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Date of publication in the **EIoP**: 4 Jul 2006

Keywords: European identity, identity, nationality, Nation-state, European citizenship, harmonisation, mutual adjustment, competences, European law, immigration policy

Full Text: HTML PDF

Abstract
It is well known that EU citizenship is parasitic upon national citizenship. To become an EU citizen it is necessary to be a citizen of one of the Member States, and the states have exclusive competence to decide who their own citizens are. They therefore function as gatekeepers, and jealously guard this role. However, in practice national citizenship and nationality laws are influenced by EU membership. Firstly, this influence comes from other Member States, who recognise that the decision on citizenship taken by their neighbours have, as a result of rights of free movement and non-discrimination a direct impact upon themselves. Secondly, there is an influence from the EU institutions and EU legislation, for example by granting rights to long-term third country national residents. Since periods of residence are often a central criterion for gaining nationality, EU residence rights effectively amount to EU support for national citizenship for these residents. These points are made using the examples of Spain, Ireland and Germany, all of which have made changes to nationality laws, or exercised nationality decisions, in a way where the influences above can be demonstrated. The long-term residents directive is used to show the influence of the EU itself. These empirical findings are placed in the context of current debates on the nature of citizenship, and on methods of harmonisation, in particular the increasing use of soft and reflexive methods.

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The impact of Union citizenship on national citizenship policies

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European Integration online Papers (EIoP) Vol. 10 (2006) N° 5;
http://eiop.or.at/eiop/texte/2006-005a.htm

Date of Publication in **European Integration *online Papers***: 4.7.2006

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Introduction

This article addresses the relationship between European Union citizenship and reform of national citizenship and nationality laws. It notes and describes a parallel development of the two which undermines the traditional perception of national sovereignty over matters of nationality.

Introducing EU citizenship was a significant and controversial moment in the European integration process. Firstly, it provoked strong objections from the MS to delegation of powers to the EU level in the domain of nationality policy. Although acquisition of national citizenship remained in the states' discretion, it did not prevent certain countries from expressing worries that Community citizenship threatened their independence. In fact, as it will be shown, granting all MS nationals the status of EU citizen has increased the interdependence of nationality policies. Changes in this field introduced at the national level no longer have exclusively domestic impact, but affect other MS and some convergence of national law is already observable. Thus, it will be claimed that a perceived need to harmonise legislation in this area is emerging. Can this trend be interpreted as the result of reflexive harmonisation?

Secondly, adopting Union citizenship created a debate on the position of third country nationals residing in the EU. Excluding foreign residents from Union citizenship deteriorated their relative position in European societies. Are the reforms facilitating access to national citizenship a reaction to, or a result of this deterioration, and hence ultimately of Union citizenship? Also, how has the EU reacted to the deepened gulf between EU and non-EU citizens? The Council Directive on third-country nationals who are long-term residents harmonises the conditions for acquiring the status of long-term resident in all MS and grants them a certain set of rights. Although aiming to provide rights compensating for exclusion from Union citizenship, the directive may also light a path towards it. It has wide implications.

Last but not least, introducing the status of EU citizen violated the traditional understanding of citizenship, which associated it solely with then nation state. Can decoupling the two change ideas of identity and belonging?

The aims of this article are threefold. Firstly, it will be argued that changes to nationality legislation have been implemented under the pressure of other MS and as a result of adopting EU citizenship. It will be claimed that EU countries are encouraged to harmonise their laws without this involving legal provisions at the Community level. However, attention will be also drawn to the fact that EU acts adopted by the MS indirectly interfere in what is thought to be an exclusively national domain. The second objective is to suggest that in this context soft law instruments are generally more desirable and effective than new hard law acts. Finally, it will be examined whether EC law, by inducing changes in nationality, may add depth to EU citizenship and lead to the revision of the general concept of citizenship.

The structure is as follows: the two first chapters provide theoretical background for the analysis of practical examples, which is presented in the third part. The first

chapter is devoted to the investigation of the idea of citizenship. Attention is particularly given to the role of citizenship in creating sense of belonging and its role in collective identity. In the second chapter, the idea of reflexive harmonisation as a new form of governance is presented. It is shown that the MS are influenced not only by legal provisions enshrined in the EC law, but also by soft law instruments, which encourage them to adjust their legislations to the 'acquis communautaire' voluntarily. The third chapter aims at discovering the relationship between Union citizenship and national citizenship legislations. The focus is laid on the indirect impact of the European Community on national policies via pressure from other states and the long-term residents directive.

1. Status of citizen

Introducing Union citizenship challenged the modern understanding of citizenship, which was considered an exclusive attribute of the nation-state. Widening this notion raised numerous questions. What does it mean to be a citizen? How does citizenship influence one's identity? Is it possible to share two different levels of citizenship? The aim of this chapter is to show how citizenship enhances belonging, and prevents non-citizens from full membership in a given polity, and to place Union citizenship in the context of scholarly thinking about these issues.

1.1. Citizenship and identity

The primary feature of citizenship is the conferral of certain rights and obligations.(1) Citizens are people who enjoy the same rights and share the same duties. Secondly, the concept of citizenship is closely connected with a political community. Since ancient Greece 'those who held power' have decided who could acquire citizenship. Nowadays the political authorities through national legislation grant the status of citizen. This leads to a basic definition of citizenship as "a status of full membership of a political community"(2),

According to Goudapel, the notion of citizenship can be viewed from two perspectives: functional and non-functional.(3) The functional approach refers to "an individual's membership of a political community", whereas the non-functional one concerns a sense of cultural identity, which is perceived as very difficult to measure in a legal context.(4) However, the two views are importantly connected.

1.1.1. A functional approach

The first aspect, or the role,(5) of citizenship (according to a functionalist approach) is granting rights to individuals. There are three types of rights, which all citizens should enjoy, namely civil, political, and social rights, known as Marshall's triad.(6) Regardless of differences between particular national citizenship legislations,(7) citizenship always assigns individuals with equal rights and duties. All citizens are treated on the same basis, as a fundamental value of citizenship is equality.(8)

Sharing identical liberties and responsibilities develops a sense of belonging to a given

community, which encourages participation and is perceived as a second function of citizenship.(9) As Held observed,

> Citizenship has meant a reciprocity of rights against, and duties towards, the community. Citizenship has entailed membership, membership of the community in which one lives one's life. And membership has invariably involved degrees of participation in the community.(10)

The status of citizen creates a relation between an individual and the authorities of a political community as well as affiliation between the members of the community.(11) By establishing these two-dimensional bonds, citizenship fulfils, according to its modern conception, an important organisational role.(12)

1.1.2. A non-functional approach

To a certain extent legal links can help foster a sense of 'common identity and shared destiny', especially in the EU, where law has played a significant role in the integration process.(13) This mechanism represents the socio-psychological (non-functionalist) dimension of citizenship.(14) People enjoying the same rights are more likely to establish relationships. The same rights "imply an affiliation with a social and historical group, a condition of solidarity […] that is never acquired 'naturally'".(15) Whereas lack of certain rights ascribed to other members of community leads to the feeling of exclusion,(16) or even discrimination. Non-citizens who live within a certain community may feel less willing to identify themselves with the citizens. As Balibar has said, humanity is divided into "unequal species" by citizenship.(17)

Citizenship's role in political community,(18) which can be described as an association of individuals who share a common life and therefore are especially committed to each other, implies that it binds citizens together.(19) Breton analyzed a number of ways in which a system of collective organization (and political community is undoubtedly one of those) shapes individual and social identities, and he found that people's conception of themselves depends on the group they belong to.(20) Also Verhoeven drew attention to the fact that citizenship implies membership in the community, which is closely related to 'belonging' and 'sense of identity'.(21) Interestingly, political rights may imply 'moral membership', which requires that all members of the community participate in the collective decision-making. As La Torre pointed out, "political rights are the most important adjunct of membership of a community".(22) Also according to Verhoeven, legitimacy of political action enables better identification with a community.(23) Hence, those who are not entitled to vote will not be accepted as full members of the community. This brings us to another significant issue related to belonging – the perception of non-citizens by citizens. There is an evident tendency to treat those, who do not enjoy political rights as 'outsiders'.(24) Such an exclusive perception makes integration of non-citizens into society more complicated.

1.2. The concept of Union citizenship

The concept of Union citizenship emerged long before its formal establishment. The

idea had been developing since a very early stage of the Communities,(25) but the final provisions were approved during the Luxemburg European Council, and inserted into the 1992 Treaty of Maastricht. Among the reasons for introducing Community citizenship, there are three of particular importance, namely encouraging free movement, reducing the European Union's democratic deficit, and forming a base for the construction of European identity.(26)

European citizenship is regulated by Articles 17-18 of the European Communities Treaty. According to these provisions, Union citizenship is conditional upon national citizenship, which makes the concept of citizenship unique. The EU does not have legal authority to grant the status of citizen; it can be acquired only through nationality of one of the Member States. The exclusive competence of the MS to determine who is a national, and therefore an EU citizen, deprives the Community of the right to decide who is subjected to the EC law.(27) Issuing legal provisions for 'unknown' subjects is rightly considered to be anomalous.(28) However, the MS put a veto on conferring this right to the EU level, as nationality policy is associated with state independence.(29)

By comparison, in modern states, nationality is granted according to two main principles, namely *ius soli* and *ius sanguinis*.(30) In countries where the *ius soli* rule is applied, everyone born within their territory acquires nationality automatically. If a country adopts the principle of *ius sanguinis*, the nationality of a child is determined by the nationality of the parents regardless of the place of birth.(31) In most cases, however, nationality legislations combine these two rules, creating a wide range of 'middle solutions'.

The Maastricht European Citizenship Clause was modified in Amsterdam - the additional phrase "Citizenship of the Union shall complement and not replace national citizenship" is an evident response to anxiety of the Member States that EU citizenship somehow threatens national citizenships.(32)

Although the list of entitlements linked to Union citizenship seems long, (33) most of them are only confirmation or development of rights already existing.(34) The most meaningful entitlement granted to EU citizens is political rights. Firstly, involving people in the decision-making process contributes to reducing the democratic deficit. (35) Secondly, the ability to participate in political life strengthens links among citizens and between citizens and the state. An awareness of their capacity to influence the EU can enhance their feeling of Europeaness. There is "an intimate link between giving effect to principles of democracy and the complex identities of EU citizens", (36)

Another significant liberty inherent in Union citizenship is freedom of movement. Personal mobility, which is an important factor of Union citizenship, seems to play a significant role in identity-building.(37) However, the importance of citizenship here is often questioned; some scholars argue that introducing the institution of EU citizenship added little substantially new value – it mainly confirmed already existing migration law under the EU law. According to these opinions, replacing the notion of 'worker' (or 'privileged alien') with 'Union citizen'(38) held more symbolic than

practical meaning. Nevertheless, moving beyond the status of employee, which may seem a minor change, indeed introduced a significant difference. The right of free movement decoupled from performance of economic activity potentially embraced all MS nationals.(39) Hence, describing Union citizenship as “a purely decorative and symbolic institution”(40) does not seem to be right, especially if it is analysed in the light of the changes in national citizenship policies of some Member States.(41)

Interestingly, Union citizenship does not entail any explicit duties at the moment. As one of the original reasons of its establishment was overcoming the democratic deficit, the focus was laid on assigning rights to EU citizens.(42) However, it does not mean that some obligations can not be added to the *dynamic* concept of Union citizenship, which has the prospect for change explicitly built into the mechanisms for its future review.(43) The evolutive clause confirms the dynamic character of EU citizenship by “recognition of its limited extent at present and a means to improve on its limited nature”.(44) The need for amendments in the content of Union citizenship is the logical result of the increasing scope of EU competences; the Union should consequently grant the rights in these new areas.

Another distinctive feature of Union citizenship lies in providing EU citizens with a new kind of relation. Apart from developing bonds between individuals of a given MS (horizontal link), and individuals and their state (vertical link), which is also characteristic for national citizenship, it establishes a relation between individuals and authorities of other MS (diagonal link?). As Wiener has said, “every citizen of the Union enjoys a first circle of nationality rights within a Member State and a second circle of new rights enjoyed in any Member State of the EU.”(45) These ties stem from ascribing EU citizens with transnational political rights. Firstly, all EU citizens are entitled to vote in municipal elections in the host country under the same conditions as nationals of that state.(46) Secondly, every holder of EU citizenship has a right to vote and stand for elections for the European Parliament on the basis of place of residence.(47) Thirdly, the status of Union citizenship guarantees diplomatic and consular protection of any MS in a third country if a home state is not represented.(48) In this sense, implementing Union citizenship contributed to dissociation between political participation at European level and MS nationality.(49) Significantly, the two first rights undoubtedly facilitated integration of MS nationals, residing in a different EU country, with their host environment and enhanced their status as compared with third country nationals.(50) In other words, EU citizenship by creating closer relation of MS nationals with the authorities of their state of residence ameliorated their position in the host country.

1.2.1. Controversies raised by EU citizenship

Union citizenship provokes fear of a threat to national citizenship, which is believed to be “a last bastion of sovereignty”,(51) and therefore to national identity. According to Deloye these worries are not groundless as “European citizenship produces a reordering of identities”.(52) Despite its complementary and dispersed character, EU citizenship challenges the structure of European identity/identities established by particular nation-states.(53) Hence, many Europeans presume that acquiring European

citizenship may lead to a new European identity. Rejection of the Maastricht Treaty by Denmark illustrates these worries. The negative response of Denmark to the concept of Union citizenship was followed by "a declaratory confirmation by the European Council that nothing in the provisions of the Treaty of Maastricht in any way displaces national citizenship".(54) Even the founding Treaty stating that the Community is supposed to "lay the foundations of an ever closer union *among the peoples of Europe*",(55) not create one people,(56) does not seem reassuring. As Deloye rightly pointed out, an attempt to impose a new configuration of norms and identities, endowed by EU citizenship, will face the opposition of numerous social actors.(57) The notion of Union citizenship itself may imply an attempt to create one European state. As Weiler argues, many understandings of Union citizenship contradict the preservation of independent nation-states and lead inevitably to European nation-building.(58)

On the contrary, European citizenship and European identity are also perceived as an additional level, not interfering with national ones. The concept of 'multiple demos' indicates that one can simultaneously belong to different levels of a community.(59) Practical examples prove that some people do not have problems with admitting to being a part of two communities. Migrants often tend to describe themselves as Scottish British or Bavarian German.(60) The phenomenon of combining several layers of identities is described in detail by Hofstede, who states that "almost everyone belongs to a number of groups and categories of people at the same time"(61); hence sharing at least two identities is a norm. The possibility to combine various levels of identities is to a certain extent confirmed by the results of 2002 Eurobarometer survey on European and national identity.(62) 59% of Europeans, compared to 52% in 1999,(63) admit to some European components in their identity.(64) In the beginning of 2004, after including 10 candidate countries, this number experienced a slight reduction of 3%.(65) Nevertheless, these results show that over half of Europeans recognise some European elements in their identity.

2. Reflexive harmonisation

2.1. From hard, to hard and soft

The European integration process has significantly increased the interdependence of MS national policies. The EU countries are now so closely linked, largely as a result of EU policies such as the internal market, that many decisions taken on the national level have a cross-border impact.(66) This has led to increasing competences being transferred from the national to the Community level, (67) in what is often described as the spillover effect, first described by the neofunctionalist Haas.(68) As another neofunctionalist, Lindberg, put it: "the initial task and grant of power to the central institutions creates a situation or series of situations that can be dealt with only by further expanding the task and the grant of power."(69) Member States agree to this, but often only because they do not see any other option. European integration can be explained by the fact that many states recognise the need to join "inter-state and multi-state networks for functional reasons [without the real will to] subordinate themselves to a large comprehensive network".(70) Many MS are reserved when called upon to

adopt common policies on matters that have been hitherto perceived as typically national.(71)

This expanding scope of EU activity, and Member State reluctance, has led to discontent over loss of national control over domestic policies. An important factor in this has been the sometimes excessive use of hard law, which uses controlling and coercive mechanisms to make sure Member States obey the EU entirely. It “creates uniform rules that the Member States must adopt, provides sanctions if they fail to do so, and allows challenges for non-compliance to be brought in court”.(72) As well as claims of over-regulation, the quality, democratic legitimacy, and transparency of Community legislation have all been subject to criticism, as well as its diversity-reducing effect. (73) Generally the abuse of hard law, resulting in ‘over-regulation’, leads to eurosceptisism.(74)

The major reaction can be observed in the increasing use of soft regulations, which do not use coercive mechanisms.(75) This is the case in areas of ‘common concern’(76) such as employment strategy and social protection where full hard law harmonisation is neither feasible nor desirable. Part of the importance of this comes from the fact that the general reluctance to act results not only from ‘what’ is expected to be done, but very often ‘how’ the action is approached. In other words, willingness to comply with common policies depends on the (hard or soft) influence tactics in force.

Although soft law (deprived of legal force) can not replace traditional legislation,(77) and the circumstances in which each should be used are highly discussable, the new approaches contribute significantly to enhancing legitimacy of the Community action. Moreover in some cases soft law has been more effective than hard. (78) As the studies of the influence tactics show, soft methods very often enhance targets to commitment, while hard methods usually evoke resistance.(79) Thus it becomes evident that instead of creating a rigid ‘European code’ and imposing it on national legislations, the emphasis should be put on encouraging diverse, local-level approaches, which will lead to adjusting national rules to European standards.

However, the need for some hard law acts suggests that the most desirable is the hybrid constellation of hard and soft law. (80) Moreover, the combination of different instruments is widely recognised to enhance effectiveness of decision making.(81) In other words, “an undeniable and legitimate function of soft law is to support and promote, *in accordance with legal means*, the goals of the Community in the process of integration.”(82)

2.2. Soft law and reflexive harmonisation

Soft law can be characterised by several, important features. Firstly, it has an entirely voluntary character. Secondly, it is consistent with the principle of subsidiarity (which is sometimes thought to be a solution to the heterogeneous character of Europe),(83) which means that it encourages allocation of the competences in various policy fields to the most appropriate levels of governance. Thirdly, it focuses on establishing general guidelines, leaving the MS discretion in choosing the most suitable national

strategy. Finally, soft law aims at mutual learning through peer reviews, where all relevant stakeholders discuss common concerns, exchange knowledge and experience that allows them to compile the best solutions to their regulatory problems. Therefore, soft law “may be viewed as a useful form of regulation, a means of co-ordinating relations among the MS and of balancing unity and diversity.”(84)

Features of soft law provide excellent conditions to induce second-order effects. These occur when national authorities are stimulated to revise the adequacy of national policies in the light of the European integration process, without any direct pressure from the EU to do so. As noted by Romanos “it is acknowledged that political institutions can have a second order effect by shaping the preferences and ideas of collective actors.”(85) Realising need for changes themselves, as the result of peer review and observation, will make Member States more willing to amend their legislations than the necessity to obey regulations issued by the Community institutions. These ‘decentralising tendencies’ of soft law practice, which can be described as a kind of ‘pluralist self-regulation’,(86) encourage harmonisation of national policies without direct influence by the EU bodies.

This process is captured by the theory of reflexive harmonisation. It suggests combining external regulations with self-regulation. The idea is borrowed from reflexive law, which aims at finding a golden means to coordinate diverse legislation. The optimal way is believed to be a compromise between ‘instrumentalist theories of regulation’, which impose concrete outcomes, and ‘deregulatory theories’ arguing for removal of all external control. According to the reflexive approach, the most effective regulatory interventions are those that seek to obtain their goals indirectly instead of providing the direct prescription. Thus, the goal of reflexive harmonisation is to encourage autonomous process of adjustment by supporting mechanisms of group representation and participation. The focus is laid not only on the input of national authorities, but also local governments and social actors. Based on these assumptions, reflexive harmonisation aims at preserving a space for experimentation in the rule-making on the national level and promotes “regulatory learning through the exchange of information between different jurisdiction levels”. In other words, harmonisation should not serve as a way to replace state-level regulations, but should leave some autonomy to the MS allowing them to figure out their own solutions to regulatory problems, which should obviously be consistent with common goals.

Reflexive harmonisation provides conditions for a process of discovery and/or adaptation that are thought to be more effective than establishing ‘optimal states’ to be achieved, especially given that ‘optimal solutions’ are often very difficult to identify. The experimentalist approach puts a great emphasis on comparison and learning from the action of others. Rule-making powers are devolved to self-regulation processes, as the MS are believed to be able to choose the most appropriate means to adjust their legal systems to EC law. Reflexive harmonisation is seen as an up-to-date regulatory technique, as it combines benefits of centralization together with local autonomy, and involves a wide range of actors, which is especially important in the case of enforcement.

Reflexive harmonisation responds to the need to coordinate national policies, while respecting their diversity. As such it is an appropriate theory for the changes in national citizenship laws. The discussions of these in the next section can be interpreted as example of reflexive harmonisation in the citizenship sphere.

3. Relation between Union citizenship and Member State nationality policies

3.1. In(ter)dependence of MS nationality legislations

3.1.1. Legal provisions guaranteeing independence

Union citizenship is conditional upon nationality of a Member State. Article 17 EC provides that "every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship". Further, according to EU law, it is the Member States who have the exclusive freedom to decide who can acquire the status of national citizen. This is made clear by the "Declaration on Nationality of a Member State" attached by the Treaty of Maastricht to the EC Treaty:

> Whenever 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 Presidency and may amend any such declarations whenever necessary. (87)

By the monopoly in determining who qualifies as their nationals, the MS enjoy freedom in deciding who is going to be granted with the status of EU citizen.(88) In this sense, the MS are sovereign actors under international law; even if national legislations distinguish several categories of citizenship, the right to decide who is finally entitled to acquire Union citizenship lies in the hands of the Member States. This was confirmed by the *Kaur* case,(89) in which Ms Kaur born in Kenya, in a family of Asian origin, became a 'Citizen of the United Kingdom and Colonies' under the terms of The British Nationality Act 1948. After amending The British Nationality Act in 1981, she gained a status of a British Overseas Citizen, which does not entitle one to enter or reside within territory of the United Kingdom. Ms Kaur, as a 'British Overseas Citizen', claimed such a right under the Union citizenship provisions.(90) However, the Court rejected her arguments by referring to the Declaration, submitted by the UK upon its accession to the Community, that considers "only those UK citizens who are entitled to reside on the UK territory or having a specified connection with Gibraltar"(91) as nationals.

3.1.2. Increasing interdependence between the MS

For the purposes of the discourse presented in this chapter, it must be noted that

nationality policies are closely linked with the national immigration strategies. As Hansen and Weil observe, "throughout Europe the politics of immigration have become the politics of nationality."(92) In this context, attempts to separate these two areas can not be successful in a long-term perspective. The EU, by its subsequent decisions concerning immigration and nationality (influenced by various, sometimes contradictory factors), prescribed competences in these two fields to different levels of governance, namely the latter remained in the MS discretion, while the former became (at least partly) coordinated at the supra- and intergovernmental level. The formal process of cooperation on common immigration procedures was launched by the Schengen Agreement in 1985.(93) Agreement on removing internal borders and strengthening external frontier controls was aimed at increasing security within the European Community.(94) The further step was made in Maastricht, where immigration and asylum were included into the third pillar of the EU(95). However, in Amsterdam it was transferred into "the more integrated decision-making setting of the first pillar [to create] more options for common European policies on migration in the future."(96) The Amsterdam Treaty also incorporated the Schengen Agreement into the EC legislation, which (although not signed by all EU MS) showed that the regulations on immigration at the EU level were directed towards all EU citizens.

Coordination of immigration policies poses a challenge for nationality laws, which belong to "the hard core of the identity and independence of the States"(97) and are still exclusive MS competences. Even establishment of Union citizenship, which obviously bound all the MS nationals together, did not entail any official cooperation in this field.

In fact, subordination of immigration policy to the EU level strengthened the will of the MS to retain independence in the field of granting nationality. This cause and effect relationship can be explained best through the example of the countries traditionally open to migrants, which do not want to make a 180-degree turn in their way of treating newcomers.(98) For these states adjusting their legislations to strict visa requirements for third country citizens, imposed by the Schengen Agreement, is often against the general assumptions of their national strategies.(99) Therefore, trying to keep their course of actions consistent, they tend to facilitate access to national citizenship as a compensation for implemented restrictions concerning conditions of entry. To put it in more general terms, external obligations to limit immigration may lead to expanding nationality internally. In this sense, Spain provides an interesting study, in which all the regulations referring to immigrants are an outcome of the policy "driven by European harmonisation on the one hand, and local and national factors on the other."(100)

However, very diverse nationality laws resulted in clashing views of the status of citizen and of the common immigration policy. Despite MS apprehension, a need for harmonisation has emerged.(101) In this situation, the only solution seems to be the voluntary reduction of the discrepancies between nationality regulations, which in fact is taking place. As Ryan pointed out, "the convergence of apparently polar cases […] is revealing."(102) The current EU trend shows that states with strict nationality laws are relaxing their rules to facilitate including permanent non-national residents, while

states whose nationality law is more open to migrants are tending to make it more restrictive.(103) It will be argued that these changes, although introduced through independent democratic processes of the particular MS, result from the pressure exerted by their co-members.

Although introducing Union citizenship formally left nationality policies untouched, it definitely contributed to their interdependence.

> Once it is acknowledged that each Member State may autonomously fix the prerequisites, conditions, ways and means to acquire, forfeit and re-acquire their nationality, one must admit, however, that national regulations are often interdependent and linked one to another.(104)

Granting national citizenship no longer concerns only one country, but also affects other members of the Community. Acquiring nationality of one Member State automatically entails adopting Union citizenship, and thus the right to move and reside freely within the territory of the whole EU. This liberty deserves special attention, as it entails numerous controversies, for instance, in the case of European (both present and former) colonies.

Countries possessing overseas territories are entitled to grant their subjects with nationality, and thus Union citizenship. This means that ascribing a resident of any colony with national citizenship of one MS gives them the right to enter every country belonging to the Community. For instance citizens of Canary Islands, Madeira, and the Azores (being Portuguese citizens), or inhabitants of Guyana, Martinique, Reunion, and Guadeloupe (holding French passports) can live and work in any MS exercising the freedom of movement inherent into Union citizenship. Moreover, countries, which do not grant their citizenship to inhabitants of their overseas territories, enjoy full freedom to confer them this status whenever they wish.

Another example is that of Spain, which concluded an agreement on dual nationality with some South American countries.(105) Even if nationality of the Member State is the second one, it must be recognised by all the EU states regardless of their national rules. This was confirmed by the ruling of the European Court of Justice in the *Micheletti* case.(106) Although the case was decided before the establishment of Union citizenship, it illustrates very well the issue of dual nationality, at that time confined to workers, now applicable to all citizens. Mr Micheletti, who held two nationalities: Italian and Argentinean, lived in Argentina. After coming to Spain he was denied the rights ascribed to the nationals of the Community because Spanish law, in regards to dual nationality, takes into consideration the one of the country of residence. The Court decided that everyone possessing Member State nationality, even if he is at the same time a national of a non-member state, must be allowed to enjoy all the liberties inherent in the quality of Member State nationality. This judgement, from 1990, now can be interpreted as the entitlement of all individuals holding nationality of any Member State to acquire Union citizenship and benefit from all the rights included in it.

These examples show that decisions concerning nationality no longer have exclusively

domestic meaning. On the contrary, they influence other countries by forcing them to accept new EU citizens. The growing number of EU citizenship holders affects mostly the countries which are the traditional destinations of immigration. Therefore, it may be argued that "a certain amount of harmonisation should be envisaged in the area of nationality legislation"(107) In fact some MS express the belief that there should be some limitations in conferring nationality to third country residents, because they are afraid that such decisions may be taken regardless of the consequences for other EU countries. Also the Court, through the *Micheletti* case,(108) indicated that the regulation of citizenship laws should be in line with Community interests. It is emphasised by the statement that "Under international law, it is for each Member State, *having due regard to Community law*, to lay down the conditions for the acquisition and loss of nationality",(109) which suggests that the Member States should take EU law into consideration. This reference is not clear, as there are no explicit legal provisions on the coordination of national citizenship policies at the EU level. Besides, the intention itself can be described as confusing or even as contradictory to the Declaration appended to the Maastricht Treaty by the Member States.(110)

Recently, significant changes in national citizenship legislations of some EU Member States could have been observed. Were these new rules introduced exclusively because of the needs of a particular country? Or perhaps they were initiated due to (or maybe against) the pressure from other MS. The Irish, German, and Spanish cases seem particularly worth analysing. While the first two represent adjustment to other MS demands (they follow the above-mentioned EU trends), the latter shows the opposite reaction to the European pressures.

3.2. Spanish case

3.2.1. Spanish attitude towards migrants

Immigration policy in Spain has been always shaped with more latitude than in any other EC country. Dealing with serious economic problems it provided more emigrants than attracted immigrants. Numerous incomers from Northern Africa and Latin America treated Spain (before it joined the EU) as a temporary place of residence before final move to northern European countries, which were perceived as much better off and therefore more attractive as an immigration destination.(111) Only in the mid 1980s, due to a sudden economic growth, which coincided with entry into the European Community, did Spain start to experience substantial immigration – it very quickly transformed from a 'labour exporter' to 'labour importer'.(112) The newcomers, however, "have not over-whelmed social services, nor have they increased unemployment appreciably by competing against native-born Spaniards for desirable, formal-sector jobs". (113) An absence of significant fear of massive migration, which bothered most of the EU countries, meant Spain would probably not have tightened visa control if not influenced by other MS, especially the Schengen requirements. Under the pressure of the EC it abandoned its traditional policy of allowing entry by citizens of the Maghreb(114) and most Latin American countries (115) without visas in 1991 and 1992 respectively.(116) Especially imposing visa

requirements on the latter was considered as a politically sensitive step, "contrary to the policy followed by every Spanish government from Franco to the present Socialist Government".(117) For years many Latin American countries had dual-nationality agreements with Spain, which enabled their citizens to move to Spain and be recognised there as nationals (as Spain in case of dual nationality recognises the one of place of residence). Special ties are undoubtedly based on the shared language and culture.(118) Interestingly, the results of many national surveys on integration of various nationalities into the Spanish society show the highest acceptance for integration of Latin Americans.(119)

Nevertheless, Spain, as one of the countries responsible for controlling an external EU border, had to adjust its policy to the common interest. "Spanish officials anticipate[d] continuing pressure from other members of the European Community as well as the Schengen Group",(120) which led to the establishment of stricter entry conditions even for Latin Americans.

3.2.2. Implications of 2005 amnesty for illegal immigrants

Despite the imposed restrictions, Spanish immigration policy is still characterised by laxity in comparison with other MS. The most recent evidence of its tolerance is the amnesty for illegal immigrants working in Spain, which was launched on 7th February 2005 and lasted for three months.(121) Everyone who possessed an identity card, was able to prove that they lived in Spain before August, had a job contract for next six moths, and had no criminal record, was eligible to apply for a permanent residence permit.(122) The government expected to receive around 1,025,000 applications from around the world,(123) and predicted that 800 000 immigrants might qualify.(124) Finally 700 000 illegal immigrants were granted legal status.(125)

The whole action provoked very negative reactions in the EU. The immediate response of France showed that Spanish policy was unacceptable for some of the MS. The French government has banned the beneficiaries of the amnesty from working in France.(126) Many of those people who were granted the right to stay in Spain were believed to be illegal immigrants from France, but also from Germany and Italy. Apparently, they hoped that this would enable them to go back to these countries, where they would finally have a right to work. However, as the French government emphasized, a non-EU citizen who has gained residence status in a particular EU country would not in most cases be able to work in another EU country. The entitlement to move and reside freely refers only to those who managed to obtain nationality of one of the MS, and therefore Union citizenship.

This brings us to the most interesting point of the significance of the Spanish amnesty in the view EU citizenship. Taking into consideration the fact that most of the immigrants, who benefited from the amnesty were from Equator and Columbia (along with Romanians and Moroccans),(127) and the lenient conditions for conferring the status of national citizen to a "national of *Ibero-America*, Andorra, the Philippines, Equatorial Guinea, or a Sephardic Jew",(128) it may be argued to be a first step towards granting Community citizenship. Assigning them with the right to reside gives them the possibility to acquire Spanish nationality after only two years.(129)

This is of course tantamount to gaining the status of EU citizen with all the liberties included in it. In this case, obviously the right to move and reside freely is of the biggest concerns, as it opens the way to all the EU countries. Providing that the above-mentioned scenario takes place, in 2007 France will have to recognise all the immigrants who benefited from the Spanish amnesty (and due to their roots acquired Spanish citizenship within two years) as EU citizens. Even those who used to work illegally in France, but managed to get to Spain and fulfilled all the necessary conditions (first for obtaining resident status, and then Spanish nationality), will have a full right to come back to France and exercise all the liberties inherent in Union citizenship. To put it in more general terms, the establishment of EU citizenship entails "stronger commonality and reciprocity of rights in different member states". (130)

3.2.3. Conclusions

As a result of its lenient immigration and nationality policy Spain is perceived as a "backdoor to citizenship in the European Community".(131) In fact this example illustrates an EU-wide impact of decisions upon nationality and immigration of the particular MS. Union citizenship, particularly via freedom of movement, links all MS into an 'interactive organism'.(132) In this context, Spain is accused of ignoring the situation in other European countries. It may also have been exploiting the fact that it no longer bears the full cost or impact of its decisions in this area, as many 'new' citizens or lawful residents move to other MS.

3.3. Irish case

Ireland is another country with liberal nationality legislation, but, contrary to Spain, it is responding to the EU trends of converging MS policies in this field. Although the impact of Community Membership on the reform of Irish citizenship law may not be widely recognised, it will be argued that there are evident signals of indirect influence on it.

3.3.1. Essence of former Irish nationality law

Until 2005, Ireland was the only country in the EU to grant citizenship automatically at the moment of birth to all those born on its territory, or even on the territory of the Northern Ireland, formally part of the United Kingdom, but part of the physical island of Ireland. The principle of unconditional *ius soli* was central to nationality law from 1922, when the Irish state came into being.(133) According to the Irish Nationality and Citizenship Act from 1935, "all those born in the Irish Free State on or after 1922 were classed as 'natural-born citizens'."(134) This right was extended to those born in Northern Ireland through the Irish Nationality and Citizenship Act in 1956.(135) The birthright citizenship, applied for 83 years, reflected an inclusive territorial conception of the Irish people (admittedly balanced by elements of *ius sanguinis* also present in Irish nationality law), which did not dictate their status by who their parents were, but treated all children equal at birth. As a result of the 1998 referendum on Northern Ireland this became a constitutional right. The Irish government then elaborated the

rule in the Nationality and Citizenship Act 2001.(136)

As concerns naturalisation, conditions of acquiring Irish citizenship in this way have been also very lenient in comparison with other EU countries. After implementing the Maastricht Treaty only 5 years of residence qualified for naturalisation in Ireland compared to 6 years in Portugal, 7 in Denmark, 10 in Italy and 15 in Germany.(137) Despite some changes in the required time of residence, Ireland remained one of the most 'open to immigrant' countries. Even British and Dutch nationality legislations, which also demanded 5 years residence, posed stricter conditions in other aspects of qualifying for national citizenship, such as giving up the first nationality (in case of the Netherlands), or at least intention to have the principal residence in the host country (in case of the United Kingdom).(138) Only in Spain has adopting national citizenship been easier.(139)

3.3.2. Controversies around unconditional ius soli

Before joining the EU, Ireland was definitely more an emigrant than immigrant state; hence, its immigrant-friendly policy did not result in any significant inflows of newcomers. However, entering the Community in 1985, which was followed by almost immediate boost in the Irish economy (The 1990s were called the 'Celtic Tiger' era of rapid growth) attracted a large number of job-seekers, also from non-EU countries. The increasing number of third country nationals, who could quite easily obtain Irish citizenship for themselves and automatically for their children born in Ireland, entailed some controversies. Birthright citizenship was especially criticised, because, as some argued, it was excessively abused. The most controversial consequence of the unconditional *ius soli* principle was the fact that the families of children born in Ireland, and therefore Irish citizens, could "make a legal claim to remain in the state on the basis of their connection to an Irish citizen."(140) That line of argumentation was really strong in the context of Ireland – a country particularly involved in providing pro-family law. The Irish constitution in Article 41 recognises "the family as the natural primary and fundamental unit group of Society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law."(141) Thus, in most cases families of Irish citizen children were allowed to stay in the country.(142) In 2002, for instance, more than 4,000 non-EU immigrants were granted residency because they were parents of babies born in Ireland.(143) However, in January 2003 the Irish Supreme Court ruled that parents of Irish-born children did not enjoy an automatic right to residence. This partially undermined the citizenship of the child, whose residence possibilities are clearly linked to those of his parents, and can be seen as the beginning of the dissolution of ius soli.(144)

Nevertheless, Ireland remained relatively liberal regarding nationality, and this lenient citizenship policy is perceived to have been a cause of a 'foreign baby boom'; in the beginning of the twenty first century the number of babies born to non-nationals sky-rocketed from 2% in 1999 to almost 20% in 2004.(145) Significantly, 70% of the non-Irish mothers came from sub-Saharan Africa. They were thought to travel to Dublin expressly to give birth, putting their health at risk in order to obtain Irish citizenship

for their babies.(146) Some women arrived heavily pregnant - sometimes in their last week - gave birth and then immediately claimed asylum.(147) Hence, the Irish Prime Minister Bertie Ahern stated that the birthright citizenship was being ‘rampantly abused’, with 60% of all asylum seekers being pregnant when they made their applications.(148) Therefore, he saw a need for reform of the Irish nationality law. As the *ius soli* rule was enshrined in the Irish constitution, change of nationality law required amendment in the constitution, which in turn could have been done only through a referendum.(149)

The possibility of the constitutional referendum to remove unconditional *ius soli* was considered by the Irish Government already in 2001 (interestingly it became public knowledge only during the 2004 referendum campaign).(150) Then the issue was brought up by the Fiana Fail-Progressive Democrat coalition, which claimed that they would “keep under review the number of applications from non-nationals to remain in the State on the basis of parentage of an Irish born child”.(151) The coalition considered introducing a clause to the constitution forbidding conferring the right of residence to these parents, but finally did not realise the idea.

3.3.3. Proposal for a constitutional amendment – debate on the need of the nationality reform

It was in March 2004, when the government announced the proposal to restrict the grant of Irish citizenship to non-national children born in Ireland. The amendment suggested inserting into Article 9 of the Constitution the following sections:

1. Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and its seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.
2. This section shall not apply to persons born before the date of the enactment of this section.(152)

The debate before the referendum, planned for June 2004, was very active, raising issues connected with domestic problems caused by the high number of births to non-national mothers, the Irish national heritage as well as adjusting to laws of other MS.

One of the main government’s arguments was above-mentioned high birth-rate to the non-national parents and numerous problems posed by non-nationals giving birth in the Dublin Maternity hospital.(153) As the Minister for Justice, Michael McDowell put it:

> Our maternity services come under pressure because they have to deal at short notice with women who may have communications difficulties, about whom no previous history of pregnancy or of mother’s health is known […] (154)

While the claim that the numbers were significant enough to present any such threat

was disputed, and it was suggested that Irish women also often presented late in pregnancy at hospitals,(155) the view that there was a problem took hold, and explanations of what seemed high numbers of children acquiring Irish citizenship, usually followed by granting this status also to their parents, did not reassure other EU countries. As it was already mentioned, after introducing Union citizenship, all MS' nationality policies became highly interdependent. Therefore, they started to pay attention to particular citizenship legislations. Ireland, with its lenient policy, was especially observed by the countries with strict nationality and migration laws, protecting carefully their borders from significant inflows of non-EU nationals. But Union citizenship, in a way, limited the effects of their efforts, as third country citizens can gain access to their countries, exercising the right to free movement inherent in EU citizenship, which can be acquired by adopting nationality of any MS. In this context, easiness to obtain Irish citizenship caused apprehension among other EU states.

These worries were reinforced by the ECJ's ruling in *Chen* case. Catherine Zhu, a Chinese child, was born in Northern Ireland, formally part of the UK, but falling within the territorial scope of the Irish nationality laws, because part of the island of Ireland. As a result she automatically became an Irish national. Her mother wanted to stay in the UK, relying on her daughter's status as a migrant EU citizen (an Irish citizen in the UK). EU law gives all EU citizens the right to reside in all other MS. The UK attempted to deny both mother and baby residence rights, and the case came before the Court of Justice. The Court's decision was as follows:

In circumstances like those of the main proceedings, Article 18 EC and Council Directive 90/364/EEC of 28 June 1990 on the right of residence confer on a young minor who is a national of a Member State, is covered by appropriate sickness insurance and is in the care of a parent who is a third-country national having sufficient resources for that minor not to become a burden on the public finances of the host Member State, a right to reside for an indefinite period in that State. In such circumstances, those same provisions allow a parent who is that minor's primary carer to reside with the child in the host Member State.(156)

This judgement meant that a child born on Irish soil acquires an EU-wide right of residence for itself and its primary carer, even if the carer does not have EU citizenship. Normally this right only applies outside Ireland, since an Irish citizen within Ireland falls outside the scope of EU law. However, in recent years the ECJ has extended the rights of citizens and their families to the situation where they return home after a period abroad.(157) Thus Catherine Zhu might be able to take her mother to live with her in Ireland, even though domestic Irish law would not automatically grant the non-European parent residence rights. Therefore, Ireland, by granting nationality to the children born on its territory, is moving towards an obligation to allow their parents long-term residence, which, in turn, makes acquiring citizenship easier, as people with 'Irish associations' are usually considered for naturalisation after 3 years (instead of 5) of legal residence in the state.(158) This fact results from the right ascribed to the Minister for Justice, Equality and Law Reform, namely the power to waive one or more of the conditions for naturalisation in certain

circumstances, for instance due to 'Irish associations'.(159)

The Irish government realised that its unconditional *ius soli* principle in the view of the above-mentioned Court's decision made access to EU citizenship even easier. It admitted that this situation could be abused by people coming to Ireland solely to obtain Irish citizenship for their children, which would give them the whole EU. This in turn could "cause difficulties in Ireland's relations with other member states."(160) Hence, the transformation of nationality law was proposed.

Nevertheless, the opponents of the suggested amendment denied the need to change their citizenship legislation due to the EU membership. They emphasised that there had never been a formal request from Europe, or any pressure to alter their nationality law.(161) While the former is definitely true, the latter is disputable. Indeed, according to Community law, citizenship legislations are the sole preserve of the Member States,(162) and the status of EU membership can not be treated officially as a factor determining basis for Irish citizenship. However, informal pressures exist, and MS aware of their political interdependence on neighbouring states, and not wishing to alienate them and incur possible future 'revenge' costs, may choose to voluntarily align their policies with current EU trends. The Irish case can be viewed as an example of this.

Another controversial point about the proposed amendment was the impact on the integration of non-nationals into the Irish society. The government was convinced that the 'integrity' of Irish citizenship would be preserved, while its abuse would be prevented.(163) As the ministers argued, not the excessive number of immigrants was worrisome, but the fact that the constitutional provisions were used in another way that they intended.(164) This argument was attacked by the opposition. First of all, the attention was drawn to the fact that the proposed amendment was aimed at children – they were the ones deprived of adopting nationality at birth, not at their parents, whose right to residency or citizenship was not altered.(165) The proposal meant classifying children according to their parents' status, which would violate the principle (deeply rooted in Irish law) that all children are born equal and should be cherished equally.(166) But the truth is that limiting the number of children entitled to Irish citizenship reduced the number of third country citizens applying for Irish nationality, as the process of naturalisation lasts longer when no 'association' to an Irish citizen can be shown.(167)

Moreover, the government was accused of undermining the integrity of the constitution itself, as the proposed amendment entailed the creation of a new distinction, namely between members of the Irish nation and Irish citizen nationals.(168) This is undoubtedly confusing, but necessary, as Article 2 of the Irish Constitution, saying that everyone has a birthright to be part of the nation, would still guarantee all children born in Ireland to be members of the Irish nation. Yet according to the amendment, the children, whose parents are not Irish, would not acquire citizenship or nationality automatically. Their parents would be required to prove their genuine link to Ireland. This might be established by being a legal resident in Ireland for three out of the previous four years immediately before the birth of the child.(169)

In other words, introducing the Article 9.2.1 may be described as devaluing the Irish Constitution by making Article 2 meaningless, as the membership of the nation became, in practice, a completely empty notion, since no longer attached to nationality.(170) This requirement of connection with Ireland was indicated as an example of inconsistency, given the possibility of adopting nationality through descent for at least two generations.(171) In fact, third generation Irish descendants from various places all over the world have claimed their Irish citizenship, which enabled them to travel and work in the whole EU, even though they did not have any personal connection with Ireland.(172) This, however, did not worry other MS so much, as their citizenship legislations are mostly based on the *ius sanguinis* principle. So, for them it is natural that even third-generation descendants, usually with no connection to the country of origin, will still possess their passports.

Another issue, which divided the proponents and the adversaries of the proposed amendment was the meaning of the reform for Ireland and the Irish people. The government claimed it was simply closing a loophole, preventing the abuse of birthright citizenship.(173) This argument could not be accepted by the opposition - the proposed reform could not be treated as a technical amendment. On the contrary, it was to completely reverse the traditional, republican basis on which citizenship of the country had been bestowed since the foundation of the state.(174) The opposition questioned the need for this change, particularly in the light of the 2000 Supreme Court ruling that “the constitution should be blind to pedigree”, while the analysed constitutional amendment would move the bloodline criterion to centrality as the basis of granting Irish nationality.(175) The adversaries of the reform also strongly criticised the rush to implement it.(176) They argued that changing the constitution, by removing the basis on which Ireland had granted citizenship since 1922, entailed deep implications for the Irish heritage and identity. Therefore, it should not be done in a hurry, especially that there was no emergency to justify the haste. Such a fundamental reform deserved a thorough process of consultation and discussion on the whole subject, not an immediate call for the referendum.(177)

Finally, the constitutional amendment was approved on June,11 2004 through a referendum, by an overwhelming majority (79% to 21%)(178). This fact was quite surprising in the light of the 1998 referendum, where the Irish people, also by a vast majority, voted for the inclusion of unconditional *ius soli* into the Irish Constitution. (179) Only six years later they invalidated their own decision. Accepting the constitutional amendment was followed by adopting the new ‘Irish Nationality and Citizenship Act 2004’, which confirmed that the children born of non-national parents, on or after the 1 January 2005, would no longer acquire Irish nationality automatically.(180)

3.4. German case

Germany has always been characterised by very restrictive nationality laws. Despite being a common immigration destination, it has applied an exclusive policy, based on an ethno-cultural model,(181) for most of the twentieth century. However, the recent liberalisation of certain conditions under which German citizenship can be acquired,

shows Germany adjusting to the European mainstream.(182) It will be argued that this reform was underpinned by the deteriorating relative position of long-term third country nationals after the creation of Union citizenship.

3.4.1. Impact of EU citizenship on third country nationals

The effect which introducing Union citizenship had on the situation of third country nationals can be best explained through the example of Germany, where immigrants constitute 10% of the population of which 75% come from non-EU countries,(183) and for whom access to German nationality (and therefore EU citizenship) was at that time the most difficult among all the MS. Union citizenship with all its entitlements increased the discrepancies between MS nationals and non-EU citizens. As O'Leary and Tiilikainen put it "the distinction between citizens of the Union and third country nationals has become sharper [...] since Union citizenship has acquired the form of a discriminating landmark for the purpose of difference in treatment".(184) Indeed, European citizenship, which was designed to foster the integration process, definitely undermined the status of non-EU citizens within the Community.(185) This became particularly visible between EU- and non-EU migrants residing in one of the MS. Every new privilege enshrined in EU citizenship (one must bear in mind it is a dynamic concept)(186) puts non-EU migrants in a worse position.(187) The negative impact of European citizenship on third country residents was neglected while creating the notion of EU citizenship.(188) This weakness of Community citizenship drew attention to the access of non-EU nationals to citizenships of particular MS. If Community citizenship was reserved only for EU nationals, then for the purpose of the real integrity of the EU societies, relative ease of acquisition of national citizenship by long-term residents became important. As Hansen and Weil noted, "states are generally unwilling to tolerate, generation after generation, large numbers of non-citizens without an entitlement to citizenship."(189)

In this context, strict German nationality law obviously came under criticism, in particular with reference to the position of long-term residents from third countries. Attention was drawn to the fact that they contributed to the welfare of the Community, and therefore should enjoy the same liberties as EU citizens.(190) Especially, the right to participate in political life was stressed, as this makes an individual a real participant in the polity.(191)

Full inclusion becomes particularly important in the case of second- and third-generation immigrants, when "individuals are raised in the society and subject to socialising influences of language, school, peers, and so on."(192) In Germany millions of Turks, who lived there for two or three generations, were denied the right to become German citizens. Maintaining the status of these immigrants as 'foreigners' and refusing them citizenship seemed to be unjust. "The prospect of a self-perpetuating minority forever closed out of majority society" can be perceived as a threat to the future relationship between these groups. A lack of attempts to improve their position as long-term residents (e.g. by conferring full civil and social rights) will result in their exclusion from full membership in society. John states that "the quest for 'special group status' for foreigners was 'socially divisive'.(193) Instead of

creating separate groups and ascribing them with certain privileges, efforts should be directed towards facilitating acquisition of German citizenship with all the liberties and responsibilities it entails.

3.4.2. Essence of former nationality law in Germany

Where does this reserved attitude towards immigrants in Germany stem from? The restrictive nationality law dates back to 1913, when it was introduced for the first time at the national level.(194) As Lemke phrased it, "the reality of the imperial state outflanked the republican notion of citizenship."(195) At that time, the main goal of citizenship legislation was to include all Germans living abroad and exclude the increasing number of immigrants.(196) Hence, the German notion of citizenship was based on the principle *ius sanguinis*. This law remained in force until 1999. The Naturalisation Rules, introduced in 1977, which prescribed absolute state discretion in naturalising foreigners,(197) only confirmed unwillingness of the German state to ascribe even permanent residents with German citizenship. The provisions that "the granting of German citizenship can be only considered if there is a public interest in [it]" and "in the German legal system resident aliens enjoy far-reaching rights and liberties anyway",(198) which resulted in the lowest naturalisation rate in Europe,(199) explain the German position in this matter.

Only after the collapse of communism and unification of German state, did a more liberal reform movement emerge.(200) The unsuccessful attempts to integrate millions of immigrants, by preserving their 'alien' status, finally led to a different discourse on citizenship and migration.(201) The need for more liberal concept of citizenship was widely recognised. The quest for transforming nationality law was also stipulated by introducing EU citizenship,(202) which entailed mutual comparison of citizenship legislations. Although they remained in the MS' discretion, Germany received evident signals that it should liberate its restrictive policy. The pressures urging Germany to 'modernise' their nationality legislation was the result of the natural need to harmonise these laws. In response, the German government in 1998 admitted that too many German inhabitants were not entitled to German citizenship, and started to prepare a 'substantial reform'.(203)

3.4.3. Implications of the 1999 citizenship reform

After several years of controversy and debate, a new law on citizenship was finally introduced on January 1, 2000. The most significant changes included departure from relying solely on the *ius sanguinis* principle and softening conditions for naturalisation.

As concerns children of foreign nationals born in Germany, they gained the right to acquire German citizenship automatically at birth under certain restrictions. First, at least one parent must have resided lawfully in Germany for at least eight years. Secondly, that parent must have possessed an unlimited residence permit or special residence permission for at least three years prior to the child's birth. These provisions applied to the children born after December 31, 1999, but special rules for the children born in the 1990s were provided in a transition agreement, allowing the granting of

citizenship to them if application was submitted before December 31, 1999.

This is obviously a remarkable step towards facilitating access to German citizenship – to illustrate its significance it is enough to mention that for over a million Turkish immigrants the door to German nationality stood open. One must bear in mind, however, that the requirements concerning the residence permit at the moment of introducing the new law could not be fulfilled by a half of the Turkish immigrants. The limited effects of new law, which undoubtedly improved the position of long-term residents, indicate the need for the future changes to ensure the full integration of German society. This, however, requires acceptance of ethnic and cultural plurality as a civil political norm,(204) which seems still to be a problem for many Germans.

Importantly, the children, who benefit from the *ius soli* principle, simultaneously acquiring nationality of their parents, between 18 and 23 have to opt for one of their nationalities, as the principle of avoiding dual nationality is still applicable. Although general acceptance of dual citizenship was envisaged in the first draft of the new legislation, it was refused by the CDU/CSU coalition, which gained advantage over the SPD at the stage of approving it in the parliamentary institutions. Holding two nationalities is possible only as an exception. Although the scope of exemptions was moderately extended, plural nationality is still not a legal right. As the possibility to hold dual nationality has beneficial effects on naturalization and integration process, its prohibition "raises the strongest doubts over the capability of the new provisions to effectively depart from the ethno-cultural notion of citizenship."(205)

Turning to naturalization, an obligatory resident period was reduced from fifteen to eight years, again under certain conditions. One of them refers to the necessity of renunciation of other nationalities (analogically to the *ius soli* requirement described above). Other prerequisites are, for instance, the sufficient knowledge of German language and acceptance of free democratic basic order laid down by the German Constitution. Although the term 'sufficient' may be disapproved due to its ambiguity, and in many cases it turned out to be the main obstacle in obtaining citizenship, the demand to possess a communicative command of German, in terms of integrating foreigners into the German society, can not be criticised. Similarly, loyalty to the constitution of the country where one aspires to become a citizen can not raise any objections. What is also worth mentioning is that the new law reduced fees for naturalization and made the whole procedure easier.(206) Also the conditions for the spouses of German citizens were relaxed – the (foreign) spouse must have lived in Germany for at least three years (instead of five), and the couple must have been married for at least two years (instead of three). Moreover, in special cases, even people who have lived in Germany for a shorter period than eight years may try to obtain German citizenship on a discretionary basis. Significantly, when the new legislation came into force, in some towns the number of applications for naturalization doubled or even tripled,(207) leading to an average raise of naturalization rate of almost 30%.(208) Interestingly, in nearly every second case new German citizens were allowed to retain nationality of their country of origin.(209)

The new naturalization rules still place Germany among the countries relatively closed

to immigrants. Strong national voices to protect German society from including high numbers of third country nationals reveal an attachment to the ethno-cultural model of citizenship. However, adopting the new law should be viewed as a remarkable step to liberalization resulting from following the EU trends. As the German government puts it, a large group within Germany's population "now has the opportunity to participate in and help shape social and political issues with all inherent rights and obligations."(210) They describe the reforms as "harmonisation with European standards",(211) implying compliance with 'unwritten' requirements of the European Community.

3.5. Directive on third country long-term residents

As was shown in the previous chapters, formally independent national citizenship policies may be indirectly and unofficially affected by the other MS. This chapter draws attention to the fact that the EU institutions indirectly influence MS' rules on obtaining national citizenship, using the example of the Council Directive on the status of third-country nationals who are long-term residents.*(212)*

3.5.1. The Directive as a response to Union citizenship

Union citizenship, aimed at facilitating migrants the integration, resulted in approximating the rights of MS nationals living in another EU country to the rights enjoyed by the citizens of the host country, whilst at the same time it deepened the gulf between all EU citizens and third country residents.*(213)* The institution of EU citizenship was widely criticised for undermining the status of non-EU migrants. Perchinig drew attention to its hierarchical character, which he perceives as the significant weakness.*(214)* This aspect was also brought up by Withol de Wenden, who described the situation after implementing Community citizenship as follows:

> At the centre we find the national of the State where he is living, then the Europeans whose rights are reciprocal with those given to foreigners in other European states, then the long term non-European residents, the non-European non-residents, the refugees, and at the margins, the asylum seekers and the illegals.(215)

This description faithfully rendered the real situation. At the same time, however, it raised controversies concerning such a state of matters. Was it unfair and therefore should the situation be improved by eliminating the discrepancies between inhabitants of the EU holding different status, or on the contrary, was it just and should be accepted? The opinions were divided – some countries believed that this situation required "a deep reconsideration of European policy on immigration",(216) whilst others, especially those described as "old guest-workers states",(217) expressed resolute opposition to harmonising this sphere at the EU level. The widest debate has been on the relation between MS citizens and third country *long-term* residents. Although this issue was at stake since the very beginning of the European Community,(218) the discussion flared up after the establishment of Union citizenship. The distinct cacophony between the EU members' positions seemed to

prevent a compromise,(219) especially given that some of them were not even willing to take part in negotiations.

The advocates of equalising the position of EU and non-EU citizens proclaimed the need for a legal act, which would grant third country nationals with the rights so far enjoyed exclusively by the MS nationals. This issue was raised during the Tampere Summit, where the Council stressed that the decisions on "the approximation of national legislation on the conditions for admission and residence of third country nationals [...]"(220) should be taken immediately. What is more, it endorsed the objective that "long-term legally resident third country nationals [should] be offered the opportunity to obtain the nationality of the Member State in which they are resident."(221) That clearly implied the will to influence conferral of national citizenship, which is incompatible with provisions of the EC Treaty and the Declaration on Nationality. These decisions also indicate a strategic advantage gained by the proponents of harmonisation of immigration and nationality legislations. Despite the objections of some MS, the Commission managed to issue a Communication on Union immigration and integration policy in accordance with the attitudes which dominated the Tampere Summit.

The Communication acknowledged the demographic need for immigration and proposed establishing common rules on admitting labour migrants on the territory of the EU.(222) Moreover, it proposed the approximation of their legal status with those of EU nationals by introducing the concept of civic citizenship.

> "The legal status granted to third country nationals would be based on the principle of providing sets of rights and responsibilities on a basis of equality with those of nationals but differentiated according to the length of stay while providing for progression to permanent status. In the longer term this could extend to offering a form of civic citizenship, based on the EC Treaty and inspired by the Charter of Fundamental Rights consisting of a set of rights and duties offered to third country nationals"(223)

Notwithstanding the positive atmosphere of Tampere Summit, which resulted in the issuing the above-mentioned Communication, the Council failed to adopt any hard law acts. Several proposals for Council Directives on third country citizens published by the Commission between 1999 and 2001 were significantly watered down in the subsequent negotiations.(224) The directive on entry for employment was finally abandoned as the result of the strong opposition of Austria and Germany.(225) However, those regarding the status of long-term residents and the right to family reunification were finally approved in 2003, which means that the MS managed to agree that common immigration rules, at least to a certain extent, are necessary.

3.5.2. Provisions of the Directive

The Council directive on third-country nationals who are long-term residents aims at achieving a goal set during the Tampere Summit, namely approximating their status to that of MS nationals by granting them a set of uniform rights, which should be as close as possible to those designed to EU citizens.(226) In the situation of non-EU

immigrants it should contribute to their integration into host societies, which is indispensable in "promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty."(227) The truth is that the position of non-EU long-term residents had varied enormously among the MS, which had been believed to have a negative impact on their political and social integration in Europe.(228) Importantly, harmonisation of the rules concerning acquisition of long-term resident status can not hinder the access to it, as the MS who apply more favourable conditions are allowed to retain them.(229)

The main prerequisite for the status of long-term resident is the length of stay in a given MS – non-EU immigrants must "have resided legally and continuously within its [EU] territory for five years immediately prior to the submission of the relevant application."(230) Another condition concerns the 'adequate resources', which allow to support oneself and their family as well as possessing the sickness insurance, which is hold by the citizens of the host MS.(231) Third country nationals wishing to acquire the status of long term residents must also prove that they do "not constitute a threat to public policy or public security."(232) What is worth mentioning, the application can not be refused on economic grounds.(233) The Directive also contains detailed procedures for the assessment of the applications and issuing the long-term residence permits.(234) It also defines the cases in which the status might be withdrawn.(235)

Attention should be drawn to the fact that the above conditions apply not only to the immigrant who is employed or self employed.(236) Parallel to Union citizenship, which recognised all MS nationals regardless of their economic status, the Directive refers to all migrants even if they do not exercise any economic activity.

The rights accorded to the long-term residents ensure them equal treatment with the nationals of the particular EU country in a wide range of cases.(237) The most meaningful is freedom of movement within the whole European Community, which allows persons to settle in any MS. These entitlements are, as well as promoting social cohesion, believed to foster the 'attainment of the internal market' and stimulate desirable mobility on the Community's employment market.(238)

3.5.3. Implications of the Directive

The Directive, as the whole process of harmonisation, has its advocates and adversaries. Approximating the position of third country residents to that of MS nationals is obviously supported by the proponents of the concept of Union citizenship based on the place of residence. Moreover, the countries which lead open immigrant policies also welcomed the decision of the EU, which improved the situation of non-EU citizens in the countries with restrictive immigration laws. Ireland, for instance, recognizes the need for "a flexible system, balancing the interests and requirements of Member States on one hand and recognising and protecting the rights and interests of migrants."(239) The Immigrant Council of Ireland (ICI) argues that all MS should admit that the EU has always been and will be a place of immigration,(240) and this fact should not be treated as a threat, but as the normal course of events. Recognising the inevitability of the considerable flows of immigrants in the forthcoming decades should automatically lead to considering the regularisation of those who already reside

in the EU as highly desirable.(241) The ICI supports the Commission's opinion that coherent immigration policy and "synergies between immigration, integration and employment policies at all levels and across all disciplines"(242) are indispensable as far as the full integration of the EU societies is concerned.

Although this line of argumentation is difficult to undermine, the fact of harmonisation of the rules concerning third-country nationals in all MS raises controversies. Some EU countries, especially those with strict immigration laws, are not willing to comply with common rules. Why do they object? Because they perceive the Directive as an attempt to violate their sovereignty in shaping national citizenship policies. The Directive indirectly interferes with the MS autonomy in establishing nationality legislations.

First and foremost, the Directive introduces a set length of duration, which entitles non-EU citizens to the status of long-term residents. Before that, according a particular status to immigrants fell completely under national authorities' competence. In this aspect, the Directive has deprived the MS of the right to decide about the position of third country nationals. What is more, the obligation to recognise them as long-term residents after five years of residence indirectly influences decisions concerning national citizenship. In some MS access to national citizenship is contingent on a long-term residence permit. Foreigners who aspire to nationality e.g. in Germany, the Netherlands or the UK may be naturalised only if they possess a permanent residence permit.(243) However, even in the countries which do not require this document to grant national citizenship, it will undoubtedly strengthen the position of candidates for naturalisation. Holding a long-term residence permit signifies a 5-year stay in the given country, which facilitates proving a given period of duration indispensable for acquiring national citizenship. In other words, the chances of becoming a MS citizen increase with the fact of acquiring the status of long-term resident.

This regularity is supported by the Immigrant Council of Ireland, which claims that the permanent residence should be followed by the "access to citizenship of the Member States in which a (labour) migrant has been legally resident for a significant length of time."(244) Ireland considers harmonising the periods of residence enabling application for citizenship in all MS as crucial. They clearly state that it is the duty of the EU to develop European immigration policy by taking over some of the competences enjoyed by the national authorities, and the countries should acknowledge that the whole Community is a region of immigration; therefore, they should not insist on maintaining national sovereignty in this area.(245) However, if we take into consideration the agreement achieved in Maastricht, does the EU have a right to put forward such a demand? This article will not try to answer this question. Its emergence, however, shows that the Directive exerts some influence on amending national citizenship regulations.

3.5.4. Conclusions

Harmonisation of the rules concerning long-term residents has exerted an impact on MS nationality legislations. One may wonder whether the EU Council had such an intention while adopting the Directive, or was it perhaps focused exclusively on

improving the position of third country nationals. However, it seems highly improbable that the Council did not realise the consequences, the Directive could have on granting national (and therefore Union) citizenship. On the bases of the above discourse it may be claimed that the EU was not satisfied with endowing long-term residents with a set of rights enshrined in the Directive; hence it indirectly pressured the MS to facilitate permanent migrant access to national citizenship. This action suggests that the EU aims at ensuring long-term residents the status of Union citizenship, but is aware that it does not hold the adequate competence.

Therefore, the Council put such a strong emphasis on the significance of non-EU nationals' presence in the Community (as they contribute to the common wealth), and the Directive can be seen as a signal that including permanent residents into societies as the full members is required. Notwithstanding the provisions agreed on in Maastricht, the EU aspires to influence the setting of conditions determining access to national citizenship. Although no official recommendations have been issued, the implicit hints do not leave any doubts about the desirable effects that the Council seeks to achieve: the MS with restrictive citizenship policies should facilitate integration of permanent non-EU residents. Adjusting to the EU trends is presented as a golden means to ensure better functioning of the nationally diverse societies as well as the whole Union. For the first time an official Community act has clear implications for the desirable amendments in nationality legislations of some MS.

These indirect, but clear suggestions were recognised by both advocates and adversaries of the harmonisation of immigration and nationality regulations. An attempt to trigger a redesign of national citizenship policies was welcomed and supported by the countries traditionally open to migrants, and highly criticised by the states attached to national homogeneity. The reaction of both sides confirms the awareness of all MS that the EU institutions are becoming more and more involved in shaping citizenship policies. The question arises whether they will continue sending hidden messages, which can be either followed or neglected by MS authorities, or they will begin using more explicit means.

4. Conclusions

At the outset it must be stressed that the essence of the European Union lies in a permanently ongoing process of integration. Europe is becoming a more and more consolidated polity, and citizenship has an important role in this.

Notwithstanding the attempts to regard the institution of EU citizenship "as so slight as [to be] almost meaningless"(246), it in fact stays at the heart of upheavals reshaping European politics.(247) As shown in the beginning of the third chapter,(248) Community citizenship has contributed to the growing interdependence of MS national citizenship policies. The Spanish case illustrates perfectly that the decisions concerning citizenship taken by one EU country, due to the freedom of movement inherent in Union citizenship, affect other members of the Community.(249) This situation created a need to harmonise national legislations, but most of the MS strongly opposed delegation of powers in this domain to the EU, as nationality policy

is associated with state sovereignty. In this regard, evolution of citizenship at the EU level interfered with the traditional understanding of this notion. For centuries citizenship belonged to the hard core of state sovereignty. Indeed, as Maas pointed out, "*modern* citizenship would have no meaning without the existence of states; conversely, states would not be states without citizens."(250) Hence, the MS retained the autonomy in conferring national citizenship, and the status of EU citizen remained strictly bound to MS nationality.

Nevertheless, the debate on citizenship was launched and different proposals on a *post-modern* concept of citizenship emerged. As Soysal suggested, "it is essential to recognise that national citizenship is no longer an adequate concept upon which to base a perceptive narrative of membership".(251) Although the relationship observed between citizenship and identity(252) may indicate the simplicity of enhancing collective identity in any group just by granting a set of certain rights, the reality proves to be much more complex. The main obstacle is the fact that the status of citizen is by many still perceived as reserved exclusively for a member of the nation-state, which remains the main level of political affiliation. Hence, the notion of Union citizenship itself caused general apprehension among the Member States.(253) Despite legal provisions, acquiring EU citizenship is believed to interfere with national citizenship. Therefore, if national citizenship is considered equivalent to national identity, then adopting European citizenship could produce a conceptual conflict within the individual. However, the latest surveys on sharing several layers of identity imply that a concept of citizenship will be no longer be associated mainly with national identity. In other words, the increasing awareness of belonging to two different political communities may eliminate apprehensions to combine two levels of identities, one corresponding to the nation-state and another to the European Union.

These gradual changes in understanding the notion of citizenship constitute the essence of a postmodern 'ethic of citizenship', which is "an expression of pluralism, and of participatory democracy, complemented by a conception of identity."(254) As the boundaries of identification in Europe remain fluid, the European Union appears to be an archetypal postmodern polity.(255) Introducing Union citizenship suggests that the general concept of citizenship is also likely to evolve beyond the nation state and beyond modernism, with potentially important implications for the loyalty of individuals to states and the EU.

The appropriate mechanism of change is reflexive harmonisation. It appears to embody an optimal compromise between the need for unity and the need to respect national sovereignty and diversity. In the case of citizenship MS will not respond well to coercion, and will not accept hard law, but do appear to be aware of external pressures. In such situations the reflexive approach suggests that the most effective regulatory interventions are those that seek to obtain their goals indirectly instead of providing a direct prescription.

These considerations suggest a role for soft law instruments. As Bothe says, soft law often serves as "a compromise between sovereignty and order".(256) Therefore, soft law is used more frequently nowadays; especially the Open Method of Co-ordination,

which is simultaneously a soft law instrument and a new form of governance, is gaining popularity. Due to its voluntary character and consistence with the principle of subsidiarity, it is accepted in an increasing number of EU areas of responsibility. The OMC focuses on establishing general guidelines, leaving MS discretion in choosing the most suitable national strategy, and promotes mutual learning through peer reviews, which means it fulfils all the assumptions of (desirable) reflexive harmonisation. It is held up as a (partial) answer to the problems concerning multi-level governance. Therefore, it may be suggested that the OMC could be applied even in such a sensitive domain as national citizenship policy.

Even without this, as the notion of European citizenship with its unique entitlements and allegiances takes hold, citizenship regimes in Europe are being reassessed. The rights and duties attached to national citizenship are increasingly compared and contrasted between the Member States, and the most extreme differences are slowly eased out. The convergence is occurring – the general EU trend reveals that states whose nationality law is relatively closed to migrants tend to relax their regulations, while states where the status of citizen is comparatively easy to acquire tend to make the rules stricter.(257) This trend of decreasing discrepancies is very well visible through the new citizenship regulations, which have been applied in Germany since 2000,(258) and in Ireland since 2005.(259) These examples show how extremely different citizenship legislations are becoming more similar due to the EU pressures. Although the decisions about the reforms were taken during sovereign democratic processes at the national level, both German and Irish governments admitted the need for transforming their regulations to the 'EU average'. The substantial changes in conditions of granting national citizenship are undoubtedly the response to the unofficial demands of other MS and the indirect requirements of the 'acquis communautaire'.

What is worth emphasizing in both cases is that the authorities had to struggle with a very strong opposition, which tried to object to following the emerging EU trend. Despite these obstacles the amendments were implemented, but as the German example revealed, the transformation, in the absence of its adversaries, could have been even more significant.

Quite unusual in this situation is the position taken by Spain, which did not hesitate to oppose the EU trend.(260) The Spanish government, by introducing amnesty for illegal immigrants in 2005, ignored the critical voices from other EU countries. It refused to consider the problems and needs of its co-members, while implementing changes that had the EU-wide effects.

Another interesting point to be made concerns the general principle of adopting national citizenship. Convergence of nationality laws also entails convergence of ideas about belonging. The EU trend is towards a compromise, with Ireland moving away from strict *ius soli* in order to prevent citizenship being too easily accessible, while Germany accepted that strict *ius sanguinis* was no longer tolerable. An emerging consensus rejecting ideologies of citizenship in favour of pragmatic social engineering is a possible interpretation and an important development.

Another important conclusion to be drawn from this article concerns to the position of long-term non-EU residents after establishment of Union citizenship. The relative deterioration of their position reawakened the idea of linking Union citizenship to the place of residence. Proponents argue that “the subjective standard of nationality will gradually yield its place to the objective standard of residence or domicile.”(261) In fact, accepting country of residence as a criterion qualifying for EU citizenship could be interpreted as the logical consequence of leaving aside the ethno-cultural model of citizenship.

The Member States do not seem ready for this, being more attuned with Weiler’s view that “one cannot, conceptually and psychologically (let alone legally) be a European citizen without being a Member State national”(262) and the long-term residents directive embodies a different approach, decreasing the discrepancies between EU and non-EU citizens. However, the outcome of this EU legal act has a much wider scope; it indirectly pressures the MS with restrictive nationality policies to facilitate access to national citizenship. Although the Community does not have competence to regulate conditions of acquiring national citizenship, it may be stated that the Council, through the provisions enshrined in this Directive, has given an implicit hint that conferring EU citizenship on long-term residents is required due to their contribution to the common wealth. As it is difficult to believe that such a signal might have been sent unintentionally, the attitude of the EU on equalizing the position of third country nationals permanently residing in the EU with that hold by Union citizens becomes clear. This deliberately partially hidden message is the first official attempt to induce certain amendments in MS independent nationality laws. Can we expect further actions of the EU institutions aiming at transforming national citizenship rules so they would help to obtain this Community goal?

References

“About the Green Paper on Immigration” open letter signed by numerous human rights and immigration organizations, available at http://www.coordeurop.org/sito/0com/pdf05_grpp_en.pdf

Akrich Case C-109/01 [2003] ECR I-9607.

Apap, J, Carrera, S, ‘Towards a Proactive Immigration Policy for the EU ?’ CEPS Working Document No. 198, 2003, http://aei.pitt.edu/1815/

Apap, J., ‘Citizenship Rights and Migration Policies: The Case of Maghrebi Migrants in Italy and Spain’ in Guild, E., (ed), *The Legal Framework and Social Consequences of Free Movement of Persons in the European Union*, (Kluwer, 1999), p. 105

Armstrong, K., ‘Governance and the Single European Market’ in Craig, P., De Burca, G., *The Evolution of EU Law*, (OUP, 1999).

Balibar, E. *We, the people of Europe? Reflections on transnational citizenship*,

(Princeton University Press, 2004), p. 76

Barnard, C., *The substantive law of the EU. The four freedoms*, (Oxford Press University, 2004), pp. 421-423

Baumbast Case C-413/99 [2002] ECR I-7091

Borra's, S., Jacobsson, K., 'The open method of new governance patterns in the EU' (2004) 11 Journal of European Public Policy, p. 190.

Bothe, M., 'Legal and Non-Legal Norms. A Meaningful Distinction in International Relations in Netherlands' (1980) 11 Yearbook of International Law, p. 90

Breton, R., 'Identification in Transnational Political Communities' in Knop, K., Ostry, S., Simeon, R., Swinton, K., (ed.), *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World*, (University of British Columbia Press, 1995).

Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, COM (2000) 757 final: 21, http://www.europa.eu/eur-lex/en/com/cnc/2000/com2000_0757en01.pdf

Comparative Highlight Report', Eurobarometer, February/March 2004 available at http://www.europa.eu.int .

Constitution of Ireland, Article 41 available at http://www.taoiseach.gov.ie

Cornelius, W., 'Spain: The Uneasy Transition from Labor Exporter to Labor Importer' in Cornelius, W., Martin, P., Hollifield, F., *Controlling Immigration. A global Perspective*, (Stanford University Press, 1992), pp. 350-366

Council Directive 2003/109/EC of 25 November 2003 Concerning the status of third-country nationals who are long-term residents.

Curtin, M., 'Open Decision-making and EU (Political) Citizenship' in O'Keeffe, D., Twomey, P.,(ed), op.cit. *Legal issues of the Amsterdam Treaty*, pp. 73-74;

D'Oliveira, H., 'Nationality and the European Union after Amsterdam' in O'Keeffe, D., Twomey, M.(ed), *Legal issues of the Amsterdam Treaty*, (Hart Publishing, 1999), p. 411

Declaration on the Nationality of a Member State, [1992] OJ C191/98 Case C-192/99,

Dell Ólio, F., 'The Redefinition of the Concept of Nationality in the UK: Between Historical Response and Normative Challenges', (2002) 22 Politics (1), p.14

Deloy, Y., 'Exploring the Concept of European Citizenship' in Harmsen, R., Wilson, T.M.(ed), *Europeanisation: Institution, Identities and Citizenship*, (Rodopi, 2000), p.199

Drago, T., 'Immigration-Europe: Opening Doors to Lock Them Tighter' available at http://www.globalecho.org/view_article.php?aid=3167

Elzar, D., 'The United States and the European Union: Models for Their Epochs' in Nicolaidis, K., Howse, R. (ed), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, (Oxford Press University, 2001), p. 48.

European Commission Green Paper on an EU Approach to Managing Economic Migration, submissions on behalf of the Immigrant Council of Ireland', Dublin 15th April 2005, p. 2 available at http://www.europa.eu.int

Goudappel, F., op.cit. 'A comparative approach to European Union citizenship'.

Haas, E.B., *The uniting of Europe; political, social and economical forces 1950-1957*, (Stanford University Press, 1958), pp. 15-23.

Hailbronner, K., 'European Union and Union Citizenship: Umbrella terms?' in Carlier, J., Verwilghen, M. (ed), *Thirty years of free movement in Europe*, (European Communities, 2000) p. 286

Hansen, R., Weil, P., 'Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?' in Hansen, R., Weil, P., *Towards a European Nationality. Citizenship*, *Immigration and Nationality Law in the EU*, (Palgrave, 2001), p. 1

Harlow, C., 'European Administrative Law' in Craig and de Burca *The Evolution of EU Law* (OUP, 1999), p. 276;

Harrington.J 'Citizenship and the bio-politics of post-nationalist Ireland' (2005) 32 Law and Society 424.

Heater, D., *A Brief History of Citizenship*, (New York University Press, 2004), p. 141

Held, D., 'Between State and Civil Society: Citizenship' in Andrews (ed.), *Citizenship*, (Lawrence and Wishart, 1991), p. 20

Helm, J., 'Ireland struggles with immigration issue', (4/4/2004) available at http://news.bbc.co.uk/2/hi/europe/3595547.stm.

Hoffman, H., 'The Reform of the Law Citizenship in Germany: Political Aims, Legal Concepts and Provisional Results', (2004) 6 European Journal of Migration and Law, p. 197

Hofstede, G., 'Levels of Culture' in Hofstede, G., *Cultures and organisations. Software of the mind*, (HarperCollins, 1991), p. 10.

'How Europeans see themselves. Looking through the mirror with public opinion

surveys', Eurobarometer, October/November 1999, available at www.europa.eu.int.

'Irish baby laws attract Africans', (16/10/2003) available at http://news.bbc.co.uk /2/hi/Europe/3199024.stm

Irish Council for Civil Liberties, 'Briefing on proposal for a referendum on citizenship' May 2004, available at http://www.iccl.ie/DB_Data/issues/ImmigrantsRights_10000_Publications.htm

Irish Nationality and Citizenship Act 1956. As amended by the Irish Nationality and Citizenship Act 1986 (No. 23 of 1986), the Irish Nationality and Citizenship Act 1994 (No. 9 of 1994) and the Irish Nationality and Citizenship Act 2001 (No. 15 of 2001), part III, para 15c) and 16a)-e), available at http://www.justice.ie http://www.iccl.ie

Jacobsson, K., 'Soft regulation and the subtle transformation of states. The case of EU employment policy', (2004) 14 Journal of European Public Policy 357

Joppke, C., *Immigration and the Nation-State. The United States, Germany, and Great Britain*, Oxford University Press, Oxford, 1999

Kochenov., D., 'Pre-accession, Naturalization, and 'Due regard to Community Law'' (2004) 4 Romanian Journal of Political Science, p. 74.

Kostakopoulou, D., 'Ideas, Norms and European Citizenship: Explaining Institutional Change' (2005) 68 Modern Law Review, pp. 233-259

Kunqian Catherine Zhu and Man Lavette Chen Case C-200/02 [2004] ECR I-09925.

L and O v Minister for Justice, Equality and Law Reform (2003) IESC 1

La Torre, M., 'Citizenship: A European Wager' (1995) 8 Ratio Juris, pp. 113-120.

Lemke, C., 'Citizenship Law in Germany: Traditional Concepts and Pressures to Modernize in the context of European integration', (Spring 2001) Harvard Focus Europe, pp. 1-3 available at www.sociology.su.se

Levinson, H., 'Immigrants transform the Emerald Isle', (12/7/2001) available at http://news.bbc.co.uk/2/hi/programmes/crossing_continents/europe/1369247.stm

Lewis, V., 'Become a Citizen of Sunny Spain and Open a Back Door to the European Union', International Living Magazine available at http://www.escapeartist.com/international/spain.htm

Lindberg, L.N, 'Integration as a source of stress on the European Community system', (1966) 2 International Organization, p. 238.

Maas, W., 'Extending Politics: Enfranchising Non-Resident European Citizens', Working Papers available at http://homepages.nyu.edu/~wm31/Maas-ISA99.pdf

Mario Vinente Micheletti and Others v. Delegation del Gobierno en Cantabria Case C-369/90

Meehan, E., 'Europeanisation and citizenship of the European Union' in Harmsen, R., Wilson, T.M.(ed), op.cit. *Europeanisation: institution, identities and citizenship*

Meehan, E., *Citizenship and the European Community*, (Sage, 1993)

Morrison, B., 'There is nothing to justify citizenship panic' (8/6/2004) available at http://www.ireland.com/focus/referendum2004/comment_080604a.html

Mullally S. 'Citizenship and Family Life in Ireland: Asking the Question " Who Belongs?"' (2005) 25 Legal Studies 579

Nascimbene, B., 'Towards a European Law on Citizenship and Nationality?' in O'Leary, S., Tiilikainen, T., op.cit. *Citizenship and Nationality Status in the New Europe*, p. 71

O'Keeffe, D., Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, (Chancery Law Publishing, 1994), pp. 87-92

O'Leary, S., 'The Options for the Reform of European Union Citizenship' in O'Leary, S., Tiilikainen, T., *Citizenship and Nationality Status in the New Europe*, (Sweet&Maxwell, 1998), pp. 84-86

O'Leary, S., *The evolving Concept of Community Citizenship*, (Kluwer, 1996)

Perchinig, B., 'EU citizenship and the Status of Third Countries Nationals', EIF Working Paper Series, http://www.eif.oeaw.ac.at/downloads/workingpapers/wp12.pdf

Reidy, A., The Irish Times (2005) available at http://www.ireland.com

Romanos, M., 'Shipping, the State, and the Market,. The evolving role of the European Union in international and Greek shipping policies', (2005) London School of Economics, available at http://www.lse.ac.uk/collections/hellenicObservatory/pdf/2ndSymposium_papers_pdf/

Ryan, B., 'Introduction: Current Issues in Nationality Law in Europe' (2004) 6 European Journal of Migration and Law, p. 171

Ryan, B., 'The Celtic Cubs', (2004) 6 European Journal of Law and Migration 173-193

Senden, L. *Soft law in European Community law. Its relationship to Legislation*, (Hart, 2005)

Shaw, 'Citizenship of the Union - Towards Post National Membership?' Harvard Jean Monnet Working Paper 6/97, available at

http://www.jeanmonnetprogram.org/papers/97/97-06-.html .

Singh Case C-370/90 [1992] ECR I-4265;

Snyder, F., *The construction of Europe. Esseys in Honour of Emile Noel*, (Kluwer, 1994)

'Spain relaxes citizenship laws' (9/1/2003) available at http://news.bbc.co.uk/2/hi/europe/2643287.stm

Soysal, Y., Limits of citizenship : migrants and postnational membership in Europe, University of Chicago, Chicago, 1994, p. 167

Staples, H., The *legal Status of Third Country Nationals Resident in the European Union*, (Kluwer, 1999)

Syrpis, P., *Legitimising European Governance: taking subsidiarity seriously within the open method of co-ordination*, (European University Institute, 2002)

Teubner, G., *Law as an Autopoietic System*, (Blackwell, 1993), *The Queen v. Secretary of State for the Home Department ex parte Manjit Kaur* [2001] ECR I-1237

Trubek, D., Cottrell, P., Nance, M., '"Soft law", "Hard Law", and European integration: Toward a theory of Hybridity', p. 15 available at www.wisc.edu/wage/pubs/papers/

Trubek, D., Trubek, L., 'Hard and Soft Law in the Construction of Social Europe' (2005) 11 European Law Review, p. 350.

Twenty-seventh Amendment of the Constitution Act 2004, part 2, available at http://www.oireachtas.ie

Velluti, S., 'The European Employment Strategy and Enlargement', in Tridimas, Nebbia (eds) *European Law for the Twenty-First Century,* volume 1 (Hart Publishing, 2004), p. 424

Verhoeven, A., *The European Union in Search of a Democratic and Constitutional Theory*, (Kluwer, 2002), p. 160.

Vink, M., *Limits of European citizenship. European Integration. Policies in Netherlands*, (Universal Press, 2003)

Wathelet, M., 'European Citizenship and Freedom of Movement in the Case Law' in Carlier, J., Verwilghen, M., *Thirty years of free movement of workers in Europe. Proceedings of the conference*, Brussels, 17 to 19 December 1998, (European Communities, 2000), p. 270

Weiler, J.H.H., 'To be a European citizen – Eros and Civilization', (1997) 4 Journal of

European Public Policy 495.

Wiener, A., ‘Rethinking citizenship: The Quest for Place-Orientated Participation in the EU’ (1996) 7 Oxford International Review, pp. 44-51.

Witteveen, W., Van Klink, B., ‘Why Is Soft Law really Law? A Communicative Approach to Legislation’ available at http://rechten.uvt.nl/bartvanklink/softlaw.pdf
White Paper on Governance, COM (2001) 428

Endnotes

(1) Vink, M., *Limits of European citizenship. European Integration. Policies in Netherlands*, (Universal Press, 2003), p. 17.

(2) Ibid., pp. 21-22.

(3) Goudappel, F., op.cit. ‘A comparative approach to European Union citizenship’ .

(4) Ibid.

(5) Shaw perceives granting rights and building a sense of community as “the role and function” of citizenship; Shaw, ‘Citizenship of the Union - Towards Post National Membership*?’* Harvard Jean Monnet Working Paper 6/97, available at http://www.jeanmonnetprogram.org/papers/97/97-06-.html

(6) Deloy, Y., ‘Exploring the Concept of European Citizenship’ in Harmsen, R., Wilson, T.M.(ed), *Europeanisation: Institution, Identities and Citizenship*, (Rodopi, 2000), p.199 and Vink, M., op.cit. *Limits of European citizenship*, note 1 above, p.22

(7) Staples, H., The *legal Status of Third Country Nationals Resident in the European Union*, (Kluwer, 1999), p. 74

(8) Shaw, J., op.cit. ‘Citizenship of the Union - Towards Post National Membership?’, note 5 above, part II A

(9) Ibid.

(10) Held, D., ‘Between State and Civil Society: Citizenship’ in Andrews (ed.), *Citizenship*, (Lawrence and Wishart 1991), p. 20

(11) Vink, M., op.cit. *Limits of European citizenship* note 1 above, pp. 22-23 and 162-163, and Heater, D., *A Brief History of Citizenship*, (New York University Press, 2004), p. 141

(12) Shaw, J., op.cit ‘Citizenship of the Union - Towards Post National Membership?’ note 5 above

(13) Barnard, C., *The substantive law of the EU. The four freedoms*, (Oxford Press University, 2004), pp. 421-423

(14) Ibid.

(15) Ibid., p. 61

(16) Balibar, E. *We, the people of Europe? Reflections on transnational citizenship*, (Princeton University Press, 2004), p. 76

(17) Ibid.

(18) Vink, M., op.cit. *Limits of European citizenship*, note 1 above, p. 23.

(19) Meehan, E., *Citizenship and the European Community*, (Sage, 1993), p. 22.

(20) Breton, R., 'Identification in Transnational Political Communities' in Knop, K., Ostry, S., Simeon, R., Swinton, K., (ed.), *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World*, (University of British Columbia Press, 1995).

(21) Verhoeven, A., *The European Union in Search of a Democratic and Constitutional Theory*, (Kluwer, 2002), p. 160.

(22) La Torre, M., 'Citizenship: A European Wager' (1995) 8 Ratio Juris, pp. 113-120.

(23) Verhoeven, A., op.cit. *The European Union in Search of a Democratic and Constitutional Theory*, note 21 above, p.168

(24) Ibid.

(25) For details see: O'Keeffe, D., Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, (Chancery Law Publishing, 1994), pp. 87-92, Heater, D., op.cit. *A Brief History of Citizenship*, note 11 above, pp. 103-104, O'Leary, S.,

The evolving Concept of Community Citizenship, (Kluwer, 1996), pp. 18-25, Staples, H., op.cit.

The Legal Status of Third Country Nationals Resident in the European Union, note 7 above, pp. 200-201

(26) O'Leary, S., 'The Options for the Reform of European Union Citizenship' in O'Leary, S., Tiilikainen, T.,

Citizenship and Nationality Status in the New Europe, (Sweet&Maxwell, 1998), pp. 84-86

(27) O'Leary, S., op.cit. *The evolving Concept of Community Citizenship*, note 25

above, pp. 39-40

(28) O'Keeffe, D., Twomey, M. (ed.), op.cit. *Legal issues of the Maastricht Treaty*, note 25 above, p. 92

(29) D'Oliveira, H., 'Nationality and the European Union after Amsterdam' in O'Keeffe, D., Twomey, M.(ed),

Legal issues of the Amsterdam Treaty, (Hart Publishing, 1999), p. 411

(30) O'Leary, S., op.cit. *The evolving Concept of Community Citizenship*, note 25 above, p. 6

(31) Staples, H., op.cit. *The legal Status of Third Country Nationals Resident in the European Union*, note 7 above , p. 74

(32) Weiler, J.H.H., 'To be a European citizen – Eros and Civilization', (1997) 4 Journal of European Public Policy 495.

(33) Articles 18-23, Treaty establishing European Communities (consolidated version) and Charter of Fundamental Rights of the European Union, chapter V 'Citizenship'.

(34) O'Keeffe, D., Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, note 25 above , p.106 and Meehan, E., 'Europeanisation and citizenship of the European Union' in Harmsen, R., Wilson, T.M.(ed), op.cit. *Europeanisation: institution, identities and citizenship*, note 6 above, pp. 166-169 and 172

(35) Curtin, M., 'Open Decision-making and EU (Political) Citizenship' in O'Keeffe, D., Twomey, P.,(ed), op.cit. *Legal issues of the Amsterdam Treaty*, note 29 above, pp. 73-74

(36) Shaw, J., op.cit. 'Citizenship of the Union - Towards Post National Membership?', note 5 above, part IV B.

(37) Verhoeven, A., op.cit. *The European Union in Search of a Democratic and constitutional Theory*, note 21 above, pp. 178-179; Wathelet, M., 'European Citizenship and Freedom of Movement in the Case Law' in Carlier, J., Verwilghen, M., *Thirty years of free movement of workers in Europe. Proceedings of the conference*, Brussels, 17 to 19 December 1998, (European Communities, 2000), p. 270

(38) DellÓlio, F., 'The Redefinition of the Concept of Nationality in the UK: Between Historical Response and Normative Challenges', (2002) 22 Politics (1), p.14

(39) Staples, H., op.cit. *The legal Status of Third Country Nationals Resident in the European Union*, note 7 above, pp. 326-328

(40) Kostakopoulou, D., 'Ideas, Norms and European Citizenship: Explaining

Institutional Change' (2005) 68 Modern Law Review, pp. 233-259

(41) This issue is developed in chapter 3

(42) Staples, H., op.cit. *The legal Status of Third Country Nationals Resident in the European Union*, note 7 above p. 202.

(43) See O'Keeffe, D., Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, note 25 above, p. 102, Nascimbene, B., 'Towards a European Law on Citizenship and Nationality?' in O'Leary, S., Tiilikainen, T., op.cit. *Citizenship and Nationality Status in the New Europe*, note 26 above , p. 71 and Meehan, E., op.cit *Europeanisation and Citizenship of the European Union* in Harmsen, R., Wilson, T.M.(ed), op.cit. *Europeanisation: institution, identities and citizenship*, note 6 above, p. 169.

(44) Nascimbene, B., 'Towards a European Law on Citizenship and Nationality?' in O'Leary, S., Tiilikainen, T., op.cit. *Citizenship and Nationality Status in the New Europe*, note 26 above, p. 71.

(45) Wiener, A., 'Rethinking citizenship: The Quest for Place-Orientated Participation in the EU' (1996) 7 Oxford International Review, pp. 44-51.

(46) Article 19 (1), EC Treaty.

(47) Article 19 (2) EC.

(48) Article 20 EC.

(49) O'Leary, S., op.cit. 'The Options for the Reform of European Union Citizenship', note 26 above, p. 93.

(50) Nascimbene, B., 'Towards a European Law on Citizenship and Nationality'?, in O'Leary, S., Tiilikainen, T., op.cit. *Citizenship and Nationality Status in the New Europe*, note 26 above, pp. 69-70 and Staples, H.,

The legal Status of Third Country Nationals Resident in the European Union, op.cit., p. 206.

(51) Vink, M., op.cit. *Limits of European citizenship*, note 1 above , p. 4.

(52) Deloye, Y., op.cit. 'Exploring the Concept of European Citizenship', note 6 above, p. 211.

(53) Ibid. pp. 211-215.

(54) Shaw, J., op.cit. 'Citizenship of the Union - Towards Post National Membership?' note 5 above, part I.

(55) Ibid., italics provided.

(56) Weiler, J.H.H., op.cit. ‘To be a European citizen – Eros and Civilization’, note 32 above, p. 509-11.

(57) Deloye, Y., op.cit. ‘Exploring the Concept of European Citizenship’, note 6 above, p. 211-215.

(58) Weiler, J.H.H., op.cit. ‘To be a European citizen – Eros and Civilization’, note 32 above.

(59) Ibid.

(60) Meehan, E., op.cit. *Citizenship and the European Community*, note 19 above, p. 152.

(61) Hofstede, G., ‘Levels of Culture’ in Hofstede, G., *Cultures and organisations. Software of the mind*, (HarperCollins, 1991), p. 10.

(62) Vink, M., op.cit. *Limits of European citizenship*, note 1 above, p. 5.

(63) ‘How Europeans see themselves. Looking through the mirror with public opinion surveys’, Eurobarometer, October/November 1999, available at http://ec.europa.eu/comm/publications/booklets/eu_documentation/05/txt_en.pdf

(64) Vink, M., op.cit. *Limits of European citizenship*, note 1 above, p. 5.

(65) ‘Comparative Highlight Report’, Eurobarometer, February/March 2004 available at http://ec.europa.eu/public_opinion/archives/cceb/2004/cceb_2004.1_highlights.pdf

(66) Jacobsson, K., ‘Soft regulation and the subtle transformation of states. The case of EU employment policy’, (2004) 14 Journal of European Public Policy 357, p. 358

(67) For details see: O’Keeffe, D., Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, note 25 above, pp. 135-136, Trubek, D., Trubek, L., ‘Hard and Soft Law in the Construction of Social Europe’ (2005) 11 European Law Review, p. 350.

(68) Haas, E.B., *The uniting of Europe; political, social and economical forces 1950-1957*, (Stanford University Press, 1958), pp. 15-23.

(69) Lindberg, L.N, ‘Integration as a source of stress on the European Community system’, (1966) 2 International Organization, p. 238.

(70) Elzar, D., ‘The United States and the European Union: Models for Their Epochs’ in Nicolaidis, K., Howse, R. (ed), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, (Oxford Press University, 2001), p. 48.

(71) Trubek, D., Cottrell, P., Nance, M., '"Soft law", "Hard Law", and European integration: Toward a theory of Hybridity', p. 15 available at http://www.law.wisc.edu/facstaff/trubek/HybridityPaperApril2005.pdf and Borra's, S., Jacobsson, K., 'The open method of new governance patterns in the EU' (2004) 11 Journal of European Public Policy, p. 190.

(72) Trubek, D., Trubek, L., op.cit 'Hard and Soft Law in the Construction of Social Europe', note 67 above, p. 352.

(73) See Senden, L. *Soft law in European Community law. Its relationship to Legislation*, (Hart, 2005) pp. 8-11; Armstrong, K., 'Governance and the Single European Market' in Craig, P., De Burca, G., *The Evolution of EU Law*, (OUP, 1999).

(74) Senden, L op.cit. *Soft law in European Community law. Its relationship to Legislation*, note 73 above, p. 12.

(75) Ibid; Trubek, D., Cottrell, P., Nance, M., op.cit. '"Soft law", "Hard Law", and European integration: Toward a theory of Hybridity', note 71 above.

(76) Jacobsson, K., op.cit. 'Soft regulation and the subtle transformation of states. The case of EU employment policy', note 66 above, p. 357.

(77) Harlow, C., 'European Administrative Law' in Craig and de Burca *The Evolution of EU Law* (OUP, 1999) , p. 276; Velluti, S., 'The European Employment Strategy and Enlargement', in Tridimas, Nebbia (eds) *European Law for the Twenty-First Century,* volume 1 (Hart Publishing, 2004), pp. 424-432, Trubek, D., Cottrell, P., Nance, M., op.cit. '"Soft law", "Hard Law", and European integration: Toward a Theory of Hybridity', note 71 above, p. 12, Senden, L., op.cit. 'Soft law in European Community law. Its relationship to Legislation', note 73 above , p. 106-262 and 465-468, and Borra's, S., Jacobsson, K., 'The open method of new governance patterns in the EU', available at http://eucenter.wisc.edu/OMC/Papers/borrasJacobssonJEPP.pdf , p. 189.

(78) Velluti, S., 'The European Employment Strategy and Enlargement' in Tridimas, T., Nebbia, P. (ed), *European law for the twenty-first century. Rethinking the new legal order*, (Hart Publishing, 2004), volume1, pp. 424-425;

(79) Ibid.

(80) Trubek, D., Trubek, L., op.cit. 'Hard and Soft Law in the Construction of Social Europe', note 72 above, pp. 23-27; Trubek, D., Cottrell, P., Nance, M., op.cit. '"Soft law", "Hard Law", and European integration: Toward a theory of Hybridity', note 71 above , pp. 33-34; Witteveen, W., Van Klink, B., 'Why Is Soft Law really Law? A Communicative Approach to Legislation' available at http://rechten.uvt.nl/bartvanklink/softlaw.pdf; White Paper on Governance, COM (2001) 428, pp. 4 and 20-22.

(81) Syrpis, P., *Legitimising European Governance: taking subsidiarity seriously*

within the open method of co-ordination, (European University Institute, 2002), p. 24

(82) Senden, L., op.cit. *Soft law in European Community law. Its relationship to Legislation*, note 73 above, p. 368, italics provided

(83) Syrpis, P., op.cit. *Legitimising European Governance: taking subsidiarity seriously within the open method of co-ordination*, note 81 above, p. 11

(84) Snyder, F., *The construction of Europe. Esseys in Honour of Emile Noel*, (Kluwer, 1994), p. 218

(85) Romanos, M., 'Shipping, the State, and the Market,. The evolving role of the European Union in international and Greek shipping policies', (2005) London School of Economics, available at http://www.lse.ac.uk/collections/hellenicObservatory/pdf/2ndSymposium_papers_pdf/

(86) Teubner, G., *Law as an Authopoietic System*, (Blackwell, 1993), pp. 67-68

(87) Declaration on the Nationality of a Member State, [1992] OJ C191/98; See also Verhoeven, A., op.cit. *The European Union in Search of a Democratic and constitutional Theory*, note 21 above, p. 172

(88) Staples, H., op.cit. *The Legal Status of Third Country Nationals Resident in the European Union*, note 7 above, pp. 75-79

(89) Case C-192/99, *The Queen v. Secretary of State for the Home Department ex parte Manjit Kaur* [2001] ECR I-1237.

(90) Ms Kaur referred to Articles 17 –18 of the EC Treaty.

(91) Verhoeven, A., op.cit. *The European Union in Search of a Democratic and constitutional Theory*, note 21 above, p. 172

(92) Hansen, R., Weil, P., 'Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?' in Hansen, R., Weil, P.,

Towards a European Nationality. Citizenship Immigration and Nationality Law in the EU, (Palgrave, 2001), p. 1

(93) Lemke, C., 'Citizenship Law in Germany: Traditional Concepts and Pressures to Modernize in the context of European integration', (Spring 2001) Harvard Focus Europe, pp. 1-3 available at http://www.gps.uni-hannover.de/europe/citizenlaw01.pdf

(94) Ibid.

(95) Articles 61-69 EC Treaty

(96) Lemke, C., op.cit. 'Citizenship Law in Germany: Traditional Concepts and

Pressures to Modernize in the context of European integration', note 93 above, p. 3

(97) D'Oliveira, H., op.cit. *Nationality and the European Union after Amsterdam*, note 29 above, pp. 410-412

(98) This will be described in more detail on the example of Spain in section 3.2

(99) Cornelius, W., 'Spain: The Uneasy Transition from Labor Exporter to Labor Importer' in Cornelius, W., Martin, P., Hollifield, F., *Controlling Immigration. A global Perspective*, (Stanford University Press, 1992), pp. 350-366

(100) Apap, J., 'Citizenship Rights and Migration Policies: The Case of Maghrebi Migrants in Italy and Spain' in Guild, E., (ed), *The Legal Framework and Social Consequences of Free Movement of Persons in the European Union*, (Kluwer, 1999) , p. 105

(101) Ibid., pp. 121-122

(102) Ryan, B., 'Introduction: Current Issues in Nationality Law in Europe' (2004) 6 European Journal of Migration and Law, p. 171

(103) The term 'EU trends' used in the further part of this thesis will hold this meaning; for detailed explanation of 'trends toward convergence' see Hansen, R., Weil, P., op.cit. 'Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?', note 92 above, pp. 10-20

(104) O'Leary, S., op.cit. 'The Options for the Reform of European Union Citizenship', note 26 above, p. 77

(105) Ibid.

(106) C-369/90, *Mario Vinente Micheletti and Others v. Delegation del Gobierno en Cantabria*

(107) Hailbronner, K., 'European Union and Union Citizenship: Umbrella terms?' in Carlier, J., Verwilghen, M. (ed), op.cit. *Thirty years of free movement in Europe*, note 37 above, p. 286

(108) C-369/90, *Mario Vinente Micheletti and Others v. Delegation del Gobierno en Cantabria*

(109) C-369/90, *Mario Vinente Micheletti and Others v. Delegation del Gobierno en Cantabria* paragraph 10, italics provided

(110) Kochenov., D., 'Pre-accession, Naturalization, and 'Due regard to Community Law'' (2004) 4 Romanian Journal of Political Science, p. 74 available at http://66.249.93.104/search?q=cache:I9k-fsPKBesJ:www.ciaonet.org/olj/rjps/rjps_v4n2/rjps_v4n2_kod01.pdf+kochenov+pre-

accession+naturalization&hl=de&gl=at&ct=clnk&cd=1

(111) Cornelius, W., op.cit. 'Spain: The Uneasy Transition from Labor Exporter to Labor Importer', note 99 above, pp. 331-335.

(112) Ibid.

(113) Ibid., p. 333.

(114) Algeria, Morocco, and Tunisia

(115) All Latin American countries except from Brazil, Guyana, and Suriname

(116) Cornelius, W., op.cit. 'Spain: The Uneasy Transition from Labor Exporter to Labor Importer', note 99 above, pp. 362-368

(117) Nicolas, D., quoted by Cornelius, W., op.cit. 'Spain: The Uneasy Transition from Labor Exporter to Labor Importer', note 99 above, p. 350

(118) Cornelius, W., op.cit. 'Spain: The Uneasy Transition from Labor Exporter to Labor Importer', note 99 above, pp. 350-351

(119) Ibid. pp. 358-362

(120) Ibid., p. 362

(121) Drago, T., 'Immigration-Europe: Opening Doors to Lock Them Tighter' Inter-Press News Service Bulletin, 07/02/05, available at http://ipsnews.org/print.asp?idnews=27346

(122) Ibid.

(123) 'Spain relaxes citizenship laws' (9/1/2003) available at http://news.bbc.co.uk/2/hi/europe/2643287.stm

(124)Drago, T., op.cit. 'Immigration-Europe: Opening Doors to Lock Them Tighter', note 121 above.

(125) http://www.workpermit.com/news

(126) This paragraph is mostly based on information gathered from http://www.workpermit.com

(127) Ibid

(128) Fuentes, F., 'Migration and Spanish Nationality Law' in Hansen, R., Weil, P., (eds), op.cit. *Towards a European Nationality*

, note 92 above, pp. 138-139, italics provided.

(129) Ibid.

(130) Meehan, E., op.cit. 'Europeanisation and citizenship of the European Union' in Harmsen, R., Wilson, T.M.(ed), *Europeanisation: Institution, Identities and Citizenship*, note 6 above , pp. 169-172

(131) Lewis, V., 'Become a Citizen of Sunny Spain and Open a Back Door to the European Union', International Living Magazine vol 17, issue 10, available at http://www.escapeartist.com/international/spain.htm. See also the similar questions raised regarding allegedly over-generous and "illegal" naturalisation in Greece, at [2003] OJ C155E/36 and [2002] OJ C160E/167.

(132) Verhoeven, A., op.cit. *The European Union in Search of a Democratic and constitutional Theory*, note 21 above, p. 302

(133) Ryan, B., 'The Celtic Cubs', (2004) 6 European Journal of Law and Migration 173-193, p. 175: Mullally S. 'Citizenship and Family Life in Ireland: Asking the Question " Who Belongs?"' (2005) 25 Legal Studies 579.

(134) Ryan, ibid., p. 175

(135) Ibid.

(136) See Harrington.J 'Citizenship and the bio-politics of post-nationalist Ireland' (2005) 32 Law and Society 424.

(137) O'Keeffe, D. and Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, note 25 above, p. 117

(138) Section 2(f) British Nationality Act 1981, , available at http://www.ind.homeoffice.gov.uk and Netherlands Nationality Act of 19 December 1984, as amended, available at http://wetten.overheid.nl

(139) See section 3.2

(140) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above , p. 179

(141) Constitution of Ireland, Article 41 available at http://www.taoiseach.gov.ie

(142) Mullally, op cit note 133 above, p.583.

(143) Levinson, H., 'Immigrants transform the Emerald Isle', (12/7/2001) available at http://news.bbc.co.uk/2/hi/programmes/crossing_continents/europe/1369247.stm

(144) *L and O v Minister for Justice, Equality and Law Reform* (2003) IESC 1, discussed by Mullally, op cit note 133 above.

(145) 'Irish baby laws attract Africans', (16/10/2003) available at

http://news.bbc.co.uk/2/hi/europe/3199024.stm

(146) Ibid.

(147) Levinson, H., op.cit. 'Immigrants transform the Emerald Isle', note 143 above

(148) Helm, J., 'Ireland struggles with immigration issue', (4/4/2004) available at http://news.bbc.co.uk/2/hi/europe/3595547.stm

(149) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above, p. 186

(150) Ibid., p. 187

(151) Quoted by Ryan, B., op.cit. 'The Celtic Cubs', note 133 above , p. 187

(152) Twenty-seventh Amendment of the Constitution Act 2004, part 2, available at http://www.oireachtas.ie

(153) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above, p. 176

(154) Sunday Independent, 14 March 2004

(155) Irish Council for Civil Liberties, 'Briefing on proposal for a referendum on citizenship' May 2004, available at http://iccl.ie/DB_Data/publications/04_draft_referendumpaper.pdf .

(156) Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen* [2004] ECR I-09925.

(157) Case C-413/99 *Baumbast* [2002] ECR I-7091; Case C-370/90 *Singh* [1992] ECR I-4265; Case C-109/01 *Akrich* [2003] ECR I-9607.

(158) Irish Nationality and Citizenship Act 1956. As amended by the Irish Nationality and Citizenship Act 1986 (No. 23 of 1986), the Irish Nationality and Citizenship Act 1994 (No. 9 of 1994) and the Irish Nationality and Citizenship Act 2001 (No. 15 of 2001), part III, para 15c) and 16a)-e), available at http://www.justice.ie

(159) Ibid., part III, para 16

(160) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above, p. 188

(161) See briefing paper, note 155 above, and ICCL No Vote Campaign Flyer, also available on http://iccl.ie/DB_Data/publications/vote_no_extra.pdf

(162) See section 3.1, subsection 'Legal provisions guaranteeing independence'

(163) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above.

(164) Ibid.

(165) Reidy, A., The Irish Times (2005) available at http://www.ireland.com; Mullally op cit note 133 above, p.587

(166) Mullally, ibid.

(167) Irish Nationality and Citizenship Act 1956, note 158 above, part III, para 16

(168) ICCL briefing, note 155 above.

(169) Mullally, op cit note 133 above, pp.587-588.

(170) http://www.iccl.ie

(171) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above, p. 189

(172) http://www.iccl.ie ; Ryan, ibid.

(173) Helm, J., op.cit. 'Ireland struggles with immigration issue', note 148 above

(174) Reidy., A., op.cit., note 165 above

(175) Ibid. and Morrison, B., 'There is nothing to justify citizenship panic' 08/06/04 Irish Times online, available at http://www.ireland.com/focus/referendum2004/comment_080604a.html

(176) Morrison, B., op.cit. 'There is nothing to justify citizenship panic', note 175 above; Mullally, op cit note 133 above, pp.586-586.

(177) Ryan, B., op.cit. 'The Celtic Cubs', note 133 above, p. 189

(178) Ibid., p. 190

(179) ICCL briefing, note 155 above; Harrington, note 136 above.

(180) Mullally, op cit note 133 above, pp.587-588.

(181) Lemke, C., op.cit 'Citizenship Law in Germany: Traditional Concepts and Pressures to Modernize in the context of European integration', note 93 above, p. 1

(182) Hansen, R., Weil, P., op.cit. 'Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?', note 92 above, p. 14

(183) Figures from 1999 provided by Lemke, C., op.cit. 'Citizenship Law in Germany', note 93 above , p. 1

(184) O'Leary, S., Tiilikainen, T., op.cit. *Citizenship and Nationality Status in the New Europe*, note 26 above, pp. 69-70

(185) See also Meehan, E., 'Europeanisation and citizenship of the European Union'

in Harmsen, R., Wilson, T.M.(ed), op.cit. *Europeanisation: Institution, Identities and Citizenship*, note 6 above, p. 166-169

(186) See section 1.2, subsection ‘Dynamic character of Union citizenship’

(187) Joppke, C., *Immigration and the Nation-State. The United States, Germany, and Great Britain*, Oxford University Press, Oxford, 1999, p. 191

(188) Ibid.

(189) Hansen, R., Weil, P., op.cit. ‘Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?’, note 92 above, p. 12

(190) O’Keeffe, D., Twomey, M. (ed), op.cit. *Legal issues of the Maastricht Treaty*, note 25 above, p. 104

(191) See section 1.1, subsection ‘Citizenship and identity’

(192) Hansen, R., Weil, P., op.cit. ‘Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?’,

note 92 above, pp. 4-5

(193) Cited in Joppke, C., op.cit. *Immigration and the Nation-State. The United States, Germany, and Great Britain*, note 187 above, p. 199

(194) Lemke, C., op.cit. ‘Citizenship Law in Germany: Traditional Concepts and Pressures to Modernize in the context of European integration’, note 93 above, pp. 1-7

(195) Ibid., p. 3

(196) Ibid., p. 4

(197) Joppke, C., op.cit. *Immigration and the Nation-State. The United States, Germany, and Great Britain*, note 187 above , p. 201

(198) Quoted after Joppke, C., op.cit. *Immigration and the Nation-State. The United States, Germany, and Great Britain*, note 187 above, p. 201

(199) Joppke, C., op.cit. *Immigration and the Nation-State. The United States, Germany, and Great Britain*, note 187 above, p. 202

(200) Lemke, C., op.cit. ‘Citizenship Law in Germany: Traditional Concepts and Pressures to Modernize in the context of European integration’, note 93 above, p. 5

(201) Hansen, R., Weil, P., op.cit. ‘Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?’, note 92 above, p. 4

(202) Lemke, C., op.cit. ‘Citizenship Law in Germany: Traditional Concepts and

Pressures to Modernize in the context of European integration', note 93 above, p. 4 and Verhoeven, A., op.cit. *The European Union in Search of a Democratic and constitutional Theory*, note 21 above , p. 302

(203) Hoffman, H., 'The Reform of the Law Citizenship in Germany: Political Aims, Legal Concepts and Provisional Results', (2004) 6 European Journal of Migration and Law, p. 197

(204) Lemke, C., op.cit. 'Citizenship Law in Germany: Traditional Concepts and Pressures to Modernize in the context of European integration', note 93 above, p. 5

(205) Ibid.

(206) Ibid.

(207) http://www.german-embassy.org.uk

(208) Hoffman, H., op.cit. 'The Reform of the Law Citizenship in Germany: Political Aims, Legal Concepts and Provisional Results', note 203 above, p. 202

(209) Ibid.

(210) http://www.german-embassy.org.uk

(211) Ibid.

(212) Council Directive 2003/109/EC of 25 November 2003 Concerning the status of third-country nationals who are long-term residents.

(213) See section 3.4.1.'Impact of EU citizenship on third country nationals'

(214) Perchinig, B., 'EU citizenship and the Status of Third Countries Nationals', EIF Working Paper Series, p.11, http://www.eif.oeaw.ac.at/downloads/workingpapers/wp12.pdf

(215) As quoted by Perchinig, ibid., p.11

(216) An open letter "About the Green Paper on Immigration" signed by numerous human rights and immigration organizations, available at http://www.coordeurop.org/sito/0com/pdf05_grpp_en.pdf

(217) Perchinig, B., op.cit. 'EU citizenship and the Status of Third Countries Nationals', note 214 above, p. 9

(218) Barnard, C., op.cit. *The substantive law of the EU. The four freedoms*, note 13 above, p.433

(219) Perchinig, B., op.cit. 'EU citizenship and the Status of Third Countries

Nationals', note 214 above, p. 6

(220) Tampere Presidency Conclusions, 15 and 16 October 1999

(221) Ibid., para 21

(222) Perchinig, B., op.cit. 'EU citizenship and the Status of Third Countries Nationals', note 214 above, p. 9

(223) Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, COM (2000) 757 final: 21,http://www.statewatch.org/docbin/com/30.00757.pdf

(224) Apap, J, Carrera, S, 'Towards a Proactive Immigration Policy for the EU ?' CEPS Working Document No. 198, 2003, http://aei.pitt.edu/1815/

(225) Ibid.

(226) Council Directive 2003/109/EC of 25 November 2003, note 212 above, para 2

(227) Ibid, para 4 and 12

(228) Perchinig, B., op.cit. 'EU citizenship and the Status of Third Countries Nationals', note 214 above, p. 5

(229) Council Directive 2003/109/EC of 25 November 2003, note 212 above, para 17

(230) Ibid., para 6 and Article 4(1); for derogations see Article 4(2-3)

(231) Ibid, para 7 and Article 5(1)

(232) Ibid., para 8 and Article 6

(233) Ibid., para 9

(234) Ibid, para 10-11 and Articles 7-8

(235) Ibid, Article 9-10

(236) Ibid, para 19

(237) Ibid., Article 11

(238) Ibid., para 18

(239) 'European Commission Green Paper on an EU Approach to Managing Economic Migration, submissions on behalf of the Immigrant Council of Ireland', Dublin 15th April 2005, p. 2 available at

http://ec.europa.eu/justice_home/doc_centre/immigration/work/doc/com_2004_811_er

(240) Ibid., p. 16

(241) Ibid.

(242) Ibid., p. 13

(243) http://www.nrc.nl, http://www.zuwanderung.de, http://www.workpermit.com/uk

(244) 'European Commission Green Paper on an EU Approach to Managing Economic Migration', note 239 above, p. 9

(245) Ibid., p. 4 and 12

(246) Meehan, E., 'Europeanisation and citizenship of the European Union' Harmsen, R., Wilson, T.M.(ed), op.cit. *Europeanisation: institution, identities and citizenship* , note 6 above , p. 172

(247) See section 1.2, subsection 'The Concept of Union Citizenship'

(248) See section 3.1

(249) See section 3.2

(250) Maas, W., 'Extending Politics: Enfranchising Non-Resident European Citizens', available at http://homepages.nyu.edu/~wm31/Maas-ISA99.pdf

(251) Soysal, Y., *Limits of citizenship: migrants and postnational membership in Europe*, University of Chicago, Chicago, 1994, p. 167

(252) See section 1.1, subsection 'Citizenship and Identity'

(253) See section 1.2, subsection 'Controversies raised by EU citizenship'

(254) Heater, D., op.cit. *A Brief History of Citizenship*, note 11 above , p. 23

(255) Ibid., p. 26

(256) Bothe, M., 'Legal and Non-Legal Norms. A Meaningful Distinction in International Relations in Netherlands' (1980) 11 Yearbook of International Law, p. 90

(257) Ryan, B., op.cit. 'Introduction: Current Issues in Nationality Law in Europe', note 102 above, p. 171

(258) See section 3.4

(259) See section 3.3

(260) See section 3.2 and Hansen, R., Weil, P., op.cit. 'Introduction: Citizenship, Immigration and Nationality: Towards a Convergence in Europe?', note 92 above, p. 7

(261) Nascimbene, B., op.cit. 'Towards a European Law on Citizenship and Nationality?' in O'Leary, S., Tiilikainen, T., op.cit. *Citizenship and Nationality Status in the New Europe*, note 32 above p. 72

(262) Weiler, J.H.H., op.cit. 'To be a European citizen – Eros and civilization', note 2 above, 459 – 519

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