THE ACCESS TO EUROPEAN CITIZENSHIP FOR THIRD COUNTRY SPOUSES OF A EUROPEAN CITIZEN

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1. INTRODUCTION

This contribution is devoted to the possibilities which third country nationals married to a European citizen have in order to acquire themselves European Citizenship. Special attention will be given to the position of those third country nationals whose EU-spouse exercises her/his freedom of movement within the EU and lives with her/his family permanently in other Member States of the EU of which he/she is not a national.

1 In the academic year 2003/2004 he gave a course on Comparative Nationality Law at the University of Liège as professeur invité on the Pierre Harel chair.
2 A word of thanks is in order for Rob van de Westelaken for his comments on an earlier version of the contribution.
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The concept of citizenship was introduced in EC Law by the Maastricht Treaty in 1992. Article 8 states that those who have the nationality of one of the EU Member States are EU citizens. The rules, however, for the acquisition of the nationality of the different Member States depend on these Member States. This autonomy of the Member States concerning the grounds for acquisition and loss of nationality is underlined by a special "Declaration (no 2) on nationality of a Member State" attached to the Maastricht Treaty:

"The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary."

The Treaty itself does therefore not provide for a procedure for becoming an EU-citizen. That is why it is of importance to study the position of foreign spouses of nationals in the nationality legislation of the Member States of the EU, because the domestic legislation of the Member State determines the access to European Citizenship and to all the rights attached thereto. The access of these third country spouses to European Citizenship is not only of importance for the spouses involved, but also influences the possibility, which their husbands or wives have to enjoy completely, without any hindrance, the freedom of movement as guaranteed by the EC-Treaty.

After some historical remarks in paragraph 2, paragraph 3 will be devoted to a description of the access to the nationality of their EU-spouse for third country nationals living with their spouse in an EU-country other than the country of the nationality of the spouse involved. In paragraph 4 the question will be raised, on which manners it can be avoided, that the difficulties which are met by the above mentioned foreign spouses in respect to their access to European Citizenship constitute a hindrance to the right of free movement of the EU-spouse. It is obvious that the difficult legal position of the foreign spouse could be a reason for not using the free movement rights guaranteed by the EC-Treaty.


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2. SOME HISTORICAL REMARKS

In the past all jurisdictions provided that husband and wife had the same nationality. In fact, women were treated in nationality law as a kind of "appendix" of their husbands. This can be illustrated with a description of the position of women in the Netherlands Nationality Act of 1892. According to this statute a wife followed the nationality of her husband in all circumstances. Women could only transfer Netherlands citizenship to their children if these were illegitimate and not recognized by a man (art. 1 Nationality Act 1892). A foreign wife, who married a Netherlands citizen acquired Netherlands citizenship automatically (art. 5 Nationality Act 1892). A Netherlands woman, who married a foreigner or a stateless person lost her Netherlands nationality automatically (art. 5 and 7 (2) Nationality Act 1892). If a foreigner acquired Netherlands citizenship, his wife acquired this citizenship as well (art. 5 Nationality Act 1892). If a man lost his Netherlands nationality, his wife lost this status too (art. 5 and 7 (1) Nationality Act 1892). Legitimate children of a Netherlands father (and his Netherlands wife) acquired the nationality of the father (art. 1 (a) and (b) Nationality Act 1892). An illegitimate child of a Netherlands mother acquired her citizenship provided the child was recognized (only) by her (art. 1 (c) Nationality Act 1892). If the child later on was recognized by a foreigner it lost the nationality of his mother (art. 1 (a) and (c) Nationality Act 1892).

This system, which was more or less followed by other states as well is often described as a "unitary system" (système unitaire).\(^4\) In the Netherlands

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\(^6\) This expression was used by Bernard DUFORT, *La nationalité de la femme mariée*, Band 1: *Europe* (Gen. 1973); Band II: *Afrique* (Gen. 1976); Band III: *Amérique, Asie, Océanie* (Gen. 1980); compare as well Bernard DUFORT, "Nationalité et mariage: leurs interactions dans le droit comparé de la nationalité", in: Michel VERWIELGEN (ed.), *Nationalité et statut personnel*, Brussel 1984, 443-474.
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This unitary system was revised in 1936 as a consequence of the Hague treaty on nationality of 12 April 1930. A foreign woman who married a Netherlands citizen still acquired Netherlands citizenship automatically, but a Netherlands wife who married a foreigner or a stateless person did not automatically lose her Netherlands nationality in all cases (art. 5 Nationality Act 1892 (1936)). She retained her Netherlands nationality, if she did not acquire a foreign citizenship by marriage. A child of a Netherlands mother and a stateless father acquired the Netherlands nationality of its mother, if it was born in the Netherlands (art. 2 (c) Nationality Act 1892 (1936)). In principle a married wife still followed the nationality of her husband. If her husband acquired Netherlands citizenship, she acquired this status; if her husband lost his Netherlands nationality, she also did. One exception was made, if the husband lost his Netherlands citizenship. The wife then kept her Netherlands nationality, because otherwise she would become a stateless person (art. 5 Nationality Act 1892 (1936)).

An important revision of Netherlands nationality law was realized in 1963 as a consequence of the New York convention on the nationality of married women. This treaty laid down an independent status for a married woman in nationality law. As a result of the revision of Netherlands nationality law, a foreign wife of a Netherlands national did not automatically acquire the Netherlands nationality of her husband anymore. She was given the choice to acquire this status by a declaration of option (art. 8 Nationality Act 1892 (1963)). A Netherlands woman who married a foreigner or a stateless person kept her citizenship (art. 8a Nationality Act 1892 (1963)). The acquisition of the nationality of legitimate children iure sanguinis was not modified. A legitimate child acquired the Netherlands nationality of the father; an illegitimate child not recognised by a foreign father acquired the nationality of the mother.

The position of women in nationality law was completely changed by a new Nationality Act, which came into force on 1 January 1985. Since then, Netherlands law of nationality is based on a system of ius sanguinis a patre

7 Act of 21 December 1936, Staatsblad 293, in force on 1 July 1937 with retroactivity from 1 July 1893.
et a matre. A child acquires the Netherlands nationality if the father or the mother is a Netherlands national at the time of its birth or is a Netherlands national who died before the birth of the child (art. 3 section 1 Nationality Act 1984).

Another consequence of the equality of the parents regarding the nationality of their children is that a minor never loses his Netherlands nationality if and for as long as one parent still possesses the Netherlands nationality (art. 16 Nationality Act 1984). For instance, if a parent is naturalized abroad and the minor child is included in that naturalization, the parent will lose his Netherlands nationality because of voluntary acquisition of a foreign nationality (art. 15 (a) Nationality Act 1984). The position of the child will then be, that it will have dual nationality if the other parent still has the Netherlands nationality.

Equal treatment of men and women is also realized in respect of the possibility for foreigners to acquire the nationality of their Netherlands spouse. The foreign spouse of a Netherlands national neither acquires the Netherlands nationality automatically nor has an option right to this nationality. Nevertheless, he or she can be naturalized in the Netherlands after being married for at least three years (art. 8 (2) Nationality Act 1984). For this naturalization of a foreign spouse or a foreign registered partner it is not necessary that the normal condition of at least five years residence in the Netherlands prior to the application is fulfilled (art. 8 (1) (c)). Remarkable is, that the condition of a five years residence prior to the application is shortened to a three years residence in the case of unmarried persons who have lived with an unmarried Netherlands national for at least three years in the context of a permanent relationship other than marriage or registered partnership. 11

For Belgium a similar development can be observed. In the past the foreign wife of a Belgian national acquired Belgian nationality ex lege at the moment of the conclusion of the marriage 12, although, since 1926, she had the possibility to renounce Belgian nationality within a period of six months following the marriage. 13 The foreign husband of a Belgian wife did not acquire Belgian nationality automatically, but since 1922 his naturalisation was facilitated. Since 1985 Belgian nationality is not acquired anymore by the foreign woman who marries a Belgian. Since then, a spouse

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11 This provision does not only apply to a heterosexual relationship but to a homosexual relationship as well.
12 Art. 12 Code civil; art. 5 of the Act of 8 June 1909, art. 4 of the Act of 15 May 1922.
13 See art. 4 of the Act of 1932.
of a Belgian national - female or male - may acquire Belgian nationality by lodging a declaration of option, if the conditions of art. 16 (2) are fulfilled.

In other states similar developments have taken place. On the international level, key moments were the conclusions of the Hague Treaty on problems of nationality in 1930, of the New York convention on the nationality of women in 1957 and finally the New York convention on the elimination of all discrimination of women in 1979 and the implementation of these treaties in the domestic nationality legislation of states.

The Hague Treaty of 1930 aimed at avoiding that women became stateless, because of the fact that they followed the nationality status of their husband. The convention provided inter alia:

"Art. 8. If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

Art. 9. If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

Art. 10. Naturalisation of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

Art. 11. The wife who, under the law of her country, lost her nationality on marriage shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage."

The 1957 treaty abandoned the unitary system as a principle. Women were given an independent position in nationality matters. However, they could acquire the nationality of their husband by privileged naturalisation procedure or by making a special declaration of option. In other words, the unitary system was not an obligation anymore, but the convention nevertheless tried to promote one single nationality in a family by giving women the right to acquire the nationality of their husbands under very privileged conditions. The treaty contained inter alia the following provisions:

"Art. 1. Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor

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14 De Groot, Staatsangehörigkeit (footnote 4), 32.
15 See also De Groot, Staatsangehörigkeit (footnote 4), 30.
the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

Art. 2. Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

Art. 3. 1. Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

2. Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right."

The final step towards an independent position for women was made by the 1979 convention on the elimination of all cases of discrimination of women. Women were given a totally independent position in nationality law and were granted the same right to transfer their nationality to their children. This convention contained one important article regarding the position of women in nationality law:

"Art. 9. – 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children."

In this context it has to be mentioned, that the Netherlands did ratify the New York Convention on the nationality of married women in 1966, but this treaty was denounced by written notification of 16 January 1992. The reason for this denunciation was that the Netherlands was of the opinion that the 1957 Treaty conflicted with the International Convention on the Elimination of All Forms of Discrimination of Women of

16 In force for the (whole) Kingdom of the Netherlands on 6 November 1966.
17 Therefore, the convention ceased to be in force for the Netherlands on 16 January 1993.
18 December 1979.\textsuperscript{18} Especially the fact that a woman should easily obtain the nationality of the man by operation of the rules of this treaty, but the man could not obtain the nationality of the woman in the same way, can, when carefully observed, lead to a discrimination of women. Spouses often think it practical for all kinds of reasons to have the same nationality. Under the rules of the 1957 Treaty it is usually the woman who has to denounce her nationality, since it is a lot harder for the man to change his nationality. Therefore the Netherlands denounced the 1957 Treaty.\textsuperscript{19} In this light it is remarkable that even today States ratify the outdated 1957 Treaty, even two of the new Member States of the European Union.\textsuperscript{20}

As we will see in the next paragraph, all Member States of the European Union have given women and men a real independent position in nationality matters. Some nationality regulations still contain some elements which resemble the situation of the 1957 convention. They give, for example, option rights to the foreign spouse, but grant this right to all foreign spouses of nationals, both female and male. In principle we have to applaud this independent position of spouses in nationality law. Nevertheless we will observe later on that this independent position can cause difficulties if the European spouse exercises her/his right of free movement as a European citizen intensively.

3. THE POSITION OF FOREIGN SPOUSES
IN THE NATIONALITY LAWS OF THE MEMBER STATES

In this paragraph a survey will be provided of the facilitation for foreign spouses of nationals of the acquisition of the nationality by registration, declaration of option or naturalisation. Special attention will be given to the acquisition of nationality if one spouse want to acquire the nationality of the other spouse, but the spouses do not live in the country of the nationality of the last mentioned spouse.

\textsuperscript{18} UNTS vol. 1249, 13; Tractatenblad 1981, 61.
\textsuperscript{19} Cf. Hoge Raad (Supreme Court of the Netherlands) 4 March 1988, NJ 1989, 626, annotated by G.R. De Groot.
a) Austria

Art. 11a of the Austrian Nationality Act\(^{21}\) gives the spouse of an Austrian citizen a right to naturalisation ("Einem Fremden ist [...] die Staatsbürgerschaft zu verleihen"), if certain conditions are met. These conditions are the following:

1. the marriage must not have been dissolved by separation ("Scheidung von Tisch und Bett"), divorce or otherwise;
2. the foreign spouse must not have lost Austrian nationality by deprivation ("Entziehung") according to art. 33\(^{22}\);
3. a) the spouses must have been married for at least one year and the foreign spouse must have had his ordinary residence ("ordentlicher Wohnsitz") in Austria for at least four years, or
3. b) the spouses must have been married for two years, while the foreign spouse has had his ordinary residence in Austria for at least three years, or
3. c) the spouses have already been married for at least five years and the Austrian partner has had his Austrian nationality for at least ten years;
4. and finally the foreign spouse has to fulfil the conditions of art. 10 subsection 1 number 2 until 8 and subsection 3.

The reference to the conditions of art. 10 implies that the normal conditions for naturalisation have to be fulfilled, with the exception of the normal residence requirement of ten years. These other conditions are:

2. The applicant has not been sentenced by final judgement of a domestic or foreign court to a term of imprisonment of more than three months for the commission of one or more wilful offences, the punishable acts on which the sentence of the foreign court is based are also punishable under domestic law, and the sentence has been pronounced in proceedings conforming to the principles set out in article 6 of the European

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\(^{22}\) This provision reads: "A national in the services of a foreign country shall be deprived of nationality, [...], if the national through his behaviour severely damages the interests or the reputation of the Republic."
Constitution for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);
3. The applicant has not been sentenced by final judgement of a domestic court to a term of imprisonment of more than three months for a fiscal offence;
4. No criminal proceedings are pending in a domestic court against the applicant on suspicion of the commission of a wilful offence liable to a sentence of imprisonment or a fiscal offence liable to a sentence of imprisonment;
5. No residence ban has been imposed on, and no procedure for termination of residence is pending against, the applicant;
6. On the basis of his or her conduct hitherto, the applicant guarantees that he or she has a positive attitude towards the Republic and neither represents a danger to law and order and public safety nor endangers other public interests as stated in article 8, paragraph (2), of the European Convention on Human Rights;
7. The applicant's livelihood is sufficiently ensured or he is not to blame for his or her situation of financial hardship, and
8. The alien does not have relations with foreign States of such a nature that the granting of nationality would be detrimental to the interests of the Republic.

The third subsection of art. 10 provides, that an applicant will not be granted Austrian nationality, if he
a) does not undertake the necessary steps to be released from his present nationality despite of this being possible and reasonable, and the person is not a refugee under the Convention of 1951 or the protocol of 1974 on the status of refugees, or
b) upon his request or otherwise deliberately retains his previous nationality.

Although art. 11a (4) does not refer to art. 10a, the condition mentioned in that provision also applies to foreign spouses who apply for naturalisation. Like all other applicants, they must have a command of the German language according their personal circumstances ("unter Bedachtsname auf die Lebensumstände des Fremden entsprechende Kenntnisse der deutschen Sprache"). If the spouses use to live abroad in a non-German speaking country only a very basic knowledge of the German language will be required. 23

23 Information given by Mrs Jannetz of the Ministry of Internal Affairs, Vienna, on 21 June 2005.
Austria therefore has a very elaborate list of conditions which have to be
fulfilled in order to obtain naturalisation. The average foreign spouse of an
Austrian national living with her/his partner abroad, however, will meet
these conditions and will acquire a right to naturalisation after having been
married for a continuous period of five years. The only condition which
could give difficulties, is the provision of art. 10 (6) “the applicant’s behav-
iour hitherto gives reason to believe that he has a positive attitude towards
the Republic of Austria”. Is it possible to show this attitude while living
abroad? Or does one have to interpret this provision as “if the opposite is not
proven, one has shown a positive attitude”? However, studying the position
of the foreign spouse of an Austrian citizen living abroad, one may conclude,
that the fact of living abroad does not exclude the possibility to get Austrian
nationality and therefore European Citizenship by naturalisation.

b) Belgium

Art. 16 (1) Belgian Nationality Act states that marriage does not have
ex lege consequences for the nationality of the spouses. Art. 16 (2) Belgian
Nationality Act gives rules on the acquisition of Belgian nationality by the
foreign spouse of a Belgian national: the foreigner can make a declara-
tion of option for Belgian nationality if the spouses have been living
together in Belgium for a period of at least three years. The declaration of
option can already be lodged if the spouses have lived together for at least
six months in Belgium, on the condition that, for at least three years, the
foreign spouse already possessed a permit to reside in Belgium for a period
longer than three months or a right to live permanently in Belgium. The
declaration of option can be refused if an impediment results from severe
personal facts, which have to be mentioned in the decision (“si un

\[24\] See also DE GROOT, Staatangehörigkeit (footnote 4), 150; Ulrike BRANDT, in: BRUNO NAUCI-
MONE (ed.), Nationalität Law in the European Union - Le droit de nationalité dans l'Union

\[25\] Code de la nationalité belge - Wetboek van de Belgische nationaliteit, Act of 28 June 1984,
Moniteur belge 12 July 1984, 10.095-10.114, most recently amended by Act of 1 March 2000,
Moniteur belge 6 April 2000, in force on 1 May 2000. See also: http://www.coe.int/T/E/
Legal_affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/
National_legislation/Belgium-CODE%20DE%20LA%20NATIONALIT%C3%A9%20BELGE.asp#TopOfPage (last visited on 23 June 2005).

\[26\] In case of “cohabitation légale” art. 16 (2) does not apply. See Mieke VAN DER PUTTE/Jan
CLEMENT, Nationaliteit, Algemene Praktische Rechtsversameling, Antwerpen: E. Steyn-Scien-

\[27\] On this condition: VAN DER PUTTE/CLEMENT, 68.
empêchement résulte de faits personnels graves qu'il doit préciser dans les motifs de sa décision"). In the past the declaration of option could also be refused, if there were reasons, which had to be mentioned too, to conclude that the readiness of the applicant to integrate was insufficient ("s'il y a des raisons, qu'il doit également préciser, d'estimer que la volonté d'intégration du déclarant est insuffisante"). However, this last mentioned possibility of a refusal because of lack of integration was abolished in the year 2000. According to the last sentence of art. 16 par. 2 the foreign spouse can be deemed to fulfil the residence requirement in Belgium, while living together with a Belgian national abroad, if real ties with Belgium have been developed.\textsuperscript{28} This part of the provision reads as follows:

"Peut être assimilée à la vie commune en Belgique, la vie commune en pays étranger lorsque le déclarant prouve qu'il a acquis des attaches véritables avec la Belgique."

Therefore, we can conclude that a foreign spouse living abroad with a Belgian partner can get European Citizenship by declaration of option in Belgium if the existence of "real ties" is proven. However, the marriage with the Belgian national as such is not enough to conclude that real ties with Belgium exist. Command of one of the national languages seems not to play a role.

c) Cyprus

According to sect. 5 Cyprus Nationality Act\textsuperscript{29} a spouse or widow or widow of a citizen of Cyprus may be registered as a citizen if he or she has lived with his or her spouse in Cyprus for a period of time which is not shorter than three years.\textsuperscript{30} This facilitation for the foreign spouse does not apply where he or she enters or stays illegally in Cyprus. Foreign spouses are not entitled to be so registered if they have renounced or been deprived of the citizenship of Cyprus.


\textsuperscript{29} The Republic of Cyprus Citizenship Law 1967, as amended by The Republic of Cyprus Citizenship (Amendment) Law 1972 and The Republic of Cyprus Citizenship (Amendment) Law 1983. See also: http://www.oee.int/TE/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Cyprus-The%20Republic%20of%20Cyprus%20Citizenship%20Law%201967.pdf

\textsuperscript{30} European Bulletin on Nationality, Council of Europe, Strasbourg 2004, 54, 55.

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For regular naturalisation it is required that the applicant has resided in Cyprus, during the eight years immediately preceding the date of his application, for periods amounting in the aggregate to not less than five years, the last year of which must be a continuous stay in Cyprus. In perspective of these requirements one must conclude, that the third country spouse of a national of Cyprus who lives with his spouse in another Member State of the European Union is not entitled to registration as a national in Cyprus nor qualifies for regular naturalisation in Cyprus.

d) Czech Republic

The general conditions for naturalisation are formulated in art. 7 Czech Nationality Act. 31 The applicant has to fulfil the following conditions:

a) he has been residing permanently and staying continuously 32 on the territory of the Czech Republic for at least five years;
b) he can prove that he was released from citizenship of another state, or will by gaining citizenship of the Czech Republic lose the previous foreign citizenship;
c) he was not sentenced in the past five years for a wilful punishable offence;
d) he can prove knowledge of the Czech language.

According to art. 11 (1) (e) the Ministry of the Interior may waive the residence condition of art. 7 (1) (a) for - inter alia - the spouse of a Czech citizen, provided that the applicant has permanent residence on the territory of the Czech Republic. 33 Art. 11 (3) mentions that the Ministry of the Interior may also, in cases worthy of special consideration, waive the condition set in art. 7 (1) (d) (knowledge of the Czech language).

Obviously, the just mentioned provisions do not allow the naturalisation of the spouse of a Czech citizen living permanently abroad.

32 I.e. more than 50% of the time. Information provided by JUDr. Stepan BRUNCLÍK of the Ministry of Interior of the Czech Republic, Department of General Administration, Section of Nationality and registers, in an e-mail of 28 June 2005.
33 In practice, the Czech authorities require in such cases a “factual stay” in the Czech Republic as a manifestation of a “genuine connection” with the Czech Republic. Information by JUDr. Stepan BRUNCLÍK in his e-mail to the author on 28 June 2005.
c) Denmark

The naturalisation is subject to a parliamentary act (see also art. 6 Danish Nationality Act \[34\] \[35\]). In each case it has to be decided whether a person is granted naturalisation or not. The act of parliament is based on a bill prepared by the Ministry of Justice. Criteria normally applied by the Ministry and the Parliament are published in a Circular Letter of 12 June 2002 on new guidelines for listing in a naturalisation bill. \[36\] Normal conditions are 1) residence; 2) a permanent residence permit; 3) no criminal record; 4) not depending on public assistance; 5) no unpaid taxes; 6) a reasonable command of the Danish language and society; and 7) renunciation of the present nationality by the applicant.

Art. 8 of the Circular Letter 2002 provides:

1. A person who lives in marriage with a Danish national may be listed in a naturalisation bill after 6 consecutive years of residence in Denmark when the marriage has lasted and the spouse has been Danish for not less than 3 years. Where a marriage is of 2 years’ duration, 7 years of residence in Denmark are required, and where a marriage is of 1 year’s duration, 8 years of residence are required.

2. Up to 1 year cohabitation prior to the marriage is considered equivalent to marriage during the period in question.

3. Where the spouses have different residences and it is doubtful for that reason whether they cohabit, the application must be submitted to the Naturalisation Committee of the Danish Parliament.

4. Where the applicant is resident abroad due to the spouse’s work, the applicant may only be listed in a naturalisation bill if the applicant’s aggregate previous periods of residence in Denmark satisfy the residence requirement of subsection (1) hereof. It is a condition that the spouse’s work abroad serves the interests of Denmark.

Especially the residence requirement and the language requirement raise difficulties for foreign spouses living with their Danish husband in other Member States of the European Union. In order to give them access to

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\[35\] Henrik Zahle in Nascimbene (ed.), Nationality laws in the EU, 188.

\[36\] I thank Mr Niels Henrik Beckman of the Danish Ministry of Refugees, Immigration and Integration Affairs, Naturalisation Division, for sending me an English translation of these guidelines.

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European Citizenship by naturalisation in Denmark it would be necessary for the Ministry and the Danish Parliament to decide to treat this group of potential applicants more generously than the average applicants.

f) Estonia

Estonia does not provide for a general facilitation of the naturalisation of spouses of Estonian citizens. The spouse must therefore fulfil the general conditions for naturalisation:

1. be at least 15 years of age;
2. have lived in Estonia on the basis of a permanent residence permit for not less than five years prior to the date on which an application for Estonian citizenship is submitted and for one year from the date following the date of registration of the application;
3. have knowledge of the Estonian language in accordance with the requirements established by law;
4. have knowledge of the Estonian Constitution and the Law on Citizenship;
5. have permanent lawful income sufficient to support himself/herself and his/her dependants;
6. be loyal to the state of Estonia;
7. take an oath to be loyal to the constitutional state system of Estonia.

Estonian citizenship shall not be granted to a person:

1. who by deliberately submitting false information while applying for Estonian citizenship, or a document attesting to Estonian citizenship has concealed facts which preclude him/her from receiving or restoring Estonian citizenship or which would have precluded him/her from obtaining a document attesting to Estonian citizenship;
2. who does not observe the constitutional state system of Estonia or who does not observe the laws of Estonia;
3. who has acted against the state of Estonia and its security;
4. who has committed a criminal offence for which he/she has been sentenced to imprisonment for a period exceeding one year and who is not

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38 European Bulletin on Nationality, Council of Europe, Strasbourg, September 2004, 73, 74.
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considered as rehabilitated by serving the sentence, or who has been sentenced on several occasions for intentional criminal offences;
5. who has been employed or is currently employed by the intelligence or security service of a foreign country;
6. who has served in a career position in the armed forces of a foreign state or has entered the reserve forces of a foreign state or has retired from a career position in the armed forces of a foreign state, nor to his/her spouse who has arrived in Estonia in conjunction with the dispatch of military personnel into active service, the reserve forces or retirement;

Estonian citizenship shall not be granted to a person whose parents, adoptive parents, guardian or supervisory guardian submitted false information about facts significant for the decision of granting Estonian citizenship while applying for Estonian citizenship for the person (this provision came into force on July 12, 1999)

Estonian citizenship may be granted or restored to a person who has retired from the armed forces of a foreign state in case he/she has been married to a person who has acquired Estonian citizenship by birth, provided that the marriage has lasted for no less than five years and has not been dissolved.

As has already been mentioned, a general facilitation for foreign spouses is lacking. The general residence requirement makes the naturalisation of a spouse of a national living abroad impossible.

g) Finland

In Finland the general conditions for naturalisation are mentioned in art. 13 Nationality Act. An alien is granted Finnish citizenship on application if:
1) he or she has reached the age of 18 years or has married before attaining that age;
2) he or she is and has been permanently resident and domiciled in Finland
   a) for the last six years without interruption (continuous period of residence); or

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b) for eight years after reaching the age of 15 years, with the last two years without interruption;
3) he or she has not committed any punishable act nor has a restraining order been issued against him or her;
4) he or she has not materially failed to provide maintenance or to meet his or her pecuniary obligations under public law;
5) he or she can provide a reliable account of his or her livelihood; and
6) he or she has satisfactory oral and writing skills in the Finnish or Swedish language, or instead of oral skills similar skills in the Finnish sign language;
7) there are no well-founded reasons for suspecting that the naturalisation will jeopardise the security of the State or public order, or that the main purpose of acquiring citizenship is to take advantage of the benefit related to Finnish citizenship without aiming to settle in Finland, or that naturalisation conflicts with the best interests of the State for some other reason on the basis of an overall consideration of the applicant’s situation.

Until the new Finnish Nationality Act came into force in 2003 a general waiver of all naturalisation conditions was possible for an applicant who was married to a Finnish citizen (art. 4 (2) Nationality Act 1968).\(^{40}\)

However, the new Nationality Act only provides for a reduction of the residence requirement. Art. 22 states that the spouse of a Finnish citizen may be granted Finnish citizenship notwithstanding art. 13(1)(2) if:
1) the spouses live and have lived together for a minimum of three years; and
2) the applicant is and has been permanently resident and domiciled in Finland
   a) for the last four years without interruption; or
   b) for a total of six years since reaching the age of 15 years, with the last two years without interruption.

Until 2003, the Finnish legislation did not contain difficulties for the foreign spouses of Finnish nationals living abroad if they wanted to acquire European Citizenship by naturalisation in Finland. It was, however, up to the discretion of the Finnish authorities whether they naturalised such

\(^{40}\) On this old regulation: Alan ROSSA/Markku SUURI, in Nasämbene (ed.), \textit{Nationality laws in the EU}, 288-290.
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applicants or not. Since 2003 the naturalisation of the foreign spouse of a Finnish national living abroad is not facilitated anymore.

h) France  

In France Art. 21-1 Code civil declares, like in Belgium, that a marriage does not automatically affect nationality ("Le mariage n'exerce de plein droit aucun effet sur la nationalité").

The next article, Article 21-2, provides, since a modification realised by Act Nr. 2003/1119 of 26 November 2003:

An alien or stateless person who marries and whose spouse is of French nationality may, after a period of two years from the marriage, acquire French nationality by way of declaration provided that, at the time of the declaration, the community of living both affective and physical has not come to an end and the French spouse has kept his or her nationality. The foreign spouse must also prove a sufficient knowledge of the French language, according to his or her condition.

The duration of the community of living shall be raised to three years when the alien, at the time of the declaration, does not prove that he has resided in France uninterruptedly for at least one year from the marriage.

The declaration shall be made as provided for in Articles 26 and following. Notwithstanding the provisions of Article 26-1, it shall be registered by the Minister in charge of naturalisations.

In the past the declaration of option could even be lodged earlier if spouses already had a child together ("Le délai de deux ans est supprimé lorsque nait, avant ou après le mariage, un enfant dont la filiation est établie à l'égard des deux conjoints, si les conditions relatives à la communauté de vie et à la nationalité du conjoint français sont satisfaits"). But that possibility has now been abolished. The requirement that the foreign spouse proves a sufficient command of the French language was introduced in 2003. The increase of the waiting period to three years for foreign spouses who have not lived in France for at least one year since the marriage was also introduced in that year.

Nevertheless, it is obvious that even if the spouses live permanently abroad, the foreign spouse can acquire French nationality by lodging a declaration of option. Nevertheless, one must realise, that Art. 21-4 gives the possibility to the government to refuse the acquisition of French nationality "par décret en Conseil d'État, pour indignité ou défaut d'assimilation, à l'acquisition de la nationalité française par le conjoint étranger" within a period of one year. If the foreign spouse has a criminal record or is not integrated in French society, the acquisition of French nationality can be refused. Since 2003 the same applies if the foreign spouse does not master French. For the average foreign spouse, living with a French partner in another Member State of the European Union, particularly the last point mentioned can create difficulties. The same can be concluded in respect to the required integration. The question is, whether one is able to integrate in French society while living abroad. The French provisions are, therefore, less liberal than they seem to be at first sight.

i) Germany

Art. 9 of the German Nationality Act provides that spouses of German citizens shall be naturalised under the conditions of art. 8, if 1) they lose or renounce their former nationality and 2) it is certain that they will adapt to the German way of life ("deutsche Lebensverhältnisse"). The naturalisation will be refused if important interests of Germany, especially those of national and international security or the relations with other states, are opposed to the naturalisation. According to art. 8 they have to fulfil the following conditions: 1) they have to reside in Germany; 2) they must be of full legal capacity; 3) there are no reasons to expel the applicant according to the rules of the German Foreigners Act; 4) the applicant must have an own dwelling or lodging in the place of his residence; 5) he must be able to support himself and his family in that place.

43 Mr Jean-François Molla, Ministère de l’emploi, du travail et de la cohésion sociale, Direction de la population et des migrations, Sous-direction des naturalisations, stresses in a letter to the author on 24 June 2005, that this procedure is difficult due to the relatively short period of one year.
45 See also Markus Kraiwosch/Helmut Rittsteig in Nascimbene (ed.), Nationality law in the EU, 369; de Groot, Staatsangehörigkeit, 64.
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For the average foreigner living with his German spouse in another Member State of the Union particularly the residence condition gives rise to problems.

The rather vague condition that it must be certain that the foreign spouse adapts to the German way of life is elaborated in the official guidelines on naturalisation ("Einbürgerungsrichtlinien", Nr. 6.1.3). Art. 9 Nationality Act will in principle be applied, if the spouses have lived in Germany for three years and the marital cohabitation has lasted for at least two years.

j) Greece

The Greek Nationality Act 46 states expressly in art. 4, that marriage does not affect the acquisition or loss of Greek citizenship. Foreign spouses of Greek citizens have to fulfil the conditions for acquisition of Greek citizenship by naturalisation as formulated in art. 6. One of these conditions is that an applicant for naturalisation who is not of Greek ethnical descent must have resided in Greece for a total of ten out of the twelve years before his application for naturalisation or five years after his application for naturalisation 47. These conditions are not required for persons who were born and reside in Greece. Since 1997 48 this residence requirement also does not apply "to those aliens living in Greece, having married to a Greek citizen and having become parent as well". 49 If no child is born, the normal residence requirements have to be fulfilled.

Obviously, only the required term of residence is waived. The foreign spouse must live in Greece in order to qualify for this facilitation. Without having residence in Greece it will be difficult for a foreign spouse of a Greek citizen to get European Citizenship by naturalisation in Greece, except in cases where the foreign spouse is of Greek ethnicity. A possibility, however, would be to qualify the marriage with a Greek national as an act serving exceptional Greek interests. This would allow the naturalisation on the

47 See also Anastasia Grammaticaki-Kalamou in Nascimbene (ed.), Nationality laws in the EU, 395.
basis of art. 8 Nationality Act. It is, however, unlikely that this qualification will be given in practice.

**k) Hungary**

The general conditions for acquisition of Hungarian nationality by naturalisation can be found in art. 4 (1) Hungarian Nationality Act. Naturalisation will be granted if the applicant:

a. resided in Hungary continuously over a period of eight years preceding the submission of the application;

b. according to Hungarian law, the applicant has a clean criminal record, and at the time of the assessment of the application, there are no criminal proceedings in progress against him before a Hungarian court;

c. his livelihood and residence are assured in Hungary;

d. his naturalisation does not violate the interests of the Republic of Hungary; and

e. provides proof that he has passed the examination in basic constitutional studies in the Hungarian language, or that of being exempted by virtue of this Act.

According to art. 4 (2) the naturalisation of a foreign spouse will be facilitated. Her or his naturalisation is already possible after a residence of three years in Hungary, provided the spouses have already been married for at least three years. A shorter period of marriage suffices for the facilitation of naturalisation if the marriage is dissolved by the death of the Hungarian spouse.

If the spouses do not live in Hungary, there will be no facilitation of naturalisation if the marriage is dissolved by the death of the Hungarian spouse.

If the spouses do not live in Hungary, no facilitation exists. Naturalisation would only be possible under application of art. 4 (7), which provides that on recommendation of the Minister of Internal Affairs, the President of the Republic may grant exemption from the criteria of evidencing Hungarian domicile and means of support and the criteria of passing the exam-

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in basic constitutional studies, if having the petitioner naturalised is in the overriding interest of the Republic of Hungary.

I) Ireland

Until 30 November 2002, section 8 Irish Nationality Act regulated the acquisition of citizenship through marriage. According to that provision the foreign spouse of an Irish citizen (otherwise than by naturalisation or post-nuptial citizenship) could acquire Irish nationality by lodging, not earlier than three years from the date of the marriage or from the date on which the Irish spouse became an Irish citizen, whatever came later, a declaration of acceptance of post-nuptial citizenship, provided that (a) the marriage subsisted at the date of lodgement of the declaration, and (b) the couple was living together as husband and wife and the spouse who was an Irish citizen submitted an affidavit to that effect when the declaration was being lodged.

If a foreigner married with a naturalised Irish citizen other rules apply. In that case the foreign spouse had to apply for a (facilitated) naturalisation.

Since the end of 2002, section 15A of the Irish Nationality Act regulates the access to Irish nationality for the foreign spouse of an Irish national. This provision reads as follows:

"(1) Notwithstanding the provisions of section 15, the Minister may, in his or her absolute discretion, grant an application for a certificate of naturalisation to the non-national spouse of an Irish citizen if satisfied that the applicant
(a) is of full age,
(b) is of good character,
(c) is married to that citizen for a period of not less than 3 years,

I thank Ms Ciara DE MORA, Irish Department of Justice, Equality and Law Reform, Citizenship Section, for her explanation of several details of the Irish law of citizenship.

See on this old regulation Siofra O'LEARY, in Nascimbene (ed.), Nationality laws in the EU, 434, 435, 438, 439.

There is a three years transition period. Therefore, until 29 November 2005 declarations of acceptance of post-nuptial citizenship based on the old section 8 can be lodged.
is in a marriage recognised under the laws of the State as subsisting,
and that citizen are living together as husband and wife and that citizen submits to the Minister an affidavit in the prescribed form to that effect,
had immediately before the date of the application a period of one year's continuous residence in the island of Ireland 55,
had, during the 4 years immediately preceding that period, a total residence in the island of Ireland amounting to 2 years,
intends in good faith to continue to reside in the island of Ireland after naturalisation, and
has made, either before a judge of the District Court in open court or in such manner as the Minister, for special reasons, allows, a declaration in the prescribed manner, of fidelity to the nation and loyalty to the State.

(2) The Minister may, in his or her absolute discretion, waive the conditions at paragraph (e), (f), (g) or (h) of subsection (1) or any of them if satisfied that the applicant would suffer serious consequences in respect of his or her bodily integrity or liberty if not granted Irish citizenship.

(3) Paragraph (h) of subsection (1) shall not apply to an applicant for a certificate of naturalisation to whom subsection (4) applies.

(4) Any period of residence outside the island of Ireland, during which
the applicant for a certificate of naturalisation to which this section applies was married to and living with his or her spouse, and
that applicant's spouse was in the public service, shall be reckoned as a period of residence in the island of Ireland for the purposes of calculating
(i) continuous residence under paragraph (f) of subsection (1), or
(ii) total residence under paragraph (g) of that subsection.\(^5\)

Except in cases where the Irish spouse is in (Irish) public service and lives with the foreign spouse abroad, the naturalisation of the foreign spouse of an Irish citizen living abroad is not facilitated anymore. For the foreign spouse who lives in the island of Ireland the normal residence requirement of four years during the eight years immediately preceding the application for naturalisation is reduced to two years during the four years immediately preceding the application.

\(^5\) This formulation includes residence in Northern Ireland.
m) Italy

Art. 5 of the Italian Nationality Act provides that the foreign spouse of an Italian national acquires Italian citizenship when he or she has had legal residence in Italy for at least six months, or after three years since the date of the marriage, unless dissolution, annulment, divorce, or separation has taken place. Italian nationality is acquired by the foreign spouse by means of a decree, given by the Minister of Internal Affairs, after application of the person concerned. This application shall be submitted to the mayor of the commune of residence or to the competent consular authority. In some cases the Minister can refuse to issue a naturalisation decree. Art. 6 states that an acquisition of citizenship pursuant to art. 5 is precluded by:

a) conviction for one of the offences provided by book II, title I, cap. I, II, III, of the Penal Code;
b) conviction for a non-reckless offence for which law provides imprisonment for a maximum term of at least three years; or conviction for a non-political crime to imprisonment longer than one year inflicted by a foreign court if the judgment has been recognized in Italy;
c) if the acquisition of the Italian nationality would endanger public security.

Art. 6 (4) provides, that the acquisition of citizenship is suspended till the communication of the final judgment if the penal action for one of the offences provided by subsection 1 (a) or (b) has been brought.

Italian nationality law therefore gives the possibility to a foreign spouse to acquire the Italian nationality, without a residence requirement. However, the competent minister can refuse to grant the nationality because of danger for the public security or conviction of the applicant for certain offences. Obviously, it is not possible to refuse the acquisition of Italian nationality for the sole reason that the foreign spouse does not have any command of the Italian language.

57 DE GROOT, Staatsangehörigkeit, 122.
58 Stefania BARIATTI in Nascimbene (ed.), Nationality laws in the EU, 476.
n) Latvia

The general conditions for naturalisation in Latvia are listed in art. 12 Latvian Nationality Act. Art. 14 (2) provides for an examination of the application outside of the general procedure for applications made by *inter alia* — persons who have been married to a citizen of Latvia for not less than ten years and who have been permanently resident in Latvia for not less than five years as of the date of submission of the application for naturalisation.

o) Lithuania

The access to Lithuanian nationality by a foreign spouse is regulated by art. 14 Lithuanian Nationality Act. This article provides that

A person, who contracted a marriage with a citizen of the Republic of Lithuania and has maintained his marital status for the last 5 years while residing in Lithuania, shall be granted citizenship of the Republic of Lithuania provided that he meets the conditions established in art. 12 (1) (4) and (5) (examination in the basic provisions of the Constitution of Lithuania and renunciation of a previous nationality). Foreign spouses residing abroad are not facilitated.

p) Luxembourg

Art. 19 of the Luxembourg Nationality Act describes several cases, under which Luxembourg nationality can be acquired by lodging a declaration of option. One of these cases is marriage to a Luxembourg citizen:

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62 Fernand SCHOCKWEILER in Nascimbene (ed.), *Nationality laws in the EU*, 513.
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"Peut acquérir la qualité de Luxembourgeois par option: [...] 3° l'étranger qui épouse un Luxembourgeois ou dont le conjoint acquiert ou recouvre la qualité de Luxembourgeois."

Art. 21 requires for the lodging of a declaration of option according to art. 19 number 3 residence during three years in Luxembourg:

"La recevabilité de l’option prévue à l’article 19, 3°, est soumise à la condition qu’au moment de la déclaration l’intéressé doit avoir résidé au Luxembourg pendant au moins trois années consécutives précédant immédiatement la demande et vivre en communauté de vie pendant la même durée avec son conjoint luxembourgeois; est assimilée à une résidence au pays la résidence à l’étranger nécessitée par l’exercice, par le conjoint luxembourgeois, d’une fonction conférée par une autorité luxembourgeoise ou internationale."

When the spouses live together abroad, a declaration of option can be made after three years of marriage if the Luxembourg spouse works for the Luxembourg authorities or an international organisation. The average foreign spouse living in another Member State of the European Union with his Luxembourg partner, who uses his right of free movement guaranteed by the EC Treaty will not have the possibility to acquire European Citizenship by naturalisation in Luxembourg.

q) Malta

Until 10 February 2000 foreign spouses of a Maltese citizen could apply for registration as Maltese citizen immediately after their marriage. Since then, the foreign spouse can apply only for registration if he/she has been married and has been living together with a Maltese national since at least five years (section 6 Nationality Act). It is not required that the spouses live together in Malta. Registration of the foreign spouse as a Maltese national

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63 Until 2001, art. 21 only required a three years residence, but did not prescribe that this residence had to be immediately before the declaration and during the marriage.
64 Maltese Citizenship Act (Cap 188), as amended in 1989 and 2000. See also: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Malta-CHART188%20Citizenship.pdf (last visited on 23 June 2005)
65 I thank Mr Joseph Muzzi, Assisatza Director of the Maltese Department for citizenship and Expatriate Affairs for his comments on an earlier version of this paragraph.
is also possible if the Maltese spouse dies within the period of five years, provided the spouses were living together at the moment of death of the Maltese spouse. In that case the foreign widow(er) can apply for registration five years after the marriage was concluded. A foreign spouse who is separated de jure or de facto of the Maltese spouse can nevertheless apply for registration if the spouses were married at least five years and were living together after marriage for a period of at least five years.

Although the position of the foreign spouse in respect to access to Maltese nationality is less favourable than before the year 2000, we can conclude that a foreign spouse can acquire Maltese nationality by registration even if the spouses live abroad. Command of the Maltese or English language is not required.

r) Netherlands

Art. 8 (2) Netherlands Nationality Act\(^\text{67}\) states that in order to be eligible for the grant of Netherlands nationality by naturalisation, no residence requirement exists for an applicant who is married to a Netherlands national for at least three years\(^\text{68}\). Nevertheless, these applicants have to fulfil the condition of art. 8 (1) (d), which prescribes that they must be integrated in the society of the Netherlands and must have a reasonable (active and passive, oral and in writing) command of the Dutch language and general knowledge of the society of the Netherlands. It will be very difficult for the foreign spouses involved to fulfil these conditions whilst living abroad in other Member States of the European Union. Again one has to conclude that this is problematic in perspective of the right of free movement within the European Union.

It is remarkable that article 8 (4) also facilitates the naturalisation of unmarried persons who have lived with an unmarried Netherlands national for at least three years and have a permanent relationship other than marriage. Article 8 (4) applies to all cohabitation relationships in which the partners are not married, regardless of whether they are hetero- or homosexual. The partners must have lived together in the Kingdom of the

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\(^{68}\) See also DE GROOT, Staatsangehörigkeit, 134; DE GROOT/BOLLEN in Nascimbene, Nationality laws in the EU, 567 and in the Netherlands Yearbook of International Law 2004 (forthcoming).
Netherlands; cohabitation with a Netherlands national abroad does not entitle one to a facilitation of naturalisation.

In addition article 6 (1) (g) provides that a foreigner who is married to a Netherlands national for three years and has his main habitual residence lawfully in the Kingdom of the Netherlands during a period of at least 15 years may acquire Netherlands nationality by confirmation of a declaration of option.  

A registered partner of a Netherlands national has under the same conditions the possibility to opt. An important difference between the facilitated naturalisation procedure of art. 8 (2) and the option procedure of art. 6 (1) (g) is that in the latter case the spouse does not need to pass a naturalisation test (command of the Dutch language and general knowledge of the society of the Netherlands).

s) Poland

A foreigner can apply for the grant of Polish citizenship by naturalisation after he/she lived in Poland during a period of at least five years on the basis of a residence permit (Art. 8(1) Polish Citizenship Act). The foreign spouse of a Polish citizen can opt for Polish citizenship after a marriage of at least three years, provided he/she is in possession of a residence permit in Poland (Art. 10(1) Polish Citizenship Act). It is not relevant whether during the mentioned period of three years the spouses lived together in Poland. However, in order to receive Polish citizenship, the foreign spouse must make use of this right within 6 months from the moment of acquiring the residence permit in Poland (if the spouses lived abroad) or 3 years and 6 months from the conclusion of the marriage (if the spouses lived in Poland). The acquisition of Polish citizenship by a foreign spouse of a Polish citizen in this way can be made conditional upon the loss or renunciation of the previous citizenship. In practice, the loss or renunciation of

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70 Mr Marcin Pruss ULM of the Ministry of Foreign Affairs, The Hague, Netherlands helped me with the interpretation of the Polish provisions.

71 Ustawą o obywatelstwie polskim, Act of 15 February 1962, Dzienik Ustaw Rzeccypospolitej Polskiej 1962, Nr. 10 of 21 February 1962, poz. 49; several times amended; a consolidated version of the Act was published in Dzienik Ustaw Rzeccypospolitej Polskiej 2008, Nr. 28, poz. 353. See also: http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Polish%20citizenship%20Act%201962.pdf (last visited on 23 June 2005).
the foreign citizenship – which condition also applies in the case of naturalisation of a foreigner – is not required if it is not permitted under the law governing the foreign citizenship, or if it is practically impossible.

t) Portugal

Art. 3 of the Portuguese Nationality Act\textsuperscript{72} provides that an alien who has been married for more than three years\textsuperscript{73} to a Portuguese national can acquire the Portuguese nationality by making a declaration of option during the marriage.\textsuperscript{74} The second subsection of this article states expressly that the nullity or dissolution of the marriage does not prejudice the nationality acquired by a spouse who concluded the marriage in good faith. At first sight, this regulation seems to be extremely generous. Even spouses living permanently abroad, for example because the Portuguese spouse uses his right of free movement within the EU, are entitled to lodge such a declaration of option after having been married for three years. It is, however, possible that the Portuguese authorities refuse the acquisition of Portuguese nationality by such a declaration. This so-called right of “opposition” is exercised by the Public Prosecutor within one year from the date of the fact on which the acquisition of the nationality depends, in a procedure initiated at the Court of Lisbon (Tribunal de Relação de Lisboa). According to art. 9, the following facts are reasons for “opposition” to the granting of the Portuguese nationality in case of a declaration of option or by adoption, namely if the applicant

a) does obviously not possess an effective link with the national community (“A não comprovação, pelo interessado, de ligação efectiva à comunidade nacional”);

b) has committed a crime with a maximum penalty of imprisonment of more than three years according the Portuguese legislation;

c) is in the public service or non-compulsory military service of a foreign State.


\textsuperscript{73} TopOfPage last visited on 23 June 2005.

\textsuperscript{74} Raúl Manuel Moura Ramos in Nascimbene (ed.), \textit{Nationality laws in the EU}, 613, 614.
Art. 10 subsection 2 prescribes that all Portuguese authorities are obliged to inform the Public Prosecutor about the facts mentioned in the preceding article.

Whether this right of opposition is used against foreign spouses living permanently abroad with their Portuguese partner is an interesting question. Is being married to a Portuguese already enough in order to show an effective link with the Portuguese national community? If the marriage is a marriage of convenience with the aim to facilitate the acquisition of nationality by the foreign spouse, the acquisition of nationality will be refused. On the other hand, command of the Portuguese language is in principle an indication of a link with the Portuguese national community, but the acquisition of nationality by the foreign spouse was accepted in cases where the foreign spouse did not speak Portuguese but was integrated in the Portuguese community in Macao. Furthermore, it has to be stressed that the Public Prosecutor under circumstances can obviously exercise the right of opposition, but does probably not have the obligation to do so. If it is at the discretion of the Public Prosecutor to use this right or not, one can argue that it would be a violation of EU law if this right were used in case of a foreign spouse living in another Member State of the European Union.

u) Slovakia

Par. 7 (1) Slovak Nationality Act provides, that the citizenship of the Slovak Republic can be granted upon request to such a person who is not a citizen of the Slovak Republic and who

a) has continuous permanent stay on the territory of the Slovak Republic for at least 5 years and speaks the Slovak language,
b) was not prosecuted for an intentional crime.

According to art. 7 (2) loss of the previous nationality is not a requirement, but favours a positive decision on the application. art. 7 (3) allows to waive the conditions mentioned in art. 7 (1), a) if the applicant is the spouse of a Slovak citizen, or b) for reasons worth of special attention, if the person has done something of great benefit for the Slovak Republic in the field of economy, science, culture or technology.

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76 Compare the transition on: http://www.coe.int/TSE/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Slovakia%20NationalityLawaspTopOfPage (last visited on 21 June 2005).
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Obviously, Slovak nationality law enables to naturalise the foreign spouse who lives with her/his Slovak partner abroad. It is, however, within the discretion of the Slovak authorities, whether the residence and language requirements are waived. In practice, the Ministry of Interior always requires that the foreign spouse has a residence on the territory of the Slovak Republic.\textsuperscript{77}

An amendment to the Slovak Nationality Act will come into force on 1 September 2005. This Amendment shall also modify the provision about spouses. An applicant who has a permitted residence on the territory of the Slovak Republic can be granted Slovak nationality without fulfilling the conditions provided in Par. 1 (permanent residence on the territory of the Slovak Republic for at least 5 years immediately preceding the submission of the application for granting Slovak nationality and basic command of the Slovak language) if he/she is married with a national of the Slovak Republic and lives together with this spouse on the territory of the Slovak Republic for at least 3 years immediately preceding the submission of the application for granting the Slovak nationality.

v) Slovenia

Art 10 Slovenian Nationality Act\textsuperscript{78} mentions the requirements for naturalisation. The following conditions have to be fulfilled by the applicant:\textsuperscript{79}:

1. he has reached 18 years of age,
2. he has a release from current citizenship or can prove that such a release will be granted if he/she acquires citizenship of the Republic of Slovenia,
3. he has been actually living in the Republic of Slovenia for the period of 10 years, of which at least five years prior to the petition for citizenship must be without interruption;
4. he has a guaranteed residence and guaranteed permanent source of income of an amount that enables material and social welfare;

\textsuperscript{77} Information received from Mrs. JUDr. Andrea Bernatkova, Ministry of the Interior of the Slovak Republic, Department for nationality and registers, in an e-mail of 23 June 2005.
\textsuperscript{79} Compare the translation on: http://www.coe.int/T/ELegal_Affairs/Legal_co-operation/Foreigners_and_citizens/Nationality/Documents/National_legislation/Slovenia%20CitizenshipAct.asp#TopOfPage (last visited on 21 June 2005).
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5. he must demonstrate active command of the Slovenian language in an obligatory written and oral examination;
6. he has not been sentenced in the state of which he was a citizen or in the Republic of Slovenia to a prison term longer than one year and for a criminal offence prosecuted by law if such an offence is punishable by the laws of its own country or by the laws of the Republic of Slovenia;
7. there is no ban on the person's residence in the Republic of Slovenia;
8. the person's admission to citizenship of the Republic of Slovenia poses no threat to public order or the security and defence of the State.
9. he must discharge his tax obligations.

Art. 12 Slovenian Nationality Act make it possible to waive the conditions 2 and 9 for an applicant who is the spouse of a Slovenian national since at least two years, provided he or she lives in Slovenia since at least one year. A complete waiver of all requirements of art. 10 is only possible on the basis of art. 13 if the naturalisation is to the benefit of the state for scientific, economic, cultural, national or similar reasons.

w) Spain

In Spain art. 21 (2) Código civil provides, that Spanish nationality is acquired by naturalisation based on residence in Spain under the requirements mentioned in the next article and granted by the Minister of Justice. However, the minister can refuse to grant the nationality, based on motivated reasons of public policy or national interest. Art. 22 (1) prescribes, in principle, residence for a period of ten years, but also formulates many exceptions in the second subsection. One category of persons which can be naturalised after a residence of only one year in Spain are persons who at the moment of application have been married to a Spanish man or woman, as long as they do not live legally or factually separated. Subsection 3 provides, that the residence has to be legal, continuous and immediately before the application. According to subsection 4, the applicant has to prove, in the way regulated by the legislation of the civil register, good civic conduct and a sufficient degree of integration in Spanish society.

81 See also José Carlos Fernandez ROSAS/Aurelia Alvarez RODRIGUEZ, Nascimbene (ed.), Nationality laws in the EU, 219.
All these provisions do not really help foreign spouses, who live abroad with their Spanish partner. The only possibility for them to get Spanish citizenship by naturalisation is on the basis of art. 21 (1). This subsection states, that Spanish nationality is acquired by certificate of naturalisation ("carta de naturaleza"), granted by discretion by Royal Decree, if regarding the person involved, exceptional circumstances exist.

x) Sweden

Art. 11 Swedish Nationality Act 82 provides that a foreigner can be granted Swedish nationality if he or she
1. has provided proof of his or her identity,
2. has reached the age of eighteen,
3. holds a permanent Swedish residence permit,
4. has been domiciled in Sweden
   a) for the previous two years in the case of Danish, Finnish, Icelandic or Norwegian citizens,
   b) for the previous four years in the case of a stateless person of one who is considered to be a refugee under Chapter 3, Section 2 of the Aliens Act (1989:529),
   c) for the previous five years for other aliens, and
5. has led and can be expected to lead a respectable life.

Art. 12 (2) allows to waive these conditions if the applicant is married to or living in conditions resembling marriage with a Swedish citizen 83, or there are other special reasons for granting citizenship.

If the applicant cannot provide proof of identity in accordance with art. 11 (1), he or she will be naturalised only if he or she has been domiciled in Sweden for at least the previous eight years and can give the authorities reason to believe that the stated identity is correct.


83 This was also the case under the old nationality Act of 1950. See Ingrid BELLANDER in NASCIMBENE, Nationality laws in the EU, 647.
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At first sight, we can conclude that the Swedish legislation does not contain difficulties for the foreign spouses of Swedish nationals living abroad if they want to acquire European Citizenship by naturalisation in Sweden. It is, however, up to the discretion of the Swedish authorities whether they naturalise such applicants or not. Obviously, command of the Swedish language is not required. In practice, the Swedish authorities frequently require nevertheless residence in Sweden, although no certain period of residence is required.84 Otherwise, a close link to Sweden is necessary.85

y) United Kingdom

Section 6 subsection 2 British Nationality Act86 provides:

"If, on an application for naturalisation as a British citizen made by a person of full age and capacity who on the date of the application is married to a British citizen, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen."

Schedule 1 contains the following provisions:

"Naturalisation as a British citizen under section 6(2)

3. Subject to paragraph 4, the requirements for naturalisation as a British citizen under section 6(2) are, in the case of any person who applies for it

(a) that he was in the United Kingdom at the beginning of the period of three years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 270; and

84 Information of Mrs. Elena DENGU-KYRLUND in an e-mail to the author on 30 June 2005 with reference to H. SANDERS/S. BORK, Nya medborgarskaplagen med kommentarer, 2005.
85 Mrs. Elena DENGU-KYRLUND states in her e-mail of 30 June 2005: "The length of the marriage/relationship has paramount importance [...] even though there is always a possibility to take into consideration actual circumstances. Among these, the relationship/connection to Sweden, and even the need to acquire Swedish citizenship, also humanitarian reasons could be taken into consideration."
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(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that on the date of the application he was not subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of three years ending with the date of the application in the United Kingdom in breach of the immigration laws; and

(e) the requirements specified in paragraph 1(1)(b), (c) and (ca)". 87

The reference in 3 (e) to par. 1 (1) (c) and (ca) was added by the Nationality, Immigration and Asylum Act 2002. 88 Par. 1 (1) (b) requires that the applicant is of good character. Par. 1 (1) (c) requires basic language skills in English (or Welsh or Scottish). Par. 1 (1) (ca) requires that the applicant has sufficient knowledge about life in the United Kingdom.

The Secretary of State may make some exceptions to the conditions of paragraph 3 based on paragraph 4 89 in relation to paragraph 2 90. He may

87 Paragraph 1(1)(b): "that he is of good character".
89 Par. 4 reads: "Paragraph 2 shall apply in relation to paragraph 3 with the following modifications, namely
(a) the reference to the purposes of paragraph 1 shall be read as a reference to the purposes of paragraph 3;
(b) the references to paragraphs 1(2)(a), 1(2)(b) and 1(2)(d) shall be read as references to paragraphs 3(a), 3(b) and 3(d) respectively;
(c) paragraph 2(6) and (e) shall be omitted; and
(d) after paragraph (c) there shall be added
(f) waive the need to fulfil all or any of the requirements specified in paragraph 3(a) and (b) if on the date of the application the person to whom the applicant is married is serving in service to which section 2(1)(b) applies, that person’s recruitment for that service having taken place in the United Kingdom."
90 Par. 2 reads: "If in the special circumstances of any particular case the Secretary of State thinks fit, he may for the purposes of paragraph 1 do all or any of the following things, namely
(a) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(a) or paragraph 1(2)(b), or both, although the number of days on which he was absent from the United Kingdom in the period there mentioned exceeds the number there mentioned;
(b) treat the applicant as having been in the United Kingdom for the whole or any part of any period during which he would otherwise fall to be treated under paragraph 9(1) as having been absent;
(c) disregard any such restriction as is mentioned in paragraph 1(2)(c), not being a restriction to which the applicant was subject on the date of the application;
(d) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(d) although he was in the United Kingdom in breach of the immigration laws in the period there mentioned;"
do all or any of the following things:

(a) treat the applicant as fulfilling the requirement specified in paragraph 3(a) or paragraph 3(b), or both, although the number of days on which he was absent from the United Kingdom in the period there mentioned exceeds the number there mentioned;

(b) treat the applicant as having been in the United Kingdom for the whole or any part of any period during which he would otherwise fall to be treated under paragraph 9(1) as having been absent;

(c) treat the applicant as fulfilling the requirement specified in paragraph 3(d) although he was in the United Kingdom in breach of the immigration laws in the period there mentioned;

(d) waive the need to fulfil all or any of the requirements specified in paragraph 3(a) and (b) if on the date of the application the person to whom the applicant is married is serving in service to which section 2(1)(b) applies, that person's recruitment for that service having taken place in the United Kingdom.

The Secretary of State can probably naturalise the foreign spouse of a British national living in another EU country, if he uses the possibilities opened by the just mentioned paragraphs. He should do so in order to avoid, that the exercise of the rights guaranteed by the EC-Treaty is hindered by the disadvantages which would be suffered in respect of the access to European Citizenship by the non-EU spouse. Nevertheless, the foreign spouse needs to have knowledge of the English, Welsh or Scottish language and of the life in the United Kingdom.

4. SOME COMPARATIVE AND CRITICAL REMARKS

All Member States know the possibility to apply for naturalisation after a certain period of residence. The required period of residence, however, varies considerably from State to State. It is not difficult to imagine, that the non-EU spouse of a European citizen suffers disadvantages in respect to fulfilling the residence requirement in a Member State if the EU spouse...
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decides to enjoy the right of free movement in another Member State and expects that the non-EU spouse moves with her/him (as permitted under EU law)\(^{92}\). This problem is exacerbated if the EU spouse accepts work in yet another Member State every four or five years, which is not uncommon for workers in the service of multinationals. In spite of having lived for many years (even decades) within the European Union, the spouses of some EU nationals may have difficulties in acquiring European Citizenship through the nationality of the country of residence, because they have not yet lived there for the required period of time. For them, another possibility to acquire European Citizenship would be to acquire the nationality of the country of origin of their EU spouse. But also the acquisition of the nationality of the spouse will not always be easy, in particular if in that country the residence requirement also applies to the national’s spouse who wishes to become a naturalised national. In the previous paragraph we made a quick "tour d’Europe" by describing the possibilities of naturalisation in the country of origin of the European spouse for his or her foreign spouse. In respect of many regulations, we could already conclude that the situation that the spouses live abroad within the European Union exercising their right of freedom of movement is not taken into account and therefore hinders the access to European Citizenship by the foreign spouse.

In two countries the position of the foreign spouse of a national who wants to obtain the nationality of the husband or wife while living in another country is very strong. This is the case in Italy and Malta. After three, respectively five years of marriage the foreign spouse living abroad can opt for Italian nationality, respectively can apply for registration as a Maltese national.

Possibilities with respect to the naturalisation of the foreign spouse of a national, without residence in the country involved, exist also in Slovakia and Sweden, but in both countries the naturalisation is within the discretion of the authorities. In practice, Slovakia always requires residence in the Slovak Republic and this practice will be formalised by amending the Nationality Act. Sweden also requires often residence in Sweden, but at least a close link to Sweden.

More complicated than in Italy and Malta is the situation in France and Portugal. Even in case of ordinary residence abroad, the foreign spouse has

after two, respectively three years of marriage an option right to the nationality of the partner. But in both countries the authorities may refuse the acquisition of the nationality through lodging an option declaration by making an "opposition". In France the authorities have the possibility to oppose a declaration of option made by a foreign spouse living abroad with a French partner, because of "défaut d'assimilation". In Portugal the authorities could oppose because of the obvious lack of a real link with Portugal. However, in both cases the use of the right of opposition would be problematic in the light of the right of free movement for European citizens within the European Union, if the spouses live together in another Member State of the European Union.

Slightly different is the situation in Belgian nationality law. The foreign spouse may have a right to acquire Belgian nationality by making a declaration of option three years after having married, but in case of residence abroad this right only exists if the Belgian authorities accept that real ties ("attaches véritables") with Belgium have been established. In comparison with the Portuguese regulation, we can observe that in Portugal the burden of proof of the lack of a real link with Portugal is on the Portuguese authorities, whereas according the Belgian rules the burden of proof of the existence of real ties is on the applicant.

A rather hidden difficulty we could notice in the nationality legislation of the Netherlands. Even without residence in the Netherlands it is possible for the foreign spouse to be naturalised in the Netherlands, but the foreign spouse must have acquired a reasonable command of the Dutch language and – since 2003 – of the life in the Netherlands. To meet that requirement will be difficult if the spouses involved use to live in a non-Dutch speaking country. A similar difficulty arises for Austria (language requirement), for France (since 2003) and for the United Kingdom (since 2002).

In all other Member States naturalisation of the foreign spouse is in principle only possible if this spouse resides for a certain period in the country. However, some countries provide for naturalisation without residence requirement if this is in the best interest of the State (for example in case of the foreign spouse of an Ambassador of the country involved). The length of the residence which is normally required differs considerably from country to country.

The Czech Republic allows the naturalisation of the foreign spouse in case of residence within the country, without specifying the duration. Poland also allows naturalisation in case of legal residence, if the spouses have already been married for three years.
One year residence is required in Slovenia (plus two years marriage) and Spain.

Two years residence is necessary in Ireland.

Three years residence is a condition in Cyprus, Germany, Hungary and Luxembourg.

Only after four years residence the foreign spouse can apply for naturalisation in Finland.

The three Baltic countries (Estonia, Latvia and Lithuania) require a residence of five years.

Six years of residence will be necessary in Denmark.

Most remarkable is the situation in Greece: the foreign spouse has to fulfil the normal residence requirement of ten years, but residence without a certain duration is enough if the spouses got a child.

Of course we have to realise, that the description of the legal situation in the various Member States of the European Union in the previous paragraph has been superficial. The description focussed mainly on the content of the statutory provisions. But already from that description we might conclude some remarkable difficulties. In order to get a better view on the problems involved, it would be necessary to consult more handbooks, commentaries, court decisions, administrative decisions and, last but not least, statistics. It would also be important to interview in depth the competent authorities in the Member States concerning their application of the rules as described above.

In respect of the statistics, special attention should be devoted to the question of the male/female division. We could signalise that the regulations in all Member States are sex-neutral. But does it perhaps more often happen, that foreign women follow their European Union husbands on their professional career throughout the Union than foreign men follow their European Union wives doing the same? It is very likely that this is the case, but of course this observation should be based on statistics. If it is the case, women would be more often than men be confronted with difficulties in respect of access to European Citizenship because of the exercise of free movement rights by the spouses. The problematic position of foreign spouses would then imply in practice an indirect discrimination of women.

In not one single Member State, a distinction is found between the situation where the non-European foreign spouse lives together with the European spouse within the European Union and the situation where they are living in a non-Member State. In the light of the free movement rights
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granted by the EC Treaty, such a distinction would be desirable. It is odd to observe that Community law guarantees the free movement of European citizens and the right of the non-European Union spouses of these citizen to accompany their spouses, but forgets that the consequence of these free movement rights can be that a non-European spouse never obtains the right to acquire the status of European citizen independently.

Of course the question has to be touched, how the observed problems could be solved.

In the first place, it is conceivable, in theory, that the European Union grants European citizenship ex lege to non-European nationals, after they have enjoyed resident status within the European Union for a certain period (e.g. ten years). The periods lived in various countries of the Union should be added up. In respect of integration requirements, it would be necessary to accept integration in European society and not anymore, as is the case today in many countries, integration in the national society of a Member State. In respect of language requirements, the reasonable command of one of the official languages of the Union should be enough in order to qualify for naturalisation. The advantage of this approach would be that it improves the legal position of all third country nationals living in the Union. However, it is unlikely that such a step will be taken soon. Such a regulation would imply the creation of a quasi-nationality entitling to European citizenship. Therefore, it would make it necessary to regulate in detail by Community law the grounds for loss of such a quasi-nationality and the way in which such quasi-nationality is transferred to descendants, in particular those born outside the territory of the European Union.

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93 Compare the view by the European Parliament that it is desirable to create an autonomous notion of "European citizenship", irrespective of the nationality of the Member States. See: Alvaro CASTRO OLIVEIRA, "The position of third-country nationals: Is it to early to grant them Union Citizenship?", in LA TORRE, European citizenship (see footnote 66), 207-223; Nikolaos KOTALAKIS, Von der nationalen Staatsangehörigkeit zur Unionbürgerschaft, Die Person und das Gemeinwesen, Baden-Baden : Nomos 2000, 303.

94 One should realise, that after Directive 2003/109 concerning the status of third-country nationals who are long-term residents, O.J. 2004, L 164/44 not only foreign spouses (and other family members) are confronted with the problems described in this contribution, but also other third country nationals who as long-term residents move to another Member State of the Union.

95 However, the European Economic and Social Committee called for such a step in a self-initiated opinion on access to European Union citizenship of 14 May 2003: "The EESC therefore proposes to the Convention that Article 7 (Citizenship of the Union) be granted not only to nationals of the Member States but to all persons who reside on a stable or long-term basis in the Union" (see 6. Conclusions, Nr. 5, first sentence).
Secondly, it would be conceivable to make a choice for a variation on the first option and to guarantee under certain conditions an entitlement to naturalisation in the Member State of residence for foreign spouses (or for all third country nationals) living already for a very long period within the European Union only subject to a very modest residence requirement in that country (for example one year).

A third, different approach would be to grant the foreign non-European Union spouses of European citizens a right of naturalisation in the country of nationality of their spouses after having been married for a certain amount of years and after having lived during a certain period on the territory of the Union. In order to realise that right it would be necessary, that Member States at least make a distinction between spouses living in another Member State of the EU and those who live in a third country. Furthermore, the language requirements in an increasing number of Member States set as a condition for naturalisation for the foreign spouse have to be modified. The question must unavoidably be raised as to whether it should be possible in certain circumstances to substitute insufficient knowledge of the language of the country of nationality of the spouse by knowledge of the language of another Member State. This is a very sensitive issue in some countries, because command of one of the national languages is often seen as an indication of a willingness to integrate into the country in question. Nevertheless, at present a person who acquires the nationality of a Member State is entitled immediately upon naturalisation to settle in another Member State of the Union, although he does not speak a single word of the official language of that Member State. Should lack of knowledge of the language then block access to European Citizenship in the country of residence? Similar observations can be made in respect of the requirement that a person applying for naturalisation has a reasonable knowledge of the society of the State, whose nationality he wishes to acquire.

Whether the first, second or third approach will be chosen at the end, one thing is sure: if one of these steps will be taken, nationality law will be slightly less nationalistic than it is today. And related to that observation we should realise that one of the aims of the foundation of the European Economic Community nearly sixty years ago was to avoid nationalism.

Maastricht, 1 July 2005

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96 Of course, Member States which allow already the naturalisation of all foreign spouses of their nationals living abroad can maintain that facilitation.