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Ius Soli Citizenship

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In awarding citizenship to those born in the country, ius soli is an important way in which people gain citizenship; it incorporates the children of immigrants as members at birth or thereafter. Ius soli prevents persons born and raised in a state from remaining foreign nationals with limited rights to residence and political participation.

In 2010 it exists in some form in 19 of the 33 European countries included in the EUDO Citizenship study.

Since 1989 there have been:

- 12 instances of significant extensions
- 7 of restrictions

Ius soli has, for example, been introduced or strengthened in Germany (2000), Portugal (2006), Luxembourg (2009) and Greece (2010), while ius soli was removed in Malta (1989) and qualified in Ireland (2004). Ireland was the last pure ius soli regime in Europe, and here it has been made subject to additional conditions.

The trend is thus towards the wider availability of ius soli citizenship, but in more conditional forms, dependent on limited forms of prior parental residence and other conditions identified with integration.

Ius soli citizenship is awarded on the basis of birth in a territory; along with ius sanguinis citizenship based on parentage, it constitutes one of the two principal ways in which people gain citizenship.

Ius soli citizenship has the advantage of offering membership of a given political community to those most likely to live there, to be subject to its laws and to contribute to its society and the economy. It provides a way of promoting social integration and democratic legitimacy, and reducing concerns about internal exclusion and insecurity of residence.



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1 Varieties of ius soli citizenship in Europe

Ius soli citizenship is widely but by no means universally available in Europe. 19 European countries from 33 studied award ius soli citizenship either at birth or thereafter.¹ 10 of these countries grant ius soli citizenship at birth, and 16 after birth.

Forms of ius soli

While ius soli in its pure (or unconditional) form is not found in Europe since its abolition in Ireland in 2004, conditional ius soli appears in a variety of forms. Some of these are weaker than others; they can be distinguished by the degrees of delay, retrospectivity and discretion with which they are granted, and the extent of conditions applied.

On the one hand, pure ius soli may often be overinclusive by awarding citizenship to persons born in the territory by mere chance or because their parents moved there in order to obtain a particular citizenship for their child. On the other hand, forms of ius soli that involve lengthy delay, retrospective and onerous conditions, and administrative discretion in the granting of citizenship generally create unnecessary obstacles to full membership. Thus citizenship gained automatically at birth or by declaration at majority, and on the basis of prior parental residence is to be preferred to the generationally deferred acquisition of double ius soli, which requires that one parent has already been born in the country, and to facilitated naturalisation, which tends to be subject to significant conditions and costs. Often, several of these forms of ius soli are combined within a single citizenship law (for example, acquisition at majority for the so-called second generation and double ius soli acquisition at birth for the third generation).

We can distinguish four main forms of general ius soli available in Europe, which are ranked below from the strongest to the weakest:

- By declaration or automatically at or before majority in Belgium, Finland, France, Greece, Italy, Netherlands, Spain and United Kingdom
- On the basis of a period of prior parental residence in Belgium, Germany, Greece, Ireland, Portugal, and the United Kingdom
- On the basis of parental birth in the country (double ius soli) in Belgium, France, Greece, Luxembourg, Netherlands, Portugal and Spain
- Facilitated naturalisation for persons born in the country in Austria, Bulgaria, Croatia, Czech Republic, Hungary, Italy, Portugal, Romania, Slovenia and Spain.

No general provision for ius soli citizenship exists in Cyprus, Denmark, Estonia, Iceland, Latvia, Lithuania, Moldova, Malta, Norway, Poland, Slovakia, Sweden, Switzerland and Turkey.

Ius soli for foundlings and those otherwise stateless at birth

Ius soli is generally accepted for foundlings, and also for children who would otherwise be stateless at birth, even in countries whose laws are otherwise based on ius sanguinis. Exceptions are Estonia, Germany, Malta, Norway, Romania and Switzerland, who grant citizenship to foundlings, but not to children who would otherwise be stateless. The grant to otherwise stateless children is automatic in 21 countries, by declaration in 5, and through a procedure of facilitated naturalisation in 1 country.

¹ The 33 countries covered by the study by mid-2009 are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

Ius soli and multiple nationality

The inclusive effect of *ius soli* is augmented when dual citizenship is allowed, and reduced if it is not. While all countries accept dual citizenship when it is acquired on the basis of descent, not all accept it in connection with *ius soli* acquisition, but require citizens to choose between citizenships. The countries which allow dual nationality when it results from *ius soli* as well as from *ius sanguinis* now number fourteen: Belgium, Bulgaria, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Slovenia, and the United Kingdom. Those that do not systematically admit dual nationality even in cases of *ius soli* citizenship are: Austria, Croatia, Czech Republic, Germany, and Spain, though some of these allow many exceptions in cases of hardship.

The case of Germany illustrates the discriminatory effects of attempts to restrict dual citizenship acquired by *ius soli*. In Germany, dual citizenship is currently tolerated for children of parents with different nationalities, for EU citizens acquiring German citizenship through naturalisation and for third country nationals for whom renouncing their previous nationality is impossible, or from whom it cannot reasonably be required. Children of two foreign nationals, who are German citizens by birth in the territory, must, however, renounce their foreign nationality between age 18 and 23 in order to retain their German citizenship. When adopting the current law, Germany had to make a reservation to Article 5 of the European Convention on Nationality, which provides for non-discrimination between citizens, whether they are nationals by birth or have acquired its nationality subsequently.

A substitute for ius soli: a right to citizenship based on residence before the age of majority

The most important effect of *ius soli* is guaranteed access to citizenship for children of immigrant origin. Where an explicit introduction of *ius soli* is politically not feasible, these children can also be included through an entitlement to citizenship based on a few years of residence in the country before the age of majority. Such a rule will also provide access to citizenship to the so-called generation 1.5, those brought into the country as minors by their parents. Such a provision is made in Sweden, for example, where children who have lived in the country for five years can become citizens without further conditions simply by notifying the authorities.

Ius soli and EU citizenship

Wide variation in the provision of *ius soli* citizenship creates differential access to EU citizenship. Children born in countries without *ius soli* will not be able to enjoy the same rights of free movement and protection under EU law as those who are citizens of the Union because of their birth in the territory of a Member State with *ius soli* provision.

2 Trends in ius soli provision

Only a handful of countries operate a moderately liberal *ius soli* policy. Where present it is often in quite weak forms, subject to multiple or onerous conditions, or attenuated by other provisions of citizenship law. Citizenship policy is, however, by no means static. In the years 1989-2010 there has been a significant number of changes with respect to *ius soli* – twelve extensions and seven limitations.

While reforms in Portugal, Luxembourg and Greece have introduced strong forms of *ius soli*, and a range of weaker *ius soli* provisions have been introduced in Austria, Belgium, Finland, and Germany in this period, some other countries have restricted *ius soli* or made it more conditional. It has been removed altogether in Malta, and qualified in Ireland through requiring that one parent must have had residence for three out of the last four years. Lesser restrictions have occurred in Belgium, France, Italy, Germany and the Netherlands.

While there is an overall increase in the number of countries that add *ius soli* provisions to a basic principle of *ius sanguinis*, there is no clear trend within this group of countries to adopt a specific form of *ius soli*. Overall, however, the number of countries that offer merely facilitated naturalisation is becoming smaller as more states introduce *ius soli* at birth conditional on legal long-term parental residence, or, after birth, as an option at majority. The group of countries with double *ius soli* has also been strengthened through the recent reforms in Luxembourg and Greece.

Ius soli citizenship has also become more politicised, and, as in the case of adult naturalisation, has become increasingly conditional, through the introduction of more stringent residence requirements for parents, and of additional requirements for facilitated naturalisation, such as continuous residence, public order conditions, and language and civic knowledge tests.

3 Policy recommendations

- 1) *Ius soli* citizenship should be provided in all countries for foundlings and otherwise stateless children as a matter of human rights.
- 2) Some form of *ius soli* citizenship is desirable to integrate immigrant populations; those countries with *ius soli* should retain it, and those without it should introduce it in some form.
- 3) Where an explicit introduction of *ius soli* is politically not feasible, the children of immigrants should be entitled to citizenship based on a few years of residence in the country before the age of majority.
- 4) In order to make *ius soli* more effectively available, countries should allow dual citizenship, and not require those born in the country and inheriting another citizenship to choose between citizenships.
- 5) The conditions applied to *ius soli* citizenship – for residence of parents and qualification of children at majority – should not be made too onerous, and should not be subject to extensive administrative discretion.
- 6) Facilitated naturalisation as the only form of *ius soli* citizenship can be regarded as a very weak provision, and should be replaced or supplemented by access to citizenship through entitlement or declaration.
- 7) The EU should promote the adoption by Member States of some form of *ius soli* in order to strengthen the shared space of free movement by giving more weight to access to citizenship of the Union by birth in the territory of the Union.

4 Prospects for reform

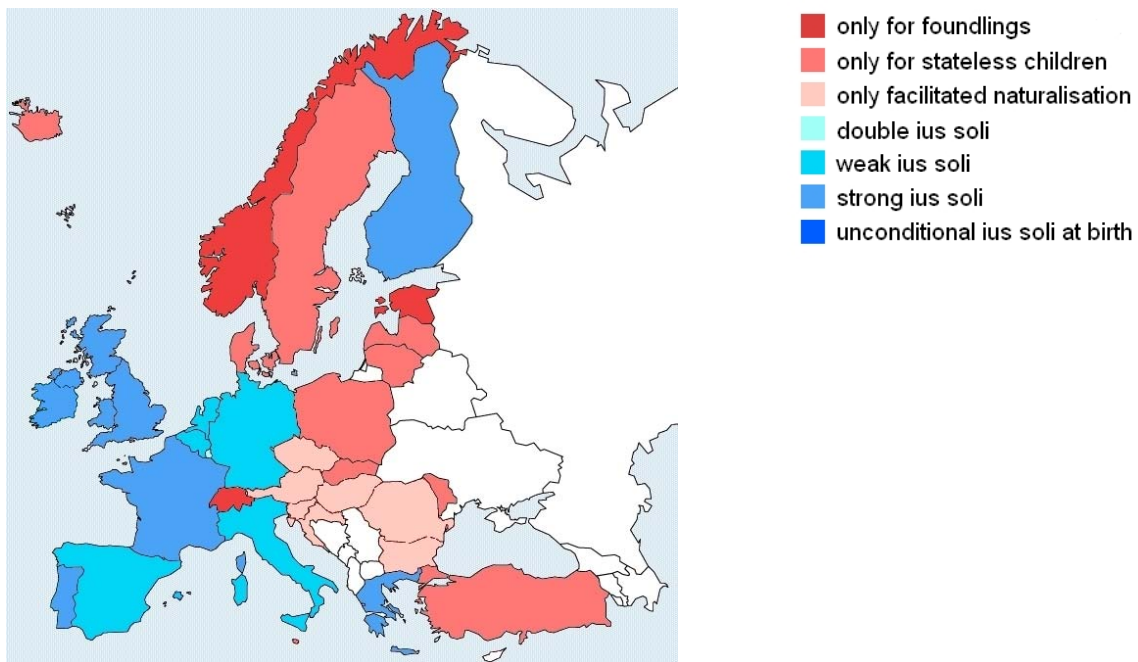
While there have been more extensions than restrictions in recent years, the increasing politicisation of citizenship policies, and the tendency towards greater conditionality mean that convergence towards more inclusive *ius soli* citizenship policies is not assured.

There is no guarantee that there will be a convergence towards more liberal policies, especially in view of doubts expressed in many countries about the limits of commitment derived simply from birth and residence. Trends are not all in the direction of liberalisation, and in many cases the conditions attached have the effect of making *ius soli* citizenship depend increasingly on immigration law. There is a tendency for conditions applied to *ius soli* to parallel or follow those for naturalisation, including longer residence for parents or children, and tests of language and civic knowledge.

5 *Ius soli* provisions in Europe

In the map and timeline below we have ranked *ius soli* provisions by their general inclusiveness and have categorised countries on the basis only of their most inclusive *ius soli* provision in 2010.

1. *ius soli* only for foundlings in Estonia, Germany, Malta, Norway and Switzerland
2. *ius soli* only for stateless children in Denmark, Estonia, Iceland, Latvia, Lithuania, Moldova, Malta, Poland, Slovakia, Sweden and Turkey
3. only facilitated naturalisation for those born in the country in Austria, Bulgaria, Croatia, Czech Republic, Hungary, Italy, Portugal, Romania, Slovenia and Spain
4. double *ius soli* (only if a parent born in the country) in Luxembourg
5. weak *ius soli* (automatic/by declaration at or after birth with substantial conditions of parental or target person residence) in Belgium, Germany, Italy, Netherlands, Spain
6. strong *ius soli* (automatic/by declaration with limited conditions of parental or target person residence) in Finland, France, Greece, Ireland, Portugal, UK
7. unconditional *ius soli* at birth in none of the countries analysed



As well as showing reforms and restrictions that change the most inclusive form of provision, and thus the *ius soli* classification of countries, the chart below shows also lesser reforms and restrictions that change a *ius soli* provision without changing the overall classification of those countries.

