

Citizenship Based on Birth in Country

France • Germany • Greece • Italy
Portugal • Spain • United Kingdom

May 2012



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Executive Summary

The following short report includes information on citizenship laws of selected member countries of the European Union. It specifically addresses whether those countries automatically confer citizenship on children born in their territory. The Law Library's Foreign Law Specialists who contributed information to this response are Laura Andriulli (Italy), Nicole Atwill (France), Clare Feikert-Ahalt (United Kingdom), Edith Palmer (Germany), Theresa Papademetriou (Greece), Graciela Rodriguez-Ferrand (Spain), and Eduardo Soares (Portugal).

I. France

There are only a few cases in which the sole fact of birth on French soil qualifies a child to automatically receive French citizenship. Pursuant to articles 19 and 19-1 of the Civil Code,¹ those cases include

- any child born in France of an unknown father and mother,
- any child born in France of stateless parents, and
- any child born in France for whom foreign laws on nationality do not permit in any way the conveyance of the nationality of either one of the parents to him/her.

The child, however, will be considered to have never acquired French citizenship if, before reaching the age of majority, one of his parents is found (in the case of a child born of an unknown father and mother) and he acquires the parent's citizenship, or the foreign citizenship acquired or possessed by one of the parents is conveyed to him or her.

Finally, a child is French if born in France to at least one parent also born in France. If only one parent was born in France, the child may renounce French citizenship.²

II. Germany

Germany bestows birthright citizenship only on the children of aliens who have lived long enough in Germany to petition for naturalization in their own right. A child born in Germany to parents who are aliens acquires German citizenship only if one parent has had his or her habitual abode in Germany for at least eight years and either has a permanent German residence permit that entitles him or her to reside in Germany or another European Union (EU)

¹ Civil Code, current through Mar. 24, 2012, LEGIFRANCE, <http://legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20120417> (in French).

² *Id.* art. 19-3.

member country or has the citizenship of another EU member country.³ Aliens who have had their habitual abode for eight years in Germany are entitled to petition for naturalization,⁴ if no impediments exist.⁵

A foundling—that is, a child found on German soil whose parents are unknown—is deemed to be a German only for as long as it is not proven that he or she is an alien.⁶ Under the generally prevailing principle of *jus sanguinis*, only a child born to a German parent is a German citizen, with the exception of long-term residents described above.

III. Greece

Pursuant to article 1 of the Citizenship Code as ratified by Law 3284/2004, and as amended by Law 3838/2010, a child acquires Greek citizenship *ipso jure* by birth in the following cases:

- (1) born to a Greek mother or father [*jus sanguinis principle*]; or
- (2) born in Greece [*jus soli principle*] if one of the following three conditions are met:
 - (a) one parent was born in Greece and lives permanently in Greece; or
 - (b) the child does not acquire foreign citizenship; or
 - (c) the child is of unknown citizenship, unless the parent(s) refuse to cooperate in declaring the citizenship of the child.⁷

A new article 1A, which was added to the Code in 2010 by Law 3838, added two more cases in which a child of foreigners acquires Greek citizenship by birth or by attending a school in Greece: if

- (1) the child was born in Greece and lives in Greece with parents of a foreign nationality who have themselves both lived legally and permanently in Greece for at least five consecutive years, as long as the parents jointly register the child in the public registry of the place of residence within three years after the birth of the child; or
- (2) the child is of foreign parents but has completed six years of attendance in a Greek school in Greece and lives legally and permanently in Greece, upon completion of six years of schooling and after a joint declaration and application by the parents.⁸

³ Citizenship Act, Staatsangehörigkeitgesetz, July 22, 1913, REICHSGESETZBLATT 583, *as amended*, § 4(3), <http://www.gesetze-im-internet.de/rustag/BJNR005830913.html>.

⁴ Residency Act, Aufenthaltsgesetz, repromulgated Feb. 25, 2008, Bundesgesetzblatt I at 162, *as amended*, § 851, http://www.gesetze-im-internet.de/englisch_aufenthg/index.html.

⁵ Citizenship Act § 8.

⁶ Citizenship Act § 4 (2).

⁷ Law No. 3284/2004, EPISEMOS EPHEMERIS TES HELLENIKES DEMOKRATIAS [EKED] [OFFICIAL GAZETTE OF THE HELLENIC REPUBLIC], pt. A, No. 217 (2004) (translation by author).

⁸ Law 3838/2010, EKED, pt. A, No. 49 (2010) (translation by author).

Paragraph 3 of article 1A provides that article 1A applies only under the condition that both parents reside legally in Greece, based on a legally valid title, such as a residence card. It does not, however, specifically mention a proof-of-residence card.

In 2011, Law 3838/2010 was challenged on constitutionality grounds before the Council of State, which ruled that certain provisions of the law, including article 1A, contravene the Greek constitution.⁹ It appears that the plenary of the Council of State has not yet issued a decision on the constitutionality of article 1A and other provisions that have been challenged before it. (A decision on article 1A does not appear among the more recent decisions on the Council of State's website but was expected sometime in late 2011.)

IV. Italy

There are only a few cases in which Italian law confers citizenship automatically based solely on birth in the Italian territory. According to the New Rules on Citizenship,¹⁰ these cases include

- any child born in Italy of a citizen father or mother (art. 1);
- any child born or found in Italy of unknown parents (art. 1);
- any child born in Italy of stateless persons (art. 1);
- any child born in Italy who does not follow the citizenship of the parents under the law of the State to which the parents belong (art. 1);
- any child for whom paternal or maternal recognition or judicial declaration of filiation occurs while he or she is a minor (art. 2);
- any child for whom paternal or maternal recognition or judicial declaration of filiation occurs while he or she is of legal age, and the child declares to elect Italian citizenship within one year of the recognition or judicial declaration, or within one year of the declaration of effectiveness of an equivalent foreign provision (art. 2); and
- an alien born in Italy who has legally resided in the Italian territory without interruption until reaching majority and declares an intention to acquire Italian citizenship within one year from that date (art. 4).

V. Portugal

Nationality in Portugal is regulated by Law No. 37 of October 3, 1981,¹¹ and Decree-Law No. 237-A of December 14, 2006.¹² Birth within the territory of Portugal does not automatically confer citizenship.

⁹ Dimitris Christopoulos, *Greek State Council Strikes Down Jus Soli and Local Voting Rights for Third Country-Nations. An Alarming Postscript to the Greek Citizenship Reform*, EUROPEAN UNIVERSITY INSTITUTE (Mar. 9, 2011), <http://eudo-citizenship.eu/news/citizenship-news/444-greek-state-council-strikes-down-ius-soli-and-local-voting-rights-for-third-country-nationals-an-alarming-postscript-to-the-greek-citizenship-reform>

¹⁰ Law No. 91 of Feb. 5, 1992, *as amended*, Ministry of the Interior website, http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/cittadinanza/legislazione_30.html (in Italian).

The following persons are considered Portuguese by origin: the children of a Portuguese mother or Portuguese father born in Portuguese territory;¹³ the children of a Portuguese mother or Portuguese father born abroad if the Portuguese parent is in the service of the Portuguese government;¹⁴ the children of a Portuguese mother or Portuguese father born abroad if their birth is registered with the Portuguese civil registrar or if they declare that they wish to be Portuguese;¹⁵ persons born in Portuguese territory who are the children of foreigners, if at least one parent was born in Portugal and resides in the country, regardless of title, at the time of birth;¹⁶ persons born in Portuguese territory who are the children of foreigners not in the service of their country, if they declare that they want to be Portuguese citizens and provided that, at birth, one parent has resided in Portugal legally for at least five years;¹⁷ and persons born in Portuguese territory that do not possess any other nationality.¹⁸

VI. Spain

Children of nonresidents acquire Spanish citizenship at birth, only if

- (1) at least one of the parents was also born in Spain, except the children of diplomats accredited before the Spanish Government;
- (2) both parents lack any nationality or if their country's law does not assign any nationality to their children; or
- (3) the children's filiation has not been determined. Minors in this category born in Spain are presumed Spanish if Spain is their first place of stay.¹⁹

Nonresident parents of minors that are Spanish nationals may be authorized to stay in the country as residents, under the so-called *arraigo familiar* (family reunification) policy, if the parents live with the minor, are in charge of the child, and meet all the obligations and responsibilities required of parents. The resident status under these circumstances is granted for

¹¹ Lei No. 37/81, de 03 de Outubro, available at PROCURADORIA-GERAL DISTRITAL DE LISBOA [LISBOA ATTORNEY GENERAL'S OFFICE], http://www.pgdlisboa.pt/pgdl/leis/lei_mostra_articulado.php?nid=614&tabela=leis&pagina=1&ficha=1.

¹² Decreto-Lei No. 237-A/2006, de 14 de Dezembro, available at PROCURADORIA-GERAL DISTRITAL DE LISBOA, http://www.pgdlisboa.pt/pgdl/leis/lei_mostra_articulado.php?nid=895&tabela=leis&ficha=1&pagina=1&.

¹³ Lei No. 37/81, art. 1(1)(a).

¹⁴ *Id.* art. 1(1)(b).

¹⁵ *Id.* art. 1(1)(c).

¹⁶ *Id.* art. 1(1)(d).

¹⁷ *Id.* art. 1(1)(e).

¹⁸ *Id.* art. 1(1)(f).

¹⁹ Código Civil, BOLETÍN OFICIAL DEL ESTADO [B.O.E.] (July 25, 1889), art. 17.1, http://www.boe.es/aeboe/consultas/bases_datos/act.php?id=BOE-A-1889-4763&tn=1&p=20.110722#art21 (translation by author).

one year and may be extended while the qualifying conditions are still met. The parents do not automatically gain citizenship through the birth of a child.²⁰

VII. United Kingdom

Citizenship is not automatically granted to babies born in the UK to non-British parents. Individuals born in the UK are British citizens if their birth father or mother is a British citizen or settled in the UK. A person whose parents are not British citizens may register as a British citizen if, during the period the individual is a minor, either parent becomes a British citizen; if a parent is, or becomes, a member of the British armed forces; or if the child has lived in the UK for the first ten years of life with only limited leave outside the country. Individuals born outside the UK are considered to be a British citizen if, at the time of birth, either the mother or father is a British citizen otherwise than by descent. Infants found abandoned are considered to be British citizens.²¹

Elderly or other dependent relatives may come to live in the UK permanently; however, as it is unlikely that a child could support people in these categories, this is only permitted once the younger relative is financially stable and established. One of the parents or grandparents must be over the age of sixty-five and must depend wholly or mainly on the relative in the UK for money and be maintained and housed without recourse to public funds. In exceptional cases, leave to remain in the UK will be granted to brothers, sisters, aunts, uncles, and cousins over the age of eighteen, or to parents and grandparents under the age of sixty-five.²²

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May 2012

²⁰ Real Decreto 557/2011 of Apr. 20, 2011, on the Reglamento de Extranjeria [Regulation of Foreigners], arts. 124.3.a, 130.1, 130.2, B.O.E. (Apr. 30, 2011), <http://www.boe.es/boe/dias/2011/04/30/pdfs/BOE-A-2011-7703.pdf>.

²¹ British Nationality Act 1981, c. 61, § 1, <http://www.legislation.gov.uk/ukpga/1981/61/section/1>.

²² *Elderly and Other Dependent Relatives*, UK BORDER AGENCY, <http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/elderly-dependent/> (last visited Apr. 23, 2012).