# Ending Childhood Statelessness:

## A comparative study of safeguards to ensure the right to a nationality for children born in Europe

Working Paper 01/16

EUROPEAN NETWORK ON STATELESSNESS

This working paper was written for the European Network on Statelessness (ENS) a civil society alliance with over 100 members in 39 countries, committed to addressing statelessness in Europe. Among other objectives, ENS advocates for the enjoyment of a right to a nationality by all. This working paper is part of a series that has been produced in support of the ENS Campaign "None of Europe's children should be stateless" which was launched in November 2014. ENS wishes to acknowledge the generous support for this campaign received from the Sigrid Rausing Trust and the Office of the United Nations High Commissioner for Refugees (UNHCR).

This paper was researched and written by Ileen Verbeek, Junior Researcher at the Institute on Statelessness and Inclusion (an ENS Associate Member).

European Network on Statelessness
Club Union House, 253-254 Upper Street
London, N1 1RY
United Kingdom
Charity Number 1158414

**info@statelessness.eu**
**www.statelessness.eu**

For further information about ENS, its activities or proposals for research or other collaboration, contact ENS Director Chris Nash at **chris.nash@statelessness.eu**.


The Institute on Statelessness and Inclusion is an Expert Partner for the ENS Campaign 'None of Europe's Children should be stateless. Extensive comments and input were provided by Dr Laura van Waas, Co-Director for all papers in this working paper series on 'Ending Childhood Statelessness'.

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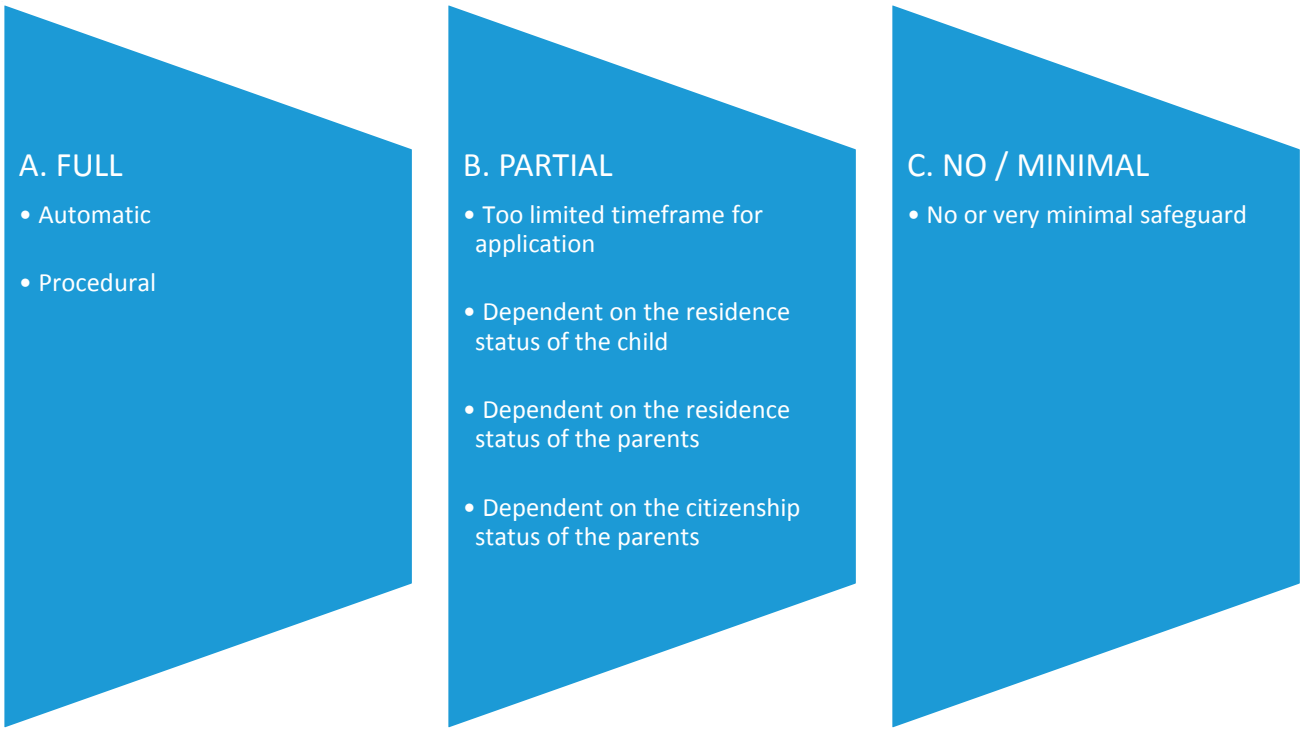
## Introduction

On 20 November 2014, the 25th anniversary of the CRC, the European Network on Statelessness (ENS) launched the campaign 'None of Europe's Children should be Stateless' to raise awareness and promote measures to ensure that all children born in Europe, or born to European parents outside the region, can in practice realize their right to a nationality.[1] As part of this campaign, in September 2015, ENS launched the report *No Child Should Be Stateless,* drawing on comparative research conducted in eight European countries and supplemented with an analysis of the performance of Council of Europe states with regard to their obligation to ensure every child's right to acquire a nationality. This working paper shares a part of its content, but goes deeper into the analysis of the nationality laws of 45 European countries.[2] It assesses these laws against international norms granting nationality to otherwise stateless children born on the territory, as contained in particular in the 1961 Convention on the Reduction of Statelessness (1961 Convention), as well as the European Convention on Nationality (ECN) and Convention on the Rights of the Child (CRC).

The analysis led to the organisation of these countries' nationality laws into three categories that range from good practice to countries falling short in comparison to international standards. Category A concerns those countries that provide a safeguard for otherwise stateless children born on the territory, either automatically or following an application that meets the conditions as set out in article 1 of the 1961 Convention. Category B covers countries in which the available safety net fails to include all children who would otherwise be stateless. Some states exhibit more than one shortcoming in their nationality law and fall within several of the problematic sub-groups under this category. Finally, category C consists of States that either entirely lack a safeguard or offer very minimal opportunity for stateless children that are born on their territory to acquire a nationality.




[1] The campaign in its turn is linked to and fits within the global United Nations High Commissioner on Refugees (UNHCR) #IBelong campaign, which aims amongst other goals to end statelessness by 2024. UNHCR, #IBelong campaign, available at http://ibelong.unhcr.org/en/home.do, last accessed 15-09-2015.

[2] See annex 3 for a list of the nationality laws analysed in this paper.

This classification is meant to help easily identify the extent of safeguards currently in place in each country with respect to conferring a nationality to stateless children born on their territory. This gives a quick overview of states' good practices as well as where states fall short and whether this is in violation of their own international commitments. Given that all of the analysed States have acceded to the CRC, any gaps in the requisite legal safeguards which limit the opportunity for stateless children to realise their right to a nationality are essentially problematic. In many cases, states maintain laws which are also in direct violation of an obligation they accepted to be bound by through accession to the 1961 Convention, ECN, or both. After providing further information on the legal framework, this report discusses each category of safeguards in turn, providing examples to further highlight good practice or problematic gaps.

## The legal framework

The right to a nationality is a right of every child. It is enshrined in article 7 of the Convention on the Rights of the Child (CRC), which explicitly obliges states to take measures to implement this in such a way as to ensure that children are not left stateless. Providing children with a nationality at birth or as soon as possible after birth is also essential to the best interests of the child, a general principle of the CRC.[3] Through their universal ratification of the CRC, all European countries have agreed to fulfil the right of children to acquire a nationality, in particular where the child would otherwise be stateless.[4]

Complementing the CRC is the 1961 Convention on the Reduction of Statelessness (1961 Convention), the object and purpose of which is to prevent and reduce statelessness. Article 1 of the 1961 Convention is key: it obligates States to ensure children's right to a nationality for all children born on their territory that are otherwise stateless.[5] States may choose to do this through one of two methods, or via a combination of the two: they may grant nationality automatically at birth to otherwise stateless children born on the territory, or they can choose to make the grant of nationality subject to an application process. This process however has to be non-discretionary and may be made subject exclusively to the conditions that are set out in the 1961 Convention.[6]

Another cornerstone of the legal framework concerned with providing all children with a nationality for European states is article 6(2) of the 1997 European Convention on Nationality (ECN).[7] The ECN works in a similar fashion to the 1961 Convention, allowing States to choose to grant nationality to otherwise stateless children either automatically at birth or following a simple, non-discretionary application process. The conditions to which such an application may be made conditional are broadly similar, with two notable differences. First, where the 1961 Convention only allows States to demand *habitual* residence from the stateless applicant, the ECN allows States to require both *lawful and habitual* residence. The 1961 Convention meanwhile specifies a minimum timeframe during which the applicant should be allowed to lodge their application. States must start accepting applications no later than when the person reaches the age of 18 and continue to accept applications from applicants at least until the age of 21. The ECN specifies no such window such that the application procedure must be available as soon and as long as the person meets the other conditions which may be set.

Since all state parties to the 1961 Convention and ECN have also ratified the CRC, the CRC plays a role of paramount importance in the interpretation of these instruments.[8] Through its recommendations to states in response to the review of national policy, the Committee on the Rights of the Child has issued important guidance on the interpretation of the child's right to acquire a nationality under the CRC.[9] The Committee has, for instance, clarified that *all* children born on a state's territory who would otherwise be stateless must have

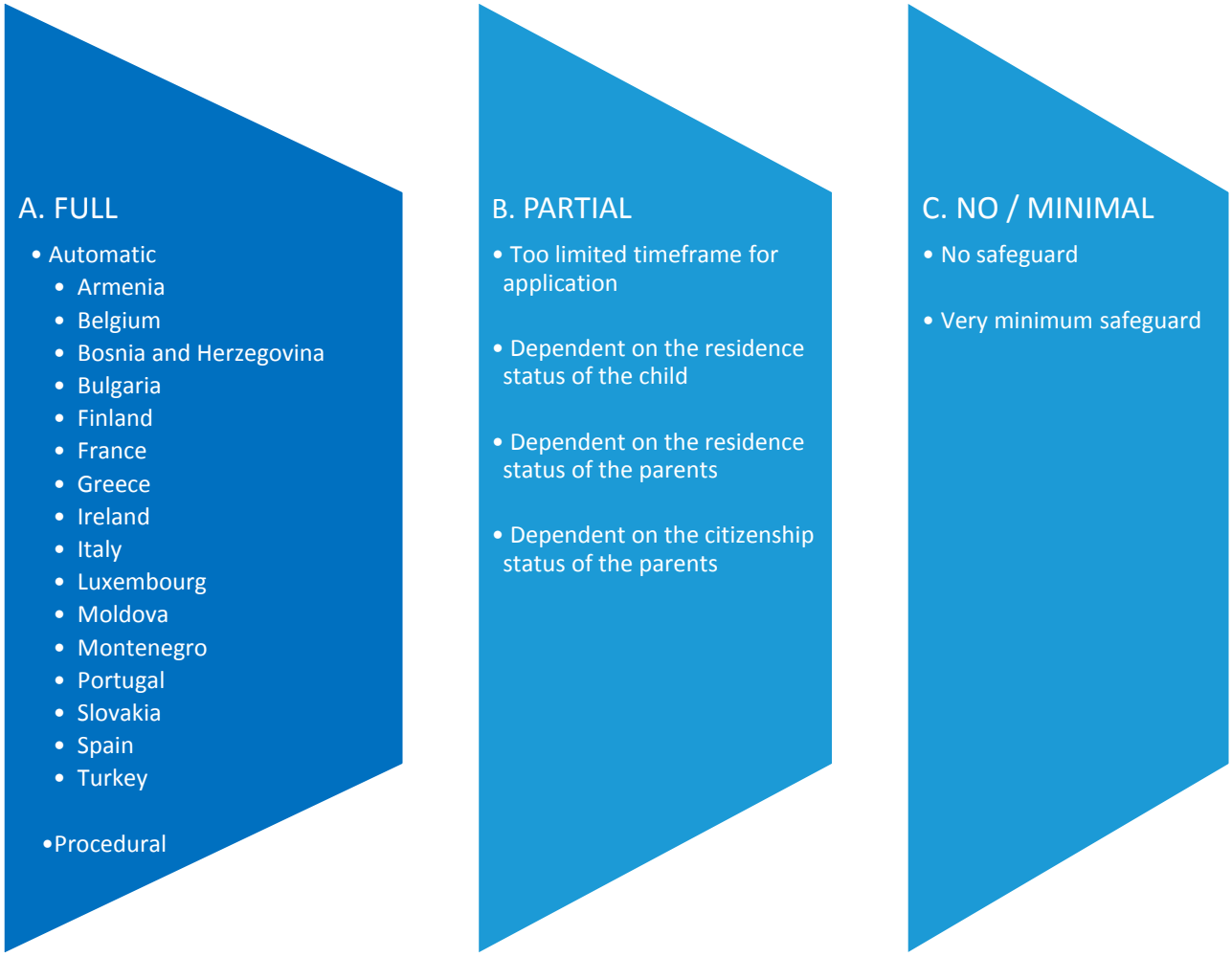
[3] OHCHR, *Fact Sheet No.10 (Rev.1), The Rights of the Child* (1997).
[4] Article 7 of the CRC.
[5] See annex 1.
[6] UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness* [Guidelines No. 4] paras 1-2.
[7] See annex 1.
[8] Ibid para 8.
[9] See for an analysis of this guidance the work of the Institute on Statelessness and Inclusion, including an analytical database of Committee recommendations, available at http://www.InstituteSI.org/children.

access to nationality and this should not be impeded through residence requirements (for the child or parents). Moreover, nationality should be granted at birth or as soon as possible after birth, given that statelessness can lead to problems for the child already at a young age. This guidance must be taken into account when states opt for the application routes under the 1961 Convention and ECN, in determining the permissibility of certain conditions.[10] A state may therefore appear to live up to the letter of either the 1961 Convention, or the ECN, or both, but its safeguards may nevertheless be problematic from the perspective of international law. Nevertheless, for the purposes of the classification of European states' safeguards in this paper, the 1961 Convention standard is used as the main benchmark against which states' laws are assessed.

## Category A: Full safeguards

Twenty-one of the analysed countries have a system in place that provides otherwise stateless children born on the territory with a nationality, which meets the international standards concerned. Sixteen of these countries grant nationality automatically, at birth. This is the optimal method, as it ensures nationality for all the children born in the country without even the shortest period of being without citizenship. The procedural route, even when in line with the international law, still allows for treatment that goes against the best interests of the child because the child may be left stateless for several years or even until age 18.

*A.1. Automatic safeguards*




[10] See also *UNHCR, Guidelines on Statelessness No.4,* para 34.

*Armenia* only recently amended its citizenship law to bring it in line with its international commitments.[11] Prior to the amendment, only children born in the country to stateless parents had a pathway to nationality,[12] but following the entering into force of the amendment of 13 June 2015, all children born in Armenia and who are unable to acquire a nationality are safeguarded from childhood statelessness.

Although listed as having automatic safeguards, the wording of the nationality laws of *Belgium, Finland, France*, *Greece*, *Italy*, and *Luxembourg* could be a potential obstacle for otherwise stateless children trying to acquire nationality. The nationality laws of Belgium and Luxembourg, for example, make the grant of their citizenship contingent on the proof that no other nationality *can be acquired* by the child. Luxembourg's citizenship law requires that parents of a child who cannot acquire its parents' nationality in any way "must in this case prove that their national legislation in no case allows the transmission of the nationality to their children".[13] Such a requirement can lead to problems for the acquisition of nationality for the child when administrative proceedings exist, but for various reasons cannot be employed. Following displacement, state succession or migration, formally required proceedings can be impossible to factually achieve.[14]

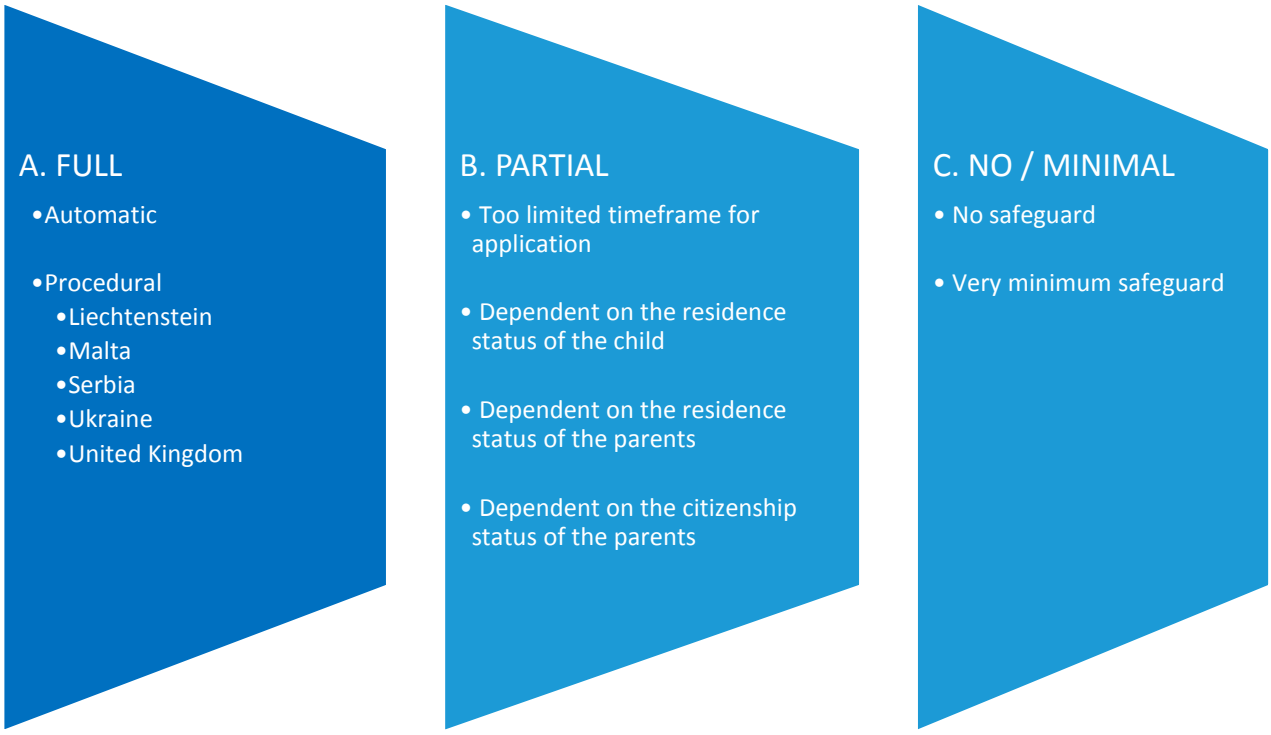
Moreover, establishing whether or not another nationality can be acquired however can be difficult. The definition of a stateless person as 'a person who is not considered as a national by any State *under the operation of* its law' for example already identifies the issue of States not always following the letter of the law, or even completely ignoring its substance.[15] Authoritative guidelines issued by UNHCR indicate that the burden of proof on whether or not a person would be otherwise stateless should be shared between the State and the claimant and his or her parents/guardians.[16] Furthermore, the standard of proof to determine whether a child would be otherwise stateless is a delicate one, as a too high standard would undermine the 'object and purpose of the 1961 Convention'. Establishing to a 'reasonable degree' that a person is otherwise stateless is the highest standards, as the consequence of an incorrect finding that an individual does possess a nationality would lead them to be left stateless.[17] Besides, granting citizenship contingent on the proof that no other nationality can be acquired, as required by Belgium and Luxembourg, ignores the instances in which parents are unable or have good reasons to not register their child with the State of their own nationality. For example, parents with refugee status. Accordingly, following the UNHCR guidelines no. 4 on how to deal with a theoretical claim to another nationality the only instance that allows States to not grant citizenship is when the child can acquire said nationality i) immediately after birth and ii) the State of the parents' nationality does not have any discretion to refuse the grant.[18]

A similar problem is seen in the nationality acts of *Finland, France, Greece* and *Italy*, yet without the explicit demand for proof. The French citizenship law only safeguards the children of parents for whom the transmission of nationality from either parent is "by no means allowed by foreign nationality acts".[19] The Finnish Nationality Act offers an analogous difficulty in its section 9(1)(3). This section has the child born on Finnish territory acquire citizenship by birth, but only those who do "not even have a secondary right to acquire the citizenship of any other foreign State". A child born in Italy is safeguarded only if they do not "acquire their parents' citizenship according to the law of the State to which the latter belong".[20] And the Greek law limits the admission of its safeguard to children who cannot by birth or by a declaration to the relevant foreign authorities acquire a nationality in cases in which the law of the State to which the parents are a national requires such a declaration.[21]

[11] Amendments to the Republic of Armenia Citizenship Law adopted 7 May 2015 by the National Assembly of the Republic of Armenia.
[12] See further category B.
[13] Article 1(c)(3) of the Luxembourg Law on Nationality.
[14] UNHCR, *Guidelines No. 4,* para 27.
[15] This requires an assessment of both law and practice. See UNHCR, *Handbook on the protection of stateless persons,* 2014.
[16] UNHCR, *Guidelines No. 4,* para 20.
[17] Ibid*,* para 21.
[18] ibid para 25.
[19] Article 19-1(2) of the French Code Civil.
[20] Article 1(1)(b) of the Italian Act No. 91. In practice, problems have arisen in the application of this safeguard, as outlined in ENS, *Ending Childhood Statelessness: A Study on Italy,* Working Paper 05/15, 2015.
[21] Article 1(2)(b) of the Greek Citizenship Code.

Greek law moreover reserves the right to withhold nationality from the children "due to his or her parent's refusal to cooperate" with the establishing of any foreign citizenship.[22] This is not a condition that is allowed by the 1961 Convention regarding the acquisition of nationality through application.[23] Denying a child nationality can moreover never hinge on the behaviour of the parents, as the child's right to a nationality exists unrelated to any status or opinion that the parents might have. This is confirmed by the Committee on the Rights of the Child in its interpretation of the principle of non-discrimination, one of the four guiding principles of the CRC.[24] This principle obliges Contracting States to the CRC ensure that no child suffers from discrimination in enjoying their rights. This means that children must enjoy their rights 'irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'.[25] The realisation of a child's right to nationality must not hinge on their parents' opinions or actions.[26]

*A.2. Procedural safeguards*




States that decide not to grant their nationality automatically at birth can choose to grant nationality upon an application pursuant to article 1(1)(b) of the 1961 Convention. This article allows four conditions to the application:

[22] Ibid article 1(2)(c).
[23] Article 1(2) of the 1961 Convention.
[24] Committee on the Rights of the Child 'General Comment No. 5. General Measures of Implementation of the Convention on the Rights of the Child' (2003) CRC/GC/2003/5 2003, para 12.
[25] Article 2(1) of the CRC.
[26] See Committee on the Rights of the Child, *Concluding Observations: Estonia,* CRC/C/15/Add.196, 17 March 2003; European Court of Human Rights, *Mennesson v. France,* Application No. 65192/11, 26 June 2014.

1. The person has always been stateless.
2. No convictions of an offence against national security or sentences of five or more years of imprisonment.
3. The application process must be available no later than the age of 18 and must remain available until at least the age of 21.
4. Habitual residence of not more than 10 years in total, nor 5 years immediately preceding the application.

Demanding any other condition is in conflict with the 1961 Convention. There are five countries in Europe that have a safeguard for otherwise stateless children born on the territory via the procedural route that is in line with what the 1961 Convention sets out. These are *Liechtenstein, Malta, Serbia, Ukraine,* and the *United Kingdom*.[27] The application procedures of Liechtenstein, Malta, and the United Kingdom are subject to several conditions that are permitted by the 1961 Convention. In Serbia[28] and Ukraine simply filing an application suffices, and no further conditions have to be met.[29]

Like a number of the countries that provide for automatic conferral of nationality to stateless children born on their territory (including Belgium, Finland, France, Greece, Italy and Luxembourg, as outlined above), the citizenship laws of *Malta* and the *United Kingdom* present potential for difficulties even though the countries are all listed as conforming to the existing international law. Malta grants nationality to a stateless person "if he satisfies the Minister that he is and always has been stateless".[30] The burden of proof for always having been stateless ought, however, to be shared between the claimant and the State receiving the application for nationality.[31] In the United Kingdom, instructions to the nationality act require evidence of identity of a person seeking to benefit from the safeguard for stateless children born in the country, 'over and above that required to establish a claim to citizenship before formally acknowledging a claim'. This is required under the pretext of guarding against the possibility of fraud. Stateless persons however often lack means to prove identity, such as a passport or identity card. This difficulty is heightened by the United Kingdom not accepting a birth certificate as evidence of identity.[32]

An alternative way of dealing with the possibility of fraud or misapplication of legal safeguards for stateless children is to provide for the possibility of loss of nationality if it is revealed, before a certain age, that the child in question (who was thought to be stateless) acquired another citizenship. Several European states employ this possibility. *Bosnia and Herzegovina,* for example, allows for the loss of Bosnian citizenship if by the age of fourteen the child acquires another citizenship by descent.[33] Other States, such as *Belgium*[34], *France*[35], *Montenegro*[36], and *Serbia*[37] hold similar provisions in their nationality laws allowing for the withdrawal of their nationality in case another nationality is or can be acquired. Such provisions have positive and negative aspects. They avoid temporary statelessness in the years before acquiring or discovering the acquisition of this other citizenship, counter the subsequent possession of dual nationality, and remove whatever attraction

[27] Note that in the United Kingdom a presence in the territory of at least 5 years is required for the acquisition of citizenship. This period cannot suffer from an absence of more than 450 days for the acquisition to stay non-discretionary (Schedule 2 paragraphs 3,6 of the British Citizenship Act).
[28] Articles 6 and 13 of the Law on citizenship of the Republic of Serbia.
[29] Article 8(3) of the Law on the Citizenship of Ukraine. Under Ukrainian nationality law a legal representative needs to file the applicant's application for nationality.
[30] Article 10(6) of the Maltese Citizenship Act. Another difficulty is caused by the definition of a stateless person under Maltese nationality law as someone who is 'destitute of a nationality' (article 2(1) of the Maltese Citizenship Act. The Maltese definition defies the 1954 Convention definition by not considering the component 'under the operation of its law'. Thereby allowing for a much narrower sense of interpretation and application of what is a stateless person.
[31] UNHCR, *Guidelines No. 4,* para 20.
[32] Para 5.5.5.1, Chapter 5 on Acquisition by People Otherwise Born Stateless of the British Nationality Instructions. Following the UNHCR Guidelines No. 4 (para 21) all relevant evidence needs to be assessed, including the birth certificate of the applicant.
[33] Article 7(2) of the Law on Citizenship of Bosnia and Herzegovina.
[34] Article 1 of the Belgian Nationality Law.
[35] Article 19-1 of the French Civil Code.
[36] Articles 7(2),7(3) of the Montenegrin Citizenship Act.
[37] Article 13(3) of the Law on Citizenship of the Republic of Serbia.

there might exist for applications for children who are not really otherwise stateless. From this perspective, the option to lose nationality acquired through a safeguard can be a way for states to comply with international standards for otherwise stateless children born on their territory while, for instance, maintaining the position of avoidance of dual nationality. However, losing one's nationality later in childhood, such as at the age of 12 or 13, does not necessarily reflect the best interests of the child. Severing the child's attachment to a state through nationality may, for instance, impact on his or her family or private life or even leave the child vulnerable to being deported to another country. Automatic loss of nationality is therefore still very much discouraged, as it does not allow the opportunity for the state to weigh up the best interest of the child nor the proportionality of withdrawal of nationality. Moreover, Serbia automatically deprives children who acquired their nationality through its safeguard of this nationality if by the age of 18 proof exists that both child's parents are citizens of foreign countries. This provision is highly problematic in that having two foreign parents does not equate to the chance to acquire a nationality in all situations.

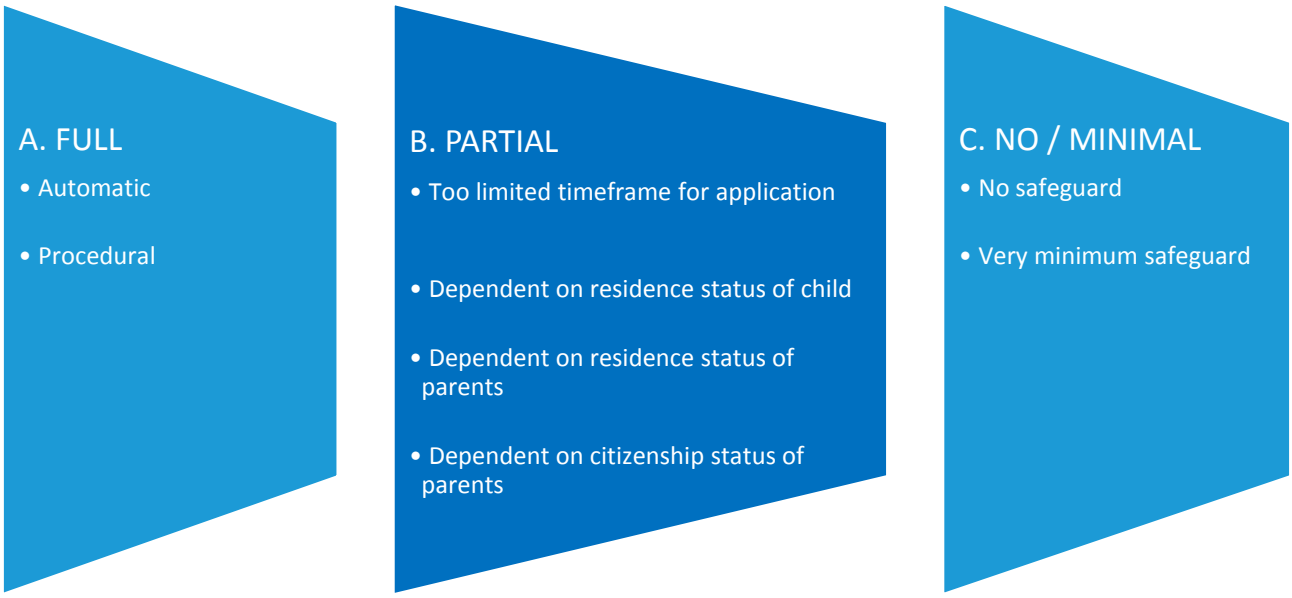
To summarise, of the 45 states studied there are 21 that provide, under their law, for otherwise stateless children born on their territory to acquire citizenship in a manner that is consistent with the 1961 Convention. The 16 countries that automatically provide nationality to such children in need of citizenship demonstrate extremely good practice. This *ex lege* acquisition of nationality for otherwise stateless children saves them from an unnecessary period of being without a nationality. And from the negative consequences associated with such childhood statelessness of temporary nature. Several countries also stand out positively by going beyond the 1961 Convention obligations. Note, however, that not all of the 21 countries that follow the rules of the 1961 Convention necessarily comply with the best interests of the child. It is in the best interests of the child to acquire a nationality at birth or as soon as possible after birth, so delayed application processes or lengthy residence requirements can still be problematic in this light.

There are some examples of good practice that go beyond the 1961 Convention's terms. For example, in *Ukraine*, a child of stateless parents who are resident in the country can acquire citizenship even if the child is not born on Ukrainian territory.[38] Moreover, Ukrainian citizenship law in some situations allows for the *automatic* acquisition of nationality, coexisting with the safeguard that already encompasses *all* otherwise stateless children. This all-encompassing safeguard however is not automatic, but follows from a request by the child's legal representatives. The automatic acquisition of nationality relates, for example, to children born to stateless parents, as long as the parents have lawful grounds to reside on Ukrainian territory.[39] Children born on the territory to at least one parent with refugee status or asylum in Ukraine also benefit from the automatic safeguard if they have not acquired another citizenship at birth via the parents.[40] *Finland* stands out because of good practice as well. It explicitly offers the same article 1 safeguard to children of parents who have refugee status or another form of protection against the authorities of their State of nationality.[41] Italy also pays special attention to refugee children: Article 16(2) of the Italian Act No. 91 extends the rights for stateless people entailed in the Italian citizenship law to individuals with a refugee status. This means children of refugees can benefit from the Italian safeguard for otherwise stateless children.

[38] Article 7 of the Law on the Citizenship of Ukraine.
[39] For this example and other categories that allow for automatic acquisition of nationality see article 7 of the Law on the Citizenship of Ukraine.
[40] Article 7(5) of the Law on the Citizenship of Ukraine.
[41] Section 9(2) of the Finnish Nationality Act.

## Category B: Partial safeguards

Even though 21 European countries offer adequate safeguards to prevent any child born on their soil from statelessness, other States offer safeguards that do not conform to international standards. This happens when countries grant nationality following an application process, yet subject this process to conditions that are not allowed following the international norms. For example, countries might offer citizenship to otherwise stateless children born on their territory, but limit this for children whose parents are stateless as well.



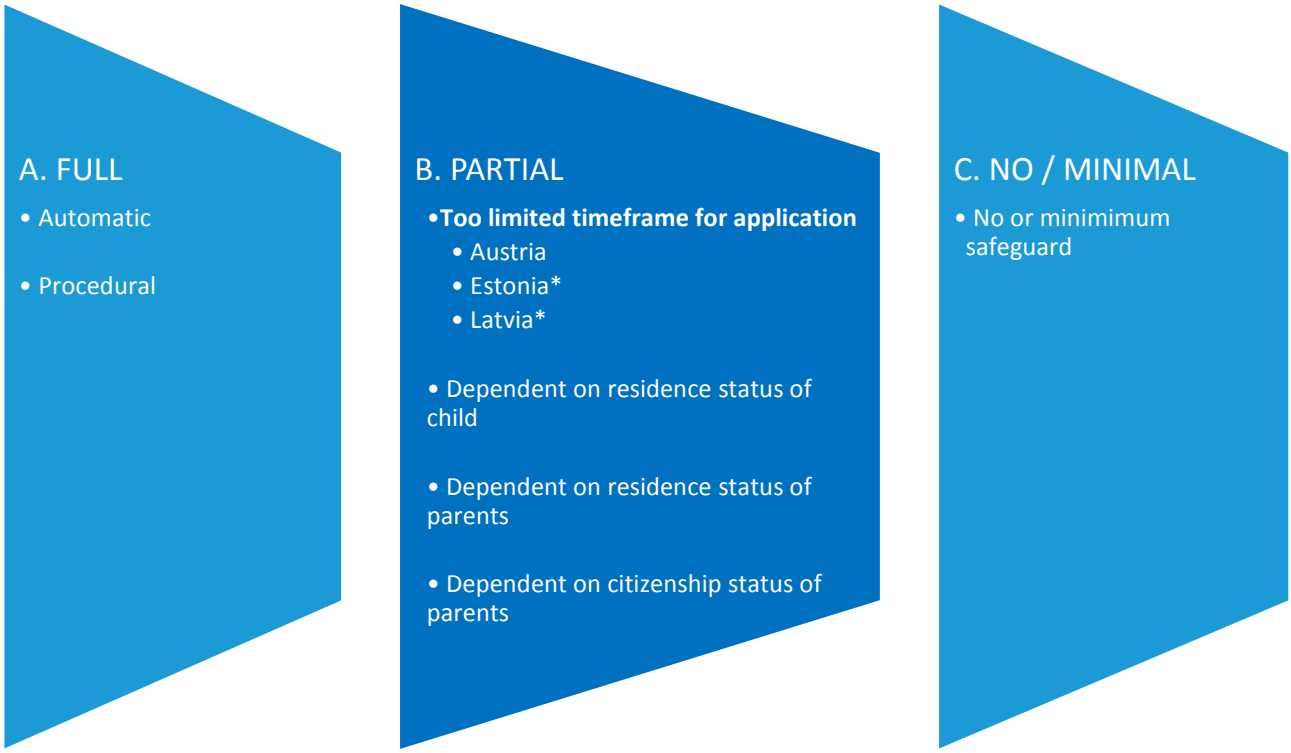

Across Europe there are four general shortcomings to the safeguards and together form category B of the analysis. These four subcategories of shortcomings are:

1. The timeframe to apply for nationality is too limited.
2. The safeguard depends on the residence of the child.
3. The safeguard is subject to the residence of the parent.
4. Parents' stateless or unknown citizenship status is prerequisite for the child to obtain a nationality.

The first subcategory, a too narrow window for application, is a procedural flaw in States' safeguarding otherwise stateless children. The other three subcategories concern substantive limitations that go against the core of the safeguard and regard the residence or citizenship status of parents and/or child. Eight States fall within more than one sub-category of shortcomings.[42]

[42] An asterisk (*) indicates that a State falls in more than one category of shortcomings.

*B.1. Too limited timeframe for application*




The first type of shortcoming is a too limited timeframe for the filing of an application. Three countries, ***Austria***[43]*, Estonia* and ***Latvia*** do not allow enough time for stateless persons to lodge such an application. According to the 1961 Convention this period should start no later than at the age of 18 nor end sooner than before the age of 21 years. This allows the individual concerned at least one year to make the application themselves without the need to obtain legal authorization for it.[44] The ECN does not prescribe such a timeframe suggesting that no procedural limits may be placed on *when* an application can be made, but this should be allowed at any time when the substantive conditions have been met.

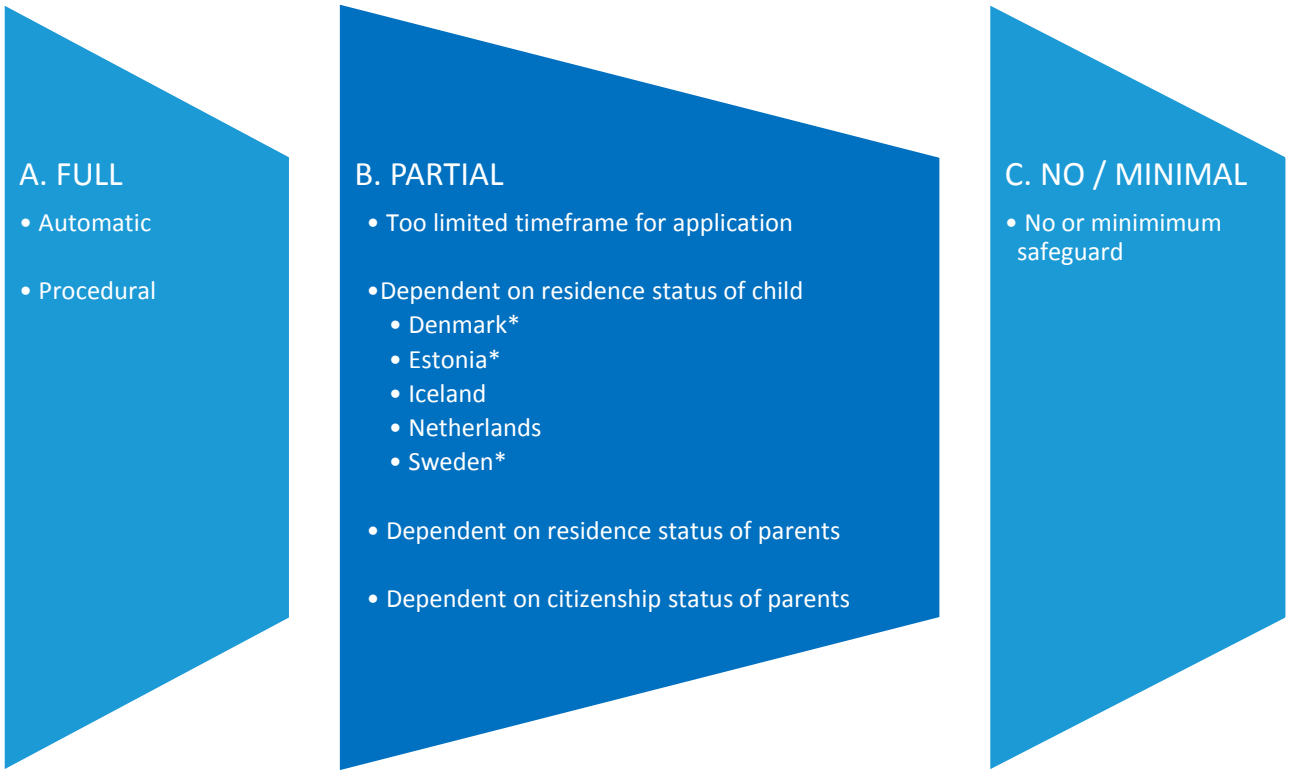
***Austria's*** citizenship law almost meets all of the criteria. Article 14 on the Law on Austrian Nationality requires all of the conditions as listed in the 1961 Convention: the person has to always have been stateless, pass a criminal conviction test, and to have resided in Austria for a period of not less than ten years (of which a continuous period of not less than five years preceding the grant of nationality).[45] The fourth requirement however, the window that allows for application, violates international standards, because Austrian law stipulates that the applicant needs to apply "for naturalization after the age of 18 years and not later than two years after having attained majority."[46] By adding one year to the window that is currently open for application from 18 until 20 years of age, Austrian law would fulfil its obligations under international law.[47] Again note that fulfilling international obligations according to the 1961 Convention can still be contrary to the best interests of the child by leaving a child to spend the entire childhood in statelessness and Austria should therefore render the application procedure available earlier in order to provide the highest safeguards.

The *Estonian* citizenship law sets a too limited timeframe for lodging an application, as well as exhibiting three more types of shortcomings. Recent amendments however, of January 2015, have change this position for the better after the laws entered into force in January 2016. As a big step forward following the entry into force,

[43] A country name written in **bold** indicates that the State has ratified the 1961 Convention yet does not meet the obligations that follow from that ratification. For an overview of the status of ratifications for the analysed States please see annex 2.
[44] Article 1(2)(a) of the 1961 Convention.
[45] Article14(1)(1-4) of the Federal Law on Austrian Nationality.
[46] Ibid article 14(1)(5).
[47] Austria is a member State of both the 1961 and the 1977 Convention.

children of parents with undetermined citizenship will automatically acquire citizenship at birth, if the parents have lived in Estonia for at least five years before the birth of the child.

*B.2. Residence status of the child*

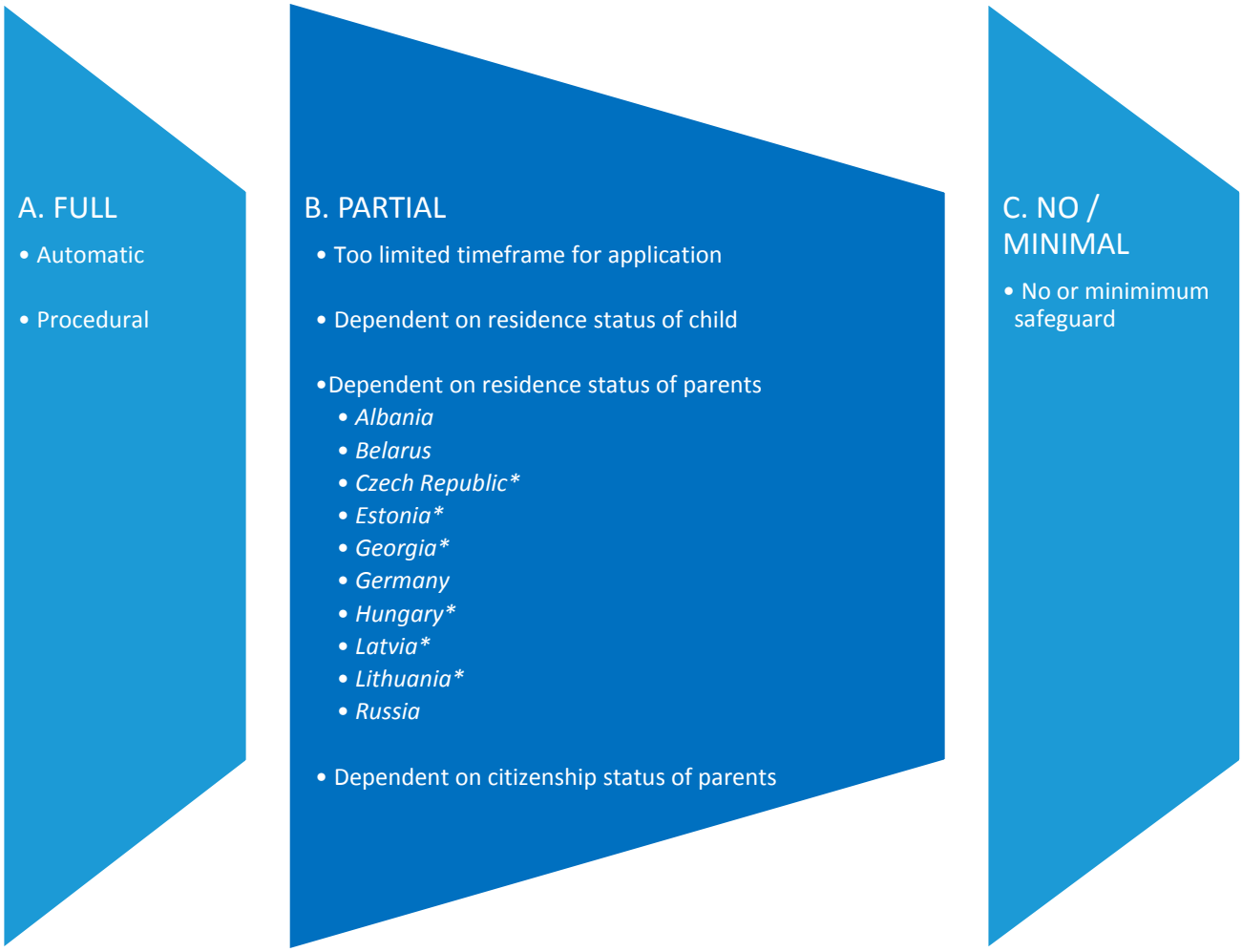



The next type of shortcomings depends on certain qualities related to the residence of the child on the territory of the safeguarding country. Following the 1961 Convention states are allowed to prescribe a period of *habitual* residence prior to application.[48] 'Habitual' means a period of residence that is stable and factual. The period of residence may furthermore not exceed five years immediately preceding the application or ten years in total.[49] The citizenship laws of ***Denmark****, Estonia, Iceland, t****he Netherlands****,* and ***Sweden*** do not comply with these international obligations as their laws require a period of *lawful* residence.[50]

In contrast to the 1961 Convention, the ECN does allow States to demand *lawful* residence.[51] This means that Estonia, Iceland, the Netherlands and Sweden do not violate ECN standards by prescribing lawful residence. However, the Netherlands and Sweden are contracting states to both the ECN and the 1961 Convention and must remove the lawful residence requirement if they are to bring their safeguards in line with their commitments under the latter instrument. Moreover, the Committee on the Rights of the Child has affirmed that under the CRC, all children have the right to acquire the nationality of the state in which they are born, if they would otherwise be stateless, *regardless* of their residence status.[52] The ECN cannot be interpreted as undermining states' obligations under the CRC – to which all European states are a party – and the requirement of *lawful* residence should be removed accordingly.

[48] Article 1(2)(b) of the 1961 Convention.
[49] Article 1(2)(b) of the 1961 Convention.
[50] UNHCR, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children. Summary* Conclusions (Dakar Conclusions 2011) para 9.
[51] Article 6(2)(b) of the ECN.
[52] Committee on the Rights of the Child, *Concluding Observations: The Netherlands,* CRC/C/NL/CO/4, 5 June 2015.

*B.3. Residence status of the parents*




The third limitation for otherwise stateless children in obtaining nationality through the application process in the European context is the required residence status of the parents. Ten countries contain a comparable condition in their citizenship legislation: ***Albania***, *Belarus,* ***Czech Republic***, *Estonia,* ***Georgia***, ***Germany***, ***Hungary***, ***Latvia***, ***Lithuania***, and *Russia*. As already stated in relation to Greek law and "parent's refusal to cooperate", whatever status the parents of the child may have can never be the basis of discrimination against the child.[53] The requirement is furthermore not included as one of the four permitted conditions set by the 1961 Convention,[54] as are the difficulties interwoven with obtaining residence permits by stateless persons.[55] The CRC committee has consistently recommended that *all* children born on a state's territory should be able to acquire nationality, irrespective of the legal status of their parents, if they would otherwise be stateless.[56]

[53] UNHCR, *Guidelines No. 4,* para 10.
[54] Article 1(2) of the 1961 Convention.
[55] European Network on Statelessness (ENS), *Still Stateless, Still Suffering. Why Europe Must Act Now to Protect Stateless Persons* (2014). Several examples of difficulties linked to getting residence permits are discussed.
[56] UN Committee for the Rights of the Child, 'Concluding Observations Switzerland' (30 January 2015) CRC/C/CHE/CO/2-4

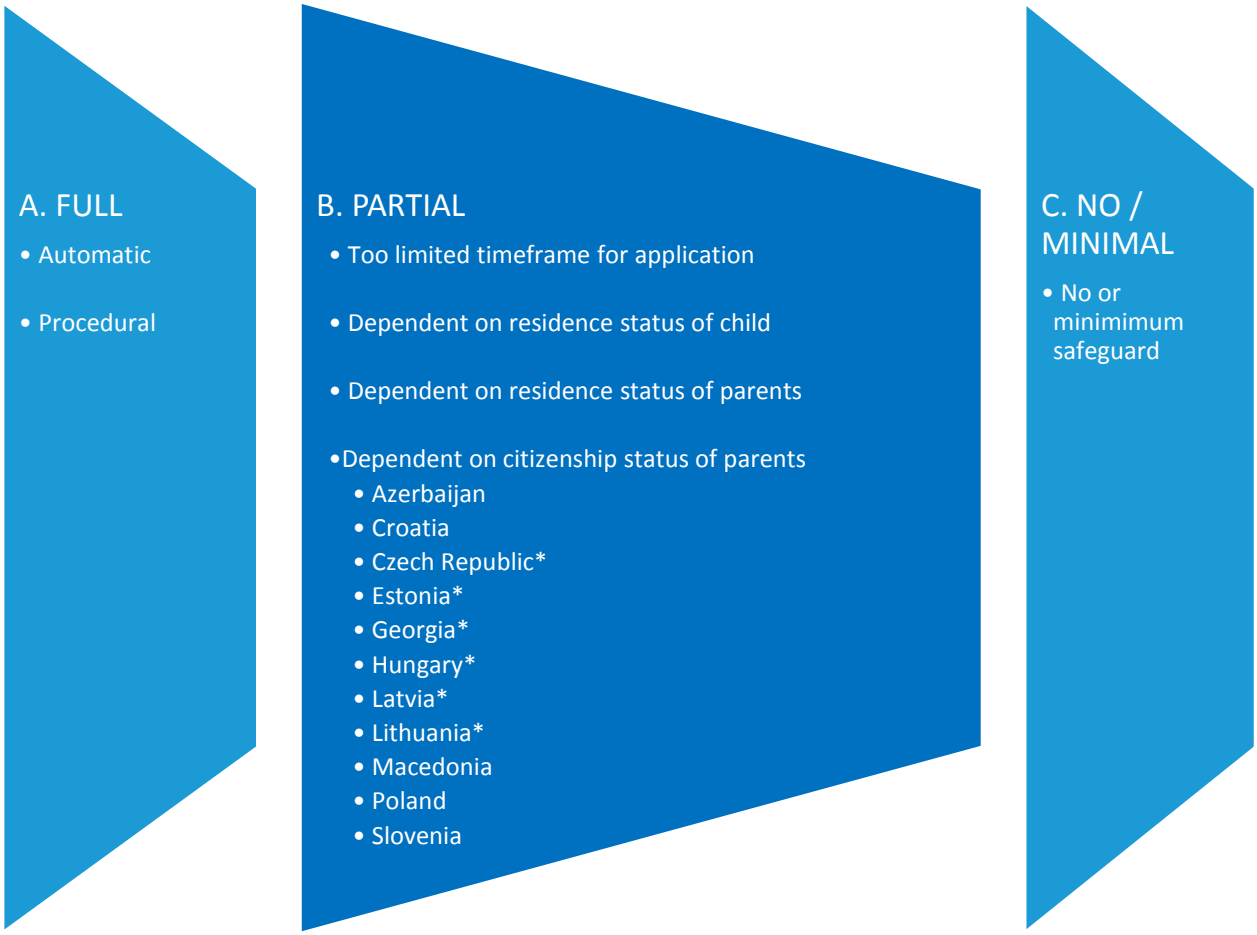
**Citizenship in the post-Soviet states**

The post-Soviet States make for an interesting comparison of nationality laws. These successor states – Belarus, Estonia, Georgia, Latvia, Lithuania, Moldova, Russia, and Ukraine - share similar histories of coming into existence and creating citizenship laws in the wake of their independence. Following the break-up of the USSR however not everyone was capable of acquiring the nationality of the State in which they resided at that time. After their Soviet passports expired and the Soviet nationality ceased to exist, these people were left without a nationality. Latvia and Estonia in particular have large groups of stateless people within their borders. At the end of 2013 there were 91,000 stateless people in Estonia, and more than 267,000 people without a nationality in Latvia.

In parallel, many of these same states have safeguards for otherwise stateless children born on their territory that suffer from multiple restrictions. Indeed, two-thirds of the former USSR countries in Europe have nationality laws that do not follow the international standards on providing otherwise stateless children born on the territory with a nationality. They are characterized by a demand of lawful residence from the parents and/or child in order for the otherwise stateless child to be granted citizenship. An additional requirement in the former-USSR countries of Estonia, Georgia, Latvia, and Lithuania is that the parents of the child are also stateless.

Requirements like these restrict the possibilities for otherwise stateless children born within these states to acquire citizenship. A recent amendment to the Estonian citizenship law however will make citizenship automatically available to the children of parents with undetermined citizenship and who have lived in Estonia for at least five years prior to the child being born. This will bring Estonia up to the level of Georgia and Lithuania, whose article 1 safeguards are subject to equal conditions. The citizenship legislation of Moldova, Ukraine, and Armenia stand out in a positive manner compared to other former USSR-countries with whom they share history. Hopefully these safeguards that serve as a safety net for all of the otherwise stateless children born in that region can be replicated elsewhere.

*B.4. Citizenship status of the parents*



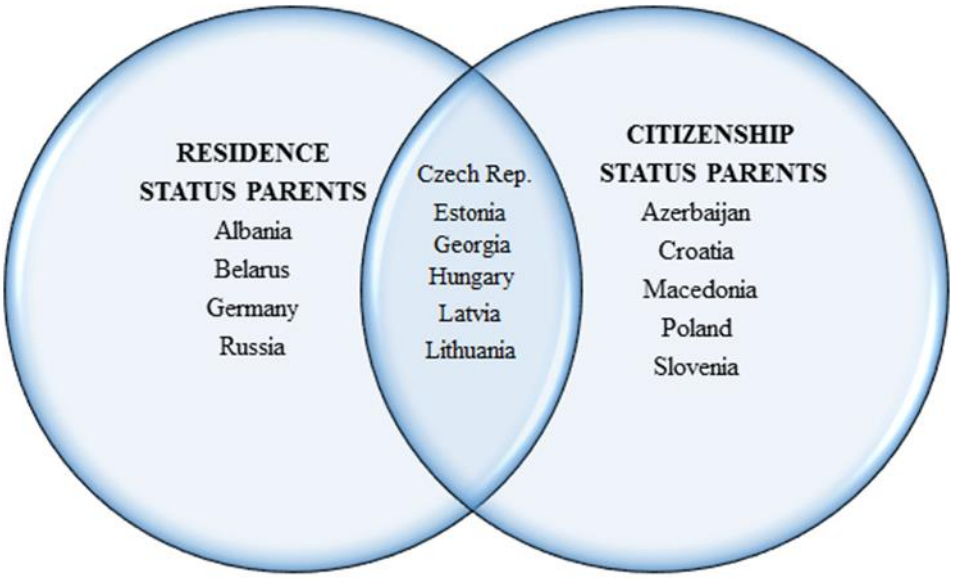

The last subcategory of limited safeguards in Europe concerns countries that made the grant of their nationality subject to the citizenship status of the parents. These are a total of eleven countries, of which eight are in violation of their international duties: ***Azerbaijan***, ***Croatia***, ***Czech Republic***, *Estonia,* ***Georgia***, ***Hungary***, ***Latvia***, ***Lithuania***, ***Macedonia***, *Poland,* and *Slovenia*.

Macedonia is only a party to the ECN, and not to the 1961 Convention. Nevertheless, Macedonia breaches its Convention related obligations by requiring the child's parents to also be stateless in order for the child to be considered for application. As mentioned, no parental status may discriminate between which child does and which child does not acquire citizenship. This is an equal norm for both the ECN and the 1961 Convention. The focus has to be on whether a child is stateless due to not being able to acquire a nationality either through its parents or from the state of birth. It is not about whether the parents are stateless because there are also other contexts in which a child can be left without a nationality.[57]

There are five countries, ***Czech Republic***, *Estonia,* ***Georgia***, ***Hungary***, and ***Lithuania***, that grant nationality to otherwise stateless children contingent on both the parents' residence and citizenship status (see figure 2). The citizenship law of the ***Czech Republic*** furthermore explicitly requires lawful residence by the parents not just in general, but on the day of birth of the child specifically.[58]

[57] UNHCR, *Guidelines No. 4,* para 18.
[58] Section 5 of Act No. 186/2013 concerning the Nationality of the Czech Republic.

*The relationship between the status of the parents and the acquisition of nationality by otherwise stateless children born on the territory:*

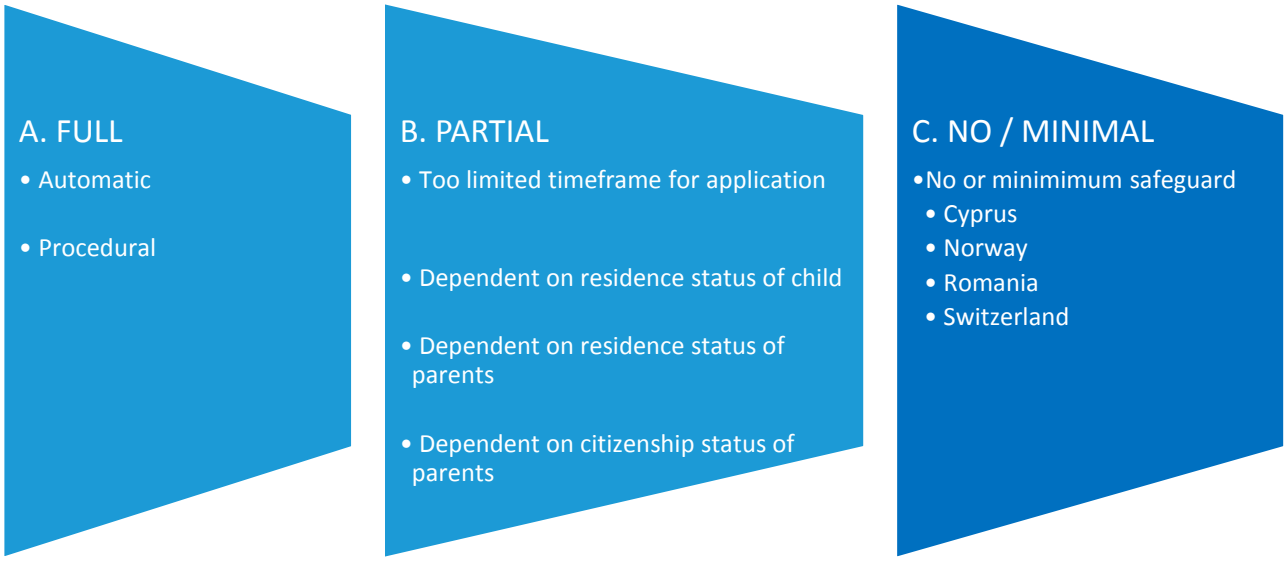



Hungary makes an interesting case study because of the two-tiered route towards nationality for otherwise stateless children. Hungary is a state party to all statelessness-related international conventions and offers a safeguard for otherwise stateless children via two routes. Nevertheless, the country does not provide a full safety net to protect children from becoming stateless through either route, nor via the two combined. The first route to obtaining a nationality is limited to the children of parents that are stateless and residing in Hungary.[59] This means children whose parents have a nationality, but who cannot pass it on to the child, are excluded from the safeguard. The second route does include the children whose parents have a nationality. This route, a non-discretionary process, however includes the lodging of an application after continuous residence of at least five years prior to the declaration, including residence on the day the child was born.[60] Neither of these two routes satisfies the 1961 Convention, nor do the two routes combined. Hungary must amend its nationality law to satisfy its international obligations.

## Category C: No or minimal safeguard

Lastly, there are four countries in Europe that have no or only a very minimal safeguard. These are *Cyprus, **Norway, Romania,*** and *Switzerland*. Cypriot citizenship law lacks a procedure for children born on the territory and that are otherwise stateless. Additionally, Cyprus is the only European country without a safeguard for foundlings that are found on Cypriot territory.[61] The absence of applicable legislation gives Cyprus the chance of making a big and positive change by amending their law to include the appropriate provisions. Cyprus is not a State Party to the 1961 or to the ECN and therefore has no internationally binding obligation to change its law. As a State Party to the CRC however, Cyprus is obliged to ensure that every child within its jurisdiction can enjoy their right to a nationality.

[59] Section 3(3)(a) of the Act on Hungarian Citizenship.
[60] Ibid section 5/A(1)(b).
[61] Under article 2 of the 1961 Convention and according to the interpretation of article 7 CRC by the Committee on the Rights of the Child, states have a particular obligation to ensure that a child who is found abandoned on their territory is able to acquire a nationality and is not left stateless.




The nationality laws of the other three European countries in this category, ***Norway***, ***Romania***, and *Switzerland*, acknowledge statelessness, yet lack a safeguarding procedure specifically geared towards stateless children born on their territory. In Norway, stateless persons can apply for naturalisation through the normal naturalisation procedure, which is slightly facilitated in that stateless individuals can apply before the age of 12 and do not have to fulfil all the requirements that non-stateless persons have to. Still, the conditions to be met to file an application conflict with international standards and can be difficult to satisfy in practice. These include, most notably, the requirement of lawful, permanent residence as well as the possibility for the application to be refused if granting nationality is 'contrary to the interests of national security or to foreign policy considerations'.[62] Additionally, Norway does not consider anyone who by their 'own act or omission has chosen to be stateless, or who in a simple way can become a national of another country' to be stateless.[63] However, a theoretical possibility to another nationality is irrelevant to a person being stateless. The route to nationality in ***Romania*** is very similar to standard naturalisation procedures and requires similar conditions having to be fulfilled.[64] Like Norway, Romania is a Contracting State to the two statelessness-related conventions[65] and to the CRC. In this light, amendments to the citizenship laws of these countries should soon be passed to a safeguard for otherwise stateless children born on their territory.

Under *Swiss* nationality law, stateless children can apply for simplified naturalisation if they have lived in Switzerland five years prior to the application of which at least one year immediately before the application is made.[66] Eligibility for simplified naturalisation however depends on being integrated in the country, abiding the law, and being no risk to the internal nor external security of the state.[67] Although requiring extensive conditions, especially in relation to the acquisition of nationality for stateless children, Switzerland does not violate the 1961 Convention or ECN conditions, as it is not a party to either.

[62] Section 16 and Section 7(1) and 7(2) of the Act on Norwegian Citizenship.
[63] Ibid section 16.
[64] Article 8 of the Law on Romanian Citizenship.
[65] These are the 1954 Convention relating to the Status of Stateless Persons, 1961 Convention, and the ECN. Norway is furthermore a member to 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.
[66] Article 30[1] of the Federal Law on the Acquisition and Loss of Swiss Nationality.
[67] Articles 26[1] of the Federal Law on the Acquisition and Loss of Swiss Nationality.

## Conclusion

The majority of European states have some form of safeguard in place to confer citizenship to children born on their territory who would otherwise be stateless. However, **the safeguards of more than half of the countries analysed are incomplete and fail to meet the international standards of providing every child with a nationality**. Four states have no or the very minimum standards available for otherwise stateless individuals born within their borders. This is particularly problematic if these states have bound themselves to the obligation of granting citizenship to all of the otherwise stateless children that are born on their territory by ratifying the 1961 Convention and/or ECN. Of the 24 countries that do not meet international standards on safeguarding otherwise stateless children, 16 nations failure to do so is in direct violation of their international agreements.


The problems encountered in the nationality legislation are broadly similar across countries. Requirements of lawful residence and certain citizenship status of the parents are common restrictions, as is the procedural restriction of a too limited timeframe in which applications for citizenship may be lodged. These limitations can have the effect of preventing the acquisition of nationality by a significant sub-set of stateless children and are highly problematic. For instance, excluding children on the basis of the nationality status or statelessness of their parents, or on the basis of their or their parents' residence status, is discriminatory and severely undermines the effectiveness of these safeguards to address situations in which children are left stateless. The

primary focus of legislative safeguards in this area must be to provide children with a much needed nationality whenever statelessness threatens. To achieve this requires law reforms in numerous European states. Only then will these countries' legislation attain compliance with the standards set in the 1961 Convention, ECN and, indeed, demanded by the Convention on the Rights of the Child.

## Annex 1: Key international provisions granting nationality to otherwise stateless children born in the territory

*1961 Convention on the Reduction of Statelessness*

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.
   Such nationality shall be granted:
   a. at birth, by operation of law, or
   b. upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

   A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.
2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:
   a. that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
   b. that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
   c. that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
   d. that the person concerned has always been stateless.

   […]

*1997 European Convention on Nationality*

Article 6 – Acquisition of nationality

[…]

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
   a. at birth *ex lege*; or
   b. subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

## Annex 2: Status of ratifications of the 1961 Convention and ECN for the 45 European States analysed

| State | 1961 Convention | ECN |
|---|---|---|
| Albania | 9 July 2003 | 11 February 2004 |
| Armenia | 18 May 2014 | |
| Austria | 22 September 1972 | 17 September 1998 |
| Azerbaijan | 16 August 1996 | |
| Belarus | | |
| Belgium | 1 July 2014 | |
| Bosnia and Herzegovina | 13 December 1996 | 22 Oct 2008 |
| Bulgaria | 22 Mar 2012 | 2 February 2006 |
| Croatia | 22 September 2011 | 19 Jan 2005 s |
| Cyprus | | |
| Czech Republic | 19 December 2001 | 19 Mar 2004 |
| Denmark | 11 July 1977 | 24 July 2002 |
| Estonia | | |
| Finland | 7 August 2008 | 6 August 2008 |
| France | 31 May 1962 s | 4 Jul 2000 s |
| Georgia | 1 July 2014 | |
| Germany | 31 August 1977 | 11 May 2005 |
| Greece | | 6 Nov 1997 s |
| Hungary | 12 May 2009 | 21 November 2001 |
| Iceland | | 26 Mar 2003 |
| Ireland | 18 January 1973 | |
| Italy | 1 December 2015 | 6 Nov 1997 s |
| Latvia | 14 April 1992 | 30 May 2001 s |
| Liechtenstein | 25 September 2009 | |
| Lithuania | 22 July 2013 | |
| Luxembourg | | 26 May 2008 s |
| Macedonia | | 3 June 2003 |
| Malta | | 29 Oct 2003 s |
| Moldova | 19 April 2012 | 30 November 1999 |
| Montenegro | 5 December 2013 | 22 June 2006 |
| Netherlands | 13 May 1985 | 21 Mar 2001 |
| Norway | 11 August 1971 | 4 June 2009 |
| Poland | | 29 Apr 1999 s |
| Portugal | 1 Oct 2012 | 15 Oct 2001 |
| Romania | 27 January 2006 | 20 January 2005 |
| Russia | | 6 Nov 1997 s |
| Serbia | 7 December 2011 | |
| Slovakia | 3 April 2000 | 27 May 1998 |
| Slovenia | | |
| Spain | | |

| | | |
|---|---|---|
| Sweden | 19 February 1969 | 28 June 2001 |
| Switzerland | | |
| Turkey | | |
| Ukraine | 25 Mar 2013 | 21 December 2006 |

## Annex 3: Nationality laws used in the analysis

| | |
|---|---|
| Albania | Law No. 8389 of 5 August 1998 on Albanian Citizenship (up to date, consolidated version 21 Jan 1999) |
| Armenia | The Law of the Republic of Armenia on the Citizenship of the Republic of Armenia (up to date, consolidated version 7 May 2015) |
| Austria | Federal Law on Austrian Nationality 1985 (consolidated version 22 Mar 2006. Up to date German version used to check for changes) |
| Azerbaijan | Law of Azerbaijan on Citizenship of the Azerbaijan Republic (30 Sep 1998) |
| Belarus | Law of the Republic of Belarus of 1 Augustus 2002 No. 136-3 on citizenship of the Republic of Belarus (up to date, consolidated version 4 Jan 2010) |
| Belgium | Belgian Nationality Law (up to date, Dutch consolidated version 25 Apr 2014) |
| Bosnia and Herzegovina | Law of 27 July 1999 on Citizenship of Bosnia and Herzegovina (consolidated version 23 Apr 2003) |
| Bulgaria | Law on Bulgarian Citizenship (up to date, consolidated version 19 Feb 2013) |
| Croatia | Law on Croatian Citizenship (up to date, consolidated version 28 Oct 2011) |
| Cyprus | Law No. 141(I)/2002: The Civil Registry Law 2002 |
| Czech Republic | Act No. 186/2013 concerning the nationality of the Czech Republic and amending certain acts (Czech Nationality Act) |
| Denmark | Law no. 730 of 25 June 2014 (Danish) amending the Law on Danish Citizenship (The Law on Danish Citizenship consolidated version only includes amendments up to 5 May 2004) |
| Estonia | Citizenship Act 1995 (consolidated version 15 Jun 2006) Complemented with amendments to the Citizenship Act of January 2015 and that will enter into force January 2016. |
| Finland | 359/2003 nationality Act (consolidated version 9 Nov 2007) |
| France | Code Civil (French) (up to date, consolidated version 22 Mar 2015) |
| Georgia | Law of the Republic of Georgia on Citizenship of Georgia / No 193-IS (up to date,consolidated version 20 Dec 2011) |
| Germany | Nationality Act 1913 (up to date, consolidated version 13 Nov 2014) |
| Greece | Law 3284/2004 Greek Nationality Code (up to date, consolidated version 24 Mar 2010) |
| Hungary | Act LV of 1993 on Hungarian Nationality (up to date, consolidated version 15 Mar 2014) |
| Iceland | Act No. 100/1952 Icelandic Nationality Act (up to date, consolidated version 6 Jul 2012) |
| Ireland | Irish Nationality and Citizenship Act 1956 (up to date, consolidated version 15 Dec 2004) |
| Italy | Italian Act No. 91 of 5 February 1992 (up to date, consolidated version 15 Jul 2009) |

| | |
|---|---|
| Latvia | Law on Citizenship 1994 (consolidated version 9 May 2013) |
| Liechtenstein | Act of 4 January 1934 on the Acquisition and Loss of Citizenship reissued in 1960 (up to date, German consolidated version 17 Sep 2008) |
| Lithuania | XI-1196 The Republic of Lithuania Law on Citizenship of 2 Dec 2010 and personal translation of Law XII-269 Supplementing and Amending Articles 18 and 40 of the Law of Citizenship of 5 Sep 2013 |
| Luxembourg | Law of 23 October 2008 on Luxembourgish nationality (up to date) |
| Macedonia | Law on Citizenship of the Republic of Macedonia (up to date, consolidated version 10 Nov 2011) |
| Malta | Maltese Citizenship Act (up to date, consolidated version 15 Nov 2013) |
| Moldova | Law on Citizenship of the Republic of Moldova (up to date, consolidated version 13 Mar 2014) |
| Montenegro | Montenegrin Citizenship Act of 14 Feb 2008 (no amendments included) |
| Netherlands | Kingdom Act on Netherlands Nationality (up to date, consolidated version 25 Nov 2013) |
| Norway | Act No. 51/2005 on Norwegian Citizenship (consolidated version 30 Jun 2006) |
| Poland | Act of 2 April 2009 on Polish Citizenship |
| Portugal | Law 37/81: Nationality act (consolidated version 16 Feb 2006; included personal translation of amendment by Law 43/2013) |
| Romania | Law on Romanian Citizenship no. 21/1991 (consolidated version 17 Jun 2010) |
| Russia | Russian Federation Federal Law on Citizenship of the Russian Federation (consolidated version 28 Jun 2009) |
| Serbia | Law on citizenship of the Republic of Serbia 2004 and Law amending the law on citizenship of the Republic of Serbia 2007 (up to date) |
| Slovakia | Act on Citizenship of the Slovak Republic (up to date, consolidated version 26 May 2010) |
| Slovenia | Act on the Citizenship of the Republic of Slovenia (consolidated version 4 Apr 2006) |
| Spain | Civil Code (nationality legislation) (up to date, consolidated version 26 Dec 2007) |
| Sweden | Law 2001:82: Swedish Citizenship Act (consolidated version 30 Mar 2006). Complemented with amendments to the Swedish Citizenship Act that entered into force 1 April 2015. |
| Switzerland | Federal Law of 29 September 1952 on the acquisition and loss of Swiss nationality (up to date, consolidated version 30 Sep 2011) |
| Turkey | Law No. 5901/2009 Turkisch Citizenship Law (up to date) |
| Ukraine | Law N 2235-III (2235-14) on the Citizenship of Ukraine (conslidated version 16 Jun 2005) |
| United Kingdom | British Nationality Act 1981 (up to date) |

No child chooses to be stateless. It is a fundamental truth that every child belongs – to this world, to a place and to a community – and this should be recognised through the enjoyment of a nationality. Yet statelessness continues to arise because European states are failing to ensure that all children born within Europe's borders or to European citizen parents acquire a nationality. The European Network on Statelessness (ENS) advocates as one of its central tenets that none of Europe's children should have to live without a nationality.

This working paper is one of a series that has been drafted in support of the ENS campaign, launched in November 2014, '**None of Europe's children should be stateless**'. It examines the presence or absence and the content of legislative safeguards for the prevention of statelessness for children born in the territory of the state across 45 European countries.