböck and Vink 2010 on external citizenship debates).

Box 1. Modes of acquisition of citizenship: birthright-based modes

Modes of acquisition	ID	Target groups
Birthright-based modes of acquisition by descent	A 01	Persons born to citizens of C1 (*ius sanguinis*)
	A 04	Persons born to citizens of C1 whose descent is established by recognition or judicial establishment of maternity/paternity (*establishment of family relationship*)
Birthright-based modes of acquisition by birth in the territory	A 02	Persons born in C1 who acquire citizenship of C1 at birth irrespective of the citizenship of their parents (except those classified under A3) (*ius soli at birth)*
	A 03a	Children found in C1 of unknown parentage (*foundlings*)
	A 03b	Children born in C1 who would otherwise be stateless
	A 05	Persons born in C1 who acquire citizenship of C1 after birth irrespective of their parents' citizenship (except those classified under A3) (*ius soli after birth)*

2 Ius sanguinis (A01)

Compared to *ius soli* provisions and naturalisation regulations, *ius sanguinis* provisions have received relatively little attention in political debates as well as in the academic literature (but see Joppke 2005 for a notable exception). However, this does not mean that states have made no changes since the 1980s in provisions concerning the descent-based attribution of citizenship. On the contrary, we distinguish two sets of main changes. First, we can identify the completion of equal treatment of men and women within citizenship law, particularly with regard to the possibility for both men and women to pass on their citizenship to (adopted) children born in or out of wedlock. This is essentially a trend of extending *ius sanguinis*. Second, there is the facilitation of citizenship acquisition by the offspring of emigrants, particularly by means of the introduction of citizenship ´recovery´ provisions. This is also essentially a trend of extending *ius sanguinis*, though some limiting counter-movements also take place, particularly with regard to the application of *ius sanguinis* for persons born abroad.

2.1 Ius sanguinis a patre et a matre

In line with the European Convention on Nationality, "each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by a child, one of whose parents possesses at the time of the child's birth the nationality of that State Party" (ECN 6(1)). In this section we discuss the transmission of citizenship by descent (*ius sanguinis*), via the mother (*a matre*) and the father (*a patre*).

At the start of the 1980s most European states had replaced the unitary system—where the wife follows the citizenship of the husband—by a dualistic system where the wife can have another citizenship than that of the husband, and marriage does not automatically lead to either the acquisition or the loss of citizenship (De Groot 2003: 268–72; cf. Dutoit 1973). However, while most European countries adapted their citizenship provisions in the 1950s and 1960s, it took Portugal (1981), Greece (1984), Belgium (1985) and Luxembourg (1986) until the 1980s to abolish the automatic loss of citizenship for women marrying a foreign man.

Equal treatment between men and women with regard to the transmission of citizenship to their children was also not completed before the mid-1980s. By the mid-1970s, 19 of our 33 European countries still had to make arrangements for the equal transmission of citizenship via the mother and the father (see Table 1; cf. De Hart and Van Oers 2006: 340–3). Until very recently, discriminatory provisions could still be found, such as in Switzerland where only in 2006 the provision was abolished that Swiss citizenship was not attributed automatically to the child of a mother who had acquired Swiss citizenship by marriage. The current Austrian provision, that a child born out of wedlock only acquires Austrian citizenship if the mother is an Austrian citizen, is certainly discriminatory with regard to the father (AUT 7(3)).

Many citizenship laws also include reparation clauses for persons who would have acquired citizenship of a country had the equal treatment between men and women been introduced earlier. In the Netherlands, for example, a 2010 revision of the Nationality Act includes a provision for so-called 'latent Dutch citizens', who were born to a Dutch mother before 1985 and did not make use of the transitional scheme that was introduced in 1985 for a limited time period. Grandchildren, i.e. persons whose parent(s) were born before 1985 to a Dutch mother, can also acquire now Dutch citizenship if their parent(s) opt for it or they can acquire it themselves through a declaration of option if the relevant parent has died (NET 6(1)(i-o)).

Table 1. Ius sanguinis provisions in Europe

	Article in national law	**Introduction ius sanguinis a patre et matre**	**Special requirements for persons born abroad?**
AUT	7(1), 7(3)	1983*	–
BEL	8(1)	1985	*if parent is not born in Belgium:* registration within 5 years after birth of child (unless child otherwise stateless)
BUL	8	1948	–
CRO	4, 5	1945 (YUG)	*if only one parent is a national:* registration before age of 18, or after establishing residence in Croatia
CYP	109(1), 109(2)	1999	*if parent, who is a citizen, is resident outside Cyprus*: registration within 2 years after birth of child, or later 'in any special case and for good cause shown'
CZE	3(a)	1949 (CS)	–
DEN	1(1)	1978	*if only father is a national*: only when child is born in wedlock
EST	5(1)	1945/1918 (USSR)	–
FIN	9 26(1)(2)	1984	*if only father is a national and child is born out of wedlock*: by declaration
FRA	18	1945	–
GER	4(1); 4(4)	1975	*if parent is not born in Germany:* registration within 1 year after birth of child (unless child otherwise stateless) (since 2000)
GRE	1(1)	1984	–
HUN	3(1)	1957	–
ICE	1(1), 1(2); 2(1)	1982	*if only father is a national* (with evidence of paternity) *and child is born out of wedlock*: by declaration
IRE	7(1), 7(3); 27	1956	*if parent is not born on isle of Ireland:* registration (unless parent works abroad in public service)

	Article in national law	**Introduction ius sanguinis a patre et matre**	**Special requirements for persons born abroad?**
ITA	1(1)(a)	1983	–
	Article in national law	*Introduction ius sanguinis a patre et matre*	*Special requirements for persons born abroad?*
LAT	2(5); 3	1945/1918 (USSR)	*if only one parent is a national:* parents have to determine the citizenship of the child by mutual agreement
LIT	8(1); 9	1945/1918 (USSR)	–
LUX	1(1)	1987	–
MAL	5(1), 5(2)	1989	*if parent is not born in Malta:* registration (if certain residence conditions are fulfilled)
MOL	11(1)(a)		–
NET	3(1)	1985	–
NOR	4(1)	1979	–
POL	11(1)	1951	–**
POR	1(1)(a), 1(1)(b), 1(1)(c)	1981	registration (unless parent works abroad in public service)
ROM	5	1948	–
SLK	5(1)(a)	1949 (CS)	–
SLN	4(1), 4(2)	1945 (YUG)	*if only one parent is a national:* registration before age of 18 or declaration until the age of 36 (before 2002: 23); or permanent residence in Slovenia, with Slovenian parent, before age of 18
SPA	17(1)(a)	1982	–
SWE	1	1979	*if only father is a national and child is born out of wedlock*: by declaration
SWI	1(1)(a), 1(1)(b)	1985/2006***	–
TUR	7	1981	–
UK	1(1)(a); 2; 3	1983	*if parent is not born in UK* (or if child otherwise stateless): registration within 1 year after birth of child (if certain conditions are fulfilled) (unless parent works abroad in public service)

* A child born out of wedlock only acquires Austrian citizenship if the mother is an Austrian citizen.
** Children of whom only one of the parents is a Polish citizen acquire Polish citizenship, unless the parents have agreed within three months after the child's birth that the child acquires the citizenship of the other parent.
*** Until 2006 Swiss citizenship was not attributed automatically to the child of a mother who had acquired Swiss citizenship by marriage.

Apart from the question of equal treatment between men and women, *ius sanguinis* provisions are also problematised due to the fact that the establishment of 'descent' is not always straightforward. Whereas some problematic 'descent' issues have been around as long as mankind, such as children born out of wedlock or from incestuous relationships, others have only recently become issues of citizenship law. In particular, medically assisted reproductive techniques force states to redefine the notion of descent and to determine the extent to which citizenship can be transmitted along 'artificial' blood lines.

All states provide, in principle, for the acquisition of their citizenship if the mother of a child possesses the citizenship of that state at the moment of child's birth. Only in the case of a birth abroad do Belgium, Cyprus, Germany, Ireland, Malta, Portugal and the United Kingdom provide for an exception to this rule. Croatia, Latvia and Slovenia provide for an

exception, if only one parent is a national and the child is born abroad (see below). In principle, the mother of a child is the woman who gave birth to the child (see e.g. NET 1(1)(c); UK 50(9)). This is in conformity with the case law of the European Court of Human Rights[2] and furthermore with the 1962 Convention on the establishment of maternal descent of natural children, of the Commission Internationale de l'État Civil (CIEC).[3] Therefore, in principle, a woman does not need to recognize a child born out of wedlock in order to establish a family relationship between herself and the child. However, some civil codes still contain provisions on the recognition by the mother of children born out of wedlock, along with provisions which allow the judicial establishment of maternity.

In very special cases, for example children born as a consequence of an incestuous relationship, some codes provide that the establishment of a family relationship between a child and the mother may be forbidden. Nevertheless, even in such cases the citizenship position of the offspring has to be regulated. For this reason the Italian citizenship law, uniquely in Europe as far as we know, explicitly states that the provisions on recognition or judicial establishment 'also apply to any person whose paternity or maternity cannot be declared, provided that their right to maintenance has been legally recognised' (ITA 2(3)).

Special 'descent' citizenship problems may also arise if a third person is involved in the birth of the child. One can think in particular of the growing number cases of children being born of surrogate mothers. In these cases, due to a possible controversy about the determination of who is the biological mother of the child, the child is in risk of being stateless, if the state of the surrogate mother's citizenship does not attribute that citizenship to the child and the state of the commissioning mother does not attribute its citizenship either because the commissioning mother did not give birth to the child. In some cases the child may be able to acquire the citizenship of the husband or partner of the commissioning mother following the recognition by the partner of the paternity, but this is not always the case. Practices vary on a country by country basis. The Council of Europe, through Recommendation 2009/13, therefore recommends in Principle 12 that states 'apply to children their provisions on acquisition of nationality by right of blood if, as a result of a birth conceived through medically assisted reproductive techniques, a child-parent family relationship is established or recognised by law'. The explanatory memorandum adds:

> In order to avoid cases of statelessness, the following rules should be observed. If the child-parent family relationship is recognised in the state of nationality of the commissioning mother or father the provisions of that state on the acquisition of nationality *jure sanguinis* have to be applicable. The child will be fully integrated into the family of the commissioning parents, which justifies – as in the case of adopted children – the acquisition of the nationality of the parents. Moreover, in many cases the authorities of the state of the commissioning parents will not be informed about the fact that the woman mentioned as the mother on the birth certificate did not give birth to the child. If this fact is discovered by these authorities after a considerable period of time, it should not lead to loss of nationality.[4]

[2] *Marckx v Belgium*, ECHR 13 June 1979, ECHR Series A, Vol. 31.
[3] Convention relative à l'établissement de la filiation maternelle des enfants naturels, Brussels 12 September 1962. See also the 1975 European Convention on the Legal Status of Children Born out of Wedlock (ETS 85).
[4] Recommendation CM/Rec(2009)13 of the Committee of Ministers to member states on the nationality of children. Adopted by the Committee of Ministers on 9 December 2009 at the 1073rd meeting of the Ministers' Deputies. Explanatory memorandum on Principle 12.

With regard to the father, all states provide, in principle, for the acquisition of their citizenship if the father of a child possesses the citizenship involved at the time of the child's birth. Of course, it has to be mentioned again that some countries provide for an exception, if the child was born abroad (see below). In order to conclude that a child derives a certain citizenship *iure sanguinis a patre*, of course it has to be determined that a person is the child of a certain 'father' in the sense of the provisions involved. All states provide that a child born within wedlock acquires the citizenship of the husband of the mother (e.g. AUT 7(1)(a); CYP 4(1)(a) and (2)(a); DEN 1(1); FIN 9(2); ICE 1(1); SWE 1(3); SWI 1(1)(a) SWI). Furthermore, citizenship can usually be derived from this father even if he died before the child's birth (AUT 7(1)(b); BEL 8(2); EST 5(1)(2); FIN 9(3); NET 3(1); NOR 4(2); SWE 1(4) and (5); cf. LUX 1(1)).

Below we discuss further issues related to the derivation of citizenship from the father, by establishing the descent of a child by legitimation, recognition, or judicial establishment. First we discuss the more generic exceptions made by some countries in case of birth abroad.

2.2 Birth abroad

A substantial number of European states limit the transmission of citizenship in the case of birth abroad. The reason to limit the transmission of citizenship in case of birth abroad is linked to the function of the institution of citizenship as such. As was already mentioned above, citizenship should be a manifestation of a genuine link between a person and a state. If several generations have already been born abroad, it becomes less likely that the next generations will develop a link which justifies the possession of the citizenship of the country of their ancestors' origin. From this perspective the European Convention also explicitly accepts – in principle – limiting the transmission of citizenship in the case of birth outside the country is acceptable (see Explanatory report on ECN 6, nos 65 and 66):

However, it should be noted that this provision does not require a State to grant its nationality to children born abroad generation after generation without limitation, when such children have no links with that State. Normally, such children will acquire the nationality of the State of birth (with which – presumably – they have a genuine and effective link).[5]

With regard to the descent-based attribution of citizenship to children born abroad, both Belgium (1985) and Germany (2000) have limited the application of *ius sanguinis* to the first generation born abroad, in a somewhat similar fashion to the limitation already applied more traditionally by Cyprus, Ireland, Malta, Portugal and the United Kingdom. Not surprisingly, these are traditional *ius soli* regimes where birth *in the territory* of a country has a symbolically higher value than in *ius sanguinis* regimes, where intergenerational transmission plays a more significant role. The second generation born abroad only acquires citizenship if children are registered within one year (Germany, United Kingdom), two years (Cyprus) or five years (Belgium). The Irish, Maltese and Portuguese citizenship laws do not state a registration period and Portugal does not limit the extension of *ius sanguinis* to the second generation born abroad. Children born abroad to Belgian and German parents—of any

[5] See also Recommendation R 99(18) of the Committee of Ministers of the Council of Europe on the avoidance and the reduction of statelessness, adopted on 15 September 1999 (rule II A, sub a): 'Exceptions made with regard to children born abroad should not lead to situations of statelessness.' This exception is repeated in Recommendation 2009/13 of the Committee of Ministers of the Council of Europe on the position of children in nationality law, Principle 1. This is an important addition to the Convention, which ideally should be added to the actual text of the Convention, preferably in an additional protocol.

emigrant generation—will also obtain Belgian or German citizenship to avoid them otherwise being stateless (De Groot 2005: 191–5). Although these limitations amount to what may be seen as an attempt to ´de-ethnicise´ citizenship, a counter ´re-ethnicisation´ trend can be seen in countries such as France, Italy and Spain, where the reacquisition of citizenship has recently been facilitated (Joppke 2005: 240–7; cf. De Groot 2005: 213).

Let us take a closer look at some of these limiting provisions. In Belgium, citizenship is acquired by every child of a Belgian parent born in Belgium, but by a child of a Belgian parent who was born abroad only if one of three different conditions is fulfilled: a) the parent was born in Belgium or in territories under Belgian administration (Congo, Rwanda and Burundi); b) the Belgian parent registers the child as a Belgian national within five years after the child's birth; c) the child is otherwise born stateless or loses his (other) citizenship before his eighteenth birthday or an earlier judicial declaration of majority (BEL 8(1)(2)).

In Germany, since 1 January 2000, German citizenship will no longer be acquired by descent if a child of German parent(s) is born abroad and the parent was also born abroad after 31 December 1999 and the parent has his habitual residence outside of Germany (GER 4(4)). German citizenship is nevertheless acquired if the child would otherwise be stateless. If the child does not acquire German citizenship of the parent(s) *ex lege* because of the 'double' birth abroad, a parent can register the child as a German citizen within one year after the child's birth. This limitation on the transmission of German citizenship is completely new in German citizenship law, and it will take a considerable amount of time before this modification will have concrete results. The first children who will not acquire German citizenship because of this limitation are the children of the German children born outside of Germany in the year 2000.

British citizenship law also contains a limitation of the transmission by descent in the case of birth abroad. The relevant British provisions are quite complicated. Section 2 UK states, *inter alia*, that a person born outside the United Kingdom shall be a British citizen if at the time of the birth his father or mother (a) is a British citizen otherwise than by descent (e.g. British because of birth in the UK or British by naturalisation); or (b) is a British citizen and is outside the United Kingdom in British service, his or her recruitment for that service having taken place in the United Kingdom; or (c) is a British citizen and is outside the United Kingdom in service under a Community institution, his or her recruitment for that service having taken place in a country which at the time of the recruitment was a member of the European Community.

Section 3 UK deals with the citizenship status of – in brief – the second generation born abroad. A person born outside the United Kingdom shall be entitled, on an application for his registration as a British citizen made within a period of twelve months from the date of the birth, to be registered as such a citizen if the requirements specified in UK 3(3) or, in the case of a person born stateless, the requirements specified in paragraphs (a) and (b) of that subsection, are fulfilled in the case of either that person's father or his mother ('the parent in question'). These requirements are:

> a) that the parent in question was a British citizen by descent at the time of the birth;
> b) that the father or mother of the parent in question
> (i) was a British citizen otherwise than by descent at the time of the birth of the parent in question; or
> (ii) became a British citizen otherwise than by descent at commencement of the British Nationality Act on 1 January 1983, or would have become such a citizen otherwise than by descent at commencement but for his or her death; and
> c) that, as regards some period of three years ending with a date not later than the date of the birth

> (i) the parent in question was in the United Kingdom at the beginning of that period; and
> (ii) the number of days on which the parent in question was absent from the United Kingdom in that period does not exceed 270.

The Secretary of State has the possibility to allow a later registration than within the twelve months immediately after the child's birth by providing that 'if in the special circumstances of any particular case the Secretary of State thinks fit, he may treat subsection (2) as if the reference to twelve months were a reference to six years' (UK 3(4)). If a person is born abroad as a child of a British parent without acquiring British citizenship, he may nevertheless acquire a right to registration if the following conditions are fulfilled (UK 3(5)):

> (5) A person born outside the United Kingdom shall be entitled, on an application for his registration as a British citizen made while he is a minor, to be registered as such a citizen if the following requirements are satisfied, namely
> (a) that at the time of that person's birth his father or mother was a British citizen by descent; and
> (b) subject to subsection (6), that that person and his father and mother were in the United Kingdom at the beginning of the period of three years ending with the date of the application and that, in the case of each of them, the number of days on which the person in question was absent from the United Kingdom in that period does not exceed 270; and
> (c) subject to subsection (6), that the consent of his father and mother to the registration has been signified in the prescribed manner.

In Ireland, citizenship is not acquired *ex lege* in case of birth outside of Ireland if the father or mother through whom the child can derive Irish citizenship was also born outside of Ireland, unless the relevant parent was at the time of the child's birth in Irish public service. The child acquires Irish citizenship by registration as an Irish citizen on application of the parent or of the person himself (IRE 7(3) juncto 27). A comparable approach can be found in Malta (MAL 5(2)(b)) and in Cyprus (CYP 109 (1) and (2), registration within two years).

Another country with a limitation on the transmission of citizenship *iure sanguinis* in case of birth abroad is Portugal. Children of a Portuguese father or a Portuguese mother born abroad acquire Portuguese citizenship by birth if they declare that they want to be Portuguese, or if they register the birth in a Portuguese civil register. If the parents reside abroad in the service of Portugal, their children acquire Portuguese citizenship *ex lege* (POR 1(1)).

A different approach exists in Slovenia. According to Slovenian citizenship law, a child born abroad acquires Slovenian citizenship, if *both* parents possess Slovenian citizenship (SLN 4(1)). If only *one* parent is Slovenian this citizenship is in principle only transmitted if the child is born in Slovenia (SLN 4(2)). In the case of birth abroad of one Slovenian parent, the child acquires Slovenian citizenship by registration as such before the age of 18 or by settling in Slovenia together with the Slovenian parent. If the child already reached the age of 14 his consent is required (SLN 8). If the child would be stateless if he does not acquire Slovenian citizenship registration is not necessary: in that case, the citizenship is acquired *ex lege* (SLN 5). Between the age of 18 and 36 (until 2002: 23) a child of one Slovenian parent who did not acquire Slovenian citizenship can acquire this citizenship by lodging a declaration of option (SLN 6). A similar approach can be found in the Croatian and Latvian citizenship laws (CRO 4(10) and 5; LAT 2(5) and 3).

The Danish situation, finally, is remarkable: in case of birth abroad outside of Denmark, Danish citizenship is not acquired by the child born out of wedlock of a Danish

father and a non-Danish mother. Danish law does not provide for the possibility to register this child as Danish citizen on application of her or his father or mother (DEN 2).

To conclude this section, limiting the transmission of citizenship for children born abroad is, as such, legitimate, in light of the genuine link principle underlying international citizenship law. However, we would raise two caveats.

First, limitations are justified, but should not cause statelessness. For that reason, and also in line with the recent Recommendation 2009/13 on the nationality of children, from the Council of Europe, it would be desirable for Cyprus, Ireland, Malta, Portugal and the United Kingdom to provide for an acquisition *ex lege* if the child born abroad would otherwise be stateless.

Second, an alternative to limiting the transmission of citizenship at birth is the provision for the loss of citizenship if a citizen habitually resides abroad and no longer has a sufficient genuine link with the state involved. Such 'loss' provisions exist in Belgium, Denmark, Finland, France, Iceland, the Netherlands, Norway, Sweden and Switzerland (De Groot and Vink 2010: 28-32). Belgium, remarkably, limits the transmission of citizenship in case of birth abroad, but uses also this ground for loss. From our perspective, a provision on the loss of citizenship due to the lack of a sufficient link is to be preferred to limiting the transmission of citizenship in case of birth abroad. After all, the 'loss' alternative gives to the child the possibility to decide for herself or himself whether to develop a link with the state of her or his ancestors in order to retain her or his inherited citizenship. In that case, it is desirable to grant the child a reasonable period after having attained the age of majority to establish significant ties with the state of his inherited citizenship in order to keep this citizenship.

On the other hand, one has to realize that almost the same result can be reached by granting an option right or a right for registration to children who did not acquire the citizenship of their parent because of their birth abroad (as in Slovenia). If the acquisition of citizenship by a child born abroad depends on an action to be undertaken by a parent (e.g. registration) or on developing significant ties whilst the child is still a minor (e.g. a period of residence in the country of the inherited citizenship before the age of majority) without compensating this with an option right to (re)acquire the citizenship after having attained the age of majority, parent(s) are given considerable power to determine the citizenship position of the child. More attention is needed for the representation by parents of their children in citizenship matters (see De Groot 2003; De Groot and Vrinds 2004).

3 Establishment of family relationship (A04)

After the near-completion of the equal treatment of women in citizenship law in the 1980s ('near' because Switzerland still made an exception for mothers who acquired Swiss citizenship by marriage until 2006, discussed above), since the 1990s most attention in matters of *ius sanguinis* application has, paradoxically, been directed at improving the status of men, particularly with regard to the transmission of citizenship in cases of children born out of wedlock or adopted. During the last two decades modifications to allow fathers to pass on their citizenship *iure sanguinis* to children born out of wedlock were made in Germany (1993), Luxembourg (1987), Iceland (1998), Denmark (1999), Sweden (2001), the UK (2002), Finland (2003) and Norway (2006) and the Netherlands (2009) (De Groot 2005: 196–7; De Hart and Van Oers 2006: 344).

An interesting extension of gender equality can be found in Sweden where, since 2005, a child born to a foreign woman through artificial insemination also acquires Swedish citizenship if the partner of the same sex is Swedish. In other words, even though the Swedish same-sex partner is not the biological father, for citizenship purposes she is, as it were, treated as the ´father´ and the child therefore acquires citizenship *iure sanguinis*. The abolition in the Netherlands (2003) of the citizenship consequences of recognition of a child by the father is contrary to this trend. This unequal treatment of children of a Dutch father, depending on whether or not the family relationship already existed at the moment of birth or was only created later, implies a discriminatory attitude towards children born out of wedlock.

Table 2. Establishment of family relationship (A04)

	Article	**Procedure**	**Material conditions**	**Additional requirement for acquisition of citizenship (unless otherwise stated for minors only)**
AUT	7a	Automatic	Legitimation*	If TP is 14 years or older: consent required by TP and legal representative
BEL	See A01	Automatic	Establishment of paternity**	–
BUL	9	Automatic	Establishment of paternity	–
CRO	See A01	Automatic; Registration	Establishment of paternity	–
CYP	114(1)	Automatic	Legitimation	–
CZE	4	Automatic	Establishment of paternity	–
DEN	2	Automatic	Legitimation	TP born abroad and unmarried
EST	See A01	Automatic	Establishment of paternity	–
FIN	11 26(1)(1), 26(1)(2)	Automatic Declaration	Establishment of paternity	TP is born abroad TP is an adult or marries before the age of 18
FRA	See A01	Automatic	Establishment of paternity	–
GER	4(1), 4(4)	Automatic	Establishment of paternity	TP is under 23 years of age
GRE	2	Automatic	Establishment of paternity	–
HUN	3(2)	Automatic	Establishment of paternity	–
ICE	2(2) 2(3)	Declaration Automatic	Establishment of paternity Legitimation	TP born abroad. If born out of wedlock: satisfactory evidence concerning child and paternity. If TP 12 years or older: consent required –
IRE	See A01	Automatic; Registration	Establishment of paternity	–
ITA	2(1) 2(3)	Automatic Declaration	Establishment of paternity	– TP is an adult. Time limit: one year after establishment. Also applies to children from incestuous relationships
LAT	See A01	Automatic; Registration	Establishment of paternity	–
LIT	See A01	Automatic	Establishment of paternity	–
LUX	1(1)	Automatic	Establishment of paternity	RP is a citizen of C1 at the time of establishment
MAL	See A01	Automatic; Registration	Establishment of paternity	–

	Article	**Procedure**	**Material conditions**	**Additional requirement for acquisition of citizenship (unless otherwise stated for minors only)**
MOL	See A01	Automatic	Establishment of paternity	–
NET	4; 6(1)(c)	Automatic Declaration	Establishment of paternity TP is recognized by a citizen of C1 who has raised and cared for TP for 3 years	If recognized TP is 7 years or older DNA proof of the paternity is required –
NOR	See A01	Automatic	Establishment of paternity	–
POL	See A01	Automatic	Establishment of paternity	–
POR	14	Automatic	Establishment of paternity	–
ROM	See A01	Automatic	Establishment of paternity	–
SLK	See A01	Automatic	Establishment of paternity	–
SLN	See A01	Automatic; Declaration	Establishment of paternity	If TP 15 or older: consent required
SPA	See A01 17(2)	Automatic Declaration	Establishment of paternity	– TP is an adult. Time limit declaration: two years after establishment. Renunciation of prior citizenship, except for citizens of C2
SWE	See A01 5	Automatic Declaration	Establishment of paternity	– TP born abroad. If TP 12 years or older: consent required
SWI	1(2)	Automatic	Establishment of paternity	–
TUR	7(3)	Automatic	Establishment of paternity	–
UK	50 (9A)	Automatic	Establishment of paternity	–

*Legitimation: father is citizen of C1 and marries with mother of target person
**Establishment of paternity: establishment of family relationship by recognition, legitimation, court order or similar procedures (see also ECN 6(1)(a)).

On a more general note, whereas all states, as discussed above, assume that the husband of the mother is the father of the child, unless additional evidence proves contrary, the situation is different if the parents are not married to each other. The European Convention expressly allows for a procedure in respect of acquisition *iure sanguinis* regarding children born out of wedlock (ECN 6). If the family relationship between a child born out of wedlock and her or his father is established by recognition, legitimation or a judicial decision, this does not necessarily have as an *ex lege* legal consequence the acquisition of the father's citizenship. A state may provide that the child has to follow certain *procedural* steps before she or he acquires or can acquire the citizenship of the father. However, the European Convention does not allow that a state provides for substantive requirements (e.g. the proof of the biological validity of a recognition).

Nevertheless, most countries provide that children born out of wedlock acquire the citizenship of their father *ex lege* if a family relationship exists between him and the child (see, for example, explicitly in GER 4(1), GRE 2, HUN 3(2), ITA 2, LUX 1(1), POR 14, TUR 7(3) and implicitly in several other countries). Almost all countries require that the family relationship in that case must be determined before the child reaches the age of majority. Germany is exceptional in this case as the family relationship must be established before the age of 23 (GER 4(1)).

There are different ways of establishing a family relationship between a child and the father: by legitimation, by recognition or by judicial establishment. We discuss these three options below (see Table 2 for an overview).

3.1 Legitimation

In most countries a child, born out of wedlock but 'legitimated' by a subsequent marriage between the mother and the father, acquires *ex lege* the citizenship of the father by legitimation. Almost all countries require that the legitimation takes place whilst the child is still a minor (e.g. FRA 20-1). In some countries legitimation is mentioned as a separate ground for acquisition (see AUT 7a (1); CYP 114; DEN 2; FIN 11; HUN 3(2); NET 4; SWE 4; SWI 1(2)(a); UK 47(1)). In other countries, this ground for acquisition is covered by the general provision that children acquire the citizenship of a parent if the family relationship with this parent is established whilst the child is still a minor See e.g. BEL 8; CRO 4(1); EST 5(1)(1); FRA 18, juncto 20 and 20-1; LAT 2(5), 3; LIT 8(1), 9; LUX 1(1); MAL 5(1) and (2); MOL 11(1)(a); NOR 4(1); SLK 5(1)(a); SPA 17(1)(a); compare also IRE 6(2) juncto Status of Children Act 1987, Sect. 5).

In Austria, an additional rule is of importance: legitimation is a ground for acquisition of citizenship, but if the minor is already over 14 years of age, his consent and the consent of his legal representative to the acquisition of citizenship is required (AUT 7a(2)). Under certain conditions a required consent can be replaced by a decision of the court in the interest of the minor involved (AUT 7a(5)). Iceland prescribes the consultation of a minor from the age of twelve (ICE 2(2)).

3.2 Recognition

Many countries provide expressly that recognition of a child born out of wedlock by a man has as a consequence the acquisition of the man's citizenship. Again, most countries require that the recognition takes place during the child's minority (compare POR 14). In Germany, the recognition must have taken place before the child reaches the age of 23 years. In some countries, recognition is mentioned as a separate ground for acquisition of citizenship (See 4 (1) GER; 2 GRE; 3 (2) HUN; 2 (1) ITA. See also 2a NOR and 2 (1) TUR). In some other countries, this ground for acquisition is covered by a general provision.

In Denmark (DEN 1) and Sweden (SWE 1(2)) a child born out of wedlock obtains exclusively *ex lege* the citizenship of the father if he is born in Denmark or Sweden respectively. A child of a Swedish father born out of wedlock outside of Sweden acquires Swedish citizenship if the father registers the child as a Swedish citizen (SWE 5), restrictive in international comparative perspective, but still considerably more generous than the previous Swedish legislation (see SWE 1 and 2a, old; compare with FIN 28(2)).

In Iceland, a child born abroad of an unmarried woman and an Icelandic man acquires Icelandic citizenship on application of the father before the child reaches the age of 18 years. The father has to consult the child if he is over 12 years old. If the father submits, in the opinion of the Icelandic authorities, satisfactory evidence concerning the child and his paternity, the child acquires Icelandic citizenship on confirmation from the ministry (ICE 2). In the Netherlands, since 2009, recognition does have *ex lege* citizenship consequences, if the

child involved did not yet reach the age of seven at the time of recognition. Otherwise the biological truth of the recognition has to be proven by DNA-evidence. As an alternative for the required evidence, the recognized child can – under certain conditions- opt for Netherlands citizenship (NET 6(1)(c)). The Icelandic and Dutch substantive conditions (satisfactory evidence on the child and paternity, respectively DNA-evidence) are problematic in perspective of the European Convention which states that the *procedure* may be determined by internal law, which obviously does not allow the introduction of additional *substantive* requirements (ECN 6; see also principle 11 of Recommendation 2009/13).

3.3 Judicial establishment

In some countries the judicial establishment of paternity is expressly mentioned as a ground for the acquisition of citizenship (CZE 4; GER 4(1); GRE 2; HUN 3(2); ITA 2; NET 4; TUR 7(3)). In a considerable number of other countries, this ground for acquisition is covered by a general *ius sanguinis* provision: if descent is established, a child automatically acquires citizenship. Again, most countries provide that the judicial establishment has to take place during the minority of the child in order to have citizenship consequences *ex lege*. In Germany, the procedure regarding the judicial establishment of paternity must have been started before the 23rd birthday of the child.

For the Netherlands, it has to be mentioned that until 2003 a judicial establishment of paternity was not regulated in the Nationality Act as a ground for acquisition of citizenship, although the possibility of a judicial establishment of paternity was already introduced into Netherlands family law since 1 April 1998. However, courts in the Netherlands came already before 2003 to the conclusion that judicial establishment of paternity did have citizenship consequences because it was covered by the general provision that a child acquires Dutch citizenship *a patre*, if at the time of its birth the father possesses this citizenship (NET 3(1)).[6]

Finally, we should note some remaining provisions related to children born out of wedlock, born in a country or abroad.

In the Netherlands, a recognized or legitimized child of a Netherlands father also has the opportunity to acquire Netherlands citizenship by confirmation of a declaration of option after the father has cared for and educated him/her ('*verzorging en opvoeding*') for a period of three years (NET 6(1)(c)). Also compare this with the complicated regulation of the entitlement to naturalization of the child born out of wedlock of an Austrian father (AUT 12(d) and 17(1)(3) juncto 10(1)(1-8) and (2)). In Sweden, a Swedish father can register his children born abroad outside of wedlock as Swedish citizens before they reach the age of 18 (SWE 5). Since 2003, Finland provides that the child born out of wedlock of a Finnish father has an option right to Finnish citizenship if the father was Finnish at the moment of birth of the child and a) the child was born in Finland, but the paternity was established only after he or she had reached the age of 18 years, or b) the child was born abroad and the paternity has been established (FIN 26).

A special provision can be found in Spain, where the descent from a Spanish national established after majority creates an option right to Spanish citizenship to be used within two years after the establishment (SPA 17(2)). The same applies if the birth in Spain was

[6] Because the Civil code of the Netherlands (Art. 207(5)) provides that a judicial establishment of paternity has retroactivity to the moment of birth, the conditions of NET 3(1) after the judicial establishment of the paternity have been fulfilled. See also ICE 2.

discovered only after majority. Belgian legislation grants an option right to the child older than 18 years born abroad of a Belgian national (BEL 12bis). If the child born abroad is only the adopted child of a Belgian national and the child did not yet receive Belgian citizenship, the Belgian legislation provides for an option right to be used between the age of 18 and 22 (BEL 13(3) juncto 14 and 15). The child born abroad of *one* Slovenian parent between the age of 18 and 23 has a comparable option right (SLN 6; see for adopted children: SLN 7).

In most countries, (minor) children often acquire the citizenship of the country if one of their parents acquires this citizenship. In countries where this is not the case and for cases where the conditions in the legislation are not met, (minor) children sometimes have a right of option to the citizenship involved if certain requirements are met (see e.g. BEL 12bis(1)(2); POR 2). We do not discuss these provisions here (see the online database on www.eudo-citizenship.eu for an overview of 'filial extension', mode A14).

To conclude this section, some critical remarks on the use of the exception allowed by the European Convention (ECN 6), in respect of the transmission of the citizenship *iure sanguinis a patre* in case of children born out of wedlock, are appropriate. As we see the issue, three different arguments are used in order to exclude (some) children born out of wedlock from the transmission of the citizenship of their father.

First, one could argue, that a child born out of wedlock will less likely develop close ties with the state of citizenship of his father, in particular if he lives abroad. This seems to us to be the background of the Danish and Swedish legislation.

Second, in countries where a man can recognize a child, even in cases where this is not in conformity with the biological truth, there is a certain danger that recognition, if it does have citizenship *ex lege* consequences, can be abused to circumvent procedures and restrictions in respect of international adoption. This was, for example, the case in the Netherlands. The Netherlands Nationality Act of 1985 mentioned recognition and legitimation as grounds for acquisition of citizenship (NET 4, old). Later it was discovered that some Netherlands men – after having received money – recognized foreign illegitimate minors in order to give them Dutch citizenship and therefore free access to the Netherlands. As a reaction to this discovery, the government of the Netherlands abolished recognition and legitimation as grounds for *ex lege* acquisition of citizenship in 2003. This amendment was heavily criticized in the legal literature *inter alia* because in most cases of recognition and legitimation the man involved really is the biological father of the child (e.g. Tratnik 1989; Koens 1998). Furthermore, the Public Prosecutors Office already had the possibility to request the annulment of a recognition if the recognition violates public policy (*ordre public*). Because of the fact that many difficulties arose regarding the rules which came in force in 2003, the citizenship consequences of a recognition were re-introduced in 2009, although the *ex lege* acquisition of Dutch citizenship is now restricted to recognition of a child younger than seven years.

Thirdly, the acquisition of a citizenship *ex lege* based on recognition or legitimation can be problematic for completely different reasons. It may be the case that an older foreign minor acquires a certain citizenship because of recognition or legitimation without his own consent in respect of the citizenship consequences. This leads to problems if the acquisition of the new citizenship causes the loss of his previous citizenship (usually the citizenship of the mother). Although one of the requirements for recognition or legitimation is normally the consent of the mother of the child (in the Netherlands until the child reaches the age of 16) as well as the consent of the child (in the Netherlands if he is older than 12 years), these consents are focused on the establishment of a family relationship between the child and the man involved. The citizenship dimension of a recognition is in many cases not taken into account.

Furthermore, potential citizenship consequences should not be the reason to give or to refuse the required consent. In Austria, the Constitutional Court came to the conclusion that the acquisition of Austrian citizenship *ex lege* by a foreign minor legitimated by an Austrian man constituted a violation of the Austrian constitution, *inter alia* because of the potential loss of another citizenship (in that case, the citizenship of Liechtenstein).[7] This decision made a modification of Austrian citizenship law necessary. Therefore, since 1985 Austrian citizenship is exclusively acquired *ex lege* by legitimation if the child who has already reached the age of 14 gives his consent and the legal representative does also.[8]

Although all of the arguments mentioned have some value, states must give children born out of wedlock as far as possible the same position as children born in wedlock. Not to attribute the citizenship of the father to a child born out of wedlock in case of birth abroad because such a child probably will not develop a genuine link with the country of citizenship of the father seems to us, in all cases, a differential treatment of children born out of wedlock in comparison to those born within wedlock.

4 Adoption

The citizenship status of an adopted child nowadays approximates to that of a biological child in that citizenship is transmitted *iure sanguinis* after the act of adoption is formally registered. This approximation is *inter alia* influenced by the Hague Adoption Convention of 29 May 1993 (De Groot 2005: 200). Finland, for example, arranged this in 2003 and the Netherlands in 1998 and 2005 for cases of adoption abroad.[9]

Acquisition of citizenship by adoption is not mentioned in the European Convention, Article 6 as a desirable ground for acquisition of citizenship *ex lege*. It is only mentioned as a ground for privileged acquisition. This is remarkable because on the other hand, the Convention does mention that national citizenship legislation may provide that a citizenship is lost by the adoption of children, if the citizenship of the adopting parents is acquired (ECN 7(1)(g)).

Nevertheless, many countries mention adoption as a ground for acquisition of citizenship *ex lege* (see Table 3; cf. Hecker 1985: 153-163; De Groot 1988: 196-199). Most of these countries require that the adoption involved was realized during the minority of the child. However, in some countries the age limit is lower, as in Denmark, Finland, Iceland and Sweden (12 years) and the Czech Republic (16 years).

According to the Belgian legislation, adoption is a ground for acquisition, but if the adopted child was born abroad and the Belgian adoptive parent(s) also, exceptions exist (BEL 9; cf. SLN 7).

Some countries only provide for citizenship consequences of adoption when the adoption order was made by a court, or by authorities of the country involved (e.g. IRE 11). However, an increasing number of citizenship codes provide for the possibility, that a foreign adoption order has citizenship consequences if this foreign adoption order is recognized

[7] Decision of 12 June 1984, Bundesgesetzblatt Nr. 375/1984.
[8] See Staatsbürgerschafts-Novelle 1985, Bundesgesetzblatt 1985, 568. Compare on that modification De Groot 1989: 145-146; Pfersmann 1985; Schwimann 1986.
[9] See Guide to Good Practice on the Implementation of the 1993 Hague Intercountry Adoption Convention of the Hague Conference on Private International Law, paragraphs 492–6: http://www.terredeshommes.org/pdf/news/Jennifer%20Degeling_e.pdf).

because of rules of private international law. In some countries, a special reference is made to the Hague Adoption Convention of 29 May 1993 (See NET 5a, SWE 3(2) and UK 1(5) and (5A); cf. ICE 2a and FIN 10).

Table 3. Adoption (A10)

	Article in national law	Procedure	Age limit
AUT	–	–	–
BEL	9	Automatic*	18
BUL	15(2)	Naturalisation	18
CRO	4(2)	Automatic	18
CYP	114(2)	Naturalisation	18
CZE	3(a) 11(1)(d)	Registration Naturalisation	16 16>
DEN	2A 6	Automatic Naturalisation	12 12>
EST	5(2-1), 5(2-2)	Automatic	18
FIN	10 27	Automatic Declaration	12 12>
FRA	20	Automatic**	18
GER	6	Automatic	18
GRE	3	Automatic	?
HUN	4(2)(c)	Naturalisation	18
ICE	2(a)	Automatic	12
IRE	11	Automatic	18
ITA	3(1) 9(1)	Automatic Naturalisation	18 18>
LAT	3(2)(4) 15(3), 16	Registration*** Naturalisation****	15 18
LIT	–	–	–
LUX	2(1)	Automatic	18
MAL	17	Automatic	18
MOL	13, 14	Automatic	18
NET	5, 5a, 5b 8(2)	Automatic Naturalisation	18 18>
NOR	5	Automatic	18
POL	–	–	–
POR	5 29	Automatic Declaration	18 18>
ROM	6	Automatic****	18
SLK	6	Automatic	18
SLN	7,8	Automatic	18
SPA	19(1) 19(2), 23	Automatic Declaration	18 18>
SWE	3	Automatic	12
SWI	7	Automatic	18
TUR	17	Naturalisation	18
UK	1(5), 1(5A)	Automatic	18

* If adoptive parent is born abroad and the child is born abroad: by declaration
** In case of simple adoption: by declaration (FRA 21-12)
*** If adoptive parent is non-citizen or stateless person and resident in Latvia at least 5 years
**** If one parent is a citizen and the other a foreigner: by mutual consent of both parents

In Latvia, although the general procedure for acquisition of citizenship following adoption is a naturalisation procedure, if both parents are citizens the adopted child acquires citizenship almost automatically (LAT 15(3), 16).

In respect of adoption, one has to realize that many countries only know full adoption, which replaces completely the pre-existing legal family ties of the child with the original parents with a family relationship with the adoptive parents. Some countries, such as France and Portugal, provide also for a weak or 'simple' adoption, usually as an alternative form of adoption. This form of adoption creates a family relationship with the adoptive parents, but does not disrupt all legal ties with the original parents. This so-called 'weak' adoption often lacks citizenship consequences (e.g. FRA 21), whereas the full adoption has these consequences (FRA 20(2) juncto 18; see also POR 5 restricted to full adoption).

In the Netherlands, 5b NET provides under certain conditions for acquisition of citizenship by an adopted child if a weak adoption is converted into a full adoption. In a few other countries, option rights exist (see FIN 27, if the child already reached the age of 12 before adoption; and FRA 21-12(1)).

In Austria and Lithuania there are, remarkably, no citizenship consequences attached to adoption.

5 Ius soli at birth (A02)

There is little doubt that the most remarkable and significant citizenship reform in Europe during the past decades was made by Germany in 2000. In the context of this reform, the single most symbolically important issue was the introduction of a provision that a child born on German territory acquires German citizenship *iure soli*, in other words regardless of the citizenship status of her or his parents, provided that the parents meet certain residence requirements. On the other hand, in Ireland, since 2004 the traditional unrestricted form of *ius soli* is conditional now as well on residence of the parents. The German and Irish citizenship reforms can be seen as illustrative of a trend of convergence between countries with *ius sanguinis* traditions and those with *ius soli* traditions.

This convergence trend has two faces. First, traditional *ius soli* countries such as the UK (1983) and Ireland (2005) amend their *ius soli* principle and restrict this by introducing residence requirements for the parents. The second, more-widely seen, face is that *ius sanguinis* countries like Germany (2000), Luxembourg (2009) and Greece (2010) introduce *ius soli*-inspired elements, either attached to residence requirements for the parents (*ius soli*) or to birth requirements for the parents (*double ius soli*). In this section we discuss both versions of ius soli. For the whole discussion in this section it should be noted that we exclude provisions that are specifically aimed at preventing statelessness. These provisions are discussed in section 7. Section 6 discusses provisions that allow for the acquisition of citizenship, based on birth at the territory of a country, but only taking place some time after birth (e.g. at the age of majority, by declaration or facilitated naturalisation).

The extension of *ius soli* rights at birth in European countries unmistakably reflects the political will to recognise immigration as a permanent phenomenon and the desire to prevent a substantial group of second- or third-generation ´immigrants´ from residing in the territory of a state, with formal incorporation in the citizenry only possible through discretionary naturalisation. To keep this development in perspective, however, one should note that only 10 out of the 33 European countries of this study have provisions for the

application of either *ius soli* or double *ius soli* at birth (see Table 4). This is not surprising given that, since the 1900s, the essentially British *ius soli* tradition is alien to continental Europe (Weil 2001: 21). From this perspective the gradual inclusion of *ius soli* provisions at birth, even though for the moment mainly limited to West and Southern European countries, is remarkable in itself (see De Groot 2005: 210–15).

5.1 Residence parents

As mentioned above, the first face of the converging ius soli trend is that traditional *ius soli* countries amend their *ius soli* principle. Since 1983, children of non-citizens born on the territory of the United Kingdom only acquire British citizenship *iure soli* if the parents meet certain residence requirements (De Groot 2005: 201). Since the British Nationality Act of 1981 entered into force on 1 January 1983, a person born in the United Kingdom after that date is a British citizen if at the time of its birth her or his father or mother is (a) a British citizen or (b) settled in the United Kingdom (UK 1(1)). References in the British Nationality Act to a person being settled in the United Kingdom are references to her or his being ordinarily resident in the United Kingdom without being subject, under the immigration laws, to any restriction on the period for which he may remain (UK 1(8) juncto 50(2)).

After the British amendment, for a long time Ireland was the only European country with a virtually unrestricted *ius soli* provision in its citizenship law. Until 2001 Ireland applied a strict *ius soli* (IRE 6(1) old): by birth on Irish territory a child acquired the citizenship of Ireland. An exception was exclusively made for children of aliens entitled to diplomatic immunity (IRE 6(4) old; cf. IRE 6(6)(b) for current provision). This exception conformed to the 1961 Optional Protocol to the Vienna Conventions on Diplomatic relations, concerning Acquisition of Nationality and the 1963 Optional Protocol to the Vienna Conventions on Consular relations, concerning Acquisition of Nationality (cf. POR 1(1)(e)).

Since 2001, every person born in the island of Ireland is *entitled* to be an Irish citizen (IRE 6(1)). A person born in the island of Ireland is an Irish citizen from birth if he or she does, or if not of full age has done on his or her behalf, any act which only an Irish citizen is entitled to do (IRE 6(2)(a)). Since 2005, however, following popular dissatisfaction with the seemingly unreasonably unrestricted Irish practice, Ireland introduced the condition that, at least for one parent, a three-year residence period is required before citizenship can be attributed *iure soli* to a child born on Irish soil (Handoll 2006; see also Honohan 2010a). This amendment was triggered by the *Chen* case, decided by the European Court of Justice in May 2004.[10] As a result, none of the countries studied for this report today applies *ius soli* as a general ground for acquisition of citizenship anymore.[11]

Portugal has a provision which is comparable to the current Irish one, although with a more restrictive residence requirement for the parents: if one of the parents is resident in Portugal for at least five years at the moment of the birth of the target person, he or she can acquire Portuguese citizenship by means of a declaration (POR 1(1)(e)). This residence period was increased from six to ten years, in 1994, for persons from non-Portuguese speaking countries. In 2006 the residence requirement was harmonized at five years, for all nationality

[10] Case C-200/02, Zhu and Chen v. Secretary of State for the Home Department, Judgment of 19 October 2004.
[11] In Luxembourg, since 2001, birth in Luxembourg before 1 January 1920 established the possession of citizenship of Luxembourg (LUX 4(1)old). This provision, however, was in particular important for the proof of citizenship and did not manifest the desire to introduce *ius soli*-acquisition in the Luxembourgian legislation as a basic principle. This rule does not exist anymore in the new Nationality Act which came in force in 2009.

groups, bringing the Portuguese provisions also in line with the anti-discrimination provisions from the European Convention (ECN 5). Since 2010, a similar provision can be found in Greece, with the caveat that in Greece five years residence by *both* parents is required, prior to birth of the child (GRE 1A(1); see also discussion in next section on ius soli after birth).

Since 1 January 2000, the German Nationality Act provides that a child of foreign parents born in Germany acquires *iure soli* German citizenship if one parent has, at the time of the child's birth a certain residence status (GER 4(3)). As stated above, this was a paradigmatic amendment to the citizenship law. Notwithstanding its political significance, two caveats are in place when discussing the introduction of *ius soli* in Germany: a) the residence requirements for parents of children born in Germany substantially restrict the application of the new *ius soli* provisions; and b) German citizenship acquired *iure soli* can still lapse if a person acquires another citizenship *iure sanguinis* and does not renounce this citizenship before his or her twenty-third birthday. With regard to the residence requirement, the parent needs to have her or his legal habitual residence in Germany for at least eight years, and is entitled to stay permanently ('*Aufenthaltsrecht*') or – for Swiss nationals - a residence permit ('*Aufenthaltserlaubnis*').

Table 4. Ius soli provisions in Europe (recent changes in bold)
(excluding prevention of statelessness and provisions regarding foundlings –see Table 5)

	Article	**Procedure**	**At birth (=mode A02)**	**Article**	**Procedure**	**After birth (=mode A05)**
AUT	–	–	–	11a(4)(3)	Naturalisation (entitlement)	If resident in AUT for 6 years before application (since 1999).
BEL	11(1) 11bis	Automatic Declaration	Parent is born in BEL and resided in BEL 5 out of 10 years before birth target person (since 1984; until 1992 by declaration); Before age of 12 if parent resided in BEL 10 years preceding declaration (since 1992)	12bis(1) 13(1), 14	Declaration Declaration	From age 18 if resident since birth (before 2000: between age of 18-30); At age of 18-22 if resident 1 year before declaration and between age 14-18, or 9 years in total (since 2000)
BUL	–	–	–	13(3)	Naturalisation (discretionary)	From age of 18 if permanent residence in BUL 3 years (since 1998)
CRO	–	–	–	9	Naturalisation (entitlement)	At any age after 5 years of residence

	Article	Procedure	At birth (=mode A02)	Article	Procedure	After birth (=mode A05)
CYP	–	–	–	–	–	–
CZE	–	–	–	11(1)(a)	Naturalisation (discretionary)	At any age if permanent resident
DEN	–	–	–	–	–	–
EST	–	–	–	–	–	–
FIN	–	–	–	28(2)	Declaration	At age 18-23 if 6 years resident, last 2 years continuous (since 2003)
FRA	19-3	Automatic	If one parent born in FRA (before 1994: or if parent born in former colony; 1994-1998: or if parent born in Algeria before 1962 and has 5 year residence in FRA).	21-7; 21-11	Automatic Declaration Declaration	At age 18 if 5 years resident since age 11; At age 16-18 if 5 years resident since age 11; At age 13-16 if 5 years resident since age 8 (1994-1998: at age 16-21).
GER	4(3)	Automatic	If one parent resides in GER for 8 years and has permanent residence right **(since 2000).***	–	–	–
GRE	1(2)(a) 1A(1)	Automatic Declaration	If one parent born and permanent resident in GRE **(since 2010)** If both parents permanent resident in GRE for 5 years **(since 2010)**	1A(1) 5(1)(d)	Declaration Naturalisation (discretionary)	Before age 18 if both parents permanent resident in GRE for 5 years **(since 2010)** From age 18 if resident in GRE continuously since birth.
HUN	–	–	–	4(4)(a)	Naturalisation (discretionary)	From age of 18 if resident in HUN for 5 years
ICE	–	–	–	–	–	–

	Article	Procedure	At birth (=mode A02)	Article	Procedure	After birth (=mode A05)
IRE	6, 6A	Declaration	If one parent has residence in IRE for 3 of the 4 years prior to birth **(before 2004: no residence requirement; before 2001: automatic)**	–	–	–
ITA	–	–	–	4(2); 9(1)(a)	Declaration Naturalisation (discretionary)	At age 18-19 if uninterrupted residence since birth **(before 1992: also interrupted and illegal residence)**; From age 18 if resident 3 years.
LAT	–	–	–	–	–	–
LIT	–	–	–	–	–	–
LUX	1(5)	Automatic	If one parent born in LUX **(since 2009)**			– **(since 2009)**
MOL	–	–	–	–	–	–
MAL	– **(1989)**	–	–	–	–	–
NET	3(3)	Automatic	If one parent resides in NET and was born to parent who resided in NET **(since 1953)**	6(1)(a)	Declaration	From age 18 if resident since birth **(since 1985)**.
NOR	–	–	–	–	–	–
POL	–	–	–	–	–	–
POR	1(1)(d) 1(1)(e)	Automatic Declaration	If one parent born in POR **(since 2006)**; If one parent has 5 years residence **(before 2006: 10 years, or 6 years if from POR speaking country; before 1994: 6 years for all).**	6(2)(a); 6(5)	Naturalisation (entitlement) Naturalisation (discretionary)	If one parent has 5 years residence and minor has concluded 4 years primary school **(since 2006)**. If resident in POR for 10 years.

	Article	Procedure	At birth (=mode A02)	Article	Procedure	After birth (=mode A05)
ROM	–	–	–	8(a)	Naturalisation	From age of 18 without required period of residence
SLK	–	–	–	7(2)(f)	Naturalisation (discretionary)	From age of 18 if resident in SLK for 3 years and has permanent residence
SLN	–	–	–	12(5), 12(6)	Naturalisation (discretionary)	At any age if resident in SLN since birth **(since 2002)**
SPA	17(1)(b	Automatic	If one parent born in SPA **(before 1982: both parents)**	22(2)(a	Naturalisation (entitlement)	At any age if resident in SPA for 1 year **(since 1982)**.
SWE	–	–	–	–	–	–
SWI	–	–	–	–	–	–
TUR	–	–	–	–	–	–
UK	1(1)(b)	Automatic	If parent has permanent residence in UK **(before 1983: no residence conditions)**.	1(4)	Declaration	From age of 10 if resident in UK since birth

* GER 4(3): Renunciation required at age 18-23 of other citizenship (except when citizenship of EU member state or Switzerland).

With regard to the attempt to restrict multiple citizenship, a child who acquired German citizenship *iure soli* and also possesses a foreign citizenship has to lodge a written declaration with the German authorities before reaching 23 years, stating whether she or he wants to retain the German or the foreign citizenship (GER 29). If the target person chooses in favour of the foreign citizenship, German citizenship is lost. If no declaration is made before the twenty-third birthday German citizenship is lost as well. Before the 21st birthday an application can be made to receive a permit of retention of the foreign citizenship next to German citizenship. This permission must be granted if the renunciation or loss of the foreign citizenship is impossible or unreasonable, or if the other citizenship is of a member state of the European Union or Switzerland (GER 12). This ground for loss potentially severely restricts the German *ius soli* provision: after having possessed German citizenship for her or his whole life, a person can lose German citizenship even in cases where the person involved continues to live in Germany (see for a further discussion De Groot and Vink 2010: 19).

5.2 Double ius soli

In some countries, citizenship is attributed *ex lege* to children whose parent(s) was (were) also born on the territory of the state involved. This ground for the acquisition of citizenship is often described as acquisition by double *ius soli* and has been ´at the heart of French citizenship law´ since it was introduced for the first time in Europe in 1851 (Weil 2006: 188–9; see also De Groot 1989: 77, 399). The background to this rule is that the second generation of persons born on the territory of a state (being the third generation living there) are deemed to have such a close link with the state involved that neither the persons involved nor the authorities of the country of birth should have the possibility to prevent the acquisition of the citizenship of the country of birth. The rule is still part of the French Code civil (FRA 19-3) and can also be found in Greece (GRE 1(2)(a), since 2010), Luxembourg (LUX 1(5); since 2009), Portugal (POR 1(1)(d), since 2006) and Spain (SPA 17(1)(b), since 1982).

In the Netherlands a similar, but slightly different provision was introduced in 1953, working retroactively as far back as 1893 (Van Oers *et al*. 2006: 396). A child shall be a Dutch citizen if it is born to a father or mother who has her or his main habitual residence in the Netherlands, the Netherlands Antilles or Aruba at the time of its birth, and if this father or mother was born to a father or mother habitually residing in one of these countries at the moment of the birth of her child, provided the child has also her or his main habitual residence in the Netherlands (NET 3(3)). In Belgium a person who is born in Belgium as the child of a foreigner who also was born in Belgium and who had his main habitual residence in Belgium for at least 5 years of the 10 years directly preceding the child's birth acquires Belgian citizenship *ex lege* (BEL 11(1)). A similar rule applies in the case of adoption of a child by an adopter born in Belgium (BEL 11(2)).

6 Ius soli after birth (A05)

The extension of *ius soli* is also visible in a trend to include either an optional provision or a facilitated naturalisation provision to acquire citizenship *after birth* for persons born in a country to foreign parents. In the Netherlands (since 1985) and Belgium (since 2000), for example, second-generation immigrants can acquire citizenship by declaration from the age of 18 if they have been resident since birth. Denmark, Finland, Italy and the UK already had broadly similar provisions in place before the 1980s, although Italy severely restricted these in 1994 by tightening the residence conditions and Denmark abolished *ius soli* after birth in 2004 for all second-generation immigrants with non-Nordic parents. Other countries introduced a facilitated naturalisation mechanism, mainly through residence requirements that are lower than for the regular naturalisation procedure.

This section discusses which persons are entitled in the various countries to acquire, under certain conditions, the citizenship of the country involved by lodging a declaration of option (or, in uniquely case of France, acquire citizenship *ex lege* at the age of majority).

It is important to stress that there are at least two distinct types of options. According to the law of some countries, a declaration of option can be made orally without any formality.[12] Of course the declaration has to reach the competent authorities. Normally these authorities will make an official document, which will be signed in order to prove the declaration, but if such a document does not exist, the declaration can be proved by any other

[12] This type of option existed in the Netherlands until it was replaced in 2003 by the second type of option rights.

means. If a declaration was made, but not all the conditions giving a right to opt were fulfilled, the citizenship is not acquired. If all conditions were fulfilled and the declaration can be proved, although no document exists, the citizenship is nevertheless acquired. The authorities do not have the possibility to avoid the acquisition of citizenship because of, for example, reasons of public policy or state security.

In some countries, a person who uses her or his right of option must make a written declaration. The authorities control whether all the conditions are fulfilled, but they are also able to reject the option for reasons of public security or lack of integration (*defaut d'assimilation* (FRA 21-4; cf. BEL 12bis(2), ITA 6, NET 6). It is obvious that this kind of option is much weaker than the first category mentioned. It is therefore not surprising that, generally speaking, countries which have this second type of option rights often grant this right to considerably more persons than countries where the first type of option rights exists. One could also describe the second type of option rights as a quick naturalisation procedure where the discretion of the authorities to refuse the acquisition of citizenship is limited.

Other countries do not use the term 'option rights', but provide for the possibility to register as a citizen if certain requirements are met. If the authorities do not have any discretion in respect of the registration, such a right to register as a citizen is in fact an option right of the first mentioned category. If there is discretion of the authorities, it can be classified as an option right of the second category.

In this context it also has to be mentioned that a few countries, such as Austria, use the construction of a legal entitlement to naturalisation ('*Einbürgerungsanspruch*'): if certain conditions are fulfilled naturalisation has to be granted on the application of the person involved. The authorities' discretion is reduced to zero. Such an entitlement comes close to the option rights of the first mentioned category. If the naturalisation can still be refused for reasons of public policy or similar general reasons, the entitlement can be compared with the option rights of the second category.

When looking at provisions for acquisition of citizenship *iure soli* after birth (see right-hand side of Table 4), the French provision stands out. Children born in France to foreign parents born abroad acquire French citizenship *ex lege* when they reach the age of majority (FRA 21-7). They may lodge a declaration of option in order to acquire French citizenship earlier. From the age of 16 years they can make such a declaration themselves; their legal representative may lodge an application with the consent of the minor once the minor has reached the age of 13 years. The applicant has to fulfil the following conditions: he or she must reside in France and must have lived there for at least five years (see also FRA 21-11).

In Ireland there are no specific '*ius soli* after birth' provisions, but there is already a general entitlement to acquisition of Irish citizenship for persons born on the Island of Ireland (although conditional upon the residence status of the parents at the time of birth).

Variations of the French declaration procedure to acquire citizenship by virtue of birth and some period of residence exist in Belgium, Finland, Greece (since 2010), Italy, the Netherlands and the UK. In the United Kingdom, a person born in the United Kingdom has the right to register as a British citizen if, while he is a minor his father or mother becomes a British citizen or "settled" in the United Kingdom (UK 1(3)). A person born in the United Kingdom has the right to register as a British citizen after she or he has attained the age of ten years if, as regards each of the first ten years of that person's life, the number of days on which she or he was absent from the United Kingdom in that year does not exceed 90 (UK 1(4)).

In Italy (ITA 4(2)) and the Netherlands (NET 6(1)(a) the declaration can only be made at the age of majority and continuous residence since birth is required. In the Netherlands, persons who were born in the Netherlands and have their lawful, main habitual residence there may acquire Netherlands citizenship by making a declaration of option if they are over the age of majority and have lived in the Netherlands since birth (6 (1) (a) NET). A similar provision can be found in Italy (ITA 4(2)), but there a declaration of option has to be made within one year after having attained the age of majority.

A child born in Belgium can acquire Belgian citizenship by a declaration of option made by the parents before the child reaches 12 years. The parents must have had their main habitual residence in Belgium for ten years before making this declaration (BEL 11bis). A similar rule applies to adopted children born in Belgium. After having attained the age of 18, a person born in Belgium has another option right (BEL 12bis (1)(1); cf. BEL 13(1) juncto 14 and 15). In Finland, six years residence, of which the last two years uninterrupted, is sufficient for an adult, born in Finland, to opt for Finnish citizenship.

In Greece, as part of the comprehensive reform of the citizenship law in 2010, a new declaration procedure was introduced for persons born in Greece. This new provision is remarkable, and worth citing at length, because it combines both elements of typical '*ius soli* at birth' (A02) provisions, by including a residence requirement for the parent,[13] as well as '*ius soli* after birth'(A05) provisions, by requiring residence in Greece from the target person:

> Article 1A
> 1. A child of foreign nationals who was born and continues to live in Greece and whose both parents have permanently and lawfully resided in the Country for at least five continuous years, acquires Greek Citizenship upon his or her birth in the event that his or her parents submit a common relevant declaration and application for registration of the child at the City Registry of his or her city of permanent domicile within three years after his or her birth. In case of posterior submission of the declaration and application, citizenship is acquired upon submission. If the child was born before the completion of five years of lawful residence in the Country by both parents, the joint declaration and application for registration is submitted only after the completion of five years of continuous lawful residence by both parents, the child acquires Greek Citizenship upon submission.

Whereas in Greece this declaration procedure and the double *ius soli* provision were introduced simultaneously in 2010, in Luxembourg, a previously existing declaration procedure for people born in Luxembourg (see LUX 19(1) old) was abolished in 2009 with the introduction of the new double *ius soli* provision.

In Austria, Croatia, Czech Republic, Greece, Italy, Portugal, Romania, Slovakia, Slovenia and Spain, acquisition of citizenship via some form of facilitated naturalisation procedure is possible for persons born in those countries. The extent to which these provisions are facilitating varies greatly. In Greece, the already existing provision that persons born in Greece can acquire Greek citizenship if they have resided continuously in Greece since birth seems a very weak facilitation of the ordinary naturalisation procedure (GRE 5(1)(d); cf. ROM 8(a)). In Austria, however, the entitlement to naturalisation introduced in 1999 comes close to a declaration procedure and therefore significantly limits the discretionary competence for authorities to reject an application for the acquisition of citizenship (AUT

[13] Compare, for example, the Portuguese A02 provision mentioned above: Children born in Portugal to foreign parents, of whom one has been resident in Portugal for at least five years, acquire Portuguese citizenship by making an option declaration (POR 1(1)(e)).

11a(4)(3)). Portugal, in 2006, not only liberalised its existing *ius soli* provision and added *double ius soli,* but also added a facilitated naturalisation provision (POR 6(2)(a).

The Spanish entitlement to naturalisation for persons born in Spain, introduced in 1982, is particularly remarkable as it virtually implies *ius soli* at birth, after one year residence, and is a significant addition to the simultaneously introduced *double ius soli* provision (Rubio Marín 2006: 496).

7 Foundlings and children who would otherwise be stateless (A03a/A03b)

Double citizenship—which may lead to conflicting claims of sovereignty—and statelessness—no state has diplomatic responsibility—are clearly two sides of the same coin, both phenomena being traditionally viewed as undesirable within the international state system. This is why Article 15(1) of the Universal Declaration on Human Rights states that everyone has the right to at least one citizenship, and Article 6(2) ECN and Article 1 of the 1961 Convention on the Reduction of Statelessness contain rules to avoid statelessness.

As a consequence, many states have ´safety´ provisions in their citizenship laws to cover persons who would otherwise be stateless. These provisions allow the acquisition of citizenship *iure soli* in cases of potential statelessness or the right for stateless children to register in their country of birth (De Groot 2005: 201–2). For example, even though the Netherlands does not apply *ius soli* at birth to first- or second-generation immigrants, children born on Dutch territory can opt to become Dutch after the age of three if they would otherwise be stateless.

In this section we discuss both generic provisions on the citizenship acquisition by persons, born in a country, who would otherwise be stateless, and the more specific rules on foundlings, who can be seen as a sub-category of the first group.

7.1 Foundlings (A03a)

The European Convention prescribes that a foundling found in the territory of a state has to acquire the citizenship of that state if he would otherwise be stateless (ECN 6(1)(b)). The wording of this provision is drawn from the 1961 Convention on the Reduction of Statelessness (Article 1). If later, but during his minority, the child's parents are discovered, and the child derives a citizenship from (one of) these parents or acquired a citizenship because of his place of birth, the citizenship acquired because of the foundling provision may be lost (ECN 7(1)(f)).

The citizenship legislation of most countries, with regard to the acquisition of citizenship by foundlings, is in conformity with the European Convention (see Table 5). For example, in the Netherlands a child shall be deemed to be the child of a Dutch citizen if he was found on the territory of the Netherlands, the Netherlands Antilles or Aruba or on a ship or aircraft registered in one of these countries (NET 3(2)).

The acquisition of citizenship by a foundling through the presumed descent from a citizen (*praesumptio iuris sanguinis*), however, is often not absolute and that is where some national provisions are at odds with the Convention. In the Netherlands, for example, if it becomes apparent within five years from the day on which the child was found, that he or she does not possess Dutch citizenship, but exclusively a foreign citizenship by birth, the

citizenship of the Netherlands will be lost. But in the case of potential statelessness, he or she keeps this citizenship. Since 2003, Finland has a similar approach, although there the child retains Finnish citizenship after his or her fifth birthday (FIN 12(1)).

Belgium (BEL 10(2)), France (FRA 19), Germany (GER 4(2)), Moldova (MOL 11(2)), Portugal (POR 1(2) juncto 14), Slovenia (SLN 9); Spain (SPA 17(1)(d) juncto 17(2)) and Switzerland (SWI 6(3)) have similar regulations, but provide that the citizenship acquired by a foundling is lost if, during his minority, it is discovered that he is the child of foreign parents and would not become stateless. These provisions correspond precisely with the Convention.

In Austria (AUT 8(1)), Denmark (DEN 1(2)), Hungary (HUN 3(3)(b)); Iceland (ICE 1(3)), Ireland (IRE 10), Italy (ITA 1(2)); Luxembourg (LUX 1(2)), Malta (MAL 5(1), Norway (NOR 4(2)); Slovakia (SLK 5(2)(b); Sweden (SWE 2), Turkey (8(2)) and the United Kingdom (UK 1(2)) citizenship is also lost by a foundling if her or his descent is discovered after majority. That conflicts with the European Convention. Even though these provisions mainly concern the loss, rather than the acquisition of citizenship (see for a more extensive discussion and a comparative table De Groot and Vink 2010: 44-47), the fact that they condition the acquisition of citizenship for foundlings brings them within the scope of ECN 6(1)(b).

More explicitly problematic are the provisions in some countries that the acquisition of citizenship for foundlings only applies to new born infants. In view of the Recommendation 2009/13 the foundling provisions should apply – as far as possible – to all persons younger than 18 years. Austria, in particular, limits the foundling provision to infants under 6 months old (AUT 8(1).[14]

Finally, whereas in all countries the acquisition of citizenship by foundlings occurs *ex lege*, in Estonia a child of unknown parents found in Estonia is declared on application of his guardian or a guardianship authority by a court decision to have acquired Estonian citizenship by birth unless the child is proved to be a national of another state (EST 5(2)). Although the absence of an automatic acquisition provision as such is problematic in light of the European Convention, the obvious declaratory character of the court decision and the absence of any discretionary power of the court leads to the conclusion that this regulation is in conformity with the ECN.

7.2 Persons who would otherwise be stateless (A03b)

The European Convention prescribes that each State Party shall provide in its internal law for its citizenship to be acquired by persons born on its territory who would otherwise be stateless. A state which does not grant its citizenship to potential stateless persons born on its territory *ex lege* has to grant the citizenship subject to only one or both of the following conditions: a) lawful and habitual residence on the territory of the state involved for a period not exceeding five years immediately preceding the lodging of the application, and b) absence of a conviction for a serious offence (ECN 6(2)). The citizenship of the country of birth has to

[14] Austria made a declaration with respect to ECN 6(1)(b): 'Austria declares to retain the right that foundlings found in the territory of the Republic are regarded, until proven to the contrary, as nationals by descent only if they are found under the age of six months.'

be attributed either *ex lege* at birth or subsequently to children who remained stateless upon application.[15]

Table 5. Ius soli provisions in Europe for foundlings (A03a) and otherwise stateless persons (A03b)

	Foundlings (A03a)	Age limit (minors only)	Stateless persons (A03b)	Procedure	Special conditions
AUT	8(1)	6 months	8(2)	Automatic	Father or mother also born in C1 (if TP born out of wedlock, father and mother)
BEL	10(2)	–	10(1)	Automatic	TP is minor
BUL	11	–	10	Automatic	–
CRO	7	–	7	Automatic	–
CYP	–	–	–	–	–
CZE	5	–	5	Automatic	–
DEN	1(2)	–	6	Naturalisation	TP is minor and resides in C1
EST	5(2)	–	–	–	–
FIN	12(1)	–	9(1)(4), 12(2) 9(2)	Automatic	If TP born out of wedlock, only if mother is stateless; Parents have refugee status
FRA	19	–	19-1	Automatic	–
GER	4(2)	–	–	Automatic	–
GRE	1(2)	–	1(2)	Automatic	–
HUN	3(3)(b)	–	3(3)(a)	Automatic	Stateless parents reside in C1
ICE	1(3)	–	10	Declaration	TP is minor, resident in C1 for 3 years
IRE	10	–	6(3)	Automatic	–
ITA	1(2)	–	1(1)(b)	Automatic	–
LAT	2(3), 2(4)	–	3(1)	Declaration	TP is stateless or non-citizen and resident in C1
LIT	11	–	10	Automatic	Stateless parents reside in C1
LUX	1(2)	–	1(3)	Automatic	–
MAL	17(3)	–	–	–	–
MOL	11(2)	–	11(1)(b), (c)	Automatic	–
NET	3(2)	–	6(1)(b)	Declaration	TP is minor, resident in C1 for 3 years
NOR	4(2)	–	–	–	–
POL	5	–	5	Automatic	–
POR	1(2)	–	1(1)(f)	Automatic	–
ROM	5(3)	–	–	–	–
SLK	5(2)(b)	–	5(1)(b), (c)	Automatic	–
SLN	9	–	9	Automatic	–
SPA	17(1)(d)	–	SPA 17(1)(c)	Automatic	–
SWE	2	–	SWE 6	Declaration	TP is under 5 years of age and resident in C1
SWI	6	–	–	–	–
TUR	8(2)	–	TUR 8(1)	Automatic	–
UK	1(2)	–	Schedule 2(3)(1)	Registration	TP is under 22 years of age and resident in C1 for 5 years

[15] See also Recommendation R 99 (18). See also Principle 2 of Recommendation 2009/13.

In the Netherlands, stateless persons can opt for Dutch citizenship provided they are born on Netherlands territory and since birth have had main habitual residence in the Netherlands, the Netherlands Antilles or Aruba for at least three years and have been stateless since birth (NET 6(1)(b)).

In Sweden a stateless child born in Sweden who lives there in possession of a permanent residence permit can opt for Swedish citizenship. The declaration of option has to be lodged before the child reaches the age of five years (SWE 6). In Austria, stateless persons born in Austria and resident there for at least ten years (of which five years must be immediately preceding the naturalisation), have, if they fulfil certain legal requirements, an entitlement to naturalisation (AUT 14).

Of the countries included in this publication, most opted for the possibility first mentioned above: attributed of citizenship *ex lege* at birth (see Table 5). In most of these countries, a provision also can be found dealing with the loss of citizenship if it is later discovered that the person involved was not stateless (see De Groot and Vink 2010: 45). The Belgian provision also includes acquisition of citizenship by a person born on Belgian territory who becomes stateless during his minority. The Czech Republic provides that Czech citizenship is acquired by a potential stateless child born on the territory of the republic if at least one parent has his permanent residence there.

In respect of these rules for avoiding statelessness, a new development can be observed. In Finland, for example, a child acquires Finnish citizenship by birth if he or she is born in Finland and does not acquire the citizenship of any foreign state at birth, and does not even have a secondary right to acquire the citizenship of any other foreign state (FIN 9(4)). A similar step was taken by the French and Belgian legislators in 2003, respectively 2007 (FRA 19-1; BEL 10(1)). The reason for both modifications is obvious: sometimes a foreign parent does not make use of the possibility to register a child in the consulate of his state in order to avoid the acquisition of the foreign citizenship by the child involved, and does this to activate the rules avoiding statelessness of the country of birth of the child. Finland, France and Belgium refuse to accept this tactical behaviour on the part of parents of a child born on their territory. This attitude is understandable, but makes it – in view of Article 7(1) of the Convention on the Rights of the Child – even more important to stimulate the creation of international instruments which oblige states to confer the citizenship *ex lege* at birth to children of their citizens born abroad if these children would otherwise be stateless.

Since 2009 the Luxembourg provision is restricted to children born in Luxembourg without another citizenship because of the fact that their parent(s) are stateless (LUX 1(3)) or because the citizenship of the parent(s) can on no way be transmitted to them (*les los étrangères de nationalité ne permettent en aucune fa,con qu'il se voit transmettre la nationalité)* (LUX 3(4)).

An interesting extension of the facilitation of the acquisition of citizenship by children born on the territory who otherwise would be stateless can since 2003 be found in Finland: a child who was born in Finland to parents with unknown citizenship is considered to be a Finnish citizen as long as it has not been established that he or she possesses another citizenship before reaching the age of five (FIN 12(2)).

8 Concluding reflections

When looking at birthright citizenship policies in European countries from the early 1980s to today, it quickly becomes obvious that not only is there still a large degree of diversity between countries, but also that there is no point in speaking of an unspecified process of convergence. Even with regard to the long-established observation of convergence towards making citizenship accessible to second-generation immigrants, mainly observed in Western Europe (Hansen and Weil 2001: 10), there is no common model. Whereas Belgium and Germany have introduced *ius soli* provisions *at birth* for the second generation, others have only introduced provisions for the attribution of *iure soli* citizenship *after birth*, usually from the age of 18. Moreover, there are often striking differences in terms of the way in which citizenship is acquired: *ex lege* (as in the German case), by declaration (as in Belgium), or only as a form of facilitated naturalisation (as in Austria).

At the same time we note that, despite the sometimes seemingly 'bewildering complexity of rules and regulations' (Bauböck *et al*. 2006a: 20), a number of broad trends can be distinguished which, overall but certainly not always, tend to indicate a convergence of national policies rather than the opposite. With regard to birthright citizenship, the two main trends that we observed in this paper are the (near-)fulfilment of the equal treatment of men and women with regard to the descent-based transmission of citizenship, and the convergence between traditional *ius sanguinis* and *ius soli* systems.

On the acquisition by descent, there is a tendency to provide increasingly often for an acquisition of citizenship *iure sanguinis a patre* for children born out of wedlock if the paternity is established. Moreover, we can witness that several states are struggling with the citizenship consequences of medically assisted reproductive techniques.

On territorial elements, many countries have, *inter alia*, introduced or modified grounds for *ex lege* acquisition based on territorial elements (birth on the territory (*ius soli*/ double *ius soli*) or residence within the territory (*ius domicilii*: residence of a parent or residence of the person involved) or provide for option rights based on these elements. The details of these regulations vary considerably from country to country. However, their aim is always to promote the citizenship integration of persons permanently living on a state's territory.

A third trend, that we do not discuss here, as it is mainly related to ordinary naturalisation procedures, is the increasingly broad acceptance of multiple citizenship, certainly in Western Europe (cf. Vink and De Groot 2010: 722). European countries are increasingly less likely to require the renunciation of one's previous citizenship as a precondition for naturalisation. Another side of this coin is that fewer countries than before now have provisions on the automatic loss of citizenship due to the voluntary acquisition of another citizenship.

We raise this third trend here, however, as it is very clearly a result of the trends in birthright citizenship. In a globalised world where international migration and mixed marriages become increasingly more commonplace, increasingly equal access to the citizenship of both the father and the mother, as well as to the country of birth, are likely to have an exponential effect on the occurrence of multiple citizenship. Within this scenario, and notwithstanding dialectical processes in domestic politics where populist parties often try to capitalise on the sentiments of those who are excluded from these globalisation processes (Howard 2010), countering multiple citizenship in naturalisation procedures becomes an increasingly less viable political strategy. It is in this perspective remarkable that Germany,

uniquely, provides for an obligation to make a choice between a *iure soli* acquired German citizenship and another citizenship acquired *iure sanguinis.*

Many of the option rights granted to different categories of persons are limited in time: the option right has to be used within a certain period of time. This is completely understandable, for example, for the cases where children or young adults have an option right to acquire the citizenship of a parent or to reacquire a citizenship lost by them during their minority. Such a limitation is less understandable in cases where the option right is granted because the person has lived her or his whole life, or at least a considerable period thereof, in the country of residence and has therefore built up close ties with this country. These ties become closer and closer if somebody continues to live in the country involved. A limitation of this category of option rights is therefore, in principle, not justified.

An age limitation of these option rights can only be defended if it is likely that persons would wish to postpone the exercise of the option right until a moment, where one does not need to fulfil certain obligations. In the past, this could happen in almost all countries in respect of military service obligations.

Finally, with respect to *stateless* persons born on the territory of a state, we observed that while in many countries these persons acquire the citizenship of the country of birth *ex lege*, in several other countries they have option rights. The choice for an option right construction is as such in conformity with leading international instruments (1961 Convention and the ECN), but leaves the child for a considerable period without citizenship. This is problematic in view of Convention on the Rights of the Child (Art. 7) and of the Universal declaration of Human Rights (Art. 15). There are also a few countries, notably Malta, Norway, Romania and Switzerland, without explicit provisions on the acquisition of citizenship for persons (other than foundlings) born in a country who would otherwise be stateless. Whereas some critical review by states is justified, as to whether these persons really do not have access to another citizenship, the importance of birthright citizenship, as signalled at the outset of this paper, makes it difficult to justify the exclusion from citizenship of persons who fall through the mazes of the international system of citizenship laws.

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