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Nationality: From an Insular to an Expansive
Citizenship Regime**

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Abstract

Over the past 15 years, Luxembourg nationality legislation has undergone a paradigmatic shift from being an “insular regime” that restricted access to citizenship for both immigrants and emigrants, as well as their descendants, to an “expansive regime” that is inclusive towards these groups. This paper addresses this “Copernican revolution”, outlining the comprehensive legal changes, assessing the impact of citizenship acquisition, and analysing the factors that explain the paradigm shift in Luxembourg nationality law in the new century. The paper focuses on two elements of this shift: the sizeable impact of new option procedures for immigrants and their descendants, and the unintended creation of a second strategic citizenship for contemporary descendants of Luxembourg emigrants from the 19th century. The paper concludes that the changes in Luxembourgish nationality law reflect simultaneous political pressures for de-ethnicisation and re-ethnicisation in response to globalization and international migration.

Keywords

Luxembourg nationality legislation reforms, citizenship regimes, strategic citizenship

1. Introduction

Nationality legislation is among the core organising principles of political life. Nationality “*institutionally expresses the state’s prerogative of inclusion and exclusion; it describes those who can claim the right to a passport, and only them enjoy the full apparatus of rights and privileges that the state grants to its citizens*”.¹

In the second half of the twentieth century, Luxembourg had a restrictive and exclusive nationality legislation. It was exclusive regarding immigrants, like other nations with an ethno-cultural understanding of nation (e.g., West Germany at the time), nationality was attributed mainly through descent (*ius sanguinis*) and naturalisation was difficult. As a result, Luxembourg had the lowest rate of naturalisation in the EU-15 before 2004 (0.5%).² It took 15 years for a person to become a naturalized Luxembourger (EU-15 average: 10 years) and only 10% of the first generation of immigrants (foreign-born immigrants) became Luxembourg citizens (EU-15 average: one third).³ Nationality legislation was also exclusive regarding emigrants, since the legislation provided for numerous ways for Luxembourgers abroad and their descendants to lose their nationality.

Then, in the two first decades of the twenty-first century, there has been a complete turnaround in Luxembourg nationality policy. This can be called a ‘Copernican Revolution’ as it shifted from the “insular regime” to an “expansive regime”, meaning that, it is inclusive towards immigrants and emigrants. Conceptually, this study will rely on the citizenship typology proposed by Maarten Vink and Rainer Bauböck (2013). Their work examines the degree of inclusiveness of citizenship legislation not only for long-term resident immigrants and their descendants, but also considers the conditions that emigrants are granted or lose their nationality. In other words, Luxembourg citizens or former citizens and their descendants who have left the state.

Vink and Bauböck (2013) distinguish four types of citizenship regimes along two dimensions (ethnocultural/ territorial): 1. ethnoculturally selective, 2. territorially inclusive, 3. insular (combining ethnocultural and territorial restrictions), and 4. expansive (combining ethnocultural and territorial inclusiveness). Ethnoculturally selective regimes have long residence requirements for naturalisation, low percentages of naturalised first generation immigrants, and strong *ius sanguinis* rules (which aim to retain citizens abroad through intergenerational *ius sanguinis*). Territorially inclusive regimes have low residence requirements before naturalisation, *ius soli* entitlements, tolerate dual or multiple citizenship, have low language requirements, and make voluntary renunciation of citizenship easy. Insular regimes combine ethnocultural and territorial restrictions by making naturalisation for resident immigrants difficult, and facilitate the loss of citizenship for emigrants and their descendants. Moreover, they create obstacles for the naturalisation of resident immigrants. Expansive regimes are inclusive both on ethnocultural and on territorial dimensions, with a strong *ius sanguinis* combined with low naturalisation requirements and a strong *ius soli*. Expansive regimes retain citizens abroad and allow for easy re-acquisition by persons who have lost or renounced their citizenship.⁴

Conceptually, this paper will also rely on the work of Christian Joppke (2003), which shows that European states in the context of globalization and international migration have been simultaneously de-ethnicising citizenship, by giving access to citizenship to immigrants based on residence and birth on the territory, and re-ethnicising citizenship, by strengthening citizenship ties to emigrants.⁵

1 Weil, Patrick & Hansen, Randall, *Citoyenneté, immigration et nationalité : vers la convergence européenne?*, in : Id. (dir.), *Nationalité et citoyenneté en Europe*, Paris, 1999, p. 9.

2 Waldrauch, Harald, Statistics on acquisition and loss of nationality, in: *Acquisition and Loss of Nationality. Policies and Trends in 15 European States. Volume 1: Comparative Analyses*, edited by Rainer Bauböck, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch, Amsterdam, IMISCOE Research, 2006, p. 298-299 (Table 6.5 Rates of nationality acquisition 1985-2004).

3 *Acquisition and Loss of Nationality. Policies and Trends in 15 European States. Volume 1: Comparative Analyses; Volume 2 : Country Analyses*, edited by Rainer Bauböck, Eva Ersbøll, Kees Groenendijk, Harald Waldrauch, Amsterdam, IMISCOE Research, 2006.

4 Vink, Maarten & Bauböck, Rainer, Citizenship configurations: Analysing the multiple purposes of citizenship regimes in Europe, in: *Comparative European Politics*, 11(5), 2013, p. 621-648.

5 Joppke, Christian, Citizenship between de- and re-ethnicization, in: *European Journal of Sociology/Archives européennes de sociologie*, 44(3), 2003, p. 431.

It has been fifteen years since the law of 23 October 2008,⁶ and six years since the law of 8 March 2017 on Luxembourg nationality⁷. These measures in nationality legislation, like the tolerance of dual nationality, lower residence requirements, double *ius soli*, and conditional simple *ius soli* have boosted the number of people who have acquired Luxembourgish citizenship. As the Luxembourg population is constantly growing (there has been an increase of more than a third of Luxembourg nationals in the last fifteen years), outlining a brief history of these law and their effects is timely.⁸ These trends have pushed Luxembourg to qualify as an “expansive” citizenship regime, largely inclusive towards immigrants and emigrants and their descendants.

The paper starts from the most recent figures of citizenship acquisition in Luxembourg. It shows the role of Luxembourg’s transition from an economy marked by industrialisation to a tertiary society marked by a strong banking and financial sector. It will then briefly describe the main historical features of Luxembourg citizenship legislation in the twentieth century in order to better understand the recent changes. Here, the reasons of the paradigm shift from an insular to an expansive citizenship regime will be explained. The paper then focuses on the main innovations brought by the 2008 citizenship law. In the following chapter, the question of why the new law on Luxembourg nationality of 2017 should be seen as a further milestone is discussed. Two aspects of nationality legislation reform will be developed in more detail: i) the unintended creation of a ‘strategic citizenship’ for descendants of Luxembourg emigrants from the 19th century; and, ii) the impact of new option procedures for immigrants and their descendants.

2. Socio-economic Transformation of Luxembourg: a demographic effect

Luxembourg, in popular discourse, is known for the headlines that regularly appear in the European and world press: international banking centre, tax haven, European capital, one of the richest countries in the world, as well as one of the countries with the biggest ecological footprints, etc. But while the financial centre explains a large part of Luxembourg’s prosperity and high standard of living, the country’s economic wealth actually has its origins in its industrial past. Heavy industry dominated the country’s economic and social life for a whole century, from the 1870s to the 1970s.

Afterwards, the country underwent a profound transition from the steel era to the financial era. In 1960, the steel industry accounted for almost 20% of total employment, and the banking sector for only 1%. Today, the steel industry accounts for 1% of total employment and the banking sector for 12%. In 1960, the steel industry contributed 31% to Luxembourg’s GDP. Today, the financial sector is the source of 25% of GDP and pays 75% of national direct taxes. The banking sector has also replaced the steel industry as the main exporting sector. The labour market has been completely transformed, from the 1960s when 79% of employees were Luxembourg nationals, 18% foreign residents and 3% cross-border commuters, to the present day where the share of Luxembourg nationals stands at 26%, that of foreign residents at 27% and that of French, Belgian and German cross-border commuters at 47% of total employment.

The country’s population has more than doubled from 1961 (315,000 people) to 2023 (661,000 people). The number of foreigners residing in Luxembourg was 41,500 (13% of the population) in 1961; today it reaches 313,500 people (48% of the population), with growing diversity. As figure 1 shows, the Portuguese have taken over from the Germans and Italians as the dominant national immigrant groups from 1900 to 1970, and are now the most numerous with 92,100 residents, followed

6 Officially called “loi du 23 octobre 2008 sur la nationalité luxembourgeoise”, French being the language of legislation in Luxembourg. There are three official languages in Luxembourg: Luxembourgish, French, German. According to the “loi du 24 février 1984 sur le régime des langues”, the national language of the Luxembourgers is Luxembourgish (art. 1) whereas French is the language of the legislation (art. 2). Where legislative and regulatory acts are accompanied by a translation, only the French text is binding (art. 2). In administrative, contentious or non-contentious matters as well as in judicial matters, French, German or Luxembourgish may be used (art. 3).

7 « Loi du 8 mars 2017 sur la nationalité luxembourgeoise ».

8 Luxembourg is currently facing a debate about strategic policy choices to grow to a 1-million-inhabitants-state by 2050 (650.000 today).

by the French (49,100), Italians (24,700), Belgians (19,200) and Germans (12,700). Immigration has also diversified, even though 78% of foreigners residing in the Grand Duchy remain citizens of the European Union, there are numerous third country nationals coming from ex-Yugoslav states (10,000), Ukraine (5,300), India (4,700), Great Britain (4,000), Syria (3,300), China (4,300), Brazil (3,000), Cape Verde (2,500), and Syria (2,500).

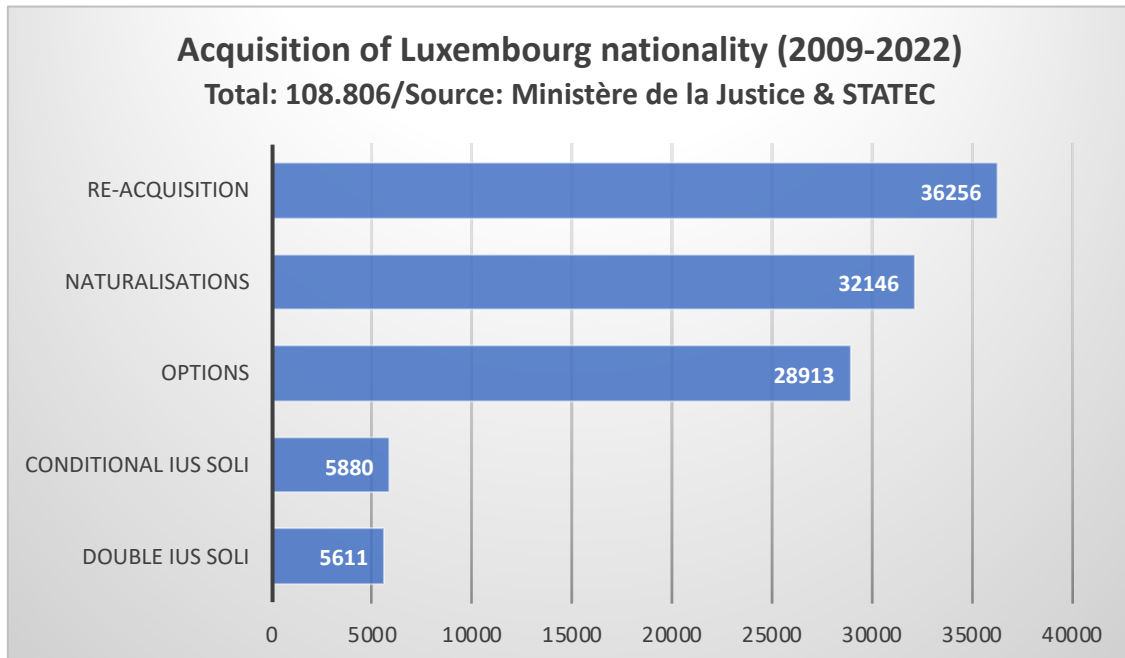
Figure 1. Population of Luxembourg by main nationalities on 1st January 2023

| Nationality | Number | Proportion |
|---------------------------------|---------|------------|
| Tot. Pop. | 660,809 | 100% |
| Lux. Pop. | 347,402 | 52.6% |
| Non-Lux. Pop. | 313,407 | 47.4% |
| EU non-citizen residents | 245,753 | 37.2 % |
| Third country nationals | 67,654 | 10.2% |
| Portugal | 92,101 | 13.9% |
| France | 49,104 | 7.4% |
| Italy | 24,676 | 3.7% |
| Belgium | 19,205 | 2.9% |
| Germany | 12,678 | 1.9% |
| Ex-Yugoslavia | 10,022 | 1.5% |
| Spain | 9,068 | 1.4% |
| Romania | 6,625 | 1.1% |
| Ukraine | 5,238 | 0.8% |
| Poland | 5,130 | 0.8% |
| India | 4,657 | 0.7% |
| China | 4,295 | 0.6% |
| Netherlands | 3,956 | 0.6% |
| Great Britain | 3,924 | 0.6% |
| Syria | 3,231 | 0.5% |
| Brazil | 3,050 | 0.5% |
| Cape Verde | 2,488 | 0.4% |
| Ireland | 2,372 | 0.4% |
| Russia | 2,216 | 0.4% |
| USA | 2,144 | 0.3% |
| Eritrea | 2,097 | 0.3% |
| Bulgaria | 2,020 | 0.3% |
| Marocco | 1,885 | 0.3% |
| Hongrie | 1,842 | 0.3% |
| Turkey | 1,676 | 0.3% |

Source: STATEC

Since the 2000s, citizenship legislation reform has been seen as a necessary structural answer to accompany these societal and economic transformations. The laws of 2008 and 2017, made access to citizenship easier for immigrants, emigrants, and their descendants. These laws had a huge impact, visible through the considerable increase of citizenship acquisitions between 2009 and 2022.⁹

Figure 2. Acquisition of Luxembourg nationality by type of acquisition (2009-2022)



In 2008, 277,900 people of Luxembourg nationality lived in Luxembourg out of a total population of 483,800 (i.e., 57.4% Luxembourgers vs 36.6% EU-foreigners and 6% third-country nationals). If Luxembourgers not living in the country are added, i.e., Luxembourgers living abroad, a number estimated at the time at around 20,000 people,¹⁰ the number becomes around 300,000 people with Luxembourg nationality as of 2008. From 2009 to 2022, there were a total of 108,806 acquisitions of Luxembourg nationality¹¹ (naturalisations, options, re-acquisitions, automatic double *ius soli*,¹² simple and conditional *ius soli*). This represents an increase of more than a third of the number of citizens.

As you can see in figure 2, one third, i.e., 36,256 new Luxembourgers, the vast majority of them living abroad, became Luxembourgers through re-acquisition, mainly as descendants of a Luxembourgish ancestor. The 72,550 people who acquired Luxembourg nationality by other means, namely through naturalisation, option, automatic double *ius soli* and conditional simple *ius soli*, also represent a very high number in absolute and relative terms. On 1st January 2022, there were 341,200 persons of Luxembourg nationality out of a population of 645,400 (i.e., 52.9% Luxembourgers vs 38.1% EU foreigners and 9% third-country nationals). Between 2009 and 2022, 63,300 new Luxembourg citizens were added to the resident population.

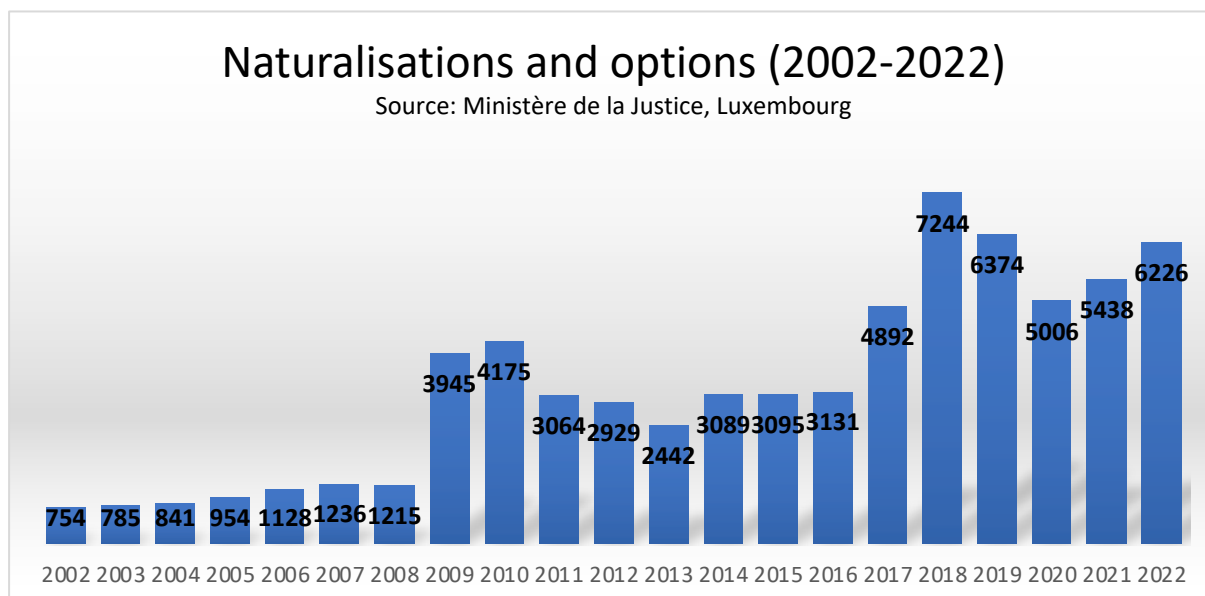
⁹ Luxembourg nationality may be granted to non-Luxembourgish citizens by naturalisation, option or re-acquisition (official French term: "recouvrement"). Naturalisation, option – an easier and more rapid procedure than naturalisation – and re-acquisition confer on the persons concerned all the rights and duties that are attached to the status of Luxembourg national. Since 2008, automatic double *ius soli* and since 2017, conditional simple *ius soli* at the age of 18 have become supplementary ways for children of non-Luxembourgish citizens to gain access to Luxembourg nationality.

¹⁰ In 2008, 11,694 Luxembourgers lived in the neighbouring regions of France (Lorraine), Belgium (province of Luxembourg) and Germany (Sarre and Rhineland-Palatinate). See : Gengler, Claude, Expatriation "à la luxembourgeoise", in: Pauly, Michel (dir.), *ASTI 30+ : 30 ans de migrations-30 ans de recherches-30 ans de migrations*, Luxembourg, ASTI, 2010, p. 262-275.

¹¹ Not included in this figure of 108,806 are the minor children of parents who have acquired or re-acquired Luxembourg nationality as well as the so-called Luxembourgers "by origin" (art. 3 of 2008 law) or Luxembourgers "de plein droit" (art. 7 of 2017 law), i.e. in 2023 persons born before 19 April 1945 on Luxembourg territory and their descendants in the direct male line who are automatically granted nationality by virtue of *ius soli*. For these categories, there are no complete and reliable figures.

¹² Here the figures for 2009 and 2022 are still missing.

Figure 3. Naturalisations and options (2002-2022)



As figure 3 shows, the considerable increase was made possible not only by re-acquisitions based on ancestry, but also by a significant increase in naturalisations and options. From 2002 to 2008, there were approximately 1,000 naturalizations and options per year. From 2009 to 2017, the average rose to 3,500 naturalisations (procedures by option had been abolished by the 2008 law). From 2018 to 2022, this figure rose to an average of more than 6,000 naturalisations and options per year (options were reintroduced as procedures by the 2017 law).

The start of the increase in the number of naturalisations since 2008 has been enabled by “the Copernican Revolution of Luxembourg nationality regime” – a shift from an insular to an expansive citizenship policy.

3. Mapping the transition from “insularity” to “expansionism” in Luxembourg nationality law

To understand the Copernican Revolution in the Luxembourg nationality law, it is important to explain the historical evolution of Luxembourg nationality legislation in the 20th century.

To contextualise it better, allow me to link it to my personal story. I belong to a specific category of Luxembourgers. Luxembourgers *de facto* by birth, and by mother tongue, however, we were not recognised as Luxembourgers (*de jure*) by the state. We were born ten years or, like me, born in 1964, twenty years after the war, to a Luxembourg mother and an Italian father – or, for others, a German or Swiss father. Through the Luxembourg law of 1940, the “loi du 9 mars 1940 sur l’indigénat¹³ luxembourgeois”, women who married an Italian or a German or a Swiss lost their Luxembourgish nationality and children born in Luxembourg out of this marriage were born as foreigners.

¹³ Until 1968, Luxembourg legislators used the term “indigénat” instead of “nationalité” in the title of the laws on nationality, but in the sense of “Eingeborene” or “natives”, “having always lived in a place”. This is the definition given by liberal jurists in the *Pandectes belges* in 1895: “Les indigènes sont tous ceux qui font partie des nationaux d’un pays, soit par leur origine, soit par l’effet de la loi, soit par la naturalisation.” (“Indigenous people are all those who are part of the nationals of a country, either by their origin, or by the effect of the law, or by naturalization.”)

A. The replacement of a liberal by a nationalist citizenship legislation in the 1930s and its long shadow

The law of 9 March 1940 put an end to the liberal legislation of nationality that had been progressively forged by the Luxembourg notables of the 19th century and replaced it with a nationalist one.¹⁴ The nationalisation of Luxembourg society was first manifested by the strengthening of immigration control from the end of the 19th century (by laws on the foreigners' police in 1880, 1893, 1913 and 1918) and by the implementation of a protectionist employment policy from the 1920s, followed in the 1930s by the making of a restrictive nationality legislation.

During the first half of the 20th century, the Grand Duchy asserted its independence mainly against the annexation plans of Germany, which invaded the country on two occasions (during the First and Second World War). Luxembourg defended itself against German imperialism by mimicry. Luxembourg intellectuals copied characteristics of German cultural nationalism to invent a Luxembourg identity of its own, a "Luxemburgertum", a concept equally imbued with an ethnocultural definition of the nation, as a bulwark against the "Deutschtum".¹⁵ In the field of nationality legislation, in order to better defend itself against the annexationist aims of its large neighbour, Luxembourg adopted the German logic of the Delbrück law on nationality of 1913, based on the predominance of *ius sanguinis*. A vision of nationality that was both romantic and nationalistic was imposed: the state as the cradle of the nation, to which individuals would be linked not by legal ties but by blood ties, racial characteristics, heredity, mentality, and language, making those who asked to be naturalised (in Luxembourg mainly German citizens) appear like spies, potential traitors, etc.

The 1940 law therefore abolished the double *ius soli* that had been introduced in 1878, as well as the optional rights for children born in Luxembourg from foreigners that had existed since the French Code Civil, and had been in force in Luxembourg since 1803. The following were also among the list of changes: a) the period of residence imposed on foreigners before naturalisation was increased from 10 to 15 years; b) naturalisation fees were increased; c) foreigners would have to prove "sufficient assimilation"; d) naturalisation of the father no longer benefited a minor child, a right that existed in Luxembourg since the 1848 naturalisation law; e) the children born in Luxembourg to foreigners had from 1940 to wait until majority and ask to naturalise; and finally, f) the law introduced the possibility of forfeiture of nationality for those who were not Luxembourgers by birth.

The 1940 law also discriminated against women. The law revoked the former nationality law of 1934 that had given women the right to keep their nationality in case of marriage. The 1934 law had followed the first struggles for women's emancipation in nationality law when their citizenship followed the condition of the father and then the husband. As consequence, a large number of those who had married a foreigner, e.g., those married to German, Italian or Swiss nationals, lost their citizenship.¹⁶

It took the Luxembourg state thirty-five years to reintroduce the right of a woman to retain or recover her nationality in the event of marriage, by simple declaration, by the law of 26 June 1975 on Luxembourg nationality. My mother, Marie-Thérèse Hoscheid, became a Luxembourger again only seven years later, in 1982. The state had taken away her nationality when she married my Italian father, Salvatore Scuto, in 1964, but state authorities had not informed her in 1975 that she could recover it. "Nul n'est censé ignorer la loi"... The right to pass on her Luxembourg nationality to

14 For a detailed historical analysis of this law: Scuto, Denis, La loi du 9 mars 1940 sur l'indigénat luxembourgeois. Contexte, travaux préparatoires, débats parlementaires, héritages, in : ...La volonté de la Chambre qui est la volonté du pays (Eugène Schaus, 22/11/1966). Un florilège de débats parlementaires luxembourgeois (1848-2008), sous la direction de Claude Frieseisen, Marie-Paule Jungblut, Michel Pauly, Luxembourg, 2019, p. 422-450 ; for the history of Luxembourg nationality from 19th to 21st century : Scuto, Denis, La nationalité luxembourgeoise (XIXe-XXIe siècles). Histoire d'un alliage européen, Bruxelles, Editions de l'Université, 2012.

15 Fehlen, Fernand, La race luxembourgeoise. Le libéral Nicolas Ries et ses épigones conservateurs, in : *Forum*, 168, 1996, p. 35-39.

16 « Loi du 23 avril 1934 sur l'indigénat luxembourgeois » and « Loi du 9 mars 1940 sur l'indigénat luxembourgeois » : By the law of 9 March 1940 on the Luxembourg nationality, the right of women to keep their Luxembourg nationality was taken away from women who married a foreigner in all the cases where their husband's nationality was compulsorily acquired by virtue of foreign law (this was the case in particular for Italian, German and Swiss legislation).

her minor sons was only granted by another Luxembourg nationality law, in 1986, for children born after 1st January 1969. Too late for her three sons born in 1964, 1965 and 1967. For my part, I had to wait until I was 18 years old to legally obtain citizenship through an option procedure. This gave me finally, in 1984, the right to wear the jersey of the “Roude Léiwen” (“Red Lions”) of the Under-21 Luxembourg national football team.¹⁷

The evolution of Luxembourg’s nationality legislation from the 1930s to the 1990s underlines how much citizenship was exclusionary and reflects hierarchies of gender, race and class, as has been shown by scholars such as Ruth Lister, Andreas Wimmer or Anthony Marx.¹⁸ Those exclusionary aspects of citizenship are also at the heart of the recent book “Citizenship”, by Dimitry Kochenov.¹⁹ Kochenov analyses, in his own words, “the story of citizenship not as a tale of liberation, dignity, and nationhood but of self-complacency, hypocrisy, and domination”. He develops how nationality, this “right to have rights” (Hannah Arendt), was and often remains a legal tool that justifies the opposite, exclusion, humiliation, and violence.

In post-war Luxembourg, nationality law justified the exclusion of women from the national community who married foreigners and of their children, but also the exclusion from the civil service of Luxembourgers who married women of German nationality, the nationality of the German occupier of Luxembourg (1940-1944). These men were considered to be unloyal to the fatherland.²⁰ It justified the humiliation of the Italians and Germans, who had been resistance fighters during the war in Luxembourg and who were denied official recognition and compensation for war damage, or whose property was sequestered after the war, because they were “nationals of enemy countries”.²¹ It justified the violence against foreign victims and survivors of the Shoah who were forbidden by the Ministry of Justice to return to Luxembourg in 1945.²² Moreover, it justified the violence against foreign seasonal workers who were expelled in the event of marriage in the 1950s.

Thus, Luxembourg nationality legislation after 1940 can be characterised as an “insular” citizenship regime, in other words making naturalisation for resident immigrants difficult and facilitating the loss of citizenship for emigrants and their descendants. For half a century, from the 1940s to the 1990s, acquiring nationality was made difficult for immigrants and their descendants: by long periods of residence before naturalisation, 15 years until 1986, then 10 years until 2001, and by high registration fees. Since 1940, foreigners have been required to ‘sufficiently assimilate’, a term that was only abolished in 2008, although UNESCO had been calling for its removal since 1959. Until 2008, an applicant had to also produce proof, by means of certificates or attestations, that he or she had lost his or her original nationality or that he or she will lose it as a result of the acquisition of another nationality. Naturalisation was also refused to any foreigner whose naturalisation was not consistent with the obligations he or she had to fulfil towards the State to which he or she belongs. For Luxembourgers abroad, the nationality legislation provided in 1986 for no less than eight cases of loss of nationality: Luxembourgers abroad who take on a foreign nationality, their minor children, Luxembourg children adopted by foreigners, Luxembourgers abroad with a foreign nationality who live there for more than 20 years if they did not declare that they wanted to keep their Luxembourg nationality, etc. Finally, until 1975 Luxembourg women married to foreigners would lose their nationality. Until 1986, the law prevented women from passing on Luxembourg nationality to their children.

17 Denis Scuto played from 1982 to 2002 for the Luxembourg First League club Jeunesse Esch, from 1984 to 1986 for the U21 Luxembourg national team and from 1988 to 1993 for the A Luxembourg national team. In 1988, he was elected by his peers football player of the year.

18 Lister, Ruth, *Citizenship: Feminist Perspectives*, New York, New York University Press, 1997; Wimmer, Andreas, *Nationalist Exclusion and Ethnic Conflict: Shadows of Modernity*, Cambridge, Cambridge University Press, 2002; Marx, Anthony, The Nation-State and its Exclusions, in: *Political Science Quarterly*, 117(1), 2002, p. 103-126.

19 Kochenov, Dimitry, *Citizenship*, Princeton, The MIT Press, 2019.

20 Scuto, Denis, Un débat parlementaire de 1959 sur une politique « inhumaine », in : *Tageblatt*, 18.3.2023, p. 6.

21 Peruzzi, Luigi, *Mes Mémoires. Un antifasciste italien déporté au SS-Sonderlager Hinzert raconte*, Traduit de l’italien par Véronique Igel, Présenté et annoté par Denis Scuto, Esch-sur-Alzette, Editions Le Phare, 2002.

22 Wagener, Renée, *Die jüdische Minderheit in Luxemburg vom 19. bis zum beginnenden 21. Jahrhundert*, Berlin, Metropol, 2022, p. 523-582.

B. The reasons for a complete shift

The complete turnaround in the beginning twenty-first century is linked to several factors: high immigration combined with a global policy of human rights, the decisive contribution of foreigners to prosperity, norm diffusion across the European Union, and domestic political consensus on reform.

There are four intertwining factors which drove the inclusive turn of Luxembourg's nationality law. First, the high level of immigration at the end of the 20th century and the beginning of the 21st century, during a particular historical context of a global human rights culture, favoured inclusion rather than exclusion in nationality legislation. Christian Joppke shows that these factors were part of "fundamental liberal democratic precepts that most contemporary states are notionally committed to."²³ Joppke argues that the post-war era of universal human rights withdrew the high-modernist state's (James Scott) basis, a state "that sought to recruit and produce identical units in its serial nation-building exercise."²⁴ Thus, it put an end to nationality laws seeking imagined ethnic homogeneity and immigration policies that flouted the most basic human rights. On the contrary, in the universal era of human rights, democratic states, as they adhere to liberalism and human rights ideals, are considered to owe rights to immigrants as legally vulnerable persons.

The second factor is the contribution foreigners have made to the prosperity of a small state. The pressure exerted by the permanent settlement of large immigrant populations increased due to the rise of Luxembourg as financial centre and headquarters for European institutions. In 1971, there were 18.6 % resident non-Luxembourgers, by 2008 this had increased to 42.6%. Moreover, there were 7,000 cross-border commuters in 1971, and 150,000 in 2008. This immigration was largely from highly skilled immigrants. Since the 1990s, employment contracts with a salary floor of four times the minimum wage have been promoted by the Luxembourg government.²⁵ With 49% in 2006 compared to 25% in 1995, the share of highly skilled immigrants among the labour force in Luxembourg had almost doubled.²⁶ Since the 1990s, Luxemburg has been evolving, mainly thanks to the contribution of its immigrant and cross-border foreign workforce, to one of the most prosperous economies in the European Union. Luxembourg has been defined as an "immigration success story"²⁷ or an "extremely efficient immigration society" ("extrem leistungsfähige Einwanderungsgesellschaft")²⁸.

The third factor is the tolerance of dual or multiple nationality diffusing as a new norm in Europe.²⁹ In the era of the world wars and then the Cold War, dual allegiance to two homelands had to be avoided at all costs. After the fall of the Berlin Wall and with the deepening of European integration, the Council of Europe's 1997 European Convention on Nationality "recognis(ed) that, in matters concerning nationality, account should be taken both of legitimate interests of States and those of

23 Joppke, Christian, Citizenship between de- and re-ethnicization, in: *European Journal of Sociology/Archives européennes de sociologie*, 44(3), 2003, p. 430.

24 Id., p. 437.

25 Hartmann-Hirsch, Claudia, A propos de la transnationalisation du marché de l'emploi: Est-elle policy driven ou market driven ?, in : *ASTI 30+. 30 ans de migrations, 30 ans de recherches, 30 ans d'engagements*, Luxembourg, Binsfeld, 2010, p. 124-137).

26 Amétépé, Fofo/Hartmann-Hirsch, Claudia, An Outstanding Positioning of Migrants and Nationals: The Case of Luxembourg, in: *Population Review*, 50/ 1, 2011, S. 195-217.

27 Fetzer, Joel S., *Luxembourg as an immigration success story. The Grand Duchy in pan-European perspective*, Lanham, Md., Lexington Books, 2011.

28 Álvaro, Pina, *Luxembourg: reaping the benefits of a diverse society through better integration of immigrants*, OECD Economics Department Working Papers, N° 1418, OECD Publishing Paris, 2017, p. 1-29; Cindrak, Samra, Hochqualifizierte Migration in Luxemburg, in : *Forum* 392 (Februar 2019), p. 23-25: "With its extremely efficient immigration society, which is currently not a burden on the state's social systems but generates surpluses, Luxembourg does not really want to fit the profile of a country characterised by mass immigration. Why this is so is explained by the ratio of the contributions immigrants make in Luxembourg (taxes paid and social contributions to pension, invalidity, health and long-term care insurance) minus the take-up of social benefits and public services. It can be seen here that the foreign population active in the Luxembourg labour market makes full contributions, but currently still consumes moderately. Cross-border commuters are particularly "frugal", as they do not have the same access to social benefits as natives or resident foreigners. Due to the higher employment rate they have compared to nationals through a) a better age structure (lower proportion of pensioners with a higher proportion of prime-age workers) and b) a higher level of education and qualification, they also generate higher contributions for the state coffers in direct comparison to nationals, which in turn compensate them with high salaries. Thus, in the case of unemployment and long-term care insurance, most benefits are not paid by the country of employment, but by the country of residence of the cross-border commuters. Luxembourg also incurs less expenditure on education, as immigrants and cross-border commuters employed in Luxembourg have usually completed their education in their home countries."

29 Faist, Thomas (ed.), *Dual Citizenship in Europe*, Aldershot, Ashgate, 2007.

individuals”³⁰ and invited European states to find solutions in the area of multiple nationality. As all European states had introduced the transmission of nationality not only through the father but also through the mother, dual nationality had become a sociological reality.

In general, norm diffusion within the European Union proved to also be central for the evolution of Luxembourg nationality, even if this norm diffusion affected first the neighbouring countries. For example, Belgium introduced the double *ius soli* and tolerance of dual nationality in 1984, and the acquisition of nationality by simple declaration after seven years’ residence (2000). Germany introduced conditional *ius soli* (1999), while France had already begun tolerating dual nationality in 1973 and remained faithful to *droit du sol* by turning it to a conditional *ius soli* in 1998. As often in history, the Luxembourg political class was directly inspired by these neighbours. The basis for the new 2008 law is a report on dual and multiple nationality in the Grand Duchy of Luxembourg by Belgian law professors Francis Delpérée, also MP of the Christian Social Centre démocrate humaniste (CDH), and Michel Verwilghen. The report was presented to the Luxembourg government in 2004 at the request of the (Christian Social) Minister of Justice, Luc Frieden. The French political scientist Patrick Weil, a specialist in French nationality law, also advised the government.

In the Delpérée-Verwilghen report, that recommends a “controlled multiple nationality” and the removal of the numerous reasons for loss of nationality, an entire chapter is devoted to the development of state policies on positive conflicts of nationality. Their conclusion is clear: “Developments in Luxembourg law, European law and international law require us to be aware of a legal as well as a political phenomenon: the sharing of citizenship and, consequently, the diversity of aspects of citizenship.”³¹

Finally, a large domestic consensus on reform has to be added as a major reason for changes. An original feature of Luxembourg is that the inclusive turn of nationality law from the 2008 law onwards was achieved in a broad consensus between political forces on the right and left, with the exception of the right-wing populist ADR party. In other European countries, nationality reforms have occurred at times when parties have been divided along right-left lines. In Germany, it was a left-wing government (SPD/Grüne) that introduced conditional citizenship. The current government (SPD/FDP/Grüne) hopes to introduce dual citizenship against the resistance of the CDU/CSU. Christian Joppke explains this divide as follows: “The political left, true to its universalist vocation, generally supports de-ethnicised citizenship laws, which lower the threshold of requirements for the acquisition of citizenship for immigrants. In contrast, the political right, more in favour of ‘the being’ than ‘the becoming’, generally supports re-ethnicised citizenship laws, which strengthen ties to members abroad, even beyond several generations born abroad. Whether de-ethnicised or re-ethnicised nationality prevails is then a question of political majority at a given time and place.”³²

The reasons for the Copernican Revolution of nationality legislation emerge clearly from the debates that took place before the vote on the law of 23 October 2008 on Luxembourg nationality. The debates refer to Luxembourg as a country of immigration and the transition from an industrial country to European capital, financial centre, the accompanying economic boom, and how the proportion of foreigners rose from 18% in 1970 to over 40% in 2008 (see figure 4), the highest proportional growth in the European Union. They refer to an increasingly highly qualified immigration that represents the main source for the performance of the Luxembourg economy and the high standard of living of the population.

30 Preamble of European Convention on Nationality, Strasbourg, 6 November 1997, <https://rm.coe.int/168007f2c8>.

31 *Citoyenneté multiple et nationalité multiple au Grand-Duché de Luxembourg*, Rapport présenté au Gouvernement du Grand-Duché de Luxembourg à la demande de Monsieur Luc Frieden, Ministre de la Justice, par les professeurs Francis Delpérée et Michel Verwilghen, Louvain-la-Neuve, Janvier 2004, p. 157.

32 Joppke, Christian, op. cit., p. 431-432.

Figure 4. Total, Luxembourgish, Non-Luxembourgish Population of Luxembourg (1971-2021)

| Year | 1971 | 1981 | 1991 | 2001 | 2011 | 2021 |
|-----------------|---------|---------|---------|---------|---------|---------|
| Total Pop. | 339,800 | 364,602 | 384,400 | 439,000 | 511,840 | 634,730 |
| Lux. Pop. | 277,350 | 268,813 | 271,350 | 277,000 | 290,476 | 335,304 |
| Non-Lux. Pop. | 62,450 | 95,789 | 113,050 | 162,000 | 221,364 | 299,426 |
| % Non-Lux. Pop. | 18.4% | 26.3% | 29.4% | 37.3% | 43.2% | 47.2% |

Source: STATEC

In its opinion on the draft law of 4 April 2007, the Chamber of Commerce pointed out that two thirds of company founders and two thirds of the workforce (residents and cross-border workers) are foreigners. It also underlined the democratic deficit in Luxembourg, given “the excessive gap between the importance of the contribution of foreigners to the prosperity of the Luxembourg economy and the weakness of their political representation”.³³ These two elements are also mentioned in the speech of the law’s rapporteur, Laurent Mosar (CSV, Christian Social Party), on 15 October 2008, to explain the opening of nationality to foreigners.

4. The citizenship legislation reform of 2008

The new law of 23 October 2008 profoundly transformed Luxembourg nationality in the direction of inclusiveness, marking a complete reversal from an identity-based nationality policy to an integration policy and an important step to an “expansive” citizenship regime. The new Luxembourg citizenship regime is inclusive both on ethnocultural and on territorial dimensions, with lower residence requirements and new *ius soli* provisions for immigrants and their children, as well as facilitating re-acquisition by emigrants who have lost or renounced citizenship and their descendants.³⁴

The “*exposé des motifs*” of the “*projet de loi sur la nationalité luxembourgeoise*” submitted by the government to the Parliament on 13 October 2006 explains the main reasons of the reform. It evokes the context of rising immigration, its importance for the economy and the need for an integration policy around dual nationality: “The purpose of this law is to adapt Luxembourg’s nationality legislation to the changes that have taken place in Luxembourg society over the last few decades and to help consolidate the integration of foreigners residing in Luxembourg into Luxembourg society. In parallel with the country’s economic development and the European dimension of the capital of the Grand Duchy of Luxembourg, the number of non-Luxembourgish nationals in our country has risen sharply to reach nearly forty per cent of the population today. (...) In order to allow foreigners residing in Luxembourg and wishing to acquire our nationality, as well as to allow Luxembourgers residing abroad to acquire the nationality of their host country without having to renounce their Luxembourg nationality, the present law allows, under clearly defined conditions, the principle of dual nationality.”³⁵

That’s why, on one hand, the 2008 law made acquisition of citizenship easier for immigrants and their descendants.³⁶ Dual or multiple citizenship was made possible for foreign residents in Luxembourg. Moreover, the automatic double *ius soli* was reintroduced (art. 1 § 5), almost 70 years after it was abolished. Thus, a child born in the Grand Duchy to non-Luxembourg parents, one of whose parents (father or mother) was already born in the Grand Duchy, would be granted Luxembourg nationality. Along with France and Spain, Luxembourg is now the third country in the

33 *Projet de loi 5620 sur la nationalité luxembourgeoise, Avis de la Chambre de Commerce (4.4.2007)*, Chambre des Députés, Session ordinaire 2006-2007.

34 See herefore: Vink, Maarten, *Migration and Citizenship Attribution: Politics and Policies in Western Europe*, Abingdon/Oxon, 2011.

35 *Projet de loi 5620 sur la nationalité luxembourgeoise, Exposé des motifs (Dépôt du projet de loi, de l’exposé des motifs et du commentaire des articles : 13.10.2006)*, Chambre des Députés, Session ordinaire 2006-2007.

36 *The Luxembourg Nationality Law of 23 October 2008*, Luxembourg, Information and Press Service of the Luxembourg Government, in collaboration with the Ministry of Justice, Office in charge of Luxembourg Nationality (Service de l’Indigénat), January 2009.

European Union to apply the automatic double *ius soli*.³⁷ It should be noted, however, that unlike dual nationality, double *ius soli* was introduced not on the initiative of the minister in charge, Luc Frieden (CSV), but following an amendment by the Socialist Party.

On the other hand, maintaining or re-acquiring Luxembourg nationality was simplified for emigrants and their descendants and was no longer subject to loss of foreign nationality. Article 14 stipulates that Luxembourg nationals who had lost their status could recover it by making a declaration from the age of eighteen years and that the recovered nationality is transmitted to their minor children. As these are first-generation Luxembourgers who have emigrated abroad, no condition of residence in Luxembourg or knowledge of the country's languages is required.³⁸ Another article, Article 29, provided that a descendant in direct paternal or maternal line, even if born abroad, of a Luxembourg ancestor on the date of 1st January 1900 can re-acquire nationality by declaration.

Political traditions thus remained visible in 2008, with the political left managing to introduce a 'de-ethnicising' measure, facilitating acquisition for immigrants and their descendants, such as double *ius soli*. The right-wing CSV, on the other hand, insisted on language requirements in Luxembourgish and introduced an original 're-ethnicising' measure, facilitating re-acquisition for Luxembourgers abroad, even beyond several generations, a measure that went unnoticed during the 2008 debates, but had a great impact thereafter.

The law of 23 October 2008 on Luxembourg nationality was also new in that it transformed naturalisation from a legislative into an administrative procedure. Naturalisation is granted or refused by order of the Minister of Justice. The law creates appeal procedures, and more particularly the establishment of a two-tier jurisdiction, in case of refusal of naturalisation application by the Minister (appeal with Administrative Tribunal, then appeal with Administrative Court). This involves a reinforcement of the rights of citizens wishing to acquire Luxembourg nationality.

These opening aspects of the 2008 law, for immigrants as well as for emigrants and their descendants, were however counterbalanced by restrictive measures, interestingly only for immigrants and their children. These measures explain why, despite a large consensus on provisions like dual nationality, the main opposition parties (liberal party DP and Green Party) voted against the law. These restrictive measures concerned the minimum years of residence for naturalisation (increasing from 5 years in the 2001 law to 7 years in 2008 law, art. 6§2), the abolition of the option procedures for children and spouses, and the introduction of compulsory language tests and civic courses (art. 10§2). It is important to note that the obligation to prove knowledge of the Luxembourg language represents an additional obstacle that is difficult for many foreigners in a country with a multilingual culture such as Luxembourg where literacy is achieved through German and the main language of communication used in professional life is French – and increasingly English – and not Luxembourgish.

The increase of the residence requirement from 5 to 7 years was explicitly justified as a compensation for introduction of dual nationality by Christian social Minister of Justice, Luc Frieden (CSV): "There is a fundamental difference if you introduce dual nationality or single nationality. That's why I think that one can treat differently duration of residence."³⁹ The high language requirements were justified by the law's rapporteur Mosar (CSV) as a concession to "the more traditional or romantic conception of the nation, defined mainly through the language and common roots"⁴⁰ and by similar language requirements in other countries' nationality laws but also by the existence of the obligation to vote for Luxembourg citizens. Voters should know the Luxembourgish language as it is the primary language of electoral campaigns.

37 *Parcours des ressortissants de pays tiers vers la nationalité dans l'UE. Rapport de synthèse de l'étude du Réseau européen des migrations (REM) 2019, Juillet 2020, https://emnluxembourg.uni.lu/wp-content/uploads/sites/225/2020/07/5_Rapport_de_synthese_Parcours_vers_la_nationalite_FR.pdf.*

38 *Projet de loi 5620 sur la nationalité luxembourgeoise, Commentaire des articles (Dépôt du projet de loi, de l'exposé des motifs et du commentaire des articles : 13.10.2006), Chambre des Députés, Session ordinaire 2006-2007.*

39 *Compte-rendu de la Chambre des Députés (CRCD), Séance du 15 octobre 2008, p. 28.*

40 *CRCD, Séance du 15 octobre 2008, p. 16.*

With a net immigration of nearly 10,000 people per year and a steadily growing population – 439,000 people in 2001 and 512,000 in 2011, the pressure to liberalise citizenship legislation remained strong after 2008. To the factors of change already mentioned, the role of political actors in the broadest sense should also be added (ministers, deputies in the Chamber's Commission juridique, ministerial administrations, representatives of employers' and trade unions' organisations, representatives of professional chambers, representatives of NGOs, etc.)

As already said, the ambivalence of the 2008 law was criticised during debates in Parliament on 15 October 2008 by the opposition, namely the Democratic Party and the Green Party. On behalf of the Socialist Party, MP Lydie Err asked for an assessment of the law after three years. The two following new ministers of Justice, Christian Social François Biltgen in 2009, followed in 2013 by Green Felix Braz, himself descendent of Portuguese immigrants, addressed the needs linked to the demographic and economic evolution of Luxembourgish society as well as numerous reform claims of stakeholders and of civil society. The Office in charge of questions of citizenship at the Ministry of Justice (Service de l'Indigénat today called Service de la Nationalité) raised several points in its assessment of the impact of the law of 2008 and of the difficulties encountered in the implementation during the first years and made recommendations (views shared by the ministers).

These debates went on against the backdrop of the loss of democratic legitimacy thematised by immigrant rights associations as well as trade unions and employers who continued to insist on the socio-economic contribution of migrants: a majority of people in Luxembourg are excluded from voting in legislative elections. This led to a proposal by the new government in 2013 (coalition of Democratic, Socialist and Green Party) for a kind of residential citizenship that would grant political participation rights to foreign residents also for national legislative elections. But, unlike the citizenship law reform leading to the nationality law of 2008, that was driven by politicians and elites and after consultation with social and economic stakeholders through a parliamentary process, the government decided in this case to let the Luxembourg electorate directly vote on this topic by an advisory referendum.

It is important to briefly outline the referendum issue. In the first chapter of the 2013 coalition programme of the new government (the first government without the presence of the Christian Social Party, CSV, since 1979), an advisory referendum was announced as part of an ongoing constitutional reform process aiming at a more inclusive democracy. This referendum was held on 7 June 2015 and concerned three questions: i) lowering the age of voting from 18 to 16 years; ii) the introduction (under certain conditions) of a residential citizenship for foreigners for national legislative elections; and, iii) the limitation of ministerial mandates to ten years.⁴¹

Among political parties, a 'yes' vote to all three questions was supported by the three coalition government partners (DP, LSAP and Déi Greng) as well as The Left (Déi Lénk). A 'no' vote to all questions was endorsed by the right-wing populist ADR and the country's largest political party from the opposition, the CSV of former Prime Minister Jean-Claude Juncker, which said that long-time foreign residents should instead seek Luxembourg citizenship and acquire the right to vote in national elections by this way.

⁴¹ Luxembourg citizens were supposed to answer following three questions: 1. "Do you approve the idea that Luxembourgers aged between 16 and 18 should have the right to register facultatively on the electoral rolls for the Chamber of Deputies, in the European and local elections as well as in referenda?; 2. Do you approve the idea that residents who are not Luxembourgers should have the right to register facultatively on the electoral rolls in view of taking part in the elections for the Chamber of Deputies, on the double condition that they have lived in Luxembourg for at least 10 years and that they have previously taken part in local or European elections in Luxembourg? and 3. Do you approve the idea of limiting the maximum, continuous length of time that a person can be a member of government to ten years?"

Despite the consultative nature of the referendum, which saw a high participation rate (87% of registered voters turned out) due to compulsory voting, the outcome was clear: 81% voted against the lowering of voting rights age, 78% against extending voting rights to foreigners and 70% against the limitation of ministerial mandates. Thus, the governmental proposal was rejected by the national electorate (nearly 80% of voters were against), an outcome accepted by the government and the proposal for residential voting was withdrawn.

On the other side, it boosted the reform process for nationality legislation, as the principal party of the opposition (CSV) stuck to advocating for making access to Luxembourg citizenship easier. During the debate on the 2008 law in the Chamber of Deputies, on 15 October 2008, Felix Braz, at that time Green Member of Parliament, had said: “Dëst Gesetz (...) mécht wuel eng Partie Dieren op, mä dëst Gesetz mécht d’Äerm net op fir d’Leit opzehuelen. Wéini maache mer dat ? ” (“This law (...) no doubt opens some doors, but this law doesn’t open arms to welcome people. When shall we do that?”).

5. The law of 8 March 2017 on Luxembourg nationality: a key milestone

With the support not only of the three coalition parties (liberals, socialists, Green) but also of the main opposition party CSV and of the Left, Braz achieved a large consensus on making Luxembourg nationality legislation even more inclusive in several fields: *ius soli* provisions, lower and more flexible residence requirements, language requirements. Only the right-wing populist party ADR did not join this coalition (but meanwhile accepted the tolerance of dual nationality). Their three MPs voted against the law in February 2017, whereas the other 57 MPs voted in favour.

The new Luxembourg nationality law of 8 March 2017 (NLNL) has led to several further steps, classifying Luxembourg among the most expansive citizenship regimes in Europe, inclusive by introducing new *ius soli* provisions, by lowering residence and language requirements and by introducing easier procedures of acquisition of citizenship.

First, it introduced conditional simple *ius soli* at the age of majority. Persons born in Luxembourg to foreign nationals obtain Luxembourgish nationality automatically when they turn 18 on the condition that they are resident in Luxembourg for at least five consecutive years before their 18th birthday, and that one of their parents who is non-Luxembourgish has lived in Luxembourg for at least 12 consecutive months prior to the child’s birth (art. 6). The law also grants nationality on the principle of *ius soli* without condition (art. 7) for any person born in the country before 19 April 1939. Since entry into force of the law on nationality in 2017, every year on 1st January, one year is added to the date concerned by this clause. In other words, in 2023, a person born in Luxembourg before 19 April 1945 is granted Luxembourg nationality automatically.⁴² The compulsory period of residence before naturalisation has been reduced from 7 to 5 years (Art. 14). And now, only the last year of residence before applying for naturalisation has to be uninterrupted.

Taking into account the criticism of the 2008 law, the NLNL reintroduced and added important option rights through procedures for spouses, children born in Luxembourg and long-term residents. Children born in Luxembourg to non-Luxembourgish parents could now apply for nationality from the age of 12 (Art. 86). Foreigners who have lived in Luxembourg for at least twenty years and who have taken a Luxembourg language course also benefit from this possibility (Art. 28). Foreigners who have reached the age of majority and have completed seven years of schooling in Luxembourg (public education programme) may also opt for citizenship (Art. 27). All these categories are exempt from the language test. The NLNL also introduced the option for stateless persons and refugees, but with a compulsory language test (Art. 31).

⁴² Luxembourg nationality is also granted to the person’s descendants in male line (as Luxembourg nationality is transmitted by women only since 1986 for children born after 1st January 1969). It is important to note that the persons born before 19 April 1945 and their descendants in the male line must obviously come forward themselves and contact the Ministry of Justice.

Another important point modified by the NLNL is the oral test in the Luxembourg language. Proposals made by NGOs, trade unions and economic actors to replace the language test with a certificate of attendance at Luxembourg language courses or to lower the proficiency levels required in the test and to introduce derogation clauses were only partially incorporated into the NLNL. Candidates still have to pass a Luxembourg language test at an A2 level in oral expression and B1 in comprehension (art. 15). The level of competence has therefore not been lowered despite the promises of the government programme. However, it is sufficient to pass the expression part (A2) to pass the whole language test. Moreover, an insufficient score in oral expression (A2) can be compensated by a higher score in comprehension (B1). Whereas a dispensation clause for elderly applicants has not been introduced, a period of residence of 20 years provides them with the possibility, as already mentioned, to opt for citizenship without passing a language test after merely attending a 24-hours-course.

By these new measures, Minister Felix Braz intended to take into account the fact that not all foreigners are equal before the requirements of the language test. In his concluding speech in Parliament on the day the law was passed on 9 February 2017, he insisted, by giving an example, that the Dutch European civil servant was not equal in front of these requirements to the worker who had not had the same access to schooling, who had not taken many exams and who came from somewhere other than a Germanic language area.

Another change deserving mention, even if it is more symbolic, is that the NLNL removed the notion of “Luxembourgers by origin” from the law, which gave the impression that there are two kinds of Luxembourgers, those having the nationality over several generations and those who acquired it more recently.

Finally, the NLNL has put an end to the double standards raised by the re-ethnicisation of Article 29 of the 2008 law, which expired for the application in 2018 and expires for the declaration in 2025. Both the Council of State and the Chamber of Commerce had criticised in 2008 that the law applied double standards for immigrants and emigrants: foreigners in Luxembourg must pass a language test and have a certain number of years of residence as a sign of integration, while descendants of Luxembourgers abroad need neither (Minister Braz mentioned in his speech in 2017 that only 5% of applicants on art. 29 were residents). Article 29 is also problematic in relation to international standards following the *Nottebohm* case of 1955,⁴³ since it breaks with the spirit that has dictated nationality law since that time: that the granting of nationality should only lead to recognition by other states if it coincides with the existence of a 'genuine link' between the individual and the state granting nationality.

A. The unintended effects of the 're-ethnizing' article of nationality law

The unintended political consequences of article 29 make it necessary to explain the genesis of this measure. The notion of 're-ethnicisation' is the pursuit of policy that has the intended aim of strengthening ties to emigrants and their descendants. Christian Joppke writes, “to the degree that the withering of nationalist inter-state rivalry has removed a lingering source of ambiguity surrounding the emigrant, one can observe a growing assertiveness with respect to the sustenance or recovery of ties with emigrant communities abroad. In this respect, the current situation has provided a new opening for re-ethnicization that did not exist in the past. As we shall see, the justification of re-ethnicized citizenship thus takes on a surprisingly contemporary note, invoking themes of the lesser importance of space, distance, and state borders in a global age of time-space compression and increased cross-border mobility.”⁴⁴

43 <https://www.icj-cij.org/fr/affaire/18>.

44 *Idem*, p. 445-446.

In the case of Luxembourg, the term re-ethnicisation is all the more appropriate as until 2008 this policy towards emigrants tended rather to exclude Luxembourgers abroad and their descendants from nationality. The term re-ethnicisation also comes to mind when reading the Delpérée-Verwilghen report and the parliamentary documents concerning the 2008 law. The report emphasises the emotional ties that may still exist for Luxembourgers abroad: “It may be objected that most of the cases of automatic loss of nationality referred to by the 1986 legislator concern Luxembourgers whose objective ties with the mother country have disappeared or become insufficient. This is to forget that many Luxembourgers whose circumstances (professional, family, etc.) have taken them away from the Grand Duchy and who possess another nationality may still have deep subjective ties, worthy of respect, and in particular a personal desire to remain Luxembourgers.”⁴⁵ In the chapter “Restrictions in the maintenance of nationality”, Delpérée and Verwilghen severely criticise article 25 of the ‘loi du 24 juillet 2001 portant modification de la loi du 22 février 1968 sur la nationalité luxembourgeoise, telle qu’elle a été modifiée’, a law mentioning eight cases of loss of nationality, mainly for Luxembourgers abroad, and call for the “protection of Luxembourg’s human heritage”.⁴⁶

Not only does the report by the two Belgian jurists call for the re-ethnicisation of Luxembourg's nationality legislation. The ethnic logic is also apparent in the explanatory memorandum (‘exposé des motifs’) of the law and more specifically in the commentary to article 29, mentioning several times the notion of “ex-Luxembourgers of origin and their descendants.” Moreover, “Article 29 sets out a particular transitional provision that is of great importance for ‘ex-Luxembourgers of origin’ and their descendants who live or were born abroad. The Luxembourg government wishes to offer the possibility to ‘ex-Luxembourgers of origin’ and their descendants to recover Luxembourg nationality, while retaining the foreign nationality they possess, either by voluntary acquisition on their part, or by the effect of *ius soli* or *ius sanguinis*. (...) The transitional provision of article 29 mainly concerns the generations of emigrants of Luxembourg origin, who no longer have this status of Luxembourg national. This concerns in particular those whose Luxembourg grandfather, who emigrated abroad, lost his Luxembourg nationality during his lifetime, or one of his descendants, for having voluntarily acquired a foreign nationality.”⁴⁷

The interest in specifically Luxembourg emigrations from the 19th and 20th centuries is closely linked to an increasingly ethnic reading of the Luxembourg people as a ‘race’ and language community, which permeates 20th century historians. Hence the infatuation with the mythical early Luxembourgers of Siebenbürgen and the Luxembourgers in the United States allows for the perpetuation of a romantic image of an agrarian people.⁴⁸ Historians, especially conservative ones, have tried to include these emigrants in the Luxembourg nation by showing where they are represented around the world and what ‘national’ values they convey. These historians over-estimated (and falsified) the number of Luxembourgers that had emigrated to the USA in 19th century; numbers that were later peddled between publications for decades.⁴⁹

This instrumentalisation of historical emigrations to the United States (and to Transsylvania) represents an institutionalised trend within the Ministry of Culture since the ethnic turn of the 1980s – when the Luxembourgish language became a national language (1984) – which strives to include these former emigrants and their descendants in the Luxembourg nation. Furthermore, at the same time when the 2008 law was elaborated, a documentary entitled “Luxembourg-USA” was produced and released. In 2007, 20 years of the “Rollingstone-Luxembourg Heritage Museum” in Minnesota was celebrated. And in 2010, the “Luxembourg-American Cultural Centre” was inaugurated in the city of Belgium in Wisconsin.⁵⁰

45 *Citoyenneté multiple et nationalité multiple au Grand-Duché de Luxembourg*, Rapport ..., op. cit., p. 82-83.

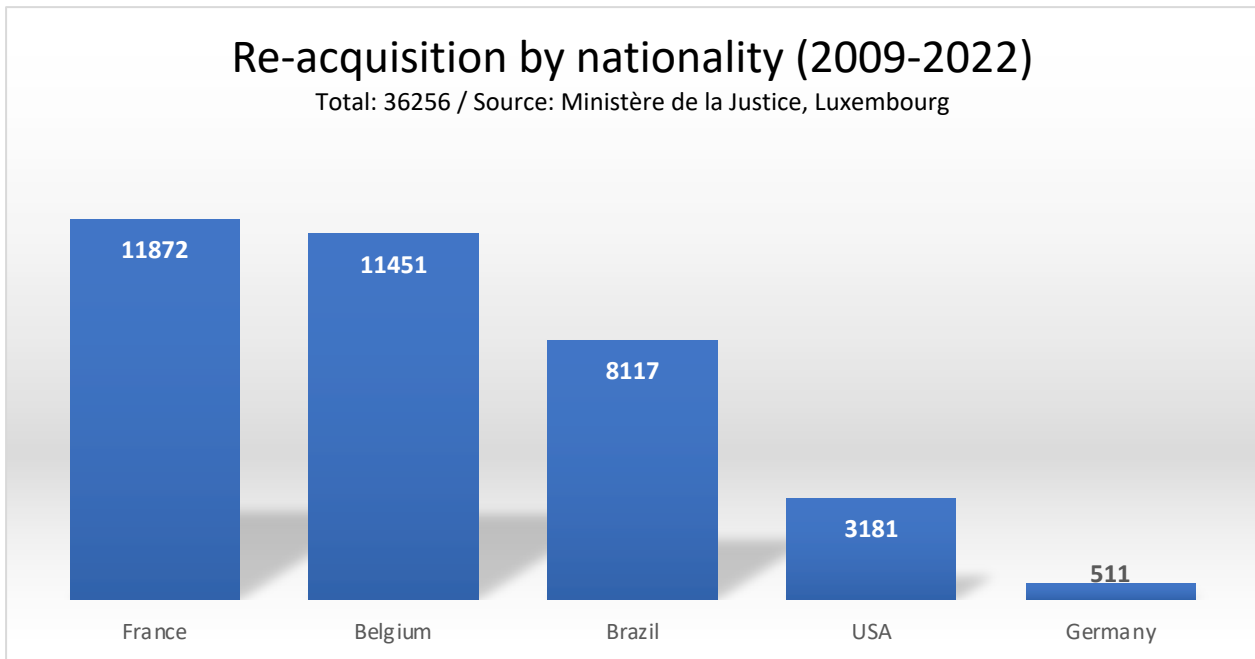
46 *Idem*, p. 80-81.

47 *Projet de loi 5620 sur la nationalité luxembourgeoise*, Commentaire des articles (Dépôt du projet de loi, de l'exposé des motifs et du commentaire des articles : 13.10.2006), Chambre des Députés, Session ordinaire 2006-2007.

48 Fehlen, Fernand, *Luxemburg und Siebenbürgen 2007*, (STADE Working Paper, 2007/1), Luxembourg, Université du Luxembourg, 2007

49 Scuto, Denis, 70.000 Luxembourgeois aux Etats-Unis au 19e siècle ? Bullshit !, in: *Tageblatt*, 22.05.2021, p. 8.

50 https://mc.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bdiscours%2B2010%2B08-aout%2B12-modert-luxembourg-american-cultural-center.html

Figure 5. Re-acquisition of Luxembourg citizenship by nationality (2009-2022)

This re-ethnicisation was an unexpectedly huge success, and (as we can see in figure 5) since 2008, 36,256 people were able to re-acquire Luxembourg nationality because they could prove ancestry from 1900. This represents one third of all new acquisitions of Luxembourg nationality from 2009 to 2022 (108,806). In the end, this re-ethnicisation measure did not primarily benefit the “Monni aus Amerika” (“uncle of America”) and their descendants now residing in the United States (3,181 people) but two other categories: on the one hand, foreigners geographically closer to Luxembourg, French (11,872) and Belgians (11,451), and on the other hand, Brazilians of the southern Brazilian province of Santa Catarina (8,117).⁵¹

The unexpected and unintended success of article 29 of the 2008 law are a good example of what the French sociologist Raymond Boudon called the “perverse effects” of laws.⁵² Some laws or decisions not only miss their target but produce effects that are different or even contrary to the effects hoped for by the decision-maker or legislator.⁵³ In this case, re-ethnicisation was the motivation of the law, but, as will be explained, the effects created new realities, consisting not in a romantic but in a strategic and opportunistic appropriation of citizenship as an asset on the one side, and a problematic acquisition of political rights on the other side for members of distant (imagined) diasporas.

51 These and the other statistics on nationality published in this paper have been calculated based on the yearly statistics published on the “procédures de nationalité luxembourgeoise évacuées” by the Office in charge of Luxembourg Nationality (Service de l’Indigénat) of the Ministry of Justice (<https://mj.gouvernement.lu/fr/dossiers/2020/nationalite-luxembourgeoise.html>). Many thanks to Joëlle Gilles, head of the Service de l’Indigénat, Laurent Hirtz, vice-head, and Christian Paler, executive manager. Thanks also to François Peltier, head of Population unit of the STATEC, the National Institute for Statistics and Economic Studies, and to Sylvain Besch, researcher at Cefis (Centre d’étude et de formation interculturelles et sociales) for complementary statistics provided.

52 Boudon, Raymond, *Effets pervers et ordre social*, Paris, PUF, 1977.

53 Or, in the words used by American political scientists, “perverse incentives” which refers to “incentives unwittingly built into a rule to comply with it in a way that creates new problems or exacerbates the very problems the rule is meant to cure.” Stone, Deborah A., *Policy paradox. The art of political decision making*, Third edition, New York, Norton, 2011, p. 305.

An understanding of the historical trajectories, as well as knowledge of the current debates are essential for understanding the implications of the 're-ethnicising' article of the 2008 law. Why did more French, Belgians and Brazilians acquire Luxembourg citizenship than US-Americans? France, United States, Belgium and Brazil were all important countries of emigration for Luxembourgers in the 19th century.⁵⁴ However, the majority of Luxembourgers who left the country at that time did not emigrate to the United States, but to France: to Lorraine, Champagne, Paris and its suburbs.⁵⁵ In 1891, according to the French and German (for 1871 annexed Alsace-Lorraine) population census, 40,000 Luxembourgers lived in France (including Alsace-Lorraine).⁵⁶ There were fewer than 20,000 in the United States at the same time.⁵⁷ That's why re-acquisition figures for French descendants of Luxembourg emigrants are much higher than for US-descendants of Luxembourg emigrants.

What explains the figures of Belgian descendants of Luxembourg emigrants? There were fewer Luxembourg emigrants in Belgium (around 10,000)⁵⁸ than in France, but the attempt of many of their descendants to regain Luxembourg nationality is linked to the presence of a Luxembourg-speaking community in the Arlon area, who had kept strong emotional ties to Luxembourg. Furthermore, many are now working as border commuters in Luxembourg. The 511 re-acquisitions by Germans reflects a smaller emigration to the German state (except the annexed Alsace-Lorraine from 1871 to 1918) in the 19th century.⁵⁹

The high number of Brazilians (8,117) who have so far benefited from the re-acquisition procedure is linked to an earlier emigration movement to Brazil. In 1828, more than 2,500 Luxembourg peasants, known as "Brasilienfahrer", joined a migration movement from southern Germany to the province of Santa Catarina in Brazil. This movement had followed publicity by German travel agents paid by Pedro I of Brazil to encourage immigration with the promise of land.⁶⁰ There was then a second migration movement in the years 1846-1852. Although the emigration of most families failed and caused a dramatic return migration, a few hundred families managed to emigrate mainly to the province of Santa Catarina. Thousands of their descendants are now asking to 'recover' Luxembourg nationality. The deadline for submitting the declaration of recovery of Luxembourg nationality to the civil registrar has been extended until 31 December 2025,⁶¹ mainly to allow approximately 7,000

54 Who was Luxembourger in 19th century? In order to settle all the disputed cases arising from the changes in borders and sovereignty between 1795 and 1839, the Council of State and the Chamber of Deputies decided in 1858 that all those who were born on Luxembourg territory (within the borders of the former Duchy before 1795, of the former Grand Duchy in 1815 or of the Grand Duchy within its 1839 borders) of parents domiciled there and who resided there until they reached the age of majority, acquired the Luxembourg nationality. After 1858 Luxembourg nationality continued also to be granted by naturalisation, option (Code civil, art. 9 and 10), marriage to a Luxembourgish husband (Code civil, art. 12). In 1878, automatic double *ius soli* on the side of the father was introduced, 1890 on the side of the mother of Luxembourg origin. After 1878, persons only lost Luxembourg nationality by taking voluntarily another nationality (Code civil, art. 17§1) and by the establishment abroad "without any spirit of return" (Code civil, art. 17§3). As it is impossible to define this condition, "without any spirit of return", it is not taken into consideration by the Service de la Nationalité of Ministry of Justice for the assessment of re-acquisitions on the basis of the 2008 law. Before 1878, a person lost Luxembourg nationality also by taking up civil service (Cc, art. 17§2) or military service abroad Cc, art. 17§2), see Scuto, Denis, *La nationalité luxembourgeoise*, op. cit., p. 107f..

55 Reuter, Antoinette, *Les Luxembourgeois en France et à Paris (XIXe siècle)*, in : *Luxembourg, histoires croisées des migrations*, Mîgrance, Paris, Mémoires-Génériques, N° 20 (2002), p. 50-59.

56 According to the general census of the French population, 31,200 Luxembourgers were living in France in 1891 (Office de la statistique générale, *Les Luxembourgeois en France 1891-1946*, in: *Bulletin statistique*, VI, n° 1, Luxembourg, 1955, p. 64-68). 9,509 Luxembourgers lived in German Lorraine in 1890 (Roth, François, *Les Luxembourgeois en Lorraine*, in : Reuter, Antoinette/Scuto, Denis, *Itinéraires croisés. Luxembourgeois à l'étranger, étrangers au Luxembourg*, Luxembourg, Editions Le Phare, 1995, p. 148-152).

57 The American decennial census records 5,802 Luxembourgers in 1870, 12,836 in 1880, but based on country of birth (not nationality). The Luxembourg historian Nicolas Gonner gives a figure of 23,900 for 1889 (Gonner, Nicolas, *Die Luxemburger in der Neuen Welt*, Illustrierte Neuausgabe in 2 Bänden, herausgegeben von J. Ensch, C. Hury und J.-Cl. Muller unter Mitarbeit von A. Gonner und L. Stemper-Brickler, Erster Band, Esch-sur-Alzette, 1985 (Originalausgabe 1889), p. 164f.

58 According to the Belgian census publications of 1910 and 1920 and the Belgian Statistical Yearbook of 1927-1928, 10,447 Luxembourgers lived in Belgium in 1900 (Office de statistique, *Note statistique. Extrait de l'Annuaire officiel 1930*, Luxembourg, Impr. Buck, 1930, p. 6).

59 According to the German census of 1905, 14,169 Luxembourgers lived in Germany at that time, but more than 10,000 living in Alsace-Lorraine (Luxemburger in Deutschland, *Obermosel-Zeitung*, 10.9.1909, p. 1). In 1925, 2,578 Luxembourgers were living in Germany (without Sarre), see: Office de statistique, *Note statistique*, op. cit., p. 6.

60 Wey, Claude, *L'histoire des migrations entre le Luxembourg et les Amériques*, in : Reuter, Antoinette/Ruiz, Jean Philippe (dir.), *Retour de Babel. Itinéraires, Mémoires et Citoyenneté, Livre II : Arriver*, Luxembourg, 2007, p. 262-271; Helminger, Guy, *Neubrasilien*, Roman (überarbeitete Ausgabe), Mersch, capybarabooks, 2020.

61 Texte coordonné : Loi du 8 mars 2017 sur la nationalité luxembourgeoise, telle que modifiée par la loi du 20 juillet 2018, la loi du 20 juin 2020, la loi du 19 décembre 2020, la loi du 30 juillet 2021, la loi du 23 décembre 2022 et la loi du 8 mars 2023, <https://mj.gou->

additional Brazilians who applied before 31 December 2018 to make their declaration. In 2025, Brazilian-Luxembourgers will therefore be the majority of more than 40,000 Luxembourgers who have re-acquired citizenship on the basis of the 2008 law. Due to the transfer of nationality to minor children, the number of Luxembourgers in Brazil has already risen from 2,844 in 2018, the year of the last legislative elections in Luxembourg, to 19,939 in 2022.

The Luxembourg case demonstrates an intended re-ethnicisation, a rather marginal citizenship provision, turning, through the new realities and possibilities offered in a global world, into something completely different. The wish to allow re-acquisition of citizenship to descendants of emigrants, supposed to have genuine links to Luxembourg, finally gave descendants of ancient diasporas a strategic citizenship, defined as “an enabling factor for non-migration mobilities, and strategic and instrumental acquisition of passports”.⁶²

This is especially striking in the case of Brazilian-Luxembourg dual citizens. These thousands of Brazilians with Luxembourgish ancestors mainly re-acquired Luxembourg citizenship because it allows them to have a passport from a European Union state.⁶³ They do so as part of identity strategies, claiming Luxembourg origins to distinguish themselves from other Brazilians. Only a minority of them actually emigrate. But the 2008 law has nevertheless led to the creation of cultural associations in Santa Catarina such as the “Associação dos Cidadãos Luxembourgueses no Brasil” (AcLux), which offers its members courses in Lëtzebuergesch, civic and cultural education about Luxembourg,⁶⁴ and is committed to the recognition of diplomas, and to help the Brazilians who have decided to settle in Luxembourg (once in Luxembourg, these Brazilian-Luxembourgers find themselves in the paradoxical situation that they are not entitled to Luxembourg language and civic education courses from the official authorities like other immigrants because they are already Luxembourgers on arrival).

Let’s have a closer look on the chronology of re-acquisitions of Luxembourg nationality on the basis of article 29 from 2009 to 2022, to better understand how a re-ethnicising measure was transformed into a tool to acquire a second strategic citizenship.⁶⁵

The first to react to the new possibilities of article 29 of the 2008 law were the Belgian inhabitants of the Province du Luxembourg belge. Against the backdrop of institutional crisis, linguistic quarrels and socio-economic differences that gave rise to fears of the break-up of the Kingdom of Belgium, the Belgians from the Luxembourgish-speaking minority around Arlon, many of whom work across the border in Luxembourg, made massive use of Article 29. As of 2012, the number of re-acquisitions exceeded one thousand people (1376). In 2013, three Belgian politicians: i) Patrick Nothomb, honorary Belgian ambassador (and father of famous writer Amélie Nothomb), descendant of a family of Luxembourg notables who chose Belgium in 1839 when the Grand-Duchy was partitioned; ii) Henri Bosseler, honorary notary, former alderman of Arlon and provincial deputy; and, iii) Philippe Greisch, retired teacher, former alderman of Arlon and provincial deputy, founded the “Association des néo-Luxembourgeois”.

[vernement.lu/dam-assets/dossiers/dossier-nationalite/texte-coordonn-de-la-loi-modifie-du-8-mars-2017-sur-la-nationalit-luxembourgeoise-6.pdf](https://www.vernement.lu/dam-assets/dossiers/dossier-nationalite/texte-coordonn-de-la-loi-modifie-du-8-mars-2017-sur-la-nationalit-luxembourgeoise-6.pdf).

62 Dzankic, Jelena/Vink, Maarten, Chapter 22: Citizenship & Migration, in: Scholten, Peter (ed.), *Introduction to Migration Studies*, IMIS-COE Research Series, 2022, https://doi.org/10.1007/978-3-030-92377-8_22, p. 367.

63 Schmidt-Vieira, Mayara, Transatlantique électorale, *Lëtzebuurger Land*, 07.04.2023, p. 6-7. In her article, the journalist from the liberal weekly *Lëtzebuurger Land*, Mayara Schmidt-Vieira, mentions several cases: a 41-year-old administrative officer, who still speaks a German dialect, who wishes to exercise his right to vote, but does not want to emigrate to Luxembourg immediately. Instead, he intends to use his European passport to emigrate to Switzerland later on. His brother, a school manager, who speaks German, Portuguese and some English, is already emigrating to Luxembourg this year in the hope of finding a job in the banking sector. A civil servant said she did not want to emigrate but saw it as an opportunity for her daughter.

64 The association received authorisation from the Luxembourg government to have the “Living Together” course translated into Portuguese-Brazilian (https://aclux.com.br/wp-content/uploads/2023/01/Brochure-ACLUX-FR--2023_18x11_melusine.pdf).

65 Yossi Harpaz defines strategic citizenship as “The second citizenship operates as a *compensatory citizenship*. It does not necessarily lead them to emigrate and does not replace their original nationality. Instead, it makes up for deficits by providing additional opportunities, an insurance policy, a high-mobility passport, and even elevated social status. Dual citizenship constitutes a new kind of global asset.” HARPAZ, Yossi, *Citizenship 2.0. Dual Nationality as Global Asset*, Princeton & Oxford, Princeton University Press, 2019, p. 2.

The next group to take advantage of reacquisition were the French inhabitants of the border regions of Lorraine, which provided, in 2008, half of the 150,000 border workers who had come to work in the Grand Duchy: 409 reacquisitions in 2013, 579 in 2014, 899 in 2015 and 1,941 in 2016.

Until 2017, there was however no great interest from the descendants of the “uncle of America” (824 re-acquisitions in total from 2009 to 2017) nor from the descendants of the “Brasilienfahrer” (365 re-acquisitions in total from 2009 to 2017). But this changed after an American businessman discovered the economic potential of the 2008 law. Daniel Atz, a US-citizen from Omaha, Nebraska, who had re-acquired Luxembourg nationality in 2013 made a business of citizenship acquisition in November 2016, “Luxembourg-citizenship”.⁶⁶ The website opens with this message: “Ancestors from Luxembourg? You may be eligible for Luxembourg Dual Citizenship. Luxcitizenship helps people get dual citizenship, relocate and find professional opportunities in Luxembourg and across Europe.” The Brazilian or US-American with Luxembourg ancestry is greeted by this message (in English or Portuguese): “Simplifying your journey to dual citizenship. About our mission: We help create bridges between America and Europe. Connect to your ancestors, and likewise open the door to new opportunities tomorrow.” If people are willing to pay \$85 per ancestor, the site, which describes itself as a “mission-driven business focused on building connections between Europe and America”, provides them with a professional report on their ancestors that allows them to apply for Luxembourg citizenship, before 31 December 2018. For a further 500\$, Luxcitizenship supports the primary applicant through the procedure on this two-step-process, to finish it before 31 December 2025.⁶⁷ For 800\$, Luxcitizenship helps a person to re-acquire Luxembourg nationality via article 7 of the 2017 law.

After a first year with only ten clients, this business in the “citizenship industry” took off in 2018,⁶⁸ as did the figures for US-Americans and Brazilians: 598 new US-Luxembourgers in 2018, 639 in 2019, 395 in 2020, 77 in 2021 (because of Covid, applicants couldn’t travel to Luxembourg to sign the declaration), 668 in 2022; 881 Brazilo-Luxembourgers in 2018, 2,050 in 2019, 1,751 in 2020, 90 in 2021, and 3,080 in 2022.

This measure exists not only in Luxembourg but also in other European countries and has opened the door to opportunistic nationality acquisition described in detail by Yossi Harpaz in his recent book “Citizenship 2.0. Dual Citizenship as a Global Asset.”⁶⁹ At a time of globalisation and great inequalities in the value of a passport, Luxembourg citizenship represents a global asset for thousands of descendants of Luxembourg nationals in Brazil who belong to the middle and upper classes. In most cases, this nationality does not lead those with a newly acquired passport to move to Luxembourg. It rather represents a case of “non-migration mobility”, it allows more freedom for travel, an insurance for the future, and something to pass down to children. Nationality as a private luxury that can be converted, if necessary, into advantages in the globalised world.

66 <http://www.danielatz.com/luxcitizenship/#about>

67 <https://www.luxcitizenship.com/services/>

68 “When I recovered Luxembourgish nationality through my ancestry in 2013, I realized that there were no materials explaining the process for someone that didn’t speak French. I wrote the first model application letters and program that was widely shared around the English-speaking part of the internet. By November 2016, I became aware that the political changes happening around the world and specifically the USA would drive more Americans to look for dual citizenship and that I could use my knowledge to share life changing opportunities with others. I can’t say for sure if what came next was because I was featured in the report or not. But what I can say is that after only receiving a few inquiries in the year, on Saturday, December 23rd, 2017, my phone exploded with inquiries. This is both peculiar because it was a Saturday and two days before Christmas. So what was the cause? The only immediate guess I can make is that the day before the Senate passed the major reform of the US tax code. This was the only major legislative achievement of the Trump presidency before Covid. Whether or not politics inspired the spark, I will never know. However, it was like a rocket lifting off into space after this date. In the first six months of 2018, I signed over 300 new clients. Growing from less than 10 in the previous year, it was huge growth. While 2019 was less active by comparison, 2020 was by far the largest year for the organization, adding over 350 new clients. This most likely is also attributable to the current events in the United States and the world. In 2020, a New York Times editorial claimed the new status symbol of the US middle class was to go into the attic and find pictures and documents of great-grandparents to figure out where it was possible to get a foreign passport. The outcomes have been much more concrete. We have experienced two years with over \$150,000 in sales, allowing LuxCitizenship to also create work opportunities in diverse communities and impacting the lives of over 700 North American clients.” (<http://www.danielatz.com/luxcitizenship/#about>)

69 HARPAZ, Yossi, *Citizenship 2.0. Dual Nationality as Global Asset*, Princeton & Oxford, Princeton University Press, 2019.

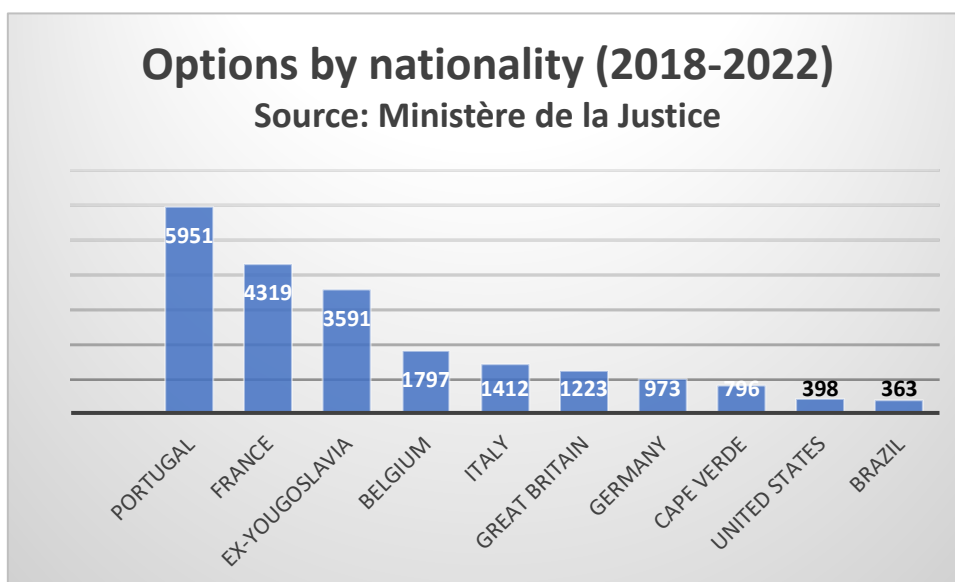
By means of article 29 (which became article 89 in the NLNL), people living in North or South America or in Luxembourg’s neighbouring countries and having distant blood ties, linked to 19th century emigrations were thus able to re-acquire (“recouvrer”) without passing a language test and without a residence clause. In October 2023, they will be able to vote in Luxembourg’s parliamentary elections. Since the electoral law of 1984, non-resident citizens, whether or not they are resident in EU Member States or in third countries, have the right to vote in national elections, EP elections and referenda. To do so, they do not have to be registered on the electoral roll but may vote in national elections, EP elections and referenda by postal vote.⁷⁰

This represents a link between ancient migration and citizenship, where migration to and settlement in Luxembourg in most cases won’t happen. Still, it gives non-migrants dual citizenship and an influence on political decision-making in Luxembourg.

B. The impact of the new option procedures

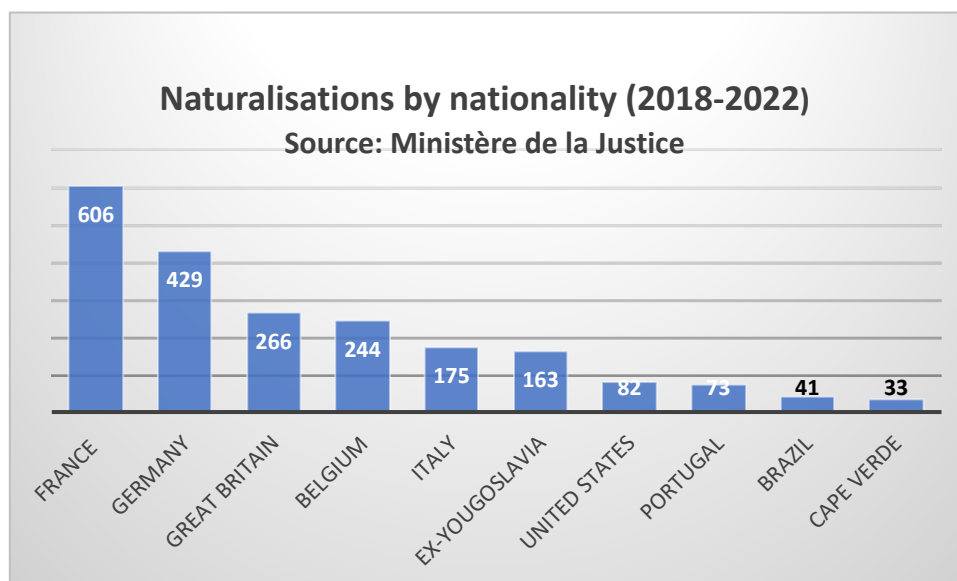
The reintroduction of option procedures and their diversification by the 2017 law has had a strong impact and allows for a more nuanced and detailed view of the groups of immigrants and descendants of immigrants who have acquired Luxembourg nationality, and thus to understand which groups have benefited most from the 2017 reform.

Figure 6. Options by nationality (2018-2022)



Acquisition is still foreseen by naturalisation (Art. 14 of the 2008 law/Art. 39 of the 2017 law), but two option procedures have been used much more since 2017: option procedure for those who have lived in Luxembourg for 20 years (Art. 28) and do not have to take a language test, but only follow a 24-hour course (30% of naturalisations and options); for those born in the Grand Duchy who can opt in at the age of 12 (Art. 86) as they have been socialised in Luxembourg (24.7%). The naturalisation procedure is used less (Art. 14/39; 14.80%) as is the option procedure for adults who have completed at least seven years of schooling in Luxembourg (Art. 27; 12.90%) and the declaration of adults who have or have had a parent with Luxembourg nationality and who have not obtained nationality (Art. 23; 11.40%).

⁷⁰ Besch, Sylvain & Scuto, Denis, *Report on political participation of mobile EU-citizens: Luxembourg*, Country report 2019/4, Florence, Globalcit, 2019.

Figure 7. Naturalisations by nationality (2018-2022)

The relatively low rate of naturalisation compared to declaration procedures since the 2017 law confirms that the compulsory Luxembourg language test remains an important obstacle in the multilingual context of Luxembourg, especially for foreign residents with a lower level of education. As we can see in figures 6 and 7, very few Portuguese (73 persons) – yet by far the first nationality among foreign residents with more than 90,000 persons in 2022 – and Cape Verdeans (33), Italians (175) and ex-Yugoslavian nationals (163) use this procedure, whereas 5,951 Portuguese, 3,591 ex-Yugoslavians, 1,412 Italians and 796 Cape Verdeans have become Luxembourgish by option since 2018.

For foreign residents with a higher level of education, the figures for naturalisation and options are more balanced, even if the use of option procedures predominates here too: the French – the second most important nationality among foreign residents in 2022 with around 50,000 people – (606 naturalisations, 4,319 options), the Belgians (244 naturalisations, 1,797 options), the Germans (429 naturalisations, 973 options) and the British, whose figures have risen sharply since 2016 due to Brexit (266 naturalisations, 1,223 options).

In a 2019 study, researchers from the European Migration Network-Luxembourg Contact Point (EMN) underlined the importance of the 2017 reform in facilitating (mainly through options) the acquisition of Luxembourg nationality for many third-country nationals, namely Montenegrins, Bosnians/Herzegovinians, Serbs, Kosovars and Cape Verdians. “A look at the statistics regarding the acquisition of nationality via procedural means, including all the pathways open to third-country nationals, for the period 2014 to 2018 show that the simplified option procedure (...) is the most common pathway through which third-country nationals have acquired Luxembourgish nationality mainly art. 28 and 86 (...).”⁷¹ Statistics published recently by the Cefis (Centre d’étude et de formation interculturelles et sociales) show the same trends, further solidifying the NLNL as an inclusive law.⁷²

Not only has the re-ethnicisation article created many new Luxembourgish with dual nationality. The *ius soli* provisions as well as the simplified procedures of the 2008 and 2017 laws have created many new dual or multiple nationals. The current figures for 2022 are an indication of this.

⁷¹ Sommaribas, Adolfo/Petry, Ralph (EMN National Contact Point Luxembourg), *Pathways to citizenship for third-country nationals in Luxembourg*, University of Luxembourg, 2019, https://emnluxembourg.uni.lu/wp-content/uploads/sites/225/2019/12/Pathways-to-citizenship-for-third-country-nationals-in-Luxembourg_2019.pdf

⁷² <https://cefis.lu/statistiques/naturalisation/>.

Out of 341,230 residents with Luxembourg nationality, 62,924 (22.6%) have multiple nationalities: 59,947 have two nationalities, 2,936 have three nationalities, 41 people have four.⁷³ This is not surprising as already in 2011, when the non-Luxembourgish rate was 43.2%, 61.2% of the population of the Grand Duchy had a migratory background, i.e. were born in the Grand Duchy to parents one of whom was not born in Luxembourg.⁷⁴

6. Conclusions

By making it possible for more than 100,000 people to acquire Luxembourg nationality from 2009 to 2022, i.e. an increase of more than a third of Luxembourg citizens in Luxembourg and abroad in less than fifteen years, the 2008 and 2017 reforms have made nationality law an inclusive legal tool with regard to foreigners in Luxembourg and Luxembourgers abroad. For immigrants in Luxembourg and their descendants, they have enabled nationality legislation and procedures for acquiring nationality to better reflect the realities of migration. Dual nationality acceptance and double *ius soli* (2008), then simple and conditional simple *ius soli* (2017), as well as the new optional rights introduced in 2017, have allowed for a consideration of these realities. Luxembourg's nationality legislation is cited as a positive example to be followed in Europe by several studies concerning *ius soli* and legislative measures on the basis of residence and education.⁷⁵

If the rate of acquisition of Luxembourg nationality has 'only' increased from 0.5 in 2004 to 1.8 in 2021,⁷⁶ while remaining slightly below the European average, this is due on the one hand to the demographic and migratory realities of the Grand Duchy and its economy, whose GDP has been growing for decades above the average of the Euro zone - with the exception of the years 2008 to 2012. From 2012 to 2022, the population has again increased by almost a quarter, by 23% (120,544 people) to reach 645,397 people on 1st January 2022.⁷⁷ Realistic projections foresee a 1 million population for 2050.

The other reason for the still comparatively low acquisition rates in comparison with other European states is the well-known issue of the limited added value of citizenship for migrants who have European citizenship or long-term residence rights. On 1st January 2023, 245,753 (78.4%) of the 313,407 foreigners residing in Luxembourg were European citizens.⁷⁸ The main difference between the acquisition of nationality and holding a long-term residence permit is the participation in national legislative elections. Further differences include being able to access all jobs in the public service. Furthermore, Luxembourgish nationals are provided with diplomatic and consular assistance while travelling abroad and are exempted from the need to prove sufficient financial resources in the context of family reunification.

The NLNL of 2017 is cited as a positive example in Europe by several studies concerning *ius soli* citizenship at birth and provisions on the basis of residence and education.⁷⁹ It appears in the Luxembourg national context as a major and necessary step forward for a society in which immigration and integration represent crucial challenges. At the same time, this reform represents an insufficient response to the challenges of integration and questions of democratic legitimacy faced

73 Statistics communicated by Sylvain Besch (CEFIS): *Population luxembourgeoise par nombre de nationalités et commune de résidence en 2022* (Source : STATEC, Centre des technologies de l'information de l'Etat, CTIE).

74 Peltier, François/Thill, Germaine/Heinz, Andreas, *L'arrière-plan migratoire de la population du Grand-Duché*, Recensement de la population 2011, Premiers résultats N° 12, Avril 2013 ; the figures about migration background for the census of 2021 will be published by STATEC later on this year.

75 Erdilmen, Merve/Honohan, Iseult, *Trends in Birthright Citizenship in EU28 2013-2022. Comparative report*, RSCAS/GLOBALCIT, 2020/02, March 2020; Vam der Baaren, Luuk, *Dual Citizenship in the European Union: trends and analysis (2010-2020). Comparative report*, RSCAS/GLOBALCIT, 2020/04, July 2020

76 <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/DDN-20230301-1>

77 [https://lustat.statec.lu/vis?fs\[0\]=Thèmes%2C1%7CPopulation%20et%20emploi%23B%23%7CEtat%20de%20la%20population%23B1%23&pg=0&fc=Thèmes&df\[ds\]=ds-release&df\[id\]=DF_B1115&df\[ag\]=LU1&df\[vs\]=1.0&pd=2007%2C2022&dq=A](https://lustat.statec.lu/vis?fs[0]=Thèmes%2C1%7CPopulation%20et%20emploi%23B%23%7CEtat%20de%20la%20population%23B1%23&pg=0&fc=Thèmes&df[ds]=ds-release&df[id]=DF_B1115&df[ag]=LU1&df[vs]=1.0&pd=2007%2C2022&dq=A)

78 *La démographie luxembourgeoise en chiffres. Edition 2022*, Luxembourg, STATEC, 2022, p. 9, <https://statistiques.public.lu/dam-assets/catalogue-publications/en-chiffres/2022/demographie-en-chiffre-22.pdf>.

79 Erdilmen, Merve/Honohan, Iseult, *Trends in Birthright Citizenship in EU28 2013-2022. Comparative report*, RSCAS/GLOBALCIT, 2020/02, March 2020; Vam der Baaren, Luuk, *Dual Citizenship in the European Union: trends and analysis (2010-2020). Comparative report*, RSCAS/GLOBALCIT, 2020/04, July 2020.

by this European country. Today, more than 47% of the population of the Grand Duchy does not have Luxembourg nationality (more than 70% of the population of the capital), a population that includes more than 170 nationalities. In the labour market, 74% of the active population are foreigners, of which 27% are foreign residents and 47% are cross-border commuters. Half of the Luxembourg voters in the October 2023 legislative elections will be people who are not active in the labour market (students, pensioners, etc.).

The acquisition by thousands of descendants of emigrants who left Luxembourg in the 19th century, has also re-launched the debate on the “double standards” practised with regard to these distant descendants of emigrants as opposed to foreigners residing in Luxembourg who contribute to the country’s economy as well as to its social and cultural life. Demands range from the simple abolition of the test to its replacement by compulsory Luxembourg language courses and exemptions based on level of education.

As early as 1985, the Council of State warned against the introduction of language skills that do not take into account the unequal realities and skills in this area: “It will be very difficult for the immigrant worker, especially the manual worker, to learn Lëtzebuergesch systematically in order to obtain a certificate. His life is divided for the most part between his workplace and his family. While it is natural that in the family the conversation is conducted in the mother tongue, i.e. the language of the country of origin, it is well known that in the workplace, particularly on construction sites, French is used in dialogues between workers of different nationalities and between workers and their bosses.”⁸⁰

The 2008 and 2017 laws also ignored the recommendations concerning language requirements of the first major European comparative study of ways of acquiring and losing nationality in 2006. The report stated that, “language proficiency requirements should, however, be managed flexibly, so that they act as an incentive rather than a disincentive and do not exclude certain groups completely. The mental capacity to learn a new language depends on prior foreign language education and decreases with age. Older people whose employment or family situation has given them little opportunity to learn the local language, or older family members who join their children, are often unable to learn a new language.”⁸¹

The analysis by the Council of State and this European study is further confirmed by naturalisation statistics (e.g. only 73 naturalisations of Portuguese citizens since 2018) and by the high failure rates for certain groups of people in language tests.

A current example to illustrate the problem: On the initiative of the Luxembourg Football Federation (FLF), the sports federations want to approach the government to discuss a possible modification of the law on nationality. What is their concern? One of the realities of Luxembourg as a country of immigration is the arrival at a young age, with their parents, of young sports talents from the most diverse countries of Europe, Africa, America and Asia. As they were not born in Luxembourg, they cannot opt for Luxembourg nationality at the age of 12, even though they attend school in Luxembourg and speak Luxembourgish at school or in their sports club. As their parents often come from countries and regions where they have not had the chance to have access to a thorough education, particularly in languages, they do not have the necessary language skills to pass the language test. This is why these young people, detected as great sporting talents, cannot access Luxembourg nationality until they are 18 years old and do not have the right to play in the youth categories of the national team. It would therefore be necessary either to extend the right of option to the age of twelve to these foreign children who are schooled in Luxembourg or to change the linguistic requirements by adapting them to the level of training of the individuals. However, these young people are building genuine links with the country every day, unlike the distant descendants of Luxembourgers who emigrated almost 200 years ago and live thousands of kilometres away.

80 Avis complémentaire séparé du Conseil d’État du 7 mai 1985 sur le projet de loi 2898/02 portant modification de la loi du 22 février 1968 sur la nationalité luxembourgeoise telle qu’elle a été modifiée dans la suite.

81 *Acquisition and Loss of Nationality. Volume 1: Comparative Analyses, op. cit.*, p. 452.

There is a discrepancy in the promotional campaigns for the acquisition of nationality by immigrants and their descendants residing in Luxembourg and Luxembourgers abroad through re-ethnicisation. For those abroad, there has been an active promotion of nationality acquisition. The success of Article 29 of the 2008 law is largely due to the commercial promotion by an American-Luxembourg businessman. While the Luxembourg authorities do help applicants residing in Luxembourg to fulfil the legal requirements for acquiring nationality, notably through the website of the Ministry of Justice (www.mj.public.lu) and a link to the “Dossier Nationalité” on the homepage (www.mj.public.lu/nationalite), with an explanation of the formalities and documents, there are no state-run or state-funded promotional campaigns for acquiring nationality, nor are there any welcome ceremonies once nationality has been acquired.

Through targeted de-ethnicising and re-ethnicising measures, Luxembourg citizenship legislation has evolved from an insular to an expansive citizenship regime. *Ius soli* provisions for second and third generations of foreign descent, *ius sanguinis* coupled with a liberal naturalisation regime, and dual or multiple citizenship without loss of citizenship coupled by easy re-acquisition measures for (former) emigrants and their descendants exemplify the range of citizenship policies that have been mobilised to make Luxembourg nationality as accessible as possible.

Nevertheless, despite this expansion, due to a constant high immigration, Luxembourg will soon reach the “break-even-point”, where the number of Luxembourgers will be lower than the number of foreigners in the population. As Luxembourg slowly but surely moves towards a million inhabitants, thorough reflection and political action remain therefore necessary on this question: How can, notably but not only through Luxembourg nationality, as many permanent residents as possible be included in a political and societal project for the common future of the Grand-Duchy of Luxembourg?

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