



*Directorate for Research  
and Documentation*

## **RESEARCH NOTE**

**Conditions and procedures relating to involuntary loss of nationality**

[...]

**Subject:** Examination of the different laws of the Member States concerning the conditions and procedures relating to involuntary loss of nationality.

[...]

*April 2018*

[...]

## SUMMARY

### INTRODUCTION

1. The right to nationality mirrors the history of international relations and of the building of Europe – in particular in the light of the gradual emergence of European citizenship – as well as the history of international migratory movements. Those factors, which vary from place to place, require States to lay down rules in their domestic legal systems on the status of persons holding their nationality and in respect of those who have migrated to their territory. The laws of the Member States concerning nationality have consequently been adapted to that context: those factors are the basis for the more or less liberal content of the rules governing the acquisition or loss of nationality.
2. This note focuses on the conditions and procedures relating to involuntary loss of nationality, by both adults and minors, in **German, Austrian, Bulgarian, Cypriot, Danish, Finnish, French, Italian, Latvian, Luxembourg, Netherlands, Portuguese, Romanian, Slovak, Swedish and Czech** law. This analysis also concerns the detailed rules, where they exist, for the individual examination of the situation of the persons concerned, both by the administrative authorities and by the court at the appeal stage, where there are such grounds for involuntary loss of nationality.
3. In that context, it should be stated, first, that a comparative study of the grounds for loss of nationality<sup>1</sup> based on the range of national legal systems identified for the purposes of this study is, by its very nature, often closely linked to the rules governing the acquisition of nationality, which, however, are not the subject of this note.

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<sup>1</sup> It should be pointed out that the use of the same legal terms by certain provisions of national law does not necessarily mean that they cover the same legal reality in each legal system concerned, which means that a certain degree of caution is required when making comparisons.

**I. INTERNATIONAL ASPECTS AND RATIFICATION STATUS OF THE RELEVANT INTERNATIONAL CONVENTIONS ON NATIONALITY**

4. This study principally concerns the individual grounds for loss of nationality, which means that grounds for loss of nationality which are linked to the cession of part of the national territory, or which are the consequence of the historic decolonisation of certain territories,<sup>2</sup> are not the subject of this analysis, owing to their exceptional nature and their historical features which are specific to the Member States concerned.
5. Accordingly and for the same reasons, this study does not aim to present all of the grounds for loss of nationality stemming from the specific (particularly bilateral) convention commitments of each Member State involved in the study.
6. As regards the United Nations Convention on the Reduction of Statelessness of 1961, the Council of Europe Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality of 1963 and the European Convention on Nationality of 1997, the table below presents a summary of the ratification status of those international conventions by the Member States concerned<sup>3</sup> (S: Signature, R: Ratification, D: Denunciation, PD: Partial Denunciation).<sup>4</sup>

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<sup>2</sup> However, information relating to those specific regimes appear in the parts devoted to **Portugal**, the **Netherlands** and **France**.

<sup>3</sup> That information is available for consultation on the website of the depositories of those conventions.

<sup>4</sup> Reference only to the signature (S) means that the convention has not yet been ratified. The deposit of ratification instruments may also give a State that is a party the opportunity to file reservations or declarations. Moreover, some conventions have subsequently been the subject of a denunciation (D) or partial denunciation (PD).

DE	AT	BG	CY	DK	FI	FR	IT	LV	LU	NL	PT	RO	SK	SE	CZ
<b>United Nations Convention on the Reduction of Statelessness (1961)</b>															
R	R	R		R	R	R	R	R	R	R	R	R	R	R	R
<b>Council of Europe Convention on the Reduction of Cases of Multiple Nationality/Military Obligations (1963)</b>															
D	R			PD		PD	PD		PD	R	S			R	
<b>Second Protocol (1997) to the Council of Europe Convention on the Reduction of Cases of Multiple Nationality/Military Obligations of 1963</b>															
						D	R			R					
<b>Council of Europe Convention on Nationality (1997)</b>															
R	R	R		R	R	S	S	S	R	R	R	R	R	R	R

## II. GROUNDS FOR INVOLUNTARY LOSS OF NATIONALITY

7. In general, where the laws examined allow for the involuntary loss of nationality, they provide for this, insofar as the relevant State is a party to the United Nations Convention of 1961 on the Reduction of Statelessness, in compliance with the provisions of that convention and the exceptions that it lays down.
  
8. The 16 legal systems analysed recognise grounds which may lead to the involuntary loss of nationality.<sup>5</sup> Although, in five of the legal systems under consideration (**Germany, Portugal, the Czech Republic, Slovakia, Sweden**), there are provisions establishing the constitutional principle that it is impossible to deprive a national of his or her nationality against his or her will, involuntary loss of nationality is nevertheless provided for in certain cases, in those legal systems, by the ordinary law.<sup>6</sup>

<sup>5</sup> It should be understood that a broad view of the concept of involuntary ‘loss’ of nationality has been taken for the purposes of this research which includes, inter alia, cases of loss linked to fraudulent acquisition of nationality which, depending on the legal system concerned, may take the form either of the mere withdrawal of nationality or of the annulment of nationality with retroactive effect.

<sup>6</sup> In the **Czech Republic**, the ordinary law does not expressly provide for the possibility of loss of nationality on an involuntary basis; nevertheless, the implementation of certain mechanisms may, to a certain extent, result in such loss.

A. GROUNDS FOR LOSS OF NATIONALITY DUE TO NON-USE OR A PROHIBITION ON DUAL NATIONALITY

9. It is necessary, first of all, to distinguish between two basic types of ground for involuntary loss of nationality of the State concerned by operation of law: loss resulting from ‘non-use’, or lapse, of nationality in the absence of a sufficiently genuine link (Section 1.; see **Denmark, the Netherlands, Sweden, Finland**) and loss resulting strictly from a prohibition, in some legal systems, on holding two nationalities at the same time (Section 2.;<sup>7</sup> see **Germany, Austria, the Netherlands, Slovakia**). For the purposes of this research, it should be stated that a ground for loss of nationality is regarded as working ‘by operation of law’ when nationality is lost automatically when one of the conditions for loss of nationality provided for by the law is fulfilled, without an individual examination of the situation of the person concerned. Some legal systems, despite using the same criteria governing genuineness or the prohibition on dual nationality as those referred to above in cases of loss of nationality by operation of law, do not, however, provide for the automatic loss of nationality in cases of non-use or a prohibition on dual nationality (Section 3.; see **Cyprus, France, Latvia**).

1. LOSS OF NATIONALITY BY OPERATION OF LAW DUE TO ‘NON-USE’ OR OTHER FORM OF LACK OF GENUINE CONNECTING LINK WITH THE STATE CONCERNED

10. Most of the legal systems examined which recognise grounds for loss of nationality by operation of law due to ‘non-use’ use criteria which may be described as ‘spatial’, or geographical, to establish the existence of a genuine link with the State concerned. They rely on criteria of residence, birth or stay, combined with ‘temporal’ criteria, establishing minimum or maximum durations of presence, abroad or in the national territory (**Denmark, Finland, the Netherlands, Sweden**).<sup>8</sup> Stays from time to time in the national territory for limited periods are

<sup>7</sup> Certain particularly rigorous legal systems have, moreover, been able to enshrine both grounds in their positive law; see, for example, the **Netherlands**.

<sup>8</sup> It should also be noted that **Romania**, under the Law on Nationality of 1939, had a similar scheme entailing a loss of nationality where Romanian nationals resided abroad continuously for more than 10 years. That law has been repealed and that ground for loss of nationality by operation of law is therefore no longer in force.

generally not enough to constitute a genuine link with the country (see, inter alia, **Denmark, the Netherlands, Sweden**).<sup>9</sup>

11. **Netherlands** law provides for automatic loss of Netherlands nationality in cases of non-use if an adult national, who also holds a foreign nationality, has had his or her main residence outside the Kingdom of the Netherlands and the territories to which the Treaty on the Functioning of the European Union applies for an uninterrupted period of 10 years since becoming an adult.<sup>10</sup>
12. Nordic legal systems also have mechanisms providing for loss of nationality in accordance with criteria relating to genuineness, while allowing account to be taken of the wish of the person concerned to retain that nationality. Sweden has a ground for loss of nationality based, for Swedish nationals born abroad, on a lack of domicile or stay in Sweden in accordance with temporal criteria.<sup>11</sup> That provision can be explained in particular by the legislature's desire to prevent the descendants of Swedes living abroad from keeping Swedish nationality for generations without the slightest contact with Sweden. However, in order for it to apply, the Swedish system of loss of nationality establishes another temporal condition relating to the age of the person concerned (22 years). A person who does not satisfy the conditions for retaining nationality loses it automatically (except where an exception applies or where an application for authorisation to retain nationality has been granted).
13. That additional age condition is shared with **Denmark**<sup>12</sup> and **Finland**. In **Finland**, the Law on Nationality<sup>13</sup> provides that a person holding Finnish nationality (as well as another nationality) is to retain his or her Finnish nationality only if, at the age of 22, he or she has sufficient links with Finland, such link being established, inter alia, if the person was born in Finland and, at the age of 22, is domiciled there or

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<sup>9</sup> In the **Netherlands**, the administrative authorities conclude that there is a genuine link by reference to official residence (which must be uninterrupted for 12 months). The condition that there be a genuine link is established in **Denmark** by verifying that the person concerned is either resident or that he or she is present in that country in the context of a broader concept of 'stays in circumstances attesting to an attachment to Denmark' (military service, holidays, training periods, the total length of which must also be approximately 12 months).

<sup>10</sup> RWN, Article 15, §1, c) (**Netherlands**).

<sup>11</sup> Law (2001:87), Section 14: 'A Swedish national shall lose his or her Swedish nationality on reaching the age of 22 if he or she: 1. was born abroad, 2. has never been domiciled in Sweden, and 3. has never been there in circumstances that indicate a link with the country' (**Sweden**).

<sup>12</sup> Due to their participation in the regime established by the Nordic Convention on Nationality of 13 September 2010, **Denmark, Finland** and **Sweden** have numerous common mechanisms in respect of nationality.

<sup>13</sup> Law on Nationality, Article 34(1) and (2) (**Finland**).

has been domiciled in Finland or has had his or her habitual residence in another Nordic country for at least seven years in total before reaching the age of 22. In **Denmark**, a similar system of loss of nationality at the age of 22 is also in force. Any person holding Danish nationality at that age, who was not born in Denmark, has never resided there and has not stayed there in circumstances attesting to his or her attachment to that country automatically loses his or her nationality when he or she reaches the age of 22.<sup>14</sup> Those provisions also have the purpose of breaking the bond of nationality between the individual and the State in cases in which the individual has no link, or only a very tenuous links, with the State concerned.

14. However, it should be noted that the fact that, in the legal systems referred to above, the conditions for loss of nationality by operation of law are satisfied in the abstract does not necessarily mean that nationality will be lost by everyone and in every case. Whether it is a matter of preventing situations of statelessness (**Denmark, Finland, the Netherlands, Sweden**) or of covering certain specific situations, those mechanisms have exceptions, or safeguarding clauses, which significantly moderate their impact or systematic nature.
15. **Netherlands** law, for example, expressly provides for exceptions to the rule establishing loss of nationality by operation of law for the benefit of persons, and their family members, who have moved abroad for professional reasons, in the service of the State of which they are nationals or of an international organisation of which the State in question is a member.<sup>15</sup>
16. Moreover, those four legal systems provide safeguarding mechanisms, or tempering mechanisms, enabling persons potentially affected by a loss of nationality due to ‘non-use’ to state their intention, within certain time limits and under certain conditions, to retain the nationality in question (**Denmark, Finland, Sweden**) or, for example, to defer, every 10 years,<sup>16</sup> the time limit for authorised residence abroad in order not to lose that nationality (the **Netherlands**).<sup>17</sup> In the **Netherlands**, that mechanism may also be regarded as a mechanism for retaining nationality (provided that nationality has previously been established), since it

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<sup>14</sup> Lov om dansk indfødsret, jfr. lovbekendtgørelse nr. 422 af 7.6.2004 med senere ændringer, Article 8 (**Denmark**).

<sup>15</sup> See also **Cyprus**, subject to the reservations expressed under Section II.A.3.

<sup>16</sup> See also **Cyprus**, which has an annual mechanism, subject to the reservations expressed under Section II.A.3.

<sup>17</sup> The 10-year period is thus interrupted by issuing a statement relating to the holding of Netherlands nationality, a travel document or a Netherlands identity card, as defined by the Law on Passports. A new 10-year period therefore begins to run on the day that document is delivered. (the **Netherlands**).

offers any person who has acquired Netherlands nationality in one way or another, either through his or her parents or by other means, the chance to defer that time limit every 10 years, despite perhaps never having resided (or, in any event, having resided for less than 1 year) in the Netherlands or in the European Union, while he or she was a minor or over the following 10 years.

17. In **Finland**, under specific procedural rules, young Finnish nationals who were not born in the country and who are not domiciled there at the age of 22, or who have not been domiciled there for at least 7 years, need only declare, once they have turned 18 but before they turn 22, that they wish to keep their Finnish nationality.<sup>18</sup> In **Denmark**, a person who, at the age of 22, does not satisfy the genuine connecting link requirements laid down by law may retain Danish nationality by applying to retain nationality before he or she reaches the age of 22. Retention of nationality is then granted by the administrative authorities where it has been established that he or she has a sufficient connecting link to Denmark due, for example, to the completion of national military service, training periods, holidays or contact with relatives in Denmark. In practice, the applicant is required to have a good knowledge of Danish. In **Sweden**, finally, the national may be authorised to retain his or her Swedish nationality if he or she applies before his or her 22nd birthday. In that case, the competent authority is to examine whether the criteria for allowing the person concerned to retain Swedish nationality are satisfied, by assessing, inter alia, his or her links with Sweden, and by taking into account additional factors such as whether the person in question has a good command of the Swedish language or maintains relationships with family members in Sweden or other acquaintances.<sup>19</sup>

## 2. LOSS OF NATIONALITY BY OPERATION OF LAW DUE TO HOLDING ANOTHER NATIONALITY (PROHIBITION ON DUAL NATIONALITY)

18. Of the legal systems examined, a number of them (**Germany, Austria, the Netherlands, Slovakia**)<sup>20</sup> also enshrine – for reasons which sometimes reflect the same concerns as those provoking the introduction of grounds for loss of nationality due to 'non-use' – grounds for loss of nationality based on the acquisition of another

<sup>18</sup> Law on Nationality, Section 34 (3): '... if the person, after reaching the age of 18 but before reaching the age of 22: a) has given notice in writing to the Local Registry or to a Finnish diplomatic mission of his or her wish to retain Finnish nationality; b) has applied for or obtained a Finnish passport or identity card; c) has performed or is performing military service, civil service or voluntary military service for women, or d) has acquired Finnish nationality on application or by declaration' (**Finland**).

<sup>19</sup> It should be mentioned that a group of experts, meeting in 2013, in connection with preparatory work relating to a draft amendment to the Swedish law, concluded that that legislation should not be considered to be incompatible with EU law in the light, inter alia, of the principle of proportionality (**Sweden**).

<sup>20</sup> See also **Latvia**, subject to the reservations expressed under Section II.A.3.

nationality, which may be regarded as corresponding, in general, to a wish to prevent, or prohibit, situations of dual nationality.<sup>21</sup> That prohibition varies according to the legal systems concerned in the light of the exceptions they allow or to the option mechanisms which some of those systems put in place, generally a few years after the age of majority of the persons concerned.

19. The legal systems which prohibit dual nationality seldom omit to establish rules inviting the persons concerned to make themselves known (**Germany, Austria, the Netherlands**) or requiring them to declare that they have acquired another nationality (**Slovakia**).<sup>22</sup> In practice, those mechanisms are therefore generally implemented by means of a voluntary action (declaration, claim, etc.) by the persons concerned and are not usually the consequence of an active step taken by the State, unless the authorities notify the persons concerned in advance.
20. In those cases, nationality is generally lost by law when the other nationality is acquired. For the States which have adopted that approach (**Germany, Austria, the Netherlands, Slovakia**),<sup>23</sup> loss of nationality on that ground stems from the voluntary acquisition of foreign nationality. However, loss of nationality on that ground has numerous exceptions, which, in particular, temper the systematic nature of the measure.
21. Consequently, while prohibiting dual nationality, certain States nevertheless accept it<sup>24</sup> in the case of dual nationality with the Member States of the European Union (see **Germany**<sup>25</sup>). Although, in **Germany** and **Austria**, the voluntary acquisition of a foreign nationality leads, in principle, to a loss of nationality, that rule does not apply where, at his or her request, the person has previously been authorised to retain the other nationality, particularly where it is in the public interest.<sup>26</sup>

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<sup>21</sup> Some of the States' legal systems which prohibit dual nationality also lay down conditions for the loss of nationality of persons who have become naturalised in those States when those persons have not taken the steps necessary to lose their nationality of origin following naturalisation (**Germany, Austria, the Netherlands**).

<sup>22</sup> See also **Latvia**, subject to the reservations expressed in Section II.A.3.

<sup>23</sup> **Latvia** also prohibits dual nationality, but loss of nationality occurs only as a result of a procedure resulting in the adoption of a decision in that regard; the loss is therefore not automatic and consequently that ground is not regarded as a case of loss by law (see Section II.A.3.). It should also be pointed out that, by the Law of 29 December 1992, the **Czech Republic** prohibited its nationals from holding another nationality on a voluntary basis except in cases in which the foreign nationality was acquired through marriage or birth. That law was repealed in 2014. Similarly, **Danish** legislation provided for loss of Danish nationality following the voluntary acquisition of another nationality before that provision was repealed on 1 September 2015. See also **Bulgaria**.

<sup>24</sup> See also **Latvia**, subject to the reservations expressed under Section II.A.3.

<sup>25</sup> Staatsangehörigkeitsgesetz, Paragraph 25 (**Germany**).

<sup>26</sup> In **Austria**, StbG, Paragraph 27(1) and Paragraph 28(1). With regard to the taking into account of the interests of the individual, see Section III.A.1 below.

22. Since 2010, **Slovakia** has also had a ground for loss of nationality by operation of law as a result of the voluntary acquisition of a foreign nationality.<sup>27</sup> Exceptions are allowed based on specific rules for acquiring the second nationality (by acquisition through birth or through marriage) or on the date of acquisition of the second nationality, if it is prior to 2010.
23. In the **Netherlands**, that ground for loss of nationality is also subject to exceptions which take account of criteria concerning the genuineness of the second nationality, such as birth and principal residence in the other country, principal residence for a set uninterrupted period (5 years) in that country at the age of majority and marriage to a national of that country.<sup>28</sup>
24. In order to prevent situations of dual nationality, **Germany** has also introduced a compulsory option procedure at the age of 21 years for the persons concerned, depending on whether he or she is a child born to foreign parents or a person who also holds another nationality, based on conditions requiring there to be a genuine geographical connection, which takes into account place of birth, residence, habitual stay or schooling, and certain duration criteria, on German territory.<sup>29</sup>
25. Finally, it should be stated, in the alternative, that, in the context of decolonisation, certain legal systems lay down, or have laid down, where these have not since been repealed, specific rules concerning the loss of their nationality owing to the independence of certain territories (**France**,<sup>30</sup> the **Netherlands**,<sup>31</sup> **Portugal**<sup>32</sup>). That ‘special’ law of nationality seeks to set the conditions in which the nationals concerned will retain or lose the metropolitan nationality by, for example, exercising a choice or satisfying various genuine connection criteria.<sup>33</sup> The date of independence is generally the critical date of reference for the purpose of assessing those conditions.

### 3. NON-AUTOMATIC LOSS OF NATIONALITY DUE TO ‘NON-USE’ OR DUAL NATIONALITY

26. Although they provide for loss of nationality due to ‘non-use’ or the acquisition of

<sup>27</sup> ZŠO, Article 9(16) (**Slovakia**).

<sup>28</sup> RWN, Article 15(1) and (2) (the **Netherlands**).

<sup>29</sup> Staatsangehörigkeitsgesetz, Paragraph 29(1) (**Germany**).

<sup>30</sup> Civil Code, Articles 17-7 to 17-10, 32 et seq. (**France**).

<sup>31</sup> RWN, Article 15A, b) (the **Netherlands**).

<sup>32</sup> Decree-law No 308-A/75 of 24 June 1975 (**Portugal**).

<sup>33</sup> Such as, for example, the nationality of relatives in the ascending line of the persons concerned, residence, stay on the independent territory or that of the metropolitan area, whether or not the new nationality was created as a result of the independence of the territory in question, etc.

another nationality (where there is a prohibition on dual nationality), the loss of nationality on those grounds is not automatic in the **Cypriot, French and Latvian** systems.

27. **Cypriot** legislation does include grounds for loss of nationality due to 'non-use' based on geographical and temporal criteria. However, the Cypriot legislature limited the scope of those mechanisms *ratione personae* to nationals who have acquired Cypriot nationality through naturalisation. A naturalised individual may first of all be deprived of Cypriot nationality if he or she resides abroad for an uninterrupted period of 7 years.<sup>34</sup> The persons concerned are required to make an annual declaration to the authorities of their intention to retain Cypriot nationality.<sup>35</sup> In the specific case of individuals who have acquired Cypriot nationality owing to their status as investors in Cyprus (naturalisation by exception), they must provide, inter alia, proof that they have no criminal convictions, a title deed establishing permanent ownership of property in Cyprus, and a residence permit, and are required to visit Cyprus at least once every 2 years.<sup>36</sup> If these conditions are not satisfied, at the end of *inter partes* proceedings (see Section III. A. below), the authorities may declare nationality to have been lost, which does not mean that that ground for loss of nationality is an automatic one.
28. Similarly, the **French** legal system contains an example of a mechanism for possible loss of nationality due to 'non-use' or 'lapse' in such circumstances which is similar to the situations referred to above (Section II. A.). The French Civil Code contains a ground for loss of French nationality for persons of French origin who have been established for a long period abroad where they have not had *de facto* French citizenship and have never had their habitual residence in France and where their relatives in the ascending line, from whom they acquired French nationality, have not themselves had *de facto* French citizenship or resided in France for half a century.<sup>37</sup> For the purposes of establishing genuine French nationality, in order to substantiate the traditional criteria of a geographical and temporal connection referred to in French law, that legal system uses the notion of 'de facto citizenship', a mechanism of legal inference taken from civil law which is applicable to evidence and which, when applied to questions of nationality, may be defined, inter alia, as

<sup>34</sup> Law 141(I)/2002, Article 113(4) (**Cyprus**).

<sup>35</sup> It is not apparent, however, from the case-law and from administrative practice whether a naturalised Cypriot national who has resided abroad for more than 7 years and who has made the annual declaration of intention to retain Cypriot nationality for 7 years would necessarily lose that nationality from the 8th year if he or she continued to make the annual declaration of intention (**Cyprus**).

<sup>36</sup> Decision of the Council of Ministers of 16 September 2016 (**Cyprus**).

<sup>37</sup> Civil Code, Articles 23-6 and 30-3 (**France**).

a situation in which the person concerned considers him- or herself to be a French citizen and has been treated and regarded as such by the public authorities.

29. This situation of loss of French nationality due to ‘non-use’ differs from the **Danish, Netherlands** or **Swedish** legal systems, since that loss of nationality can be effected only by a judgment delivered by a court, which means that although that ground for loss of nationality is indeed characterised by a confirmation that there is no connection considered to be sufficiently genuine between the nationality held and the State concerned, it cannot be regarded as grounds for automatic loss of nationality.
30. Similarly, in **Latvia**,<sup>38</sup> loss of nationality due to acquisition of another nationality arises only as a result of a procedure the outcome of which is that, due to the obligation imposed on the persons concerned to renounce Latvian nationality (subject to exceptions), the decision-making authority must exercise its discretionary power and adopt a decision in that regard (see Section III. A.); loss is therefore not automatic and that ground cannot be regarded as a case of loss by operation of law.

#### B. OTHER GROUNDS FOR INVOLUNTARY LOSS OF NATIONALITY

31. Some grounds for loss may be equated to cases of loss as a penalty whereas others may instead be regarded as consequences of the acquisition of nationality wrongfully obtained or merely claimed.
1. LOSS OF NATIONALITY AS A PENALTY FOR CONDUCT CONTRARY TO THE INTERESTS OF THE STATE OF NATIONALITY (INCLUDING WHERE CRIMINAL OFFENCES HAVE BEEN COMMITTED FOR THAT PURPOSE)
32. Of the 16 Member States chosen for the purposes of this study, 10 Member States (**Germany, Austria, Bulgaria, Cyprus, Denmark, France, Italy, Latvia, the Netherlands, Romania**) recognise grounds for involuntary loss of nationality as a penalty for conduct which is contrary, in one way or another, to the interests of the State of nationality or due to the fact that the national concerned has committed criminal offences.
33. Those reasons for the loss of nationality differ depending on the varying types of ground. Grounds for loss of nationality include an act detrimental to the

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<sup>38</sup> Law on Nationality (1993), Articles 9(1), 23(2) and 24(1). It should be pointed out, however, that **Latvia** accepts cases of dual nationality with the Member States of the European Union.

fundamental or essential interests, taken in the broad sense, of the State of nationality (**Austria, Bulgaria, France, Latvia, the Netherlands, Romania**), or to, inter alia, its ‘prestige’ (**Austria, Romania**) or offences committed against its institutions or administrative authorities (**Denmark, France**). Other grounds relate more particularly to conduct showing a lack of allegiance, in peacetime or wartime, on the part of the national towards the State of nationality (**Denmark, Cyprus, France, Italy, Romania**): situations where the national has, inter alia, provided services to another State (**Austria, France, Italy**), its armed forces in particular (**Germany, Austria, France, Latvia, the Netherlands, Romania**), or to an international organisation to which the State of nationality is not a member and the national failed to comply with an order requiring him or her to leave its service (**France, Italy**). Nationality may also be withdrawn for reasons of national security (**Romania**), in particular where the national is involved in an organisation participating in armed conflict (**Austria, the Netherlands**) or has committed acts of terrorism (**Denmark, France, Romania**).

34. In certain cases, the States make certain of those grounds subject to exceptions or additional conditions, such as the requirement that the acts in question constitute an offence which has previously been the subject of a criminal conviction (**Cyprus, France, Latvia**),<sup>39</sup> that they have been committed abroad (**Bulgaria, Romania**), or that only certain categories of national (nationals by naturalisation) are covered by those grounds for loss of nationality (**Bulgaria, France, Romania**), or, on the contrary, that those nationals are subject to conditions which prohibit dual nationality (**Germany, France**).
35. Some of those grounds for loss of nationality for naturalised persons are, however, subject to limitation periods which prevent, when those periods end, the adoption of the measures referred to above even if the conditions for them have otherwise been satisfied (**Bulgaria, Cyprus, France**).
36. In some of those States, certain grounds for loss of nationality as a penalty or due to criminal offences are not applicable where such loss would leave the individual stateless (**Germany, Austria, Bulgaria, Denmark, France, Italy, Latvia, the Netherlands**).

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<sup>39</sup> In that regard, in **Denmark**, withdrawal of nationality on that ground will be ordered not by the administrative authorities but by judgment after criminal proceedings.

2. LOSS OF NATIONALITY WHERE IT HAS BEEN ACQUIRED BY FRAUD (OR SIMILAR SITUATIONS)

37. Most of the legal systems examined contain grounds for loss of nationality where that nationality has been acquired through fraud or through the submission of forged documents or where information or criminal convictions that must be disclosed prior to the granting of nationality have been concealed, or any other similar situation (see, *inter alia*, **Germany, Austria, Bulgaria, Cyprus, Denmark, Finland, France, Latvia, Luxembourg, the Netherlands, Portugal, the Czech Republic, Romania, Slovakia**). On those grounds, the procedure for acquiring nationality may be reopened or nationality may simply be withdrawn or annulled with retroactive effect.
38. Those legal systems sometimes provide exceptions to those grounds reflecting an intention to prevent situations of statelessness (**Austria, Bulgaria, Finland, Luxembourg**) or make those grounds subject to additional conditions requiring a court previously to have established that the fraud in question has been committed (**Bulgaria, Luxembourg**), or requiring the withdrawal of nationality on that ground itself to be carried out by means of judgment (**Denmark**).
39. Depending on the specific conditions of the situation covered, some of those grounds are also subject to limitation periods (**Germany, Bulgaria, Finland, France, Latvia**).

### III. PROCEDURAL ASPECTS RELATING TO GROUNDS FOR INVOLUNTARY LOSS OF NATIONALITY AND DETAILED RULES FOR THE INDIVIDUAL EXAMINATION OF THE SITUATIONS CONCERNED

#### A. IN CASES OF LOSS OF NATIONALITY DUE TO NON-USE OR A PROHIBITION ON DUAL NATIONALITY

##### 1. 'NON-USE' OF NATIONALITY OR OTHER LACK OF A GENUINE CONNECTION WITH THE STATE CONCERNED

40. As far as concerns loss of nationality due to 'non-use', it is necessary to distinguish between cases in which the procedure for loss of nationality is set in motion at the *initiative* of the State and those in which steps are taken by the national concerned.
41. Accordingly, in the situations covered by **Cypriot, French and Netherlands** law, the procedure in question is initiated as a result of a step taken by the national

generally seeking to obtain a document certifying his or her nationality in one form or another (identity card, travel document, certificate of nationality). The same applies in **Denmark** and in **Sweden** where, unlike in **Finland** – where the competent administrative authority takes the initiative of contacting young Fins who do not fulfil the specific conditions for residence in Finland when they reach the age of majority and asking them to take the steps necessary for retaining Finnish nationality before they reach 22 years of age – it is for the persons concerned to come forward before they reach the age of 22 in order to keep their nationality by making an application to retain it. If they do not take any steps, the legal systems of **Denmark**, the **Netherlands**<sup>40</sup> and **Sweden** therefore make no provision for informing *a priori* the persons concerned of the loss of their nationality by operation of law in the event of ‘non-use’,<sup>41</sup> a loss which will therefore not be the subject of a positive legal act which may subsequently be open to substantive appeal.

42. An application to retain nationality and submission to the administrative authorities of requests for documents certifying nationality offer administrative authorities the opportunity to check whether the conditions for holding nationality, in the light of the grounds for losing nationality identified above, are satisfied and initiate the corresponding administrative procedure. The administrative procedure in question may be described as *inter partes* (**Denmark, France, the Netherlands, Sweden**), since, inter alia, the person concerned is informed of the factors that will affect the decision concerning him or her and is afforded the opportunity to present his or her observations.<sup>42</sup> In **France**, that initial *inter partes* procedure is not conducted by the administrative authorities but by the registrar of the tribunal d’instance (District Court, Civil Division) who, if there is any doubt as to whether the applicant’s nationality is genuine, is to ask the public prosecutor to apply to the tribunal de grande instance (Regional Court) for a judgment declaring that French nationality has been lost as it has lapsed.
43. In cases of loss of nationality due to ‘non-use’, the detailed rules for individual examination, by the competent authority, of the situation of the persons concerned

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<sup>40</sup> A situation which is criticised in the **Netherlands** by the Ombudsman and which led the Netherlands government to adopt an online information leaflet particularly for Netherlands nationals residing abroad.

<sup>41</sup> A slightly different situation in the case of **Cyprus** owing to the requirement for the persons concerned to declare annually their intention to retain Cypriot nationality.

<sup>42</sup> In that regard, it may also be concluded that the *inter partes* nature of the procedures in **Denmark, Finland** and **Sweden** authorising the submission of applications to retain nationality at the age of 22 stems from their voluntary or consensual nature.

vary depending on the legal systems and mechanisms concerned. Only **Danish, Finnish, Netherlands** and **Swedish** law include grounds for loss of nationality due to ‘non-use’ which lead to the persons concerned automatically losing their nationality.

44. In the **Netherlands**, the administrative authorities carry out only an assessment of whether the conditions for application of the legal grounds are satisfied and have no further discretion regarding the individual situation of the persons concerned. In **Finland**, since the conditions for deciding situations in which there is a sufficient link between Finland and the person concerned are also strictly determined by the Law on Nationality, the administrative authorities are not entitled to use other parameters which are not contained in that law. Similarly, provided that a young Finn expresses the wish, before he or she is 22 years old, to retain Finnish nationality, the administrative authorities have no special discretion and are required to grant his or her request.
45. In **Denmark**, the administrative authorities are to check whether the stays of the person concerned in Denmark are evidence of a sufficient connecting link with Denmark.<sup>43</sup> Moreover, it is for the administrative authorities to examine the situation of the person concerned individually when considering a voluntary application to retain the nationality concerned (**Denmark, Sweden**). In **Cyprus**, even when all conditions are satisfied, the Council of Ministers is to carry out an individual evaluation of the file of the person concerned having regard to the public interest. The Council of Ministers is to examine, in that case, the degree to which the person concerned has cooperated with the Cypriot authorities in order to determine whether the deprivation of nationality envisaged is disproportionate having regard to the public interest referred to above. In **France**, finally, the assessment of the connecting links of the person concerned or of his or her relatives in the ascending line with France is also to be subject to an individual examination where that nationality has ‘lapsed’. However, this is due, essentially, to the judicial nature of the decision adopted, at the end of civil proceedings, in the context of which the relevant circumstances are examined by the court in the exercise of its discretion.
46. Decisions refusing to grant an authorisation to retain nationality (**Cyprus, Denmark, Finland, Sweden**) or refusing to issue the requested documents certifying nationality (the **Netherlands**) are the subject of ordinary law appeals. In

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<sup>43</sup> See footnote 9.

**France**, the decision refusing to issue the document requested is subject to the right to bring an informal appeal before the Minister of Justice, but any legal appeal against that decision is of a judicial nature and is to be brought before the competent civil court. The same is true of the final judgment declaring loss of French nationality due to lapse.

47. Where nationality is lost for reasons of ‘non-use’, the legal systems in question lay down detailed rules for *reinstatement or recovery* of nationality, in accordance with specific conditions requiring there to be a connection (**France, the Netherlands**) or by means of acquiring nationality under ordinary law (**Cyprus, Denmark, Finland, Sweden**).

2. HOLDING ANOTHER NATIONALITY (PROHIBITION ON DUAL NATIONALITY)

48. The legal systems concerned (**Germany, Austria, Latvia, the Netherlands, Slovakia**) can organise procedures for loss of nationality only if the administrative authorities are informed of the acquisition by the person concerned of another nationality, either on the initiative of the person concerned, or as a consequence of the requirement that he or she declare it, or, as in cases of ‘non-use’, in the context of a request for a document certifying nationality, which, in this instance, will initiate the procedure for loss or withdrawal. Logically, remedies are limited to cases in which a positive judicial act which is open to substantive appeal has been issued, as is the case where nationality is lost due to ‘non-use’.
49. In **Slovakia**, the acquisition of another nationality requires the person to declare it to the Slovak authorities who will then register that nationality has been lost, after carrying out a verification on the basis of the documentation provided. Infringement of the obligation to declare is penalised by an administrative fine and the loss of nationality is entered in the central register. In **Latvia**, the administrative authority must ascertain, *inter alia*, which other nationality has been acquired and for what reason it has been acquired, whether the person concerned has requested voluntary withdrawal of Latvian nationality and whether the Cabinet of Ministers has authorised that person to retain the nationality of that other State. That procedure is *inter partes* and respects the rights of the defence. A decision to withdraw nationality is adopted and is open to administrative and judicial appeal. In **Austria**, an individual will be declared to have lost his or her nationality on grounds of dual

nationality, in practice, only where information relating to the acquisition of the new nationality is provided by the national him- or herself or by the competent foreign authorities. Where the national requests to retain Austrian nationality (see above Section II.A.2.), such retention of nationality may be granted by administrative decision provided that the foreign nationality is acquired within two years. If retention of nationality is refused, the competent authority must then confirm to the applicant the effective loss of Austrian nationality. Those administrative decisions are open to appeal before the administrative courts.

50. In **Germany**, the administrative authority is to examine instances of dual nationality at the request of the person concerned or of its own motion where it is in the public interest. In the case of the exercise of the option right at 21 years of age (see above Section II.A.2.), if the person has not previously obtained recognition of nationality by the administrative authority, that authority must provide the person concerned with information in writing concerning the obligation to choose between German nationality and foreign nationality, and that person must, in a written reply, inform the administrative authority of his or her choice. Retention of German nationality is validated within two years following that exchange only on presentation of evidence of loss of the foreign nationality.
51. Where foreign nationality is held, authorisation to retain German nationality may be granted by the administrative authorities. It must be granted when loss of the foreign nationality is impossible, unacceptable or would be excessive. The procedure followed therefore necessitates respect for the rights of the defence and for the principle that both parties must be heard. Those administrative decisions are open to appeal before the administrative courts.
52. In the **Netherlands**, the administrative procedure and the legal remedies applicable in cases of dual nationality are the same as those applicable to cases of loss due to 'non-use' (see above Section III.A.1.).
53. Where nationality is lost on that ground, the legal systems at issue lay down rules for the reinstatement or recovery of that nationality subject to specific connection conditions or through the acquisition of nationality under ordinary law (**Germany, Austria, Latvia, the Netherlands, Slovakia**).
54. In **Germany, Austria, the Netherlands and Slovakia**, the administrative

authorities have no discretion as regards the individual situation of persons who have voluntarily acquired another nationality. The administrative authorities therefore merely verify whether the conditions laid down by law apply, and judicial review is limited to verifying that they have been properly applied.<sup>44</sup>

55. It is where nationals apply for authorisation to retain nationality that the administrative authorities may be afforded a certain margin of discretion in the interests of the State itself or in view of the situation of the person concerned given the impact on his or her situation of a refusal to grant authorisation (**Germany, Austria**). In **Latvia**, an examination of recent case-law reveals that the court now requires the administrative authorities, prior to withdrawing Latvian nationality due to dual nationality, to take into account, in the light of the principle of proportionality, the individual situation of the persons concerned in atypical and exceptional cases.

B. PROCEDURAL ASPECTS RELATING TO THE OTHER GROUNDS FOR INVOLUNTARY LOSS OF NATIONALITY AND PROCEDURES FOR INDIVIDUAL EXAMINATION OF THE SITUATIONS CONCERNED

56. The procedural characteristics particular to the situations in the 16 States which are the subject of this study are indicated briefly in order to explain the context in which certain characteristics linked to the individual situation of the persons concerned will be taken into account in the light, *inter alia*, of the principle of proportionality in the legal systems concerned.
57. The procedure in other cases of loss, or deprivation, of nationality (harm to State interests, fraudulent acquisition of nationality, criminal offences, etc.), which takes the form, in most cases, of an initiative by the administrative authorities that ultimately leads to a positive act withdrawing or annulling nationality, is *inter partes*, in accordance with the ordinary law principles of administrative procedure and of the right to sound administration and to an effective remedy.
58. Depending on the detailed rules, which vary from one country to another according to the grounds, this generally involves notifying the person concerned in advance

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<sup>44</sup> Including verification that the second nationality has actually been acquired in order to avoid creating a situation of statelessness (**Slovakia**)

(or issuing an injunction, depending on the case), providing information which relates to him or her, giving the opportunity to him or her, on that basis, to submit comments or to be heard in person (see, *inter alia*, **Germany, Austria, Cyprus, Finland, France, Italy, the Netherlands, Portugal, the Czech Republic, Romania**).

59. In the **Netherlands**, when the situation of the person concerned represents an immediate threat to national security, he or she is not notified in advance of the decision to withdraw nationality. In **Bulgaria**<sup>45</sup> and **Luxembourg**, cases of withdrawal of nationality due to fraudulent acquisition are not the subject of *inter partes* proceedings before they are adopted; however, while in Luxembourg, they are subject to administrative and judicial appeal, those acts cannot be subject to judicial appeal in **Bulgaria**.
60. In **Denmark**, the decision to withdraw nationality on the basis that it has been acquired fraudulently or that criminal offences have been committed is adopted not by the administrative authorities but by a court. The *inter partes* nature of the procedure followed is also assured by making the corresponding legal remedies available to the person concerned.
61. In the various instances of loss of nationality, judicial review verifies compliance with legal requirements which may, in some cases, be very detailed as regards whether the personal situation of the person concerned should be taken into consideration by the administrative authorities (**Germany, the Netherlands**). An examination of the legal systems concerned reveals that the situation of the person must, in general, be assessed in the light of the circumstances of the case (**Germany, Austria, Bulgaria, Cyprus, Denmark, Finland, France, Latvia, Italy, the Czech Republic, Romania, Slovakia**) or of the principle of proportionality (**Germany, Austria, Denmark, France, Italy, Latvia, the Czech Republic, Romania**).<sup>46</sup> However, given the limited relevant case-law available in some States in this field, it seems that it cannot be concluded that an examination of proportionality by the

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<sup>45</sup> Similarly, in **Bulgaria**, in the event of withdrawal of nationality for acts committed abroad which are prejudicial to the interests of the Bulgarian State.

<sup>46</sup> This assumes that the administrative authorities apply the relevant case-law when subsequently implementing the law. For citations taken from legal decisions which have, on principle, reviewed the proportionality of the measure of withdrawal, or deprivation, of nationality, see, *inter alia*, **Austria, France, Latvia, Romania**. It should be pointed out that, in **Denmark**, the withdrawal of Danish nationality obtained fraudulently or due to an infringement of the Criminal Code is ordered by judicial decision.

administrative authorities is systematic and is conducted for all grounds of withdrawal of nationality (**Italy, Luxembourg, Romania**).

62. Where nationality is withdrawn on those other grounds for loss of nationality, the legal systems allow (see, inter alia, **Germany, Austria, Bulgaria, Cyprus, Denmark, Finland, France, Italy, Latvia, Luxembourg, the Netherlands, Portugal, Slovakia**) persons who have lost nationality to submit an application to regain it under specific conditions for recovery or via means of acquisition under ordinary law. Certain legal systems, however, prohibit this in certain circumstances (**Denmark, France, Italy, Latvia, the Netherlands, Slovakia**).

#### IV. SPECIFIC REMARKS CONCERNING MINORS

63. In the legal systems which recognise loss of nationality due to non-use or a prohibition on dual nationality (see Section II. A.), the situation of minors is assessed in differently. In those legal systems, however, the matter is not always addressed specifically from the perspective of the right to nationality, since the nationality of children stems in particular from the right to parentage<sup>47</sup> and, therefore, from the various types of parentage possible.<sup>48</sup>
64. In the **Netherlands**, the Law on nationality expressly lays down conditions in which minors may lose their nationality. Loss of nationality due to ‘non-use’ applies, first of all, under conditions laid down for such circumstances, to persons who acquired foreign nationality when they were minors. A Netherlands child also loses nationality where the family relationship which justified the original acquisition of Netherlands nationality has ended (paternity dispute, revocation of adoption, annulment of recognition), except in situations which would result in the child becoming stateless. A child also loses nationality through acquisition of another nationality by judicial declaration of parenthood, or recognition, legitimisation, or adoption by a foreigner, by voluntary acquisition of another nationality by the parent (on grounds of unity of nationality, in this case foreign nationality, within

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<sup>47</sup> For this reason, identifying the rules concerning children’s loss of nationality of is complicated and this summary is not intended to be exhaustive.

<sup>48</sup> For examples of effects on children’s nationality resulting from a change to the bond of parentage through adoption or owing to the reinstatement of original parentage, see, inter alia, **Germany, Austria, Finland, France, Italy, the Netherlands, Romania, Sweden**.

the same family) or owing to the loss of nationality of a parent, due, in particular, to 'non-use'. However, in the last three cases the Netherlands legislature has established an exception enabling the child not to lose his or her nationality.<sup>49</sup>

65. In **Cyprus**, the law does not provide for exceptions with regard to deprivation in respect of minors, so that when a Cypriot national, by naturalisation or registration, loses nationality, his or her child also loses Cypriot nationality if the other parent does not also have Cypriot nationality. Nevertheless, where both parents no longer have Cypriot nationality, such loss of nationality is possible only if the persons concerned may carry on living together outside Cyprus without family unity being affected.
66. In **Denmark** and **Sweden**, in cases in which an adult has lost his or her nationality at the end of the procedure applicable at the age of 22 and that person is the parent of a minor child, if the child's other parent does not have the nationality in question, the minor also loses his parent's nationality unless that measure amounts to rendering him or her stateless.<sup>50</sup> In **Finland**, the same circumstances of loss of nationality by a parent at the age of 22 does not, by contrast, have as a knock-on effect that the child will also lose nationality.
67. In **Slovakia**, the parents' loss of nationality means that the child will also lose that nationality. Similarly, if a child gains another nationality by naturalisation, that child will, as a direct result, lose his or her Slovak nationality (unless the second nationality is acquired at birth).
68. In **Germany**, **Latvia** and **Slovakia**, a child does not lose his or her nationality if his or her parents have lost the nationality in question due to their having dual nationality. In **Austria**, in that same situation, the minor will keep his or her nationality only under certain conditions.
69. In other cases of loss of nationality by the parent<sup>51</sup> (as a penalty, due to fraudulent

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<sup>49</sup> As long as the parent has Netherlands nationality, where the minor was born in the country whose nationality he or she has acquired and has his or her principal residence there at the time it was acquired and the minor has or has had that principal residence during an uninterrupted period of five years (the **Netherlands**).

<sup>50</sup> Specific rules for recovery of Swedish nationality, also applicable to the children of the persons concerned, are provided for between Nordic countries (**Sweden**).

<sup>51</sup> See also the case of a minor who performs military service in another State (**Austria**) or the legal situation where offences are committed by the child him- or herself (**Italy**).

acquisition of nationality or criminal offences, etc.), the child is generally protected from losing nationality as a knock-on effect (see in particular **Germany, Bulgaria, Denmark, Finland, France,**<sup>52</sup> **Latvia, Luxembourg, the Czech Republic, Romania**). The child's situation is examined, inter alia, having regard to his or her connecting links with the country (**Finland**), stable and effective cohabitation with the parent concerned (**Italy**) or taking into account the protection of his or her best interests (see, in particular, **Germany**).<sup>53</sup>

70. The rules of procedure and the detailed rules for examination described for cases of loss of nationality by operation of law in respect of adults (**Germany, Austria, Denmark, Finland, Latvia, the Netherlands, Slovakia, Sweden**) apply, in principle,<sup>54</sup> to children, in accordance, naturally, with the rules of legal representation of minors by their parents or legal representatives.<sup>55</sup> In **Germany** and **Austria**, inter alia, in the case of an application for a child to retain nationality, that retention of nationality may be granted if it protects the child's best interests.

## CONCLUSION

71. Of the legal systems examined, seven States provide for the automatic loss of nationality by operation of law due to 'non-use' (**Denmark, Finland, the Netherlands, Sweden**) or a prohibition on dual nationality (**Germany, Austria, the Netherlands, Slovakia**). However, those systems provide exceptions or safeguarding procedures and, in certain cases, allow opportunities for recovering nationality.
72. Three other systems recognise loss of nationality for those types of grounds (**Cyprus, France, Latvia**) while providing for an individual examination of the circumstances of the case to be carried out by the administration or the court.
73. As regards the other grounds for non-automatic loss of nationality, an examination of the legal systems concerned reveals that the person's situation must, in general, be assessed in the light of the circumstances of the case (**Germany, Austria,**

<sup>52</sup> Except in the case of fraudulent acquisition of French nationality.

<sup>53</sup> With regard to the right to respect for family life, taking into account the child's interests does not, however, lead to the invalidation (**France**), or suspension (**Romania**), of the measure of withdrawal or deprivation of nationality adopted against the child's parent.

<sup>54</sup> Subject, inter alia, to any specific rules laid down by the law of parentage in each legal system concerned.

<sup>55</sup> See, for example, **Germany, Austria**.

**Bulgaria, Cyprus, Denmark, Finland, France, Italy, Latvia, the Czech Republic, Romania, Slovakia)** and, in some cases, having regard to the principle of proportionality (**Germany, Austria, Denmark, France, Italy, Latvia, the Czech Republic, Romania**).

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