The Naturalization-Privacy Interface

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THE NATURALIZATION–PRIVACY INTERFACE: PUBLICATION OF PERSONAL DATA OF NEW EUROPEAN UNION CITIZENS VERSUS EUROPEAN PRIVACY STANDARDS

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Abstract: At present, there is great variance in the law and practice concerning the publication of personal data of newly naturalized citizens across the European Union Member States, affecting a million individuals annually. Depending on the extent of the personal details made available, publishing the fact that an individual has naturalized can have negative repercussions in that individual's state of naturalization or his state of other/prior nationality. While some European states publish personal details in their official journals to some extent, twelve do not do so at all. In recent years, several countries have amended their legislation or re-assessed publication practices in response to the growing awareness of the importance of data protection concerns. This article analyzes the current Member State practices in this field, focusing in particular on data protection rules for naturalization in Ireland, France, and Latvia. This analysis documents the emergence of a clear trend toward the development of a more critical approach to the publication of personal data, which was previously the unquestioned default. The article subsequently

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investigates the possibility of identifying a legal standard that could be used to determine whether a more coherent approach to regulating the issue of publishing personal data of naturalized citizens can be deduced. In the EU context, it finds that such publication practices may fall within the scope of the EU General Data Protection Regulation. In the context of Council of Europe law, the principles of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data undoubtedly apply. U.N. instruments, by contrast, appear *de facto* inapplicable. The article concludes with a set of recommendations for what information should be published and how, emphasizing that public authorities should carefully scrutinize and potentially reconsider their strategies managing the publication of personal data upon naturalization.

INTRODUCTION 238

I. EUROPEAN PRACTICE 248
A. *Ireland* 254
B. *France* 256
C. *Latvia* 258

II. APPLICABLE PRIVACY STANDARDS 260
A. *EU Legal Framework* 261
B. *Council of Europe Standards* 270
C. *United Nations Standards (UDHR and ICCPR)* 276

III. CONCLUSIONS AND RECOMMENDATIONS 278

INTRODUCTION

Law and practice on the publication of the personal data of new citizens vary greatly throughout the European Union (EU). Some countries, such as Greece, publish a large amount of information in respect to new citizens in the *Official Journal*.[1]

1. KODIKAS ELLENIKES ITHAGENEIAS [KEI] [CODE OF GREEK CITIZENSHIP] art. 8(1) (Greece).

Others, like Estonia, strictly prohibit the publication of personal data.[2] With 995,000 new citizens naturalizing in the EU every year,[3] plenty of EU citizens are directly affected by radically different privacy policies depending on their Member State of naturalization.[4] Indeed, whether your personal data will be made easily accessible and searchable via the most popular Internet search engines seems to be a matter of luck. This state of affairs seems to linger under the radar of privacy advocates and citizenship scholars and is highly problematic, especially in the context of the heightened attention to privacy and data protection with the new EU General Data Protection Regulation (GDPR), which entered into force on May 25, 2018,[5] and the adoption of the recently modernized Convention 108 of the Council of Europe.[6] The issue, which has seemingly been largely irrelevant

2. EUR. MIGRATION NETWORK [EMN], AD-HOC QUERY ON NATURALISATION 2, 4 (Nov. 9, 2015), https://www.udi.no/globalassets/global/european-migration-network_i/ad-hoc-queries/compilation-ie_ad_hoc_query_on_naturalisation_open.pdf [hereinafter EMN].

3. *Acquisition of Citizenship in the EU*, EUROSTAT ¶ 1 (Apr. 9, 2018), ec.europa.eu/eurostat/documents/2995521/8791096/3-09042018-AP-EN.pdf/658455fa-c5b1-4583-9f98-ec3f0f3ec5f9.

4. *See* Gerard-René de Groot, *Towards a European Nationality Law*, ELEC. J. COMP. L., OCT. 2004, at 1, 20–21, https://www.ejcl.org/83/art83-4.PDF (discussing the differences among Member States in gaining access to European citizenship); *see also* Dimitry Kochenov, Ius Tractum *of Many Faces: European Citizenship and a Difficult Relationship between Status and Rights*, 15 COLUM. J. EUR. L. 169, 181–182 (2009) (discussing how "European citizenship is largely left within the virtually exclusive domain of the Member States"); Maciej Szpunar & María Esther Blas López, *Some Reflections on Member State Nationality: A Prerequisite of EU Citizenship and an Obstacle to Its Enjoyment*, *in* EU CITIZENSHIP AND FEDERALISM: THE ROLE OF RIGHTS 107 (Dimitry Kochenov ed., 2017) (explaining "that EU citizenship is a 'unique concept,' since a person must have the nationality of a Member State in order to be an EU citizen"); Hans Ulrich Jessurun d'Oliveira, *Union Citizenship and Beyond* 3, 9 (Eur. Univ. Institute Working Papers, Law 2018/15, 2018) (discussing that the Member States determine who their citizens are and the rights associated with citizenship).

5. *See* Council Regulation 2016/679, 2016 O.J. (L 119) 1–2, 65 (stating different provisions of the regulation that emphasize the importance of trust and individual autonomy regarding personal data for natural citizens); PAUL VOIGT & AXEL VON DEM BUSSCHE, THE EU GENERAL DATA PROTECTION REGULATION (GDPR): A PRACTICAL GUIDE 1–2 (2017) (explaining that the ability to process and exchange personal data has become increasingly easier and that the GDPR is designed to make companies, even those outside of the EU, more accountable for their data protection obligations).

6. *See* Protocol Amending the Convention for the Protection of Individuals with

in the United States, where the data protection of new Americans is at a very high level since only the data of expatriate Americans is published,[7] affects dozens of thousands of new Europeans naturalizing every year.

The aim of this article is to map the landscape of the law and practice of disclosing the personal data of new citizens at naturalization across the EU, as well as to analyze the applicability of the updated European data protection regime to the current practice, as widely heterogeneous as it stands. The article concludes with a set of recommendations concerning the best practice of handling the personal data of new EU citizens following their naturalization in the EU. We particularly underline the need to find and strictly uphold the right balance between the societal need to know who "joined" the collective of citizens on the one hand, and the imperative to avoid discrimination between the citizens and equally uphold privacy and dignity standards of all those concerned, including the newly-naturalized citizens, on the other hand.[8]

Let us start with two examples where personal data disclosure following naturalization was in the spotlight. First, immediate reaction followed when the newly-naturalized citizens of Latvia discovered that the *Official Gazette* of the Republic contained not only their full names and the dates of naturalization, but also the dates and places of birth, full addresses and individual taxpayer numbers.[9] As a result of a

Regard to Automatic Processing of Personal Data, art. 1, Council of Europe, Oct. 10, 2018, C.E.T.S. 223 (declaring on behalf of the "member States of the Council of Europe and the other Parties to the Convention for the Protection of Individuals" that personal autonomy over personal data is necessary to human dignity and in the interest of human rights and must be secured and protected); Jörg Ukrow, *Data Protection without Frontiers? On the Relationship between EU GDPR and Amended CoE Convention 108*, 2 EUR. DATA PROTECTION L. REV. 239, 239 (2018).

7. 26 U.S.C. § 6039G (2018).

8. For a critical analysis of the concept of naturalization, see Dora Kostakopoulou, *Why Naturalisation?*, 4 PERSPECTIVES ON EUR. POLITICS & SOC'Y 85, 88 (2003).

9. Press Release from Baiba Broka, Minister of Justice of Latvia, „Par Ministru kabineta rīkojuma „Par uzņemšanu Latvijas pilsonībā naturalizācijas kārtībā" publicēšanu" [On the Publication of the Cabinet of Ministers' Order on the Admission of Latvian Citizenship by Naturalization] (June 6, 2014), http://tap.mk.gov.lv/doc/2015_01/TMZino_060614_publ.1245.docx.

multi-agency deliberation process involving the courts, the Latvian Republic decided to change its approach to the publication of the personal data of the newly-naturalized citizens by 180 degrees in 2014.[10] Indeed, when all the core bureaucratic data about the person is freely searchable on the Internet, it is difficult to argue that high European privacy standards are upheld. The discrimination element is equally of importance here: in many EU Member States, dozens of thousands of naturalized citizens *de facto* seem to enjoy fewer rights to privacy than the natural-born citizens, who legitimately expect not to have their core taxpayer information findable on search engines such as Google in almost all countries.[11] This being said, discrimination on the basis of the manner in which citizenship is acquired remains prohibited in the EU,[12] making up part of the general non-discrimination principle in EU law.[13] The Latvian U-turn is not atypical. As we will demonstrate, numerous EU Member States have been reassessing their prevailing practice in the context of the growing awareness of the privacy concerns of the newly-naturalized citizens, as this right is gaining ground in the EU.

Also, in terms of the starting position to publish personal data

10. *Compare id.* (discussing the Latvian government's publication of a person's name, surname and personal identification number upon admission of citizenship in Latvia's Official Gazette and government website), *with* EMN, *supra* note 2, at 6 (explaining the Latvian government's recent decision to no longer publish personal data of newly admitted citizens as of August 2014).

11. *Cf.* Ken Devos & Marcus Zackrisson, *Tax Compliance and the Public Disclosure of Tax Information: An Australia/Norway Comparison*, 13 EJOURNAL TAX RES. 108, 109, 113–15 (2015) (explaining mainly that few countries publish tax information on the internet while also discussing the role of race, nationality and culture in perceived tax compliance behaviors).

12. *E.g.*, 136/78 Criminal Proceedings against Vincent Auer, ECLI:EU:C:1979:34, ¶ 28.

13. *See, e.g.*, 117/76, Albert Ruckdeschel & Co. et al v. Hauptzollamt Hamburg-St. Annen, ECLI:EU:C:1977:160, ¶ 7; C-300/04, Eman & Sevinger v. College van burgemeester en wethouders van Den Haag, ECLI:EU:C:2006:545, ¶ 61 [hereinafter Eman & Sevinger]. *But see* Dimitry Kochenov, *Citizenship without Respect: The EU's Troubled Equality Ideal* 4 (NYU Law Sch., Jean Monnet Working Paper 8/10, 2010) (outlining the complexity of the operation of the principle of equality in the context of EU law).

without giving it further thought, Latvia is not an atypical story. In fact, there seems to be no consensus in the EU between the approaches taken on this issue as we move from one state to another, as has been documented most recently by the *ad hoc* query on naturalization of the European Migration Network (EMN), which this article takes as a starting point and updates.[14] As we will discuss in the next section, twelve EU Member States refuse to publish any information on the newly-naturalized citizens, while others disclose such information to varying degrees, often making it freely available on the internet.

The complete absence of any common ground on the issue of the publication of the personal data of the newly-naturalized citizens of the EU can be illustrated by the second example of putting the issue in the spotlight, which, instead of a regulatory reform like in Latvia, led to threats of prosecution. When the names of the investors naturalized in Cyprus based on *ius doni*[15] were leaked by activists opposing such practice to the press,[16] the Cypriot Commissioner for Personal Data Protection noted that, "there is no legal basis for publishing such data" and concluded that such publication may constitute a criminal offense.[17] In contrast, in many other countries, such as Cyprus' sister-nation Greece, *not* publishing the data of the new citizens amounts to a

14. EMN, *supra* note 2, at 5.

15. For a critical analysis of the Cypriot citizenship by investment program in the light of EU Law, see Sofya Kudrayashova, *The Sale of Conditional EU Citizenship: The Cyprus Investment Programme Under the Lens of EU Law*, 4 EUR. PAPERS 1265, 1266–67 (2018). For the general context of citizenship by investment in the EU, see Kristin Surak, *Global Citizenship 2.0: The Growth of Citizenship by Investment Programs* 1 (Inv. Migration Working Papers IMC-RP 2016/3, 2016); CHRISTIAN H. KÄLIN, *IUS DONI* IN INTERNATIONAL LAW AND EU LAW 44 (2019) (explaining that *ius doni* is citizenship by investment flowing from naturalization based on the applicant's contribution to the country's economy).

16. Sara Farolfi, David Pegg, & Stelios Orphanides, *The Billionaires Investing in Cyprus in Exchange for EU Passports*, GUARDIAN (Sep. 17, 2017, 8:04 PM), https://www.theguardian.com/world/2017/sep/17/the-billionaires-investing-in-cyprus-in-exchange-for-eu-passports.

17. Stelios Orphanides, *Confidentiality for Investors Buying Passports*, CYPRUS MAIL (Feb. 28, 2018), cyprus-mail.com/2018/02/28/cipa-insists-confidentiality-leak-exposed-naturalised-investors/.

violation of the law.[18] Furthermore, the authorities of Malta, operating a similar citizenship for investment scheme, also fully disclose the names of all the investors on a regular basis.[19] Hence, what is against the law on Cyprus (and now Latvia) is precisely required by law in Malta and Greece.

It is difficult to blame the journalists breaking Cypriot law outright: the Cypriot lists contained plenty of interesting names, including powerful oligarchs from the former Soviet Union, Chinese tycoons, and scions of prominent dictatorial families from all around the world, mostly representing, unsurprisingly, the countries granting citizenship of relatively low quality.[20] One can unquestionably argue that the disclosure of the names of new citizens could definitely be in the public interest—precisely what the journalists have done.[21] Yet, it is also true that disclosing names of new citizens can cause grave harm to the persons concerned moving far beyond simple inconvenience. Those heading from jurisdictions inimical to the possession of multiple citizenships, such as China, Ukraine, or Japan, can be deprived of their original nationalities with all the harsh consequences that follow,[22] which is a threat affecting the citizens of nearly half

18. KEI, art. 8(1).

19. Individual Investor Programme Regulations, S.L. 188.03 § 14(2) (Malta).

20. *See* Sara Farolfi, Luke Harding & Stelios Orphanides, *EU Citizenship for Sale as Russian Oligarch Buys Cypriot Passport*, GUARDIAN (Mar. 2, 2018, 6:00 PM), https://www.theguardian.com/world/2018/mar/02/eu-citizenship-for-sale-as-russian-oligarch-oleg-deripaska-buys-cypriot-passport; *see also* Farolfi, Pegg, & Orphanides, *supra* note 16 (discussing specific names and titles of people exposed in the information leak). On the approaches to the quality of citizenship, see, eg., YOSSI HARPAZ, CITIZENSHIP 2.0 (2019); KÄLIN AND KOCHENOV'S QUALITY OF NATIONALITY INDEX: AN OBJECTIVE RANKING OF THE NATIONALITIES OF THE WORLD (Dimitry Kochenov & Justin Lindeboom, eds. 2020).

21. Farolfi, Pegg, & Orphanides, *supra* note 16.

22. *See* Peter J. Spiro, *Dual Citizenship as Human Right*, 8 INT'L J. CONST. L. 111, 121–22, 126–27 (2010) (analyzing some countries' hostility toward dual citizenship and consequences that arise from denouncing citizenship). *See generally* Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L. J. 1411, 1433 n. 90, 1441 n. 129, 1447, 1464 n. 228 (1997) (explaining the greater risks and consequences for dual citizenships relating to such countries as China, Japan and governments in the "former Soviet republics," which conceivably includes the Ukraine).

of the world's jurisdictions,[23] including several EU Member States, such as Austria, Lithuania and Slovakia.[24] Those changing citizenship precisely to get a chance to escape suffocating dictatorial regimes in the previous home could suffer repercussions too. It is thus impossible to state that law-abiding citizens have nothing to fear when their names are publicized in the context of naturalization abroad—quite the contrary is true. Negative consequences ranging from persecution to the loss of the original nationality and all the rights attached to it, are among the outcomes of the disclosure of private data at the moment of naturalization. Catering to the interests of openness and transparency, while attempting to minimize the loss of rights by the newly-naturalized citizens, is thus a typical example of a situation where finding balance is not an easy matter, which no doubt underlies the radical differences in the regulation of this issue at the national level among the EU's 27 Member States.

Privacy in connection with national identities is mostly presented in the literature and public debate in a radically different light—naturalization context hardly enters the picture.

23. *But see* PETER J. SPIRO, AT HOME IN TWO COUNTRIES 7 (2016) (stating that a "clear majority of countries now permits dual citizenship, and the trend is unidirectional").

24. Dimitry Kochenov, *Double Nationality in the EU: An Argument for Tolerance*, 11 EUR. L. J. 323, 323 n.1, 341 (2011) (discussing the naturalization procedure for the Member States of the EU and the trends in approaching nationality); *see* C-221/17 Tjebbes et al. v. Minister van Buitenlandse Zaken, ECLI:EU:C:2019:189, ¶¶ 13, 50 (deciding that Member States of the EU are not precluded from creating legislation that sets conditions under which their respective nationals may lose citizenship and many of the rights that attaching thereto if they possess any other citizenship status); *see also* José-María Arraiza, *Good Neighbourliness as a Limit to Extraterritorial Citizenship: The Case of Hungary and Slovakia*, *in* GOOD NEIGHBOURLINESS IN THE EUROPEAN LEGAL CONTEXT 116 (Dimitry Kochenov & Elena Basheska eds., 2015) (explaining that Slovakia "established the automatic withdrawal of Slovak nationality upon the voluntary acquisition of a foreign one" in reaction to the entry into force of Hungarian legislation granting citizenship to Hungarian minorities abroad, including in Slovakia); Dimitry Kochenov, *The* Tjebbes *Fail*, 4 EUR. PAPERS 319, 320 (2019) [hereinafter Kochenov, *The* Tjebbes *Fail*] (explaining how the *Tjebbes* ruling negatively affects matters of EU citizenship). *See generally* David A.J.G. de Groot, *Free Movement of Dual EU Citizens*, 3 EUR. PAPERS 1075, 1081, 1095 (discussing how the current EU law undermines protections of people with dual nationality when they move between Member States of the EU and ultimately diminishes their rights).

The increasing use of biometric data in identity documents to counter identity theft and fraud, as well as to enable the prevention, detection, prosecution or investigation of crime, raises concerns about potential abuse or misuse by authorities or private parties.[25] While photographs and information on height and eye color to identify persons have become a standard for a considerable time span, the increased use of further biometric information and identifiers, such as fingerprints and facial recognition, has become widespread in the years following the 9/11 terror attacks in New York City.[26] Biometric data is also integrated in personal identity cards or passports to facilitate machine recognition and increase traceability.[27] Since 2004, the EU has harmonized the basic features of passports even further and increased the use of biometric information.[28]

Despite widespread use, such practices are potentially problematic because it remains largely unclear whether such practices are efficient, proportionate, or effective.[29] Particularly, while humans can "opt-out" and (potentially) cease using devices such as computers, smartphones, wearables or tablets, the "use"

25. Catherine Jasserand, *Law Enforcement Access to Personal Data Originally Collected by Private Parties: Missing Data Subjects' Safeguards in Directive 2016/680?*, 34 COMPUT. L. & SEC. R. 154, 155 (2017).

26. *Working Document on Biometrics*, 12168/02/EN art. 29, at 2–3 (2003), https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2003/wp80_en.pdf; *Opinion 3/2005 on Implementing the Council Regulation (EC) No. 2252/2004 on Standards for Security Features and Biometrics in Passports and Travel Documents Issued by Member States*, 1710/05/EN, 2005 O.J. (L 385) 3 [hereinafter *Opinion 3/2005*].

27. EUR. UNION AGENCY FOR FUNDAMENTAL RIGHTS, FUNDAMENTAL RIGHTS AND THE INTEROPERABILITY OF EU INFORMATION SYSTEMS: BORDERS AND SECURITY, 20–21 (2017).

28. Council Regulation 2252/2004, 2004 O.J. (L 385) 1.

29. *See European Data Protection Supervisor Opinion, on the Proposal for a Regulation of the European Parliament and of the Council Amending Council Regulation (EC) No 2252/2004 on Standards for Security Features and Biometrics in Passports and Travel Documents Issued by Member States*, 2008 O.J. (C 200) 1, 2 (stating that the European Commission has not yet conducted adequate assessments evaluating the benefit of using biometric data in passports with the potential threat of data protection issues); *see also Opinion 3/2005*, *supra* note 26, at 11–12 (concluding that exhaustive discussion in society and study results are necessary before biometric features are implemented in passports and other travel documents).

of biometric identifiers cannot be manipulated without grave consequences for the respective individual. This concerns fingerprints, iris, facial, and voice recognition, as well as DNA. Additionally, the sheer presence of artefacts such as human DNA in a specific area (e.g. a crime scene) might potentially lead to unjustified conclusions by investigators. This example illustrates that strictly limited use, additional safeguards, and high standards when employing such methods are crucial to avoid human rights violations.[30] Besides, states have seemingly become increasingly willing to "innovate" on the use and dimensions of national identities, as evidenced in Estonia and the "e-residence" shows, an endeavor meant to facilitate cross-border business and boost the country as an economic hub.[31]

It is most surprising in this context to see that significant disclosures of personal information required by law following naturalizations in a large number of EU Member States have gone unnoticed both in privacy and in citizenship legal and political science literatures. The lacuna is all the more acute, given the particularly grave level of harm that such disclosures are prone to inflict on those concerned, ranging from violations of privacy to the loss of other citizenships and all the rights they bring, against their will. This is the lacuna this paper aims to identify and take the first steps towards filling.

Balancing the interest of the state and society in disclosing such information with the privacy and the protection of other rights of individuals is thus the fundamental starting point in thinking about the interface of privacy rights and naturalization. Keeping this starting point in mind, we proceed by analyzing the current practice of personal data disclosures upon naturalization across the EU. Using Ireland, France, and Latvia as case studies,

30. FORENSIC GENETICS POLICY INITIATIVE, ESTABLISHING BEST PRACTICE FOR FORENSIC DNA DATABASES 6, 8, 31–33 (2017), http://dnapolicyinitiative.org/report/.

31. Vadim Poleshchuk, *'Making Estonia Bigger': What E-Residency in E-Estonia Can Do for You, What It Can Do for Estonia*, INV. MIGRATION POLICY BRIEF IMC-PB 2016/1 1 (2016). For a critical account of the growing importance of digital identities, see Oskar J. Gstrein & Dimitry Kochenov, *Digital Identity and Distributed Ledger Technology: Paving the Way to a Neo-Feudal Brave New World?*, 3 FRONTIERS IN BLOCKCHAIN, Mar. 2020, at 5.

a bird's-eye view is provided of the legal systems where the practice of full disclosure of the personal information of the newly-naturalized citizens has recently been in the spotlight of public scrutiny and was either entirely or partially amended. Indeed, all three of these Member States recently saw a radical rethinking of the legal-political approach to the issue. In Part II, we analyze European and international privacy standards potentially applicable to data disclosures upon naturalization. In Part III, we argue that, although the law of the EU and the Council of Europe, as well as international legal standards, could potentially be of relevance, they do not provide any clearly articulated guidance on the matter, leaving it up to states to determine how to approach the difficult issue of guaranteeing the privacy of new citizens.

We conclude with a brief outline of the best practice in this area of law and policy, based on the analysis provided. In particular, we make three interrelated points in figuring out the best practice:

First, we propose that national practices of publication of personal data upon naturalization be assessed and redesigned, taking into account the possibilities of information management in the Digital Age, as well as the existing obligations of states under European and international law. Whereas it had been cumbersome to search, combine, and analyze information in the pre-Internet era, new technologies facilitate these processes enormously. Hence, the risks of privacy infringements in this domain have grown considerably over the last decades, which seems to make it advisable to consider general publication of such information carefully.[32]

Secondly, it is not only necessary to think about publication, but also necessary to consider what happens once the information is in the public domain. As we will show, the French and Dutch approaches in particular address this problem. Generally, however, by limiting access to (not the existence of) such a publication—in the spirit of the *Google Spain* decision of the

32. Report of the Special Rapporteur on the Right to Privacy, ¶ 56, U.N. Doc. A/73/45712 (Oct. 17, 2018).

European Court of Justice (ECJ)[33]—any naturalized individual should have the possibility to opt out of the public spotlight within the new country by making a de-listing request. In fact, this should arguably be the default position. By managing access to personal data appropriately, it is possible to strike a balance between the public interest in receiving the information and protecting individual rights.

Thirdly, it would be advisable for the EU Member States to come up with the acknowledged best practice in this area. While the current regulatory framework suggests that each country enjoys absolute discretion to decide for itself, as has long been the established approach in the field of citizenship in the EU,[34] the increasing harmonization of the privacy framework in Europe and across the world raises the expectation of individuals to be subject to at least comparable standards guaranteeing the safeguarding of their rights, albeit via different routes, thus also reflecting the on-going global convergence of privacy standards.[35] Crucially, where disclosure of personal data related to naturalization is mandatory, any common standard or best practice ought to contain very clear guidelines for opt-outs when such disclosures could demonstrably lead to significant negative consequences for the newly naturalized citizens either in the new or other states of nationality.

I. EUROPEAN PRACTICE

The landscape of legal rules on the disclosure of personal information of newly-naturalized citizens and the application of such rules in the EU is very diverse indeed, demonstrating no strong consensus among EU governments on this matter. This

33. *See* C-131/12 Google Spain SL v. Agencia Española de Protección de Datos, ECLI:EU:C:2014:317, ¶ 99 [hereinafter Google Spain].

34. Jussurun d'Oliveira, *supra* note 4, at 3, 9; *see* Daniel Sarmiento, *EU Competence and the Attribution of Nationality in Member States* 11 (Inv. Migration Working Papers IMC-RP 2019/2, 2019).

35. Graham Greenleaf, *Global Convergence of Data Privacy Standards and Laws (Speaking Notes for the European Commission Events on the Launch of the General Data Protection Regulation (GDPR), Brussels and New Dehli, 25 May 2018)*, U. OF N. S. WALES L. RES. SERIES, 2018, at 1, 1–2.

being said, a strong trend, which seems to be emerging across the continent, points in the direction of at least problematizing the formerly default option of full data disclosure, often leading to the reversal of established approaches in favor of respecting privacy and other rights of the newly-naturalized citizens.

Following a general presentation of the EU's legal landscape on this issue, this section turns to three case-studies of regulation at the national level, where the rules have recently been changed following a public debate and, in some cases, engagement of the judiciary. Such change resulted either in the attempts to restrict the availability of the disclosed personal information in the public domain, like in France, or the abolition of such disclosures altogether, like in Ireland and in Latvia. The emerging trend in Europe is crystal clear: disclosure by default is gradually being replaced with a more critical approach.

EU Member States that do not publish information related to the naturalization of specific individuals include: Austria, Croatia, Cyprus, the Czech Republic, Estonia, Germany, Hungary, Ireland, Latvia, Luxembourg, Slovakia, Slovenia,[36] Sweden, and the United Kingdom (which left the Union in 2020).[37] Moreover, it appears that Denmark and Poland do not publish information related to the naturalization of specific persons either.[38]

Other Member States of the EU demand different levels of

36. EMN, *supra* note 2, at 7 (explaining that Slovenia only publishes information in its Gazette whenever it is otherwise unable to reach the person in order to carry out administrative acts).

37. *Id.* at 7.

38. *See Confirmation of Polish Citizenship or Its Loss*, MINISTRY OF THE INTERIOR & ADMIN., https://archiwum.mswia.gov/pl/en/document/ways-of-acquiring-polic/79 7/,Confirmation -of-Polish-citizenship-or-its-loss.html (last visited Sept. 25, 2019) (briefly explaining Poland's method of communicating to individuals regarding their confirmation or loss of citizenship); *see also* EMN, *supra* note 2, at 7 (reporting Poland's official position that it does not publish personal information in its naturalization process); Bekendtgørelse om forskellige forhold vedrørende Statstidende [Executive Order on Various Matters Relating to the Official Gazette] 2014 (Den.), https://www.retsinformation.dk/Forms/R0710.aspx?id=162572 (showing an exhaustive list of the types of information published in the Gazette, which does not list naturalization information or any similar subject as a topic that is published).

personal information disclosure. In accordance with its Law on Citizenship,[39] Lithuania publishes the name, date of birth, country of birth, and current residence of newly naturalized citizens in the online Register of Legal Acts.[40] New Greek citizens also have their full names, country of birth, city of residence, and Special Identity Card numbers published in the Greek digital *Gazette*.[41] Belgium's nationality law likewise prescribes the publishing of naturalization acts,[42] and their *Official Monitor* disseminates the full name as well as the date and place of birth of each new citizen.[43] The *Official Monitor* makes the information highly accessible, as a simple search for "naturalizations" will populate all such instances from May 1997 to present.[44] While the Portuguese National Contact Point (NCP) of the European Migration Network indicated in 2015 that they do not publish naturalization details, Article 19 of their 1992 Nationality Regulation states that naturalization is granted by a decree published in the Portuguese official journal,[45] and since 2007, the *Diário da República* indeed contains naturalization notices which provide the name, birth date, and city of birth of the individual concerned.[46] Spanish NCP requested their response in the EMN

39. EMN, *supra* note 2, at 6.

40. *See id.* (explaining that after naturalization the personal data is published online at www.e-tar.lt, which is the Register of Legal Acts).

41. KEI, art. 8(1); *see e.g.,* EFIMERIS TIS KYVERNISEOS [FEK] [GOVERNMENT GAZETTE] B' 3184/17.12.2017.

42. CODE DE LA NATIONALITÉ BELGE [WBN] CODE OF BELGIAN NATIONALITY art. 21(6) (Belg.).

43. *See e.g.*, Loi accordant des naturalisations [Act Granting Naturalizations] of July 11, 2018, BELGISCH STAATSBLAD [B.S.] [Official Gazette of Belgium], Aug. 16, 2018, http://www.ejustice.just.fgov.be/eli/loi/2018/07/11/2018013138/moniteur (showing the published list of names and information for all the naturalized citizens for that day).

44. *Nouvelle recherche [New Search]*, BELGISCH STAATSBLAD [B.S.] [Official Gazette of Belgium], www.ejustice.just.fgov.be/doc/rech_f.htm (last visited Oct. 8, 2019).

45. Portuguese Nationality Act, art. 18(1)(c), 19 (Act. No. 37/81) (2006).

46. *See, e.g.*, Decreto-Lei N.º [Decree-Law No.] 237-A/2006, DIÁRIO DA REPÚBLICA [PORTUGUESE OFFICIAL JOURNAL], https://dre.pt/web/guest/pesquisa/-/search/216911/details/normal?q=Concede+a+nacionalidade+portuguesa%2C%20por+naturaliza%C3%A7%C3%A3o (last visited May 4, 2020) (indicating that the authorities have been publishing such information since 2007).

query be kept private,[47] but a simple search reveals that they do publish the names of naturalized individuals in their *Boletín Official del Estado*.[48]

In Romania, press releases of the National Citizenship Authority provide the number of individuals naturalized on the given date.[49] Unlike authorities in other countries, who publish the data of the newly-naturalized citizens, Romanian authorities publish the names of those who *applied* for naturalization,[50] though the Romanian official journal can only be accessed without subscription within ten days of publication.[51] Similarly, the Finnish authorities also publish the names of applicants who make naturalization requests in the Finnish official journal.[52] Italy previously did the same, but has recently deleted these online lists upon the entry into force of the GDPR.[53]

Countries that previously had naturalization lists but which

47. EMN, *supra* note 2, at 7.

48. *Buscar [Search]*, BOLETÍN OFICIAL DEL ESTADO [BOE] [OFFICIAL STATE BULLETIN], https://www.boe.es/buscar/boe.php?accion=Mas&id_busqueda=_dndURGwxbVJvQkRYTlFGYzVXY1ZjbERkRFk5MGd5UUdCYUtIeW50bzVablZ3MmJUR3ptWm5wY0FsRVEwVnJHcGkxR2twUWs4MXRHRDg2djBGVklVTzRpSGZlVlZpWDNtcXJxUlZSeXpBVEUrTTFhU3BOQVErQlduYXJqZXBOYVNIaG5EbzR1MXRBUzVvQjBwaXQ3dDl0UXFqZVgwQVRoeHUrMWw5OXJzU0FyZFdXbTBsTGhsTnFXSU13MDcyR2ZEcmdHcEpNK3RYRzFNUWFVeU53czUxSTh4L0hhcXVwNDZpZEI0bDIwaXJPVGRjUVpXZTl1ekxnVjBIVk1GaTlkeQ,,-0-50%20.%20See%20eg%20https://www.boe.es/boe/dias/2015/10/29/pdfs/BOE-A-2015-11613.pdf (last visited Sept. 23, 2018).

49. *See e.g.*, *Ceremonie depunere jurământ [Cermony of Taking an Oath]*, AUTORITĂȚII NAȚIONALE PENTRU CETĂȚENIE [NATIONAL CITIZENSHIP AUTOHRITY] (Aug. 23, 2018), http://cetatenie.just.ro/index.php/en/comunicate-de-presa/505-23-08-2018.

50. *See Citizenships*, MONITORUL OFICIAL [OFFICIAL MONITOR], http://www.monitoruloficial.ro/EN/article--Citizenships--124.html (last visited May 15, 2020).

51. *Produs electronic conținând actele publicate [Electronic Product Containing Published Documents]*, MONITORUL OFICIAL [OFFICIAL MONITOR], www.monitorulofic ial.ro/?lang=en (last visited May 15, 2020).

52. EMN, *supra* note 2, at 4.

53. *Lista delle richieste di appuntamento per il riconoscimento della cittadinanza italiana [List of Appointment Requests for Italian Citizenship]*, CONSOLATO GENERALE D'ITALIA SAN PAOLO [CONSULATE GENERAL OF ITALY SAO PAOLO] (June 15, 2018), www.conssanpaolo.esteri.it/consolato_sanpaolo/it/la_comunicazione/dal_consolato/lista-requerimentos.html.

have abolished the practice in recent years include Ireland, Latvia, Luxembourg, and the United Kingdom. Unlike in Latvia, where personal details were retroactively deleted from official sources, the *London Gazette* and Luxembourg *Journal Officiel* have maintained the availability of previously published naturalization decisions.[54]

"In-between" options of public dissemination of the personal data of the newly-naturalized citizens and other ways of making such information available are also possible. Bulgaria previously published all naturalization decrees in the national *Gazette*;[55] however, now, according to the webpage of the Ministry of Justice, the decree certificates can only be obtained in person by appointment.[56] The Netherlands has adopted a different privacy-sensitive approach where the details of those who naturalize are published only 100 years after the date of birth.[57] Exceptionally, personal information of this nature may be requested under defined circumstances, such as, when the consultation of the files is necessary as legal evidence or when the individual concerned is deceased.[58]

The Dutch approach most closely resembles the procedure of

54. *See, e.g.*, *Naturalization*, LONDON GAZETTE (July 24, 1959), https://www.thegazette.co.uk/London/issue/41773/page/4684/data.pdf; *Lois du 7 november 2008 conférant la naturalisation [Laws of November 7, 2008 Conferring Naturalization]*, JOURNAL OFFICIEL DU GRAND-DUCHÉ DE LUXEMBOURG [J.O.] [Official Journal of the Grand Duchy of Luxembourg] (2008), http://legilux.public.lu/eli/etat/leg/loi/2008/11/07/n2/jo.

55. Vesco Paskalev, *Naturalistion Procedures for Immigrants—Bulgaria*, EUDO CITIZENSHIP OBSERVATORY, May 2013, at 1, 2, https://core.ac.uk/download/pdf/45683850.pdf.

56. *See Obtaining Certifications in Execution of a Decree*, REPUBLIC OF BULGARIA MINISTRY OF JUSTICE, https://newweb.mjs.bg/en/obtaining-certificates-in-execution-of-a-decree/ (last visited May 15, 2020).

57. *Besluit van de Minister van Justitie en Veiligheid tot beperking van de openbaarheid van het naar het Nationaal Archief over te brengen digitale archief 'Vreemdelingendossiers en Naturalisatie- en Nationaliteitsaangelegenheden van de Immigratie- en Naturalisatiedienst, 2006–2010 [Decree on Limiting Public Access to the Digital Archive Immigration Files and Naturalization of the Immigration and Naturalization Service, 2006–2010],* WETTENBANK (Nov. 11, 2017), https://wetten.overheid.nl/BWBR0040231/2017-11-24.

58. *Id.*

the United States Genealogy Program of the Citizenship and Immigration Service regarding access to immigration records, where only the naturalization files of deceased immigrants naturalized by 1975 are available for a fee of $65.00 per file.[59] The latter program was established in 2008 precisely because requests via the regular program had to be processed as Freedom of Information Act/Privacy Act requests, "adding unnecessary delays to the process."[60] Balancing privacy and access to information via the regular USCIS FOIA/PA request route, one can only make requests pertaining to another individual if they can provide a "certification of agreement" in their application (i.e., written consent).[61] It is worth noting, however, that the Internal Revenue Service publishes the full names of those who lost their U.S. nationality in the *Quarterly Publication of Individuals, Who Have Chosen to Expatriate*.[62]

Besides pointing to a lack of any uniform EU-wide approach to the issue, the above overview illustrates the emergence of a clear trend: more and more countries view the publication of the newly-naturalized citizens' private data as a problem. Countries have therefore been amending their laws accordingly and

59. *Whose Records are Filed and Indexed?*, Question under *Searching the Index*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, https://www.uscis.gov/history-and-genealogy/genealogy/searching-index#2 (last updated Dec. 23, 2019); *What is a Record Request?*, Question under *Record Requests Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, https://www.uscis.gov/history-and-genealogy/genealogy/requesting-help/record-requests-frequently-asked-questions (last updated Dec. 27, 2019) (explaining that the fee for a hard copy is $65.00).

60. Establishment of a Genealogy Program, 71 Fed. Reg. 20357 (proposed Apr. 20, 2006) (to be codified at 8 C.F.R. pt. 103, 299), https://www.govinfo.gov/content/pkg/FR-2006-04-20/pdf/E6-5947.pdf.

61. U.S. CITIZENSHIP & IMMIGRATION SERVICES, FREEDOM OF INFORMATION ACT REQUEST GUIDE 12, 13 (2019), https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf (stating that "[t]hird party requesters without certification of agreement, proof of parentage, proof of guardianship or proof of death will receive no information or records from an alien file"). *But see* U.S. DEP'T OF HOMELAND SEC., PRIVACY IMPACT ASSESSMENT FOR THE FOIA IMMIGRATION RECORDS SYSTEM (FIRST) (2019), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-first-march2019.pdf_0.pdf (making no note of any privacy concerns in this respect).

62. Quarterly Publication of Individuals, Who Have Chosen to Expatriate, as Required by Section 6039G, 84 Fed. Reg. 61137 (Nov. 12, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-12/pdf/2019-24474.pdf.

attempting to strike a more rights-friendly balance as a response, as we have seen with the examples of Bulgaria, Romania, and the Netherlands. The developments in Ireland, France, and Latvia are of particular interest in this regard, offering examples of U-turns or significant fine-tuning of law and policy, while moving away from the formerly default option of full disclosure. These examples are worth considering in further detail.

A. Ireland

Section 18(2) of the Irish Nationality and Citizenship Act indicates that a notice regarding the issuance of a naturalization certificate "shall be published in the prescribed manner in the *Iris Oifigiúil*," the Irish official journal.[63] The information to be contained in the public notice was not enshrined in the Nationality and Citizenship Act itself: it was laid down in a secondary, delegated measure called the Irish Nationality and Citizenship Regulations of 2011, a statutory instrument of the Minister for Justice and Equality.[64] These regulations stipulating the form of the notice state that the information of the naturalized individual published in the Irish official journal will include their name, address, date of naturalization certificate, and whether they are an adult or a minor.[65] The website of the Irish Department of Justice and Equality includes the reminder that such notices are "required to be published by law and are mandatory," and that no exemptions are available.[66] A review of the practice was undergone the same year these Regulations were enacted.[67]

63. Irish Nationality and Citizenship Act 1956 (Act No. 26/1956), Sec. 18(2) (Ir.), http://www.irishstatutebook.ie/eli/1956/act/26/enacted/en/print.html.

64. Irish Nationality and Citizenship Regulations 2011 (SI 569/2011), Sec. 7 (Ir.), http://www.irishstatutebook.ie/eli/2011/si/569/made/en/print?q=Irish+Nationality+and+Citizenship+Regulations+2011+#.

65. *Id*. Form 4.

66. *Become an Irish Citizen by Naturalisation*, DEP'T OF JUST. & EQUALITY (July 10, 2017), http://www.inis.gov.ie/en/INIS/Pages/WP16000022.

67. *See* Elaine Edwards, *Publication of New Irish Citizens' Data Put on Hold*, IRISH TIMES (Apr. 11, 2016, 1:00 AM), https://www.irishtimes.com/news/ireland/irish-news/publication-of-new-irish-citizens-data-put-on-hold-1.2605504.

The publication of these notices has not gone unremarked. Upon being contacted by a disgruntled newly-naturalized citizen, the *Irish Times* wrote a piece in August 2015 which initiated a public debate on the privacy concerns related to publishing such notices.[68] The Ministry of Justice and the Office of the Data Protection Commissioner responded that the practice was justified on the grounds that it was required by law; the Data Protection department also argued that disclosure of this information was in the public interest.[69] The authority for data protection correctly pointed out that the Irish official journal cannot be searched by name; however, the information was indexed by search engines.[70] Digital Rights Ireland—the same civil society organization that brought down the Data Retention Directive[71]—argued that the publishing of such notices was in conflict with the (former) Data Protection Directive and the EU Charter of Fundamental Rights,[72] as the restriction of the privacy rights of the individuals concerned is in breach of the principle of proportionality.[73]

Despite the government's initial defense of the publication procedure, after public backlash, the then Justice Minister Frances Fitzgerald announced she would examine the situation.[74]

68. *See* Marie O'Halloran & Elaine Edwards, *Government Publishes Personal Details of New Citizens Online*, IRISH TIMES (Aug. 21, 2015, 1:00 AM), https://www.irishtimes.com/news/ireland/irish-news/government-publishes-personal-details-of-new-citizens-online-1.2323501.

69. *Id*.; Elaine Edwards, *Migrant Rights Group 'Astounded' Citizen Data Published Online*, IRISH TIMES (Aug. 21, 2015, 5:15 PM), https://www.irishtimes.com/news/ireland/irish-news/migrant-rights-group-astounded-citizen-data-published-online-1.2324498.

70. *See* Elaine Edwards, *Online Publication of New Citizens' Personal Details is Unwise*, IRISH TIMES (Aug. 21, 2015, 1:00 AM), https://www.irishtimes.com/news/ireland/irish-news/online-publication-of-new-citizens-personal-details-is-unwise-1.2323443.

71. C-293/12 Digital Rights Ireland Ltd. v. Minister for Communications et al., ECLI:EU:C:2014:238, ¶ 69.

72. *Ireland's Public Database of Naturalised Citizens*, DIGITAL RTS. IR. (Aug. 21, 2015), www.digitalrights.ie/irelands-public-database-of-naturalised-citizens/.

73. *Id*.

74. *E.g.*, Ronan McGreevy, *Minister to Look into Data Concerns of New Irish Citizens*, IRISH TIMES (Aug. 26, 2015, 1:00 AM), https://www.irishtimes.com/news/

The Justice Department requested that the EU's European Migration Network launch the *Ad-Hoc Query on Naturalization* in September 2015, which was produced that November and published in March 2016.[75] The Irish National Contact Point requested their responses not be publicly disseminated.[76] In April 2016, the practice of publishing naturalization notices was suspended in Ireland,[77] though neither the relevant legislation mentioned above nor the government website have been updated to reflect these changes.[78] In the end, the outdated legal basis for the publishing of naturalization details in the Irish official journal—established in the pre-digitized era—gave way to the emerging recognition of privacy-related data protection concerns.

B. France

In France, when citizenship is acquired via naturalization, a notice is published in the *Journal Officiel* in accordance with Articles 50 and 51 of Decree no. 93-1362 of 1993.[79] The published decrees include the newly naturalized citizen's full name, date and place of birth, as well as the same information in respect to their eligible children.[80] In their response to the EMN's above-mentioned query, the French NCP indicated that these decrees are indeed publicly available, "but only in a paper version."[81] This,

ireland/irish-news/minister-to-look-into-data-concerns-of-new-irish-citizens-1.2328655.

75. EMN, *supra* note 2, at 1–2.

76. *Id*. at 5.

77. Edwards, *supra* note 67.

78. *Citizenship Updates & Announcements: Updated Statement from the Minister of Justice and Equality on the Recent Judgment in the High Court Citizenship Case*, DEP'T OF JUST. & EQUALITY (Sep. 11, 2019), http://inis.gov.ie/en/INIS/Pages/citizenship-updates (showing that the Minister for Justice and Equality has yet to introduce new legislation to reflect the changes on the law governing applications for citizenship).

79. Décret n° 93-1362 du 30 décembre 1993 relatif aux déclarations de nationalité, aux décisions de naturalisation, de réintégration, de perte, de déchéance et de retrait de la nationalité française [Decree No. 93-1362 of December 30, 1993 on Declarations of Nationality, Decisions Naturalization, Reinstatement, Loss, Deprivation and Withdrawal of Nationality], DALLOZ-SIREY, *LEGISLATION* [D.S.L.] [DALLOZ-SIREY, *LEGISLATION*], Dec. 30, 1993, p. 15.

80. *Id*.

81. EMN, *supra* note 2, at 5.

however, is no longer the case: as of January 1, 2016, the online version of the French official journal (originally digitized in 2004) now includes texts related to the status and nationality of individuals.[82]

While the decree digitizing the French official journal was passed by the National Assembly in December 2015, the President had just signed an ordinance on the Code of Administrative Procedure in October 2015 stating that certain individual acts as defined by the Council of State, "particularly relating to the status and nationality of individuals," were not to be published electronically.[83] In a clear effort to balance the interests of freedom of information on the one hand, and privacy of the individuals concerned on the other, the newly passed Code was amended upon the French official journal's digitization.[84] The solution was that the status- and nationality-related acts previously restricted from publication would now indeed be published, but only "under conditions guaranteeing that they are not indexed by search engines."[85] In an apparent effort to

82. LE JOURNAL OFFICIEL [THE OFFICIAL JOURNAL] (2004), www.journalofficiel.gouv.fr/ (last visited Sept. 23, 2019); *see also* Loi n° 2015-1713 du 22 décembre 2015 portant dématérialisation du Journal Officiel de la République Française [Law 2015-1713 of December 22, 2015 on the Digitalization of the Official Journal of the French Republic], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 23, 2015, p. 23805; *2016: Le Journal officiel dématérialisé [216: The Digitalized Official Journal]*, DIRECTION DE L'INFORMATION LÉGALE ET ADMINISTRATIVE [LEGAL AND ADMIN. INFO. DEP'T] (Feb. 16, 2016), https://www.dila.premier-ministre.gouv.fr/publications/lettres-d-information-dila/les-articles-de-la-lettre-dila/2016-le-journal-officiel-dematerialise.

83. *Art. L221-14 du Ordonnance n° 2015-1341 du 23 octobre 2015 relative aux dispositions législatives du code des relations entre le public et l'administration [Article L221-14 of Ordinance No. 2015-1341 of October 23, 2015 on the Legislative Provisions of the Code Relations between the Public and the Administration]*, LÉGIFRANCE (Oct. 23, 2015), https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031360943&categorieLien=cid.

84. *See* Décret n° 2015-1717 du 22 décembre 2015 relatif à la dématérialisation du Journal Officiel de la République Française [Decree Number 2015-1717 of December 22, 2015 on the digitalization of the Official Journal of the French Republic], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 23, 2015, p. 23808.

85. *Art. L221-14, Modifie par Loi n° 2015-1713 du 22 decembre 2015 [Article L221-14, Modified by Law No. 2015-1713 of December 22, 2015]*, LÉGIFRANCE (Dec. 22, 2015),

guarantee such conditions, and upon the advice of the French Data Protection Authority, the online naturalization decrees are now available under "Protected Access."[86] These "Protected Access" barriers, however, have been largely circumvented as private parties were quick to establish web-pages assembling links to all original journals published since January 1, 2016, containing naturalization decrees.[87] France demonstrates how a well-meaning, privacy-sensitive approach, when not properly implemented at the technical level, brings about purely illusory improvements, stopping short of addressing the on-going violations of privacy rights of the newly-naturalized citizens.

C. Latvia

Latvia provides another recent example of a Member State whose practice of publishing naturalization information in its national official journal, the *Latvijas Vestnesis*,[88] as well as on the website of the Cabinet of Ministers,[89] was subject to radical

https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000031677770&cidTexte=LEGITEXT000031366350&dateTexte=20160101 (translation of "dans des conditions garantissant qu'ils ne font pas l'objet d'une indexation par des moteurs de recherche").

86. *See e.g.*, Décret du 1er août 2018 portant naturalisation, réintégration, mention d'enfants mineurs bénéficiant de l'effet collectif attaché à l'acquisition de la nationalité française par leurs parents, francisation de noms et de prénoms et libération de l'allégeance française [Decree of August 1, 2018 on Naturalization, Reintegration, Mention of Minor Children Benefiting from the Collective Effect Attached to the Acquisition of French Nationality by their Parents, Francization of Names and First Names and Release of French Allegiance], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 3, 2018, https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7717CF55FCE0F84314750DAB094C67DD.tplgfr31s_2?cidTexte=JORFTEXT000037278292&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000037277271 (click "Access the protected area" link; complete the basic math to access the decree).

87. *See e.g.*, *Décrets de naturalisations parus en France [Naturalization Decrees Published in France]*, POUR LES ÉTRANGERS [THE SITE OF THE STEPS FOR FOREIGNERS IN FRANCE], https://www.pourlesetrangers.fr/decrets-de-naturalisation-france/ (last visited May 15, 2020).

88. *See* LATVIJAS VĒSTNESIS [LATVIAN JOURNAL], www.lv.lv/ (last visited May 15, 2020).

89. *See generally Processing of Personal Data at the State Chancellery*, CABINET OF MINISTERS—STATE CHANCELLERY, https://www.mk.gov.lv/en/content/processing-

change. Previously, full names and personal identification codes containing the person's date of birth were provided in a list; however, now, such information is completely withheld, and one can only determine the number of individuals naturalized per issue of the Latvian official journal.[90]

In May 2014, the Latvian Prime Minister requested former Minister of Justice Baiba Broka to submit an evaluation of the publication practice and to propose possible solutions to the outstanding problems connected to it.[91] The report submitted to the Cabinet assessed the procedure from the perspective of Article 96 of the Constitution, the right to privacy, as well as the national data protection rules implementing the former Data Protection Directive.[92] They considered the aims of publishing the naturalization information online to be twofold: 1) to inform the individual concerned of the decision, and 2) to inform the public about Cabinet decisions.[93] The Minister found the practice to be in conflict with the principle of proportionality, as the first aim was already achieved by directly informing the individual of the decision, and because the right to privacy of said individual outweighed informing the public.[94]

personal-data-state-chancellery (last updated May 25, 2018).

90. *See,* e.g., Rīkojuma projekts "Par uzņemšanu Latvijas pilsonībā naturalizācijas kārtībā" [Draft Order "On Admission to Latvian Citizenship by Naturalization"], LATVIJAS VĒSTNESIS [LATVIAN JOURNAL], Mar. 31, 2020, Sec. 7, https://www.vestnesis.lv/op/2020/64.1 (demonstrating that only numbers, not personal information, are published).

91. Informatīvais ziņojums „Par Ministru kabineta rīkojuma „ Par uzņemšanu Latvijas pilsonībā naturalizācijas kārtībā" publicēšanu" *[Informative Report "On Publication of the Cabinet of Ministers Order" On the Acquisition of Latvian Citizenship by Naturalization]*, LATVIJAS REPUBLIKAS MINISTRU KABINETA TIESIBU AKTU PROJEKTI [DRAFT LEGAL ACTS OF THE CABINET OF MINISTERS OF THE REPUBLIC OF LATVIA] (June 6, 2014), http://tap.mk.gov.lv/doc/2015_01/TMZino_060614_publ.1245.docx.

92. *Id.*

93. *Id.*

94. *See id.* (explaining that publication of the personal codes of newly-naturalized citizens could give rise to identity theft, and that information on other forms of citizenship acquisition is not published); *Informatīvais ziņojums „Par personas datu izmantošanas praksi tiesību aktos"* [Information Report on Practices on the Use of Personal Data in Legislation] (Apr. 27, 2015) (Lat.), http://tap.mk.gov.lv/doc/2015_05/TMZino_270415_dati.647.docx [hereinafter Information Report on Personal Data] (pointing out that naturalization decisions entail consequences for a particular

Similarly, they found the national law laying down the rules for the publication of information in the Latvian official journal provided the possibility of not publishing certain legal acts if necessary for the protection of information of a "restricted access" nature, which encompasses information relevant to the private life of an individual.[95] In light of those considerations, the Minister proposed a compromise: the naturalized individual's personal details would go unpublished, but the number of naturalized persons would be indicated in order to facilitate the right of society to receive information on Cabinet decisions.[96] After further discussion and study, the practice of the publication of the personal data of newly-naturalized Latvians was temporarily suspended.[97] Upon consultation of the national data protection authority, which conducted a similar analysis for the former Minister of Justice and came to very similar conclusions, publication of the personal details of those who naturalize was permanently abolished in 2017.[98]

II. APPLICABLE PRIVACY STANDARDS

The entry into force of the GDPR has sparked a trend of taking privacy more seriously,[99] which might also have

person rather than society as a whole, hence justifying their non-publication).

95. Informācijas atklātības likums [Freedom of Information Law], 1998, Sec. 5(1)–5(4), (Lat.), https://likumi.lv/ta/en/en/id/50601-freedom-of-information-law (restricting access to information concerning the private lives of natural persons to be accessible only by those persons who require this information in relation to the performance of their work or official duties).

96. Information Report on Personal Data, supra note 94.

97. *Latvijaa Republikas Ministru Kabineta—Sēdes Protokols Nr.43 [Cabinet Minutes of the Republic of Latvia—Minutes of the Sitting No. 43]*, LATVIJAS REPUBLIKAS MINISTRU KABINETA TIESIBU AKTU PROJEKTI [DRAFT LEGAL ACTS OF THE CABINET OF MINISTERS OF THE REPUBLIC OF LATVIA] Sec. 41, (Aug. 12, 2014), http://tap.mk.gov.lv/mk/mksedes/saraksts/protokols/?protokols=2014-08-12#41.

98. Datu valsts inspekcija, *Par lēmumu dzēst personas datus, kas publicēti Administratīvā akta oficiālajā publikācijā un atcelšanā [On the Decision to Delete the Personal Data Published in the Official Publication and Repeal of the Administrative Act], Nr. 2–3.4/820-N*, DATU VALSTS INSPEKCIJA [DATA STATE INSPECTORATE] (Aug. 4, 2017), https://www.vestnesis.lv/wwwraksti/PAZINOJUMU_PIELIKUMI/LEMUMS_PAR_PERSONAS_DATU_DZESANU.PDF.

99. Chris J. Hoofnagle, Bart van der Sloot, & Frederik Z. Borgesius, *The European*

stimulated changes in data management practices of the newly-naturalized citizens in some European countries. Despite this legislative attempt to fully harmonize data protection on a regional level, the standards and practices in the specific field discussed in this paper differ deeply from jurisdiction to jurisdiction. In reality, as we survey the situation in EU Member States, we can observe that one national law often requires the opposite of another. The aim of this section is to outline the potential influence the new data protection framework of the EU could have on national legislation. While this is the main focus, we think it is useful to consider the bigger picture as well. Hence, we will briefly analyze the framework of the Council of Europe and international legal standards of the United Nations. We will analyze whether a more coherent approach to regulating the issue of publishing personal data of newly-naturalized EU citizens across the EU is both desirable and required since the legal framework has, and continues to be, updated. As we will demonstrate, it remains questionable whether, and to what extent, the existing national, regional, or international legal acts contain clear guidance on this matter.

A. EU Legal Framework

In 2012, the EU commenced an effort to deliver on the "digital single market" strategy,[100] resulting in a deep revamp of the legal framework. Although this reform is not completed at the time of writing,[101] the first provisions in force are already studied

Union General Data Protection Regulation: What It Is and What It Means, 28 INFO. & COMM. TECH. L. 96, 98 (2019).

100. *See Data protection in the EU*, EUR COMMISSION, https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en (last visited May 14, 2020) (providing access to detailed information about the GDPR). *See generally Shaping the Digital Single Market*, EUR. COMMISSION, https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market (last updated Feb. 19, 2020) (detailing the pillars and achievements of the Digital Single Market); *Cloud Computing*, EUR. COMMISSION, https://ec.europa.eu/digital-single-market/en/cloud (last visited Oct. 11, 2019) (describing the European Cloud initiative within the Digital Single Market Strategy for Europe as building upon the results achieved under the 2012 European Cloud Strategy).

101. *See* Quirin Schiermeier, *EU Copyright Reforms Draw Fire from Scientists*, NATURE (Apr. 3, 2018), https://www.nature.com/articles/d41586-018-03837-7; Natasha

intensely in the literature.[102] Particularly, the GDPR and its principles seem noteworthy because the new data protection law has considerable chances to become the standard-setting document for years to come in the field of privacy, as comparative research on this legal area suggests.[103] The policymakers and authorities in EU Member States ought to consider whether the changes have effect on the regulatory frameworks already in force in their respective legal orders.

The GDPR is the second comprehensive data protection law of the EU replacing the Data Protection Directive 95/46/EC of 1995.[104] In accordance with Article 288 of the Treaty on the Functioning of the European Union (TFEU) the GDPR Regulation establishes a full harmonization of the data protection framework across the EU.[105] Nevertheless, the GDPR mostly builds on the substantive core of the Directive it replaced, which, in itself, is heavily inspired by the original Convention 108 of the Council of Europe from 1981.[106] Hence, the GDPR has essentially the same substantive principles when it comes to processing personal data (Article 5), lawfulness of processing (Article 6), consent to use personal data (Article 7), and other fundamental

Singer, *The Next Privacy Battle in Europe is Over This New Law*, N.Y. TIMES (May 27, 2018), www.nytimes.com/2018/05/27/technology/europe-eprivacy-regulation-battle.html.

102. *See* Sahar Bhaimia, *The General Data Protection Regulation: The Next Generation of EU Data Protection*, 18 LEGAL INFO. MGMT. 21, 21 (2018); Mireille M. Caruana, *The Reform of the EU Data Protection Framework in the Context of the Police and Criminal Justice Sector: Harmonisation, Scope, Oversight and Enforcement,* 33 INT'L R. OF L. COMPUTER & TECH. 249, 250, 267–68 (2017) (analyzing "issues arising from the reform of the EU data protection framework" particularly Directive 2016/680 and insights into its harmonization, application, and enforcement); Natalia Daśko, *The General Data Protection Regulation (GDPR)—A Revolution Coming to European Data Protection Laws in 2018*, 23 COMP. L. R. 123 (2017); PAUL VOIGT & AXEL VON DEM BUSSCHE, THE EU GENERAL DATA PROTECTION REGULATION (GDPR) (2017).

103. *See* Graham Greenleaf, *Global Data Privacy Laws 2017: 120 National Data Privacy Laws, including Indonesia and Turkey*, 145 PRIVACY L. & BUS. INT'L REPORT 10, 10–13 (2017).

104. Council Directive 95/46/EC, 1995 O.J. (L 281).

105. Council Regulation 2016/679, *supra* note 5, at 1.

106. *See* Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Jan. 28, 1981, E.T.S. No. 108 [hereinafter Convention 108].

rules.[107] While this suggests that Europe follows an overly conservative approach in this area,[108] the incrementally improved European standards influence most of the legislation in this area across the world today.[109] Despite the influence of the heritage on which the GDPR is based, the Regulation still contains some substantive innovations such as a "right to be forgotten" which is an extended right to erase information that can be found in Article 17 GDPR.[110] Furthermore, a new "right to data portability" in Article 20 allows data subjects to transfer data between services, such as different social networks or other data-related systems.[111] While the right is important as a legal precondition to achieve the aim, it remains to be seen whether the economic circumstances will also facilitate its realization. Equally controversial and much discussed is the new right to human review in cases of automated individual decision-making, which relates to the context of machine learning and artificial intelligence that can be found in Article 22.[112]

All of these new individual rights will have to prove relevance and usefulness as the Regulation is being implemented across Europe and the world. The latter is necessary since Article 3 on

107. Bhaimia, *supra* note 102, at 21.

108. Greenleaf, *supra* note 103 (describing the GDPR as a mere modernization of the previous Directive, which could be seen as a conservative improvement in legislation). *But see* Hoofnagle, van der Sloot, & Borgesius, *supra* note 99, at 70–72 (explaining the ways the GDPR not only builds upon the United States Fair Information Practices from 1973 but expands the scope to include all information processing in response to the shortfalls of the Fair Information Practices).

109. *See* Greenleaf, *supra* note 103 (listing forthcoming legislation building upon GDPR core principles); Greenleaf, *supra* note 35, at 1–2 (explaining that Benin even adopted legislation identical to the GDPR).

110. Muge Fazgioglu, *Forget Me Not: The Clash of the Right to Be Forgotten and Freedom of Expression on the Internet*, 3 INT'L DATA PRIVACY L. 149, 149–50 (2013); Eleni Frantziou, *Further Developments in the Right to Be Forgotten*, 14 HUM. RTS. L. R. 761, 761 (2014).

111. Derek McAuley, Neelima Sailaja, & Lachlan Urguhart, *Realising the Right to Data Portability for the Domestic Internet of Things*, 22 PERS UBIQUIT COMPUT 317, 317–18 (2018).

112. Sandra Watcher, Brent Mittelstadt, & Luciano Floridi, *Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation*, 7 INT'L DATA PRIVACY L. 76, 76–77, 79 (2017).

the territorial scope also mandates operators outside of the EU to apply the GDPR if they target data subjects (identified or identifiable natural persons, not citizens according to Article 4(1)) who are in a Member State.[113] However, probably the most important aspect of the GDPR is that it results in more cooperation of national data protection authorities, which have now the possibility to apply much higher fines than before the introduction of the new legal framework.[114] This means that enforcing data protection is finally and literally "worth it." In effect, this is probably also the main reason why the GDPR has the power to initiate a culture change for the management of personal data in the Digital Age.

The GDPR entered into force on May 25, 2018, and applies, as per Article 2(1) GDPR, "to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system."[115] While it is still being discussed what this definition entails in particular (which data is truly "personal"),[116] this very broad scope could be interpreted as relating to the publication of naturalization data by the Member States. If such a publication is also done online, or in electronic form, this constitutes processing of personal data by automated means. However, even if the publication is done solely using traditional means (e.g. on paper in an official gazette or journal of the government), one is still compelled to argue that this is part of a filing system of the government, or at least intended to be part of a filing system. The rationale behind publication is to inform the public and to create a "public record" to provide the basis for proper public

113. EUR. DATA PROT. BD., GUIDELINES 3/2018 ON THE TERRITORIAL SCOPE OF THE GDPR (ARTICLE 3)—VERSION FOR PUBLIC CONSULTATION 19 (2018), edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_3_2018_territorial_scope_en.pdf.

114. Paul Nemitz, *Fines Under the GDPR*, EASYCHAIR PREPRINT NO. 582 2, 4 (2018), https://easychair.org/publications/preprint_open/ZC64.

115. *See* Council Regulation 2016/679, *supra* note 5, at 32.

116. Oskar Josef Gstrein & Gerard Jan Ritsema van Eck, *Mobile Devices as Stigmatizing Security Sensors: the GDPR and a Future of Crowdsourced 'Broken Windows,'* 8 INT'L DATA PRIVACY L 69, 80 (2018).

administration, which clearly depends on creating filing systems. While this also suggests that the GDPR is applicable to the publication of naturalization information, Article 2(2)(a) GDPR contains possible exceptions. For example, the GDPR does not apply "in the course of an activity which falls outside the scope of Union law."[117] This raises the critical issue of whether the EU has any competence to govern the publication of personal naturalization information by the Member States.

In the absence of ECJ case-law on this particular matter, it is possible to list the arguments for and against considering whether or not this issue falls within the scope of EU law. To start with the contrarian arguments, the very essence of EU citizenship as an "additional" status as established by Article 20 TFEU[118] and interpreted in the light of the Danish Declaration underlining the importance of ensuring that EU citizenship does not replace the nationalities of the Member States[119] and the Court's tacit approval in *Kaur*[120] of the crucial role of the Member States' *unilateral* determinations of the scopes of their citizenry (for the purposes of EU law and EU citizenship) clearly point in the direction that the field of EU citizenship law is within the national domain of competences and regulation, as has been frequently and passionately argued by Jessurun d'Oliveira, among many others.[121] Additional arguments in favor of such a reading are supplied by the court in *Micheletti*, where it prohibited the Member States from failing to recognize the effects

117. *See* Council Regulation 2016/679, *supra* note 5, at 32.

118. Szpunar & Blas López, *supra* note 4, at 107; Consolidated Version of the Treaty of the Functioning of the European Union art. 20, Oct. 26, 2012, 2012 O.J. (C 326) 56 [hereinafter TFEU].

119. Denmark and the Treaty on European Union, Dec. 31, 1992, 1992 O.J. (C 348) 2.

120. C-192/99 The Queen v. Sec'y of State for the Home D, ex parte: Manjit Kaur, ECLI:EU:C:2001:106, ¶ 25.

121. Hans Ulrich Jessurun d'Oliveira, *Union Citizenship: Pie in the Sky?*, *in* A CITIZENS' EUROPE: IN SEARCH OF A NEW ORDER, 58, 61–62 (1995); *see* Kochenov, *The* Tjebbes *Fail, supra* note 24, at 324–25 (explaining the ECJ has underlined that acquisition and possession of EU citizenship must have due regard for EU law despite the responsibility of the Member States of granting national and European citizenship). For a detailed approach to possible exceptions, see de Groot, *supra* note 4, at 10–20.

of each other's nationalities through overbroad reaching of ICJ's *Nottebohm* case law,[122] as well as the court in *Eman and Sevinger*, where the court insisted that EU citizenship, and the rights it brings, applies also outside of the territorial scope of EU law, thus, having legal consequences on Aruba and other overseas territories of the Member States excluded, *per se*, from the scope of the EU's internal market.[123] In other words, at first glance it seems unquestionable that the EU cannot legislate on matters related to the acquisition of EU citizenship and that EU citizenship remains, to a large extent, within the domain of national regulation for the Member States to adjust.

To argue this way would amount to revealing only part of the truth, however. As with any other issue, which does not fall squarely within the scope of EU legislative competences, the requirements of the duty of loyalty unquestionably apply, as the Court has aptly clarified in *Rottmann*.[124] The Member States are prohibited from putting any regulation in place that would obstruct the *effet utile* and the smooth functioning of EU citizenship as a supranational legal status (as per *Rottmann*) or as a bundle of rights, as the Court specified in *Ruiz Zambrano* and its progeny.[125] While the question of how far exactly the

122. *See* C-369/90, Mario Vicente Micheletti and others v. Delegación del Gobierno en Cantabria, ECLI:EU:C:1992:295, ¶¶ 10–12. For a detailed analysis, see Peter J. Spiro, Nottebohm *and 'Genuine Link': Anatomy of a Jurisprudential Illusion* (Inv. Migration Working Papers IMRC-RP 2019/1, 2019) (and the literature cited therein).

123. Eman & Sevinger, *supra* note 13, ¶ 61; Leonard F.M. Besselink, *Spain v. U.K., Eman and Svinger, ECtHR, and Sevinger and Eman v. The Netherlands*, 45 COMMON MKT. L. REV. 787, 791 (2008); *see also* Michael Orlando Sharpe, *Extending Postcolonial Sovereignty Games: The Multilevel Negotiation of Autonomy and Integration in the 2010 Dissolution of the Netherlands Antilles and Dutch Kingdom Relations*, ETHNOPOLITICS 14–15 (Apr. 9, 2020), https://www.tandfonline.com/doi/full/10.1080/17449057.2020.1726031.

124. C-135/08 Janko Rottmann v. Freistaat Bayern, ECLI:EU:C:2010:104, ¶ 51 [hereinafter Rottmann]; Dimitry Kochenov*, Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of the Court (Grand Chamber) of 2 March 2010*, 47 COMMON MKT. L. REV. 1831, 1834 (2010); Sara Iglesias Sánchez, *¿Hacia una nueva relación entre la nacionalidad estatal y la cuidadanía europea? [Towards a New Relationship between State Nationality and European Citizenship?]*, 37 REVISTA DE DERECHO COMUNITARIO EUROPEO [EUR. CMTY. L. R.] 933, 938 (2010).

125. C-34/09, Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm), ECLI:EU:C:2011:124, ¶ 42 [hereinafter Ruiz Zambrano]; Dimitry Kochenov, *A Real*

Member States need to go in undermining EU citizenship in order for the EU to be in the position to intervene remains open[126]—especially so since *Tjebbes*[127]—it is beyond any reasonable doubt that the sphere of citizenship regulation is not a prohibited terrain for the EU.[128]

To summarize the two sides of the EU citizenship coin, while the Member States are free to regulate all the aspects of conferral and withdrawal of citizenship as they see fit, such regulation (while fully falling within the competence of the EU Member States to regulate) cannot undermine the essence of the status or jeopardize the enjoyment of EU citizenship rights by the holder of the supranational status. Two lessons can be drawn from this in the context of the currently prevailing practice of the publication of the personal data of new EU citizens by a number of the Member States. Such publication will not be within the scope of EU law, and thus, will fail to trigger the GDPR, which is based on the general obligation of the EU and its Member States to establish "rules relating to the protection of individuals with regard to the processing of personal data" in Article 16 TFEU[129] and the Charter (particularly Articles 7 and 8 CFR), *only if*:

European Citizenship: A New Jurisdiction Test: A Novel Chapter in the Development of the Union in Europe, 18 COLUM. J. EUR. L. 55, 85–86; *see also* Martijn van den Brink, *EU Citizenship and EU (Fundamental) Rights*, 39 EUR. L. J. 21, 22 (2019) (explaining that although EU citizens do not have equal rights, EU citizenship allows citizens to enjoy almost complete membership benefits of Member States that they are not a citizen of); Martijn van den Brink, *The Origins and Potential Federalising Effects of the Substance of Rights Test*, *in* EU CITIZENSHIP AND FEDERALISM: THE ROLE OF RIGHTS, *supra* note 4, at 85.

126. Ruiz Zambrano, *supra* note 125, ¶¶ 42, 46; Dimitry Kochenov, *The Right to Have What Rights? EU Citizenship in Need of Clarification*, 19 EUR. L. J. 502, 503–04 (2013); Sebastien Platon, *Le champ d'application des droits du citoyen européen après les arrêts* Zambrano, McCarthy *et* Dereçi *[The scope of citizen's rights European Union after* Zambrano*,* McCarthy *and* Dereçi*],* 48 RTDeur 23, 29 (2012); Sara Iglesias Sánchez, *Fundamental Rights and Citizenship of the Union at a Crossroads: A Promising Alliance or a Dangerous Liaison?*, 20 EUR. L. J. 464, 472 (2014).

127. Kochenov, *The* Tjebbes *Fail*, *supra* note 24, at 332 (criticizing the lack of benchmark that the level of proportionality must or must not meet for EU intervention).

128. Szpunar & Blas Lopez, *supra* note 4, at 107.

129. TFEU art. 16.

1. It does not, following *Ruiz Zambrano*, constitute a violation of one of the rights of EU citizenship enjoyed by Europeans merely by virtue of possessing the status (such as the right to elect the members of the European Parliament, which was at issue in *Eman and Sevinger* and *Delvigne* and is now unquestionably within the scope of EU law).[130]

2. It does not disproportionately threaten the enjoyment of the status of EU citizenship, in which case EU law would kick in as per *Rottmann*.[131]

In light of the above, it is absolutely clear that even though national citizenship remains one of the core elements of a state, a cumulative reading of Articles 4(1), 4(2), and 9 of the Treaty on the European Union (TEU) and Article 20 TFEU falls short of removing the issues of the conferral and withdrawal of EU Member States' nationalities from the scope of EU law. However, treating EU citizenship as pertaining uniquely to the national domain of regulation after *Rottmann*, *Delvigne*, *Ruiz Zambrano*, and other case-law developments mentioned above would be very difficult to justify.[132]

This conclusion is equally in line with the findings of the court

130. C-650/13, Thierry Delvigne v. Commune de Lesparre Médoc, Préfet de la Gironde, ECLI:EU:C:2015:648, ¶¶ 33–34; K. Lenaerts & J.A. Gutiérrez-Fons, *Epilogue on EU Citizenship: Hopes and Fears*, *in* EU CITIZENSHIP AND FEDERALISM: THE ROLE OF RIGHTS, *supra* note 4, at 751; Sébastien Platon, *The Right to Participate in European Elections and the Vertical Division of Powers in the European Union*, 3 EUR. PAPERS 1245, 1251–1255 (2018). *See generally* Federico Fabbrini, *The Political Side of EU Citizenship in the Context of EU Federalism*, *in* EU CITIZENSHIP AND FEDERALISM: THE ROLE OF RIGHTS, *supra* note 4, at 271, 285–88.

131. Rottmann, *supra* note 124, ¶ 60. *See generally Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?* (Eur. Univ. Institute Working Papers, RSCSAS 2011/62, 2011).

132. *See generally* de Groot, *supra* note 4, at 22–23 (examining the Member States' obligations to grant long-term resident status under EU requirements); Dimitry Kochenov, *EU citizenship and the Internal Market: Illusions and Reality, in* FROM SINGLE MARKET TO ECONOMIC UNION: ESSAYS IN MEMORY OF JOHN A. USHER 241, 244 (Niamh Nic Shuibhne & Laurence W. Gormley eds, 2012) (describing the adaptation of the Member States' nationality laws to the new reality of EU citizenship).

in *Åkerberg Fransson*.[133] The Court found a nexus to EU law through the harmonization of value added tax in Member States, despite the fact that taxation is a core national domain.[134] In essence, we can deduce that the court in Luxembourg might only intervene in publication matters relating to citizenship under exceptional circumstances. However, and as presented, it seems possible in cases where the essence of the rights resulting from EU citizenship is threatened by national conduct. In other words, while an intervention of EU law in this matter is unlikely, it seems possible. The main issue unquestionably pertains to the core sovereign functions of the state, making it possible to state, without a case-by-case analysis of the concrete facts at hand, that the publication of the personal data of each EU citizen would not necessarily always be beyond the scope of EU law as per Article 2(2)(a) GDPR. Notwithstanding the demands of legal certainty, a much more flexible approach seems to be required.

The same reasoning unquestionably applies to other secondary law besides the GDPR. For example, Directive 2016/680 on the processing of personal data for law enforcement purposes in the EU has a similar exception to the GDPR.[135] Such exception allows for the non-application of EU privacy standards to the publication of personal information of new EU citizens. Yet, even at a more global level, the very fact that we are dealing with the conferral of EU citizenship, not merely a Member State nationality (at least in the cases when third country nationals naturalize), opens up a store of additional arguments in favor of

133. C-617/10 Åklagaren v. Hans Åkerberg Fransson, ECLI:EU:C:2013:105, ¶¶ 48–49 [hereinafter Åklagaren v. Hans Åkerberg Fransson]; *see* Emily Hancox, *The Meaning of "Implementing" EU Law under Article 51(1) of the Charter: Åkerberg Fransson*, 50 COMMON MKT. L. REV. 1411, 1411–1412 (2013) (arguing that *Åkerberg Fransson* resolves the inconsistencies between the scopes of Article 51(1) of the EU Charter of Fundamental Rigths and the *acquis* of EU law); Oskar Josef Gstrein & Sebastian Zeitzmann, *Die „*Åkerberg Fransson*"—Entscheidung des EuGH—„*Ne bis in idem*" als Wegbereiter für einen effektiven Grundrechtsschutz in der EU? [The "*Åkerberg Fransson*" Decision of the ECJ—"*Ne bis in idem*" as a Pioneer for Effective Protection of Fundamental Rights in the EU?]* 2 ZEuS 239, 258 (2013).

134. *See* Åklagaren v. Hans Åkerberg Fransson, *supra* note 133, ¶¶ 48–49; Hancox, *supra* note 133, at 1416, 1427 (2013).

135. Directive 2016/680, art. 2(3)(a), 2016 O.J. (L 119) 89, 106.

the applicability of EU law in this domain.[136]

B. Council of Europe Standards

While the main focus of this publication is on the situation within the EU and its Member States, a look at the data protection framework of the Council of Europe is necessary after establishing that the publication of new citizens' personal data following naturalization falls predominantly outside the scope of EU law (with possible exceptions). Since the legal framework of the Council of Europe is applicable in all Member States of the EU (including in the United Kingdom after leaving the Union) and much of the EU data protection law is rooted in Council of Europe standards,[137] it remains to be seen whether the regulatory framework of the Strasbourg organization potentially covers the publication of personal data following naturalization. In particular, Article 8 of the European Convention of Human Rights (ECHR), which protects the right to privacy, potentially entitles individuals to file an application against the publication of naturalization if their right to privacy, family life, or honor and reputation is infringed due to the publication.[138] This provision is remarkably broad and comprehensive.[139] Depending on the case, and assuming that all national remedies have been exhausted, it is not entirely unreasonable that Council of Europe standards are applicable.

The key question is whether the specific publication of personal data following naturalization is justifiable in light of Article 8(2) ECHR. Any of the 47 Council of Europe states may argue that the publication of personal information at

136. *See* Kochenov, *supra* note 125, at 95.

137. EUR. UNION AGENCY FOR FUNDAMENTAL RIGHTS, HANDBOOK EUROPEAN DATA PROTECTION LAW 3 (2018), https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf.

138. EUR. COURT OF HUMAN RIGHTS, GUIDE ON ARTICLE 8 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS 39 (2019) [hereinafter GUIDE ON ARTICLE 8], https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf.

139. *See* Hoofnagle, van der Sloot, & Borgesius, *supra* note 99, at 70 (explaining the broader and more comprehensive approach to the right to privacy than its more limited application in the United States).

naturalization is provided by law and is fulfilling an aim "necessary in a democratic society," particularly relating to "the interests of national security, public safety or the economic well-being of the country, . . . the prevention of disorder or crime, . . . the protection of health or morals, or . . . the protection of the rights and freedoms of others."[140] The most relevant criteria of how the European Court of Human Rights (ECt.HR) applies this in practice are well known and remain amply summarized and retold.[141] It is not unlikely that the ECt.HR would accept such an argumentation of a Member State, and therefore, deem the publication of personal information of the newly-naturalized citizens necessary and proportionate in the light of the requirements of Article 8 ECHR. Additionally, it remains the case that the margin of appreciation doctrine plays a particularly significant role in areas where a consensus between Member States seems unlikely or non-existent.[142] As has been demonstrated throughout the previous sections, European states currently have very different approaches. As a result, the critical application of the ECHR to this issue seems unlikely.

While privacy is often understood as a "right to be let alone,"[143] it also boasts an under-emphasized enabling element, which is essential for "an individual's ability to participate in political, economic, social and cultural life."[144] Given the absence

140. GUIDE ON ARTICLE 8, *supra* note 138, at 7.

141. *See generally Factsheets*, EUR. COURT HUM. RTS., www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c (last visited Apr. 19, 2020) (providing detailed information regarding the case law surrounding how the Court will apply the standards of Article 8(2) ECHR); GUIDE ON ARTICLE 8, *supra* note 138, at 37–40 (offering a closer analysis at how the key phrases in Article 8(2) are often interpreted with examples of their use in case law).

142. *See* Yutaka Arai-Takahashi, *The Margin of Appreciation Doctrine: A Theoretical Analysis of Strasbourg's Variable Geometry*, *in* CONSTITUTING EUROPE: THE EUROPEAN COURT OF HUMAN RIGHTS IN A NATIONAL, EUROPEAN, AND GLOBAL CONTEXT 62, 62–63 (Adreas Føllesdal et al. eds., 2013) (indicating that the margin of appreciation theory developed in the human rights area given the diverse values of the member states); YUTAKA ARAI-TAKAHASHI, THE MARGIN OF APPRECIATION DOCTRINE AND THE PRINCIPLE OF PROPORTIONALITY IN THE JURISPRUDENCE OF THE ECHR 1–5 (2001).

143. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193, 196, 206 (1890).

144. Human Rights Council Res. 34/7, U.N. Doc. A/HRC/34/7 (Mar. 23, 2017).

of any specific case law relating to the precise topic of this article, we will outline the most prominent areas in which the ECt.HR currently interprets this right: deprivation of citizenship, protection of personal data, surveillance in different forms (mass surveillance, surveillance at the workplace, protection of the privilege of the legal profession), protection of reputation, and protection of one's image.[145]

Digging deeper in some selected areas that are relevant to the discussion of citizenship, one recent important judgment in the area of deprivation of citizenship is *Ramadan* v. *Malta*. In *Ramadan,* an Egyptian was denied Maltese citizenship after marrying a Maltese person.[146] The ECt.HR held that there was no infringement of Article 8 ECHR because there was a clear legal basis for the decision, a fair procedure, and the Egyptian could still carry out his business on the island.[147]

Another recent judgment in the discussion of citizenship is linked to the topic of terrorism. In *K2* v. *UK*,[148] a naturalized British citizen filed a complaint claiming he was unlawfully deprived of his citizenship by the Home Secretary after he left the United Kingdom in breach of his bail conditions, contributing to the growing wave of citizenship deprivations in the United Kingdom.[149] The ECt.HR declared the application inadmissible giving several reasons, including that national remedies were still available in the case, that there was strong evidence the man was likely involved in terrorist activities, and that the applicant would not become stateless since he also had Sudanese citizenship.[150] Although there is a huge discrepancy between the two statuses,

145. *Factsheets*, *supra* note 141 (linking further information regarding each of these areas).

146. *Factsheets—Deprivation of Citizenship*, EUR. COURT OF HUM. RTS. 1 (Jan. 2018), https://www.refworld.org/pdfid/5a5f7ce94.pdf.

147. Ramadan v. Malta, no. 76136/12, §§ 86–87, 89–90, June 21, 2016.

148. K2 v. United Kingdom (dec.), no. 42387/13, §§ 4–5, 7–8, Feb. 7, 2017 [hereinafter K2 v. United Kingdom (dec.)].

149. *Id.* §§ 4–5, 7–8. *See generally* Peter J. Shapiro, *Expatriating Terrorists*, 82 FORDHAM. L. REV. 2169, 2182 (2014) (providing an in-depth analysis on the growing legislative measures for expatriation in the terrorism context and specifically noting the U.S. and U.K. response).

150. K2 v. United Kingdom (dec.), *supra* note 148, §§ 55, 62, 70.

the discrepancy did not play a role in the decision, which is the standard approach in current law: statelessness, quite strikingly, is viewed as a worse evil than a substandard nationality.[151]

Continuing this short overview in the area of national security and mass surveillance, the ECt.HR has delivered two notable judgments in *Big Brother Watch and Others v. UK*[152] and *Centrum för Rättvisa v. Sweden* in 2018.[153] Those two judgments are similar in the sense that both cases relate to civil society organizations' complaints about surveillance carried out by states and were decided in light of the 2013 revelations of Edward Snowden.[154] Particularly in *Centrum för Rättvisa*, the court found no violation of Article 8 ECHR. The ECt.HR emphasized that clear and limited legal competences combined with robust oversight structures can make it possible that a state carries out surveillance for national security purposes.[155] Although both of these judgments are not final at the time of writing, they can be read in contrast with the 2015 Grand Chamber judgment in *Zakharov v. Russia*, where the ECt.HR found that Russia was infringing on the right to private life of the applicant due to its wide ranging and unspecific access to telecommunications

151. *See* Alison Harvey, *Deprivation of Nationality: Implications for the Fight Against Statelessness*, 31 QUESTIONS INT'L L., Sept. 2016, at 21, 21, 37–38 (indicating that there is a general consensus that statelessness is an evil to be eradicated); *see also* Dimitri Kochenov & Justin Lindeboom, *Empirical Assessment of the Quality of Nationalities: The Quality of Nationality Index (QNI)*, 4 EUR. J. COMP. L. & GOVERNANCE 314, 335–36 (2018) (concluding that nationalities are not equal in value and can be objectively compared); *see also* Katja Swider, *The Quality of Statelessness*, *in* KÄLIN AND KOCHENOV'S QUALITY OF NATIONALITY INDEX: AN OBJECTIVE RANKING OF THE NATIONALITIES OF THE WORLD 154, 155–56 (Dimitry Kochenov & Justin Lindeboom eds., 2020).

152. Big Brother Watch and Others v. The United Kingdom, nos. 58170/13, 62322/14, & 24960/15, §§ 7–8, 22, Sept. 13, 2018.

153. Centrum för Rättvisa v. Sweden, no. 35252/08, §§ 119, 181, June 19, 2018 [hereinafter Centrum för Rättvisa v. Sweden].

154. Ewan MacAskill, *Edward Snowden, NSA Files Source: 'If They Want to Get You, in Time They Will,'* GUARDIAN, (June 10, 2013), www.theguardian.com/world/2013/jun/09/nsa-whistleblower-edward-snowden-why (revealing how the surveillance system used invaded the privacy of individual's private lives).

155. Centrum för Rättvisa v. Sweden, *supra* note 153, § 181.

infrastructure enabling arbitrary monitoring of its citizens.[156]

Those more recent judgments complement existing interpretations of the right to privacy and add new aspects to the findings in classical judgments relating to the publication of private information, such as in *von Hannover v. Germany,* which is about the privacy of a publicly known person,[157] and *Mosley v. UK,* which relates to the publication of sensitive pictures of the applicant in a national newspaper.[158] These cases might allow the ECt.HR to interfere on the issues of the publication of personal data at naturalization. They show a broad support for the protection of the informational sphere of the individual and the integrity of the family, even in the context, where potential restrictions in areas where national security concerns could prevail. However, referring again to the margin of appreciation doctrine, as well as the fragmented situation in the individual Member States of the EU, the precise answer to the question discussed in this article cannot be directly deducted from existing ECt.HR case law and must be left to general indications and speculation at this stage.

The considerations of the legal framework of the Council of Europe should not end here. The potential regulatory implications of the oldest international, legally-binding instrument in the area of data protection, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108), still needs to be scrutinized[159]—especially since the Convention was modernized and updated in 2018.[160] The Convention is particularly interesting because other non-Council of Europe countries can join; states such as Cabo Verde, Mauritius, Mexico, Senegal, Tunisia, and Uruguay have

156. Roman Zakharov v. Russia, 2015-VIII Eur. Ct. H.R. 205, 296–97.

157. Von Hannover v. Germany, 2004-VI Eur. Ct. H.R. 41, 48–50; Von Hannover v. Germany (No. 2), 2012-I Eur. Ct. H.R. 399, 405, 408.

158. Mosley v. UK, no. 48009/08, §§ 9–14, May 10, 2011.

159. Edwin Lee Yong Cieh, *Personal Data Protection and Privacy Law in Malaysia*, *in* BEYOND DATA PROTECTION: STRATEGIC CASE STUDIES AND PRACTICAL GUIDANCE 5, 11 (Noriswadi Ismail et al. eds., 2013).

160. *See* Ukrow, *supra* note 6, at 240, 246–47.

already become members,[161] while others such as Argentina, Burkina Faso, and Morocco show interest in joining at the time of writing.[162] This "GDPR Lite" provides the essential building blocks for national data protection laws.[163] However, it is in many regards less detailed and contains no "right to be forgotten," "right to data portability," or some other more innovative individual rights of the GDPR.[164]

Convention 108 follows a traditional data protection approach, which is only binding for the signing state.[165] It contains several important basic principles relevant for us. These include "lawfulness,"[166] "fairness,"[167] "purpose limitation,"[168] and "data minimization,"[169] among others.[170] According to Article 3(1) of the consolidated version of Convention 108, each Party undertakes to apply it to data processing in the public and private sectors, thereby securing every individual's right to protection of his or her personal data.[171] This has two important implications for the publication of the personal information following naturalization. First, the principles of the Convention 108, especially those referred to above, unquestionably apply. Thus, when making information about naturalized citizens public, a state party to Convention 108 needs to carefully consider which information should and could be published. Secondly, these rights

161. *See Chart of Signatures and Ratifications of Treaty 108*, COUNCIL EUR., www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p_auth=BfbLJBUT (last visited Apr. 20, 2020); *see also*, *Mexico Joins the Data Protection Convention*, COUNCIL EUR. (June 29, 2018), www.coe.int/en/web/portal/-/mexico-joins-the-data-protection-convention.

162. *Mexico Joins the Data Protection Convention*, *supra* note 161.

163. *See* Greenleaf *supra* note 103 (explaining the harmonization of legal standards); *see also* Greenleaf, *supra* note 35, at 4.

164. Ukrow, *supra* note 6, at 245–46.

165. *See* Greenleaf, *supra* note 35, at 4 (naming the states that have signed the convention and thus become party to Convention 108).

166. Convention 108, *supra* note 106, art. 5(a).

167. *Id.*

168. *Id.* art. 5(b).

169. *Id.* art. 5(c).

170. Ukrow, *supra* note 6, at 243.

171. *See* Convention 108, *supra* note 106, art. 3(1).

also cover non-citizens of the country signatory of the Convention. Hence, while the framework of the Council of Europe (including the ECt.HR judgments), is not as robust in terms of enforcement mechanisms as the one of the EU,[172] signatory states to Convention 108, and its modernized version, still arguably must carry out a careful assessment process when making information about naturalized citizens public.

C. United Nations Standards (UDHR and ICCPR)

Moving one level up the ladder of legal regulation from the Council of Europe to the United Nations, it is necessary to consider whether there is any legal guidance available at the U.N.-level on this subject. Since international law on citizenship *sensu stricto* is a truly rare animal,[173] the human rights framework could once more form the last resort for public authorities seeking guidelines to develop an approach to this subject of the publication of personal data at naturalization or to individuals, who consider their privacy rights to be violated. Most importantly, Article 12 of the Universal Declaration of Human Rights (UDHR) on private and family life, as well as honor and reputation, and Article 17 of the International Covenant on Civil and Political Rights (ICCPR),[174] which provides similar substantive protection, are topical for providing public authorities with guidelines.

Notwithstanding the promise of these instruments, when it comes to the protection of privacy on the U.N. level, these provisions remain rather general and abstract.[175] The U.N.

172. Élisabeth Lambert Abdelgawad, *The Enforcement of ECtHR Judgments*, *in* THE ENFORCEMENT OF EU LAW AND VALUES 326, 340 (András Jakab & Dimitry Kochenov eds., 2017).

173. Alice Sironi, *Nationality of Individuals in Public International Law: A Functional Approach*, *in* THE CHANGING ROLE OF NATIONALITY IN INTERNATIONAL LAW 54, 54 (Alessandra Annoni & Serena Forlati eds., 2013).

174. Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III), art. 12 (1948); International Covenant on Civil and Political Rights art. 17, Dec. 19, 1966, 999 U.N.T.S. 171.

175. Rep. of the Special Rapporteur on the Right to Privacy, U.N. Doc. A/HRC/37/62, ¶ 25 (Oct. 25, 2018).

Human Rights Committee has made an attempt to clarify the meaning of Article 17 ICCPR with General Comment No. 16 from April 8, 1988.[176] However, whether this short document, which mostly relates to surveillance methods popular before the mass adoption of the Internet, is still useful has been subject to vivid discussion. After the Snowden revelations were presented in 2014, a dedicated report of the U.N. High Commissioner for Human Rights was given on the applicability of the U.N. privacy framework in the Digital Age.[177] Despite their formally comprehensive nature, the abstract level of the provisions remains challenging and has resulted in calls for new international instruments defining privacy more precisely and in-depth.[178] Thus, it is difficult to develop any meaningful guidance for detailed subjects such as the publication of personal data at naturalization which might influence the private life, family life, honor, or reputation of the subject. Additionally, the tools on the level of the U.N. are first and foremost directed toward the states, who are bound to respect, protect, and promote these laws. Hence, it is also the states who are traditionally supposed to hold each other accountable. The provision of remedies for human rights violations on the international level is a complex issue.[179] It is submitted, therefore, that the U.N. system substantially covers publication of personal data at naturalization very abstractly, but that this aspect, together with the complexity of enforcement, renders it *de facto* inapplicable.

176. Human Rights Comm., The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, U.N. Doc. CCPR/C/GC/16, ¶ 1 (Apr. 8, 1988).

177. The Right to Privacy in the Digital Age, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/27/37 (June 30, 2014).

178. Rep. of the Special Rapporteur on the Right to Privacy, U.N. Doc. A/HRC/34/60, ¶ 69 (Sept. 6, 2017).

179. Dinah Shelton, *Human Rights, Remedies*, *in* 4 THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1097, 1103 (Rüdiger Wolfrum ed., 2012) (canvasing the nuances of the continually "evolving" remedies available across national and international law for human rights violations).

III. CONCLUSIONS AND RECOMMENDATIONS

At the outset, the risk for a naturalized individual to suffer limitations of rights based on the publication of personal data following naturalization should be taken very seriously and assessed closely. If legislation generally mandates the publication of the fact of naturalization, exceptions are advisable for those who can demonstrate that such publication considerably threatens their continued enjoyment of rights in the new, as well as the other, states of nationality and/or could negatively affect business or family interests. Spanish implementation of EU data protection law appears to be most closely in line with such an approach: it has been expressly indicated that an individual's *ex post* control rights of erasure and objection can apply to government official journals, balanced against any "current public relevance" the publication may have.[180] However, it seems this only applies if the information is indexed by search engines;[181] this is arguably insufficient from the perspective of ensuring the privacy and personal data of the individual are adequately protected, since consequences can arise from disclosure in the journal itself, regardless of any indexing.

Furthermore, it should be considered which data in particular is being published. Is it merely the name of a person and perhaps their date and place of birth? Or more information, such as the home address, personal tax number, social security number, and "special categories of personal data" (e.g. health-related

180. Pere Simón Castellano, *A Test for Data Protection Rights Effectiveness: Charting the Future of the Right to be Forgotten under European Law*, 19 COLUM. J. EUR. L. F. (2012), https://web.law.columbia.edu/sites/default/files/microsites/journal-european-law/files/castellano.pdf. Official journal publications are expressly referred to in national data protection legislation; for an explanation in English, see Mònica Vilasau, *Legal Grounds to Process Personal Data under Spanish Legislation after the ECJ Judgment of 24 November 2011 (the ASNEF and FECEMD case)*, COMPUTER L. & SECURITY REV., Feb. 2012, at 44, 49–50.

181. Pere Simón Castellano, *The Right to Be Forgotten under European Law: A Constitutional Debate*, LEX ELECTRONICA, Winter 2012, at 22, https://www.lex-electronica.org/files/sites/103/16-2_castellano.pdf. For case examples, see Miguel Peguera, *In the Aftermath of* Google Spain*: How the 'Right to Be Forgotten' Is Being Shaped in Spain by Courts and the Data Protection Authority*, 23 INT'L J. L. & INFO. TECH. 325, 333–335 (2015).

information)?[182] When the decision on which data to publish is made, the negative implications of combining all available data should equally be taken into account. As the United Nations Special Rapporteur on the right to privacy, Cannataci, rightly pointed out in his 2017 report to the General Assembly on Big Data and Open Data, the potential combination of such openly available information with other information (e.g. coming from "closed" or confidential sources controlled by private or public entities) might result in serious privacy concerns once the sources are combined and an advanced data analysis is carried out.[183]

Additionally, due to the technological developments, it becomes increasingly important to consider how such published data is perceived over time. While it may be perfectly legitimate and necessary to publish a fact (like naturalization) and keep it in the public spotlight for a certain amount of time, an individual might equally face illegitimate repercussions if a dataset remains freely and openly available for an indefinite amount of time and without any consideration of purpose limitation. While paper publications get recycled, turn yellow, and end up micro-filmed and archived, websites remain on servers with backup mechanisms and become indexed by search engines, "cached", or part of collections of web archives. This allows them to be widely and effortlessly available for a much longer time span and remain in perfect condition.[184]

However, because society keeps developing while the raw data (publication and associated information) remains the same, the context in which this information is interpreted and analyzed changes over time.[185] Indeed, it might be worth considering

182. *See* Regulation 2016/679, *supra* note 5, at 1, 38 (comprehensively defining the term "special category of personal data").

183. Report of the Special Rapporteur on the Right to Privacy, ¶ 89, U.N. Doc. A/72/43103 (Oct. 19, 2017).

184. *See generally* VIKTOR MAYER-SCHÖNBERGER, DELETE: THE VIRTUE OF FORGETTING IN THE DIGITAL AGE 49 (2009) (chronicling the rise of new memory-saving technologies, which arguably makes forgetting harder than remembering for humankind).

185. Similar to the proverb "the beauty is in the eye of the beholder," one feels tempted to state "the meaning of the data comes from the capacities of the processor and/or controller."

whether there should be a mechanism with a similar effect as de-listing (the "right to be forgotten"), which was put in force by the ECJ in the *Google Spain* case for the index of search engines.[186] While the facts of the cases at hand do not seem comparable since the publication of naturalization information is a matter of public administration, a strategy on how such publicized personal data is managed over time seems advisable when focusing on the individual and on privacy as a human right. *Google Spain* could provide a gate-way to discuss the issue of personal data and time in the digital age in a more nuanced and appropriate manner: not only whether to publish personal data or not, but also *how* to publish and to what extent to make the publication available, both fundamental issues.

The described aspects of the amount of information provided and its "development" over time show that any authority publishing information on naturalization should have a strategy in place to address such human rights concerns. As a minimum starting point, such a strategy should clearly specify at least the following: categories, amount (including its possible negative effects in the light of aggregation with information from other sources), accessibility, and time management of the publication of personal data at naturalization.

In light of the analysis above, it is abundantly clear that opting for the default position of unrestricted publication of personal data of the new citizens at naturalization is a deeply problematic choice boasting large potential for rights violations. Accordingly, we find it advisable for public administrations to carefully scrutinize and potentially reconsider their strategies managing the publication of personal data at naturalization, potentially leading to significant changes in the approaches taken by the Member States until now, the insensitivity to privacy standards potentially applicable in the domain of naturalizations. The upgraded European data protection framework, and the

186. *See* Google Spain, *supra* note 33, ¶ 99; Orla Lynskey, *Control over Personal Data in a Digital Age: Google Spain v AEPD and Mario Costeja Gonzalez*, 78 MOD. L. REV. 522, 533–34 (2015); Indra Spiecker genannt Döhmann, *A New Framework for Information Markets: Google Spain*, 52 COMMON MKT. L. REV. 1033, 1033 (2015); Frantziou, *supra* note 110, at 761–62.

heightened attention to privacy resulting from it, create a welcome opportunity to reassess traditional practices. As mentioned earlier, the following three interrelated points might provide guidance in this exercise:

First, we propose that national practices of publication of naturalization should be assessed and redesigned, taking into account the possibilities of information management in the Digital Age, as well as the existing obligations of states in European and international law. Although it had been cumbersome to search, combine, and analyze information in the pre-Internet era, new technologies facilitate these processes enormously. Hence, the risks of privacy infringements in this domain have grown considerably, which seems to make it advisable to consider general publication of such information carefully.[187] Thus, the growing number of EU Member States prohibiting the unrestricted default publication of the personal data of all the newly-naturalized citizens has taken the safest approach to the issue from the point of view of personal rights protection. As we have demonstrated, based on the Irish and the Latvian examples, privacy-aware choices can stem from a well-informed critical discussion, considering very carefully all the interests involved.

Secondly, it is necessary not only to think about whether to publish personal data of the new citizens or not, but also to formulate, should a decision to publish be taken, a privacy-sensitive approach to what happens once the information is in the public domain. As we have shown, particularly the French and the Dutch approaches attempt to address this issue, albeit with a radically different degree of success. Generally, however, by limiting the accessibility (not the existence of) such a publication—in the spirit of the *Google Spain* decision of the ECJ—any naturalized individual should have the possibility to opt out of the public spotlight within the new country, which should be the default. [188] By managing the access to this data appropriately, it is possible to strike a balance between the public

187. Report of the Special Rapporteur on the Right to Privacy, *supra* note 183, ¶ 56.

188. *See* Google Spain, *supra* note 33, ¶ 99.

information interest and individual rights.

Thirdly, it seems advisable for states to harmonize their practices in this area at least to some degree. While the current regulatory framework suggests that each country has discretion to decide for itself, the increasing harmonization of the privacy framework in Europe and across the world raises the expectation of individuals to be subject to comparable standards based on sensible rules.[189] At the most basic level, the publication of the personal data of the new citizens should be prohibited at least when such publication could put their other citizenship(s) in danger, or cause similarly significant harm to them in other domains, such as family or business affairs. It is very easy to avoid inflicting serious harm upon those joining the collective of citizens by at least being aware of the far-reaching and harsh consequences of neglecting privacy rights. The common good standard to apply to all the EU Member States should embrace the ideal of avoiding unnecessary harm by embracing privacy standards as a starting point. Where publication remains required, the adoption of a proportionality text to take potential harms, which such default option may cause, would be the most logical way forward.

To conclude, there is no doubt that the usual default practice of unconditional disclosures of private information of the newly-naturalized citizens in Europe is under strong pressure from privacy considerations and cannot continue unchanged. While the trend in the direction of taking privacy fully into account is already clearly decipherable, much more is to come as the awareness of the potential application of the strict GDPR rules in this area is growing, as well as the relevance of the revamped Council of Europe's Convention 108. Thus, a long road towards fully safeguarding the privacy rights of the newly-naturalized Europeans is ahead of us. The right direction is now clear.

189. *See* Greenleaf, *supra* note 35, at 4 (arguing that the modernization and accession of Convention 108 may offer a preview of "what the next decade's global convergence [of privacy law] will look like") (emphasis omitted).