

# Valentin Bou-Franch\*

## Nationality and Citizenship of the European Union

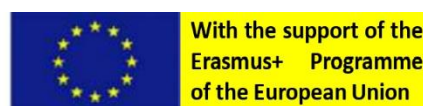
### SLIDE 1

Hello, welcome. My name is Valentin Bou, and in this publication I am going to talk to you about Nationality and European Citizenship.

### SLIDE 2

As an introduction, the definition of nationality is the legal bond that most closely and effectively unites the individual on whom nationality is conferred with the population of the State that conferred that nationality.

The relationship between State nationality and European citizenship was established with the Maastricht Treaty which created the European Union. This Treaty regulated for the first time the Citizenship of the European Union by signing that: “Citizenship of the European Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the European Union.” This wording raised doubts, as it did not cla-



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\* Full Professor of Public International Law. University of Valencia (Spain).

rify whether the notion of European citizenship overlapped with or absorbed the different State nationalities. This relationship was therefore attempted to be improved in subsequent reforms.

First, the Amsterdam Treaty added to this relationship an additional sentence stating that “Citizenship of the European Union shall be complementary to and not a substitute for national citizenship.” This wording was criticised, as it implied that State nationality is insufficient and needs to be complemented by European citizenship.

This is why we have reached the current situation, where it is stated that “European citizenship is in addition to national citizenship, not a substitute for it.”

### **SLIDE 3**

This relationship has important practical consequences.

Firstly, the status of national of a Member State remains unchanged: we will have the rights recognised by our Constitution (Spanish, French...), as long as we live in our national territory.

Secondly, as European citizens, we will have a new legal status (made up of more and different rights). These rights are characterised by three notes: (1) They are rights common to all European

Citizens; (2) They are rights that can be enjoyed in the territory of all Member States; and (3) No single Member State can create, modify, or abolish these rights. They can only be altered or removed by European legislation.

These new rights are the ones we will discuss in this collection of teaching videos.

## **SLIDE 4**

As far as the acquisition of European citizenship is concerned, we must always remember that a European citizen is any person who is a national of a Member State. Three important ideas follow from this:

1) Acquiring European citizenship depends exclusively on having or acquiring the nationality of a Member State;

2) Acquisition of European citizenship is automatic: no procedural steps are required once you are a national of a Member State; and

3) We should recall an intergovernmental Declaration, annexed to the Maastricht Treaty, which stated that: “the question whether a person possesses a given nationality shall be settled solely by reference to the national law of the Member State concerned.”

In practice, two types of problems have arisen. The first problem concerns the possible naturalisation of legal or regular immigrants.

Although this is a competence of each Member State, the European Commission and the Council have elaborated common basic principles, favouring the integration of these long-term immigrants.

This does not apply to irregular migrants: what awaits them is a return order and a seven-year re-entry ban.

The second problem is that several Member States have granted very favourable naturalisations to foreign investors with no or very little residence in the EU.

For such cases, the European Commission requires a “genuine link,” i.e. a minimum period of residence. This is a limit to the discretionary granting of nationality by Member States. I should point out, however, that this is an unresolved issue: the European Commission has set up a group of experts to establish common minimums for all Member States.

## **SLIDE 5**

Loss of European citizenship occurs when the nationality of a Member State is lost. The loss of nationality is a sovereign competence of each

Member State, but “must be exercised in compliance with European law.”

This has also given rise to two practical problems. In one court case, an Austrian national acquired German nationality, automatically losing his Austrian nationality. Subsequently, Germany discovered fraud in the naturalisation documentation and decided to withdraw German nationality. As he did not regain Austrian nationality, he became stateless, thereby losing his EU citizenship.

The Court of Justice of the European Union ruled that national courts must check that the withdrawal decision respects the principle of proportionality in relation to EU law. It must be verified that the loss of nationality by naturalisation is justified in relation to: (1) the seriousness of the offence committed by the person concerned; (2) the time which has elapsed between the naturalisation decision and the withdrawal decision; and (3) the possibility for the person concerned to regain the nationality of origin.

The second problem is the emergence of an important exception. The Court of Justice has held that an irregular immigrant in a Member State whose dependent minor children are nationals of that country cannot be refused residence or a work permit.

The justification is that refusal to grant such a right to the father would deprive the children of the effective enjoyment of their rights as European citizens, as it would force them to leave the territory of the Union.

## **SLIDE 6**

That is all I had to say to you. Thank you very much for your attention.