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Guidelines on the Influence of European Union Law on Member States Laws on Nationality

The very possibility of codifying rules on nationality elicited certain doubts and reservations on the part of the Nationality Sub-Group from the moment of its first meeting on 13 November 2023. Several members questioned or expressed a certain scepticism regarding the European Union's competence in this area; others proposed distinguishing between loss of nationality (where the control of European Union law is now well established) and the granting of nationality (where it is more fragile). The Sub-Group favoured the idea of a series of guidelines or recommendations that could serve as a guide for national legislators. Such a set of recommendations, even if not in line with GEDIP's traditions, could represent an acceptable compromise that would not risk excessive encroachment on the exclusive competence of Member States.

It should be noted that such an approach is not without precedent. A similar attempt is found with regard to the loss of nationality in the Guidelines on Involuntary Loss of European Citizenship, see Annex 1, G. R. de Groot, M. P. Vink and P. Wautelet, p. 595, in S. Carrera Nunez and G. R. de Groot, *European Citizenship at the Crossroads*, 2015.

In the draft guidelines, the Sub-Group has attempted both to summarise EU case law and to draw some more general, but concise conclusions about the links between nationality and EU law. As a result, the precise situations in which nationality is lost are not discussed.

The rules that are recommended focus mainly on the loss of nationality, with some relating to the granting of nationality.

There is obviously no reference to conflicts of nationality, as this matter has already been the subject of a codification proposal by GEDIP at its 2013 [session in Lausanne](#).

In 2013, in accordance with the case law of the CJEU at the time and GEDIP's scientific guidelines, no room was left for any review of effectiveness. This position has not changed. The recent judgment [in Commission v. Malta](#), which contradicted [the conclusions](#) of Advocate General Collins, did not introduce a review of effectiveness in the strict sense, but simply prohibited the commercialisation of nationality when it was not accompanied by any other verification of ties. Article 2.1 aims to generalise this requirement, without introducing any checks on effectiveness or close links.

The footnotes explain, where necessary, the origin or justification of certain recommendations.

1. Competence¹

1.1. The definition of the conditions for acquiring and losing nationality, as well as the question of whether a person should be considered a national of a State, fall, in accordance with international law and European Union law, within the competence of each Member State.

1.2 Member States must exercise this competence in accordance with EU law, in particular the principles of legal certainty, sincere cooperation, proportionality and non-discrimination. They must also ensure the full enjoyment of fundamental rights and freedoms and ensure that the best interests of children are taken into account.²

1.3 In particular, the situation of a European Union citizen who faces losing their nationality of a Member State and who, as a result, may lose the status conferred by Article 20 TFEU or the rights attached to it falls, by its nature and consequences, within the scope of European Union law.³

2. Substance

Acquisition of nationality

2.1. Member States shall ensure that they grant their nationality to persons who have a connection with the State that ensures compliance with the requirements of the principle of sincere cooperation set out in Article 4(3) TEU.⁴

When granting their nationality, Member States shall ensure compliance with the general principle that Union law may not be invoked for abusive or fraudulent purposes.⁵

¹ This section does not discuss the competence that would enable the guidelines to be established, but rather the general rules that enable the European Union's competence to be articulated with that of the Member States. It should be noted that the European Parliament considers that EU action could be based on Articles 21(2) TFEU (competence in matters of citizenship) and 79(2) TFEU (competence in matters of migration policy): See European Parliament, "Resolution with proposals to the Commission on citizenship and residence programmes in exchange for investment", 9 March 2022, 2021/2026(INL).

² These two guidelines are taken, with some adaptations, from recitals d and e of the draft act on conflicts of nationality adopted by GEDIP at its session in Lausanne. The generalisation of the formula makes it possible to integrate, in addition to the free movement of persons (Article 20 TFEU) and workers (Article 45 TFEU), sincere cooperation (Article 4(3) TEU) and the Charter of Fundamental Rights, into European Union law.

³ This is a general adaptation of the principle established by the *Rottmann* judgment, C-135/08, 2010 (No 10). It should be noted in particular that this concerns the loss of the status "or" (and not "and") of the rights attached to it. This amendment aims to take into account the case of a dual national of two Member States, including that of the forum, who would therefore not lose their citizenship in the event of loss of one nationality, but could see the rights deriving from free movement guaranteed to themselves and their family limited, as their situation could become, in the eyes of the forum, purely internal (see CJEU, 14 November 2017, C-165/16, *Lounes*). The wording is repeated in Rules 2.3, 2.6, 2.7 and 3.1.

⁴ This wording aims to translate into more general terms the rule laid down in the aforementioned *Commission v Malta* judgment and seeks to link sincere cooperation with the absence of effective nationality.

⁵ This wording, which merely reiterates a general principle of European Union law, is inspired by the *mentioned* conclusions of Advocate General Collins, No 51.

Loss of nationality

2.2 The loss of nationality of a Member State which may result in the loss of the status conferred to the citizen by Article 20 TFEU or of the rights attached thereto⁶ may only be based on an established legal rule and may not be retroactive.⁷

2.3 Except in cases of fraud, the loss of nationality of a Member State cannot lead to statelessness.⁸

2.4 In the event of loss of nationality based on the voluntary acquisition of another nationality, the Member State of origin should not take a final decision on the loss of nationality without ensuring that this decision only takes effect once the new nationality has been effectively acquired.⁹

2.5 The loss of nationality of a State which may result in the citizen losing their status under Article 20 TFEU or the rights attached thereto, linked to the absence of habitual residence in that State, cannot be declared if the person concerned has transferred their habitual residence to another Member State.¹⁰

2.6 The loss of nationality of a Member State which may result in the citizen losing their status under Article 20 TFEU or the rights attached thereto may be declared only if it complies with the principle of proportionality in terms of its impact on the situation of each person concerned and, where applicable, on the situation of their family members, under European Union law.¹¹

3. Procedure¹²

3.1 The loss of the nationality of a Member State which may result in the loss of the status conferred on the citizen by Article 20 TFEU or of the rights attached thereto may only be declared only after an examination of the individual situation.¹³ This examination must enable

⁶ This wording, borrowed from rule 1.3, makes it possible to limit the competence of the European Union while including the scenario in which a European citizen would not lose their citizenship as a result of the loss of their nationality, as shown, *mutatis mutandis*, in the *Lounes* case, cited above (see note 4). It is repeated in the following articles.

⁷ This very general and consensual rule, laying down the requirements of legality and non-retroactivity, does not result from the case law of the Court. It is proposed in the de Groot *et al* guidelines (rule 1. 2). The limit on European Union citizenship concerns the scope of the European Union's competence.

⁸ The rule is a generalisation of the *JY* judgment (see following rule); the reservation concerning fraud takes account of the *Rottmann* judgment. The same rule appears in Article 7(3) of the 1997 European Convention.

⁹ The rule is taken directly from the *JY* judgment (no. 50). It should be noted that the wording does not exclude loss through acquisition of the nationality of a third country.

¹⁰ The rule is very clearly affirmed by AG Szpunar in the *Udlændinge- og Integrationsministeriet* judgment (*loss of Danish nationality*), Case C-689/21, no. 65. It has not been explicitly adopted by the CJEU, but the opposite solution appears to be in direct breach of the freedom of movement.

¹¹ The rule is taken directly from the Court's judgments, in particular from the operative part of the *Tjebbes* judgment, which has subsequently been reiterated.

¹² The requirement for an individual decision and the right to appeal are also guaranteed by Articles 11 and 12 of the 1997 Convention. However, the GEDIP proposal, set out in three articles and supplemented by the Court's case law, is more specific.

¹³ This provision and the following one are taken and adapted from the operative part of the judgment in *Udlændinge- og Integrationsministeriet* (*loss of Danish nationality*) and the judgment in *Stadt Duisburg* (*loss of German nationality*), cases C-684/22 to C-686/22.

the competent authorities to assess the proportionality of the consequences of the loss of that nationality in the light of Union law.

3.2 It must be possible to submit this request within a reasonable period, which may start once the authorities have duly informed the person concerned of the loss of their nationality or the imminence thereof, as well as of their right to request, within that period, the retention or recovery of that nationality.

3.3 These requests must be subject to administrative or judicial review in accordance with the domestic law of each Member State.¹⁴

¹⁴ This is an adaptation of Article 12 of the 1997 European Convention.