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From Loss to Acquisition of Nationality: Union Citizenship and the (Still) Indeterminate Limits of State Competence

Simone Marinai*

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1. Introduction.

The case law of the Court of Justice has played a decisive role in shaping the relationship between national citizenship and citizenship of the European Union. The institution of Union citizenship is governed by the founding Treaties (Arts. 9 TEU and 20 TFEU), as well as by the Charter of Fundamental Rights of the European Union (Art. 39 *et seq.*). However, this is an essential framework which, as regards the relationship between national citizenship and Union citizenship, is limited to stating that: (i) citizenship of the Union is established by these provisions; (ii) every person who is a national of a Member State shall be a citizen of the Union; and (iii) Union citizenship is additional to and does not replace national citizenship.

It follows from this framework that Union citizenship does not exist independently. The identification of Union citizens depends upon the prior acquisition of national citizenship. This is consistent with Declaration No 2 on nationality of a Member State annexed to the Final Act of the Treaty of Maastricht, as well as with the decision of the

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European Council of December 1992¹: whenever the Treaties refer to nationals of the Member States, the question of whether an individual possesses the nationality of a Member State is to be settled solely by reference to the national law of the Member State concerned. From this derives the well-established position of the Court of Justice that the determination of the conditions for the acquisition and loss of nationality falls, under international law, within the competence of each Member State².

Within this framework, the present contribution examines the relationship between national citizenship and Union citizenship in the light of the recent case law of the Court of Justice, with particular regard to whether the limits progressively identified by the Court in cases concerning the loss of national citizenship – where such loss entails the loss of Union citizenship – may also operate as constraints on the freedom of Member States to determine the conditions for the acquisition of nationality. The aim is to assess whether, and to what extent, the Court is developing a general criterion delimiting state sovereignty in matters of nationality, or whether, conversely, the constraints flowing from EU law apply only to selective categories and «borderline cases», thereby leaving areas of indeterminacy.

To that end, after briefly recalling the increasingly complex body of case law which has progressively clarified the limits imposed by EU law in situations involving the loss of nationality, the contribution analyses the judgment in *Commission v Malta*³,

¹ V. See Decision of the Heads of State or Government, meeting within the European Council, concerning certain problems raised by Denmark on the Treaty on European Union, Annex 1 to Part B of the [Conclusions](#) of the Presidency adopted by the European Council at Edinburgh on 11 and 12 December 1992.

² In this regard, see, *inter alia*, Court of Justice, judgment of 7 July 1992, [case C-369/90](#), *Micheletti and Others*, EU:C:1992:295, para. 10; judgment of 11 November 1999, [case C-179/98](#), *Mesbah*, EU:C:1999:549, para. 29; judgment of 19 October 2004, [case C-200/02](#), *Zhu and Chen*, EU:C:2004:639, para. 37; judgment of 2 March 2010, [case C-135/08](#), *Rottmann*, EU:C:2010:104, para. 39; judgment of 12 March 2019, [case C-221/17](#), *Tjebbes and Others*, EU:C:2019:189, para. 30; judgment of 18 January 2022, [case C-118/20](#), *Wiener Landesregierung (Révocation d'une assurance de naturalisation)*, EU:C:2022:34, para. 37; judgment of 5 September 2023, [case C-689/21](#), *Udlændinge- og Integrationsministeriet (Perte de la nationalité danoise)*, EU:C:2023:626, para. 28; judgment of 29 April 2025, [case C-181/23](#), *Commission v. Malta*, EU:C:2025:283, para. 81.

³ Court of Justice, *Commission v. Malta*, cit. Among the numerous commentaries on the judgment, see S. BARBIERI, *La cittadinanza dell'Unione come parte della sua identità: la sentenza Commissione c. Malta. Corte di giustizia, 29 aprile 2025, C-181/23*, Commissione c. Malta, in *Osservatorio costituzionale*, 2025, No 6, pp. 338-357, available [online](#); M. CHAMON, *Commission v Malta (C-181/23) and the Trilemma of EU Citizenship*, in *European Law Review*, 2025, pp. 475-486; K. GRIMONPREZ, *EU Citizenship Based on Common Values: Implications of Commission v Malta (C-181/23) for the European Dimension in Citizenship Education*, in *European Law Review*, 2025, pp. 502-514; D. KOCHENOV, G. ÍÑIGUEZ, *EU Citizenship's New Essentialism*, in *European Law Review*, 2025, pp. 455-474; B. NASCIMBENE, *La cittadinanza nel diritto europeo*, in *Giustizia insieme*, 13 November 2025, available [online](#); R. O'NEILL, *A Stitch in Time? Mutual Trust as the EU's Fix-All in Case C-183/23 Commission v Malta*, in *European Papers*, 2025, pp. 463-487, available [online](#); S. PEERS, *Pirates of the Mediterranean Meet Judges of Kirchberg: the CJEU Rules on Malta's Investor Citizenship Law*, in *EU Law Analysis*, 30 April 2025, available [online](#); S. POLI, *The End of the Reserved Domain on Citizenship Attribution?*, in *EU Law Live*, 13 May 2025, available [online](#); M. VAN DEN BRINK, *Why Bother with Legal Reasoning? The CJEU Judgment in Commission v Malta (Citizenship by Investment)*, in *EUI Global Citizenship Observatory*, 2

reconstructing its rationale, assessing its innovative scope, and critically examining certain aspects of its reasoning in order to understand its potential systemic implications. In the light of that judgment, it will also be possible to reflect on the Maltese reform that was adopted in July 2025, as well as on developments in Cyprus that have led to the definitive abandonment of the citizenship-by-investment scheme, and, with regard to the Italian legal system, on the litigation arising from the reform of the *ius sanguinis* principle, which had traditionally allowed the transmission of Italian citizenship by descent without any generational limitation. More broadly, the analysis seeks to determine whether the increasingly pervasive case law of the Court of Justice points towards a transformation in the nature of Union citizenship and its relationship with the citizenship of the Member States, or whether it instead reflects an evolution that, at present, remains incomplete and structurally indeterminate.

2. The consolidation of the Court of Justice's case law on the limits to Member States' discretion in matters of loss of nationality.

Starting with the judgment in *Micheletti*, the Court of Justice affirmed that the competence of Member States in matters of nationality must be exercised in compliance with EU law (formerly Community law)⁴. That reasoning, which in *Micheletti* could be inferred only from an *obiter dictum*, was subsequently developed through a series of judgments specifically addressing situations involving the loss of national citizenship.

The Court has held that EU law may limit the discretion of Member States in this field when the loss of national citizenship also entails the loss of Union citizenship. It is within this line of development that the cases of *Rottmann* (2 March 2010), *Tjebbes* (12 March 2019), *Wiener Landesregierung* (18 January 2022), *Udlændinge- og Integrationsministeriet* (5 September 2023) and *Stadt Duisburg* (25 April 2024) are situated⁵. These judgments may be understood as part of a coherent evolution whose aim is the progressive consolidation of principles capable of constraining the exercise of state competence in matters of loss of nationality, at both the substantive and at the procedural level⁶.

From a substantive perspective, this body of case law highlights the central role of the principle of proportionality. A national decision leading to the loss of citizenship may

May 2025, available [online](#); U. VILLANI, *La Corte di giustizia davanti alla "cittadinanza (di Malta) in vendita"*, in *Rivista del contenzioso europeo*, 2025, No 2, pp. 1-13, available [online](#).

⁴ Court of Justice, *Micheletti*, cit., para. 10.

⁵ Court of Justice, *Rottmann*, cit.; *Tjebbes and Others*, cit.; *Wiener Landesregierung*, cit.; *Udlændinge- og Integrationsministeriet*, cit.; judgment of 25 April 2024, [joined cases C-684/22, C-685/22 and C-686/22](#), *Stadt Duisburg (Perte de la nationalité allemande)*, EU:C:2024:345.

⁶ On this development, see, for example, F.L. GATTA, *The If and the How: Losing the EU Citizenship, but with Due Regard to the Due Process of (EU) Law*, in *European Papers*, 2024, No. 1, pp. 131-144, at p. 134 ff., available [online](#), to which reference is also made for further relevant bibliographical references.

be subject to judicial review in the light of that principle if it also results in the loss of Union citizenship status. In such circumstances, it is necessary to take into account the possible consequences of the decision for the individual concerned and, where appropriate, for his or her family members, particularly with regard to the loss of the rights attached to Union citizenship. This was made clear as early as in the *Rottmann* case, which concerned the withdrawal of German nationality obtained by naturalisation through deception.

In subsequent judgments, the Court explicitly linked the proportionality review to the protection of fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, especially the right to respect for private and family life under Art. 7 thereof.

It is in this context that the judgment in *Tjebbes and Others* must be situated. In that case, the Court acknowledged that a Member State may legitimately conceive nationality to be the expression of a genuine link, and may provide for the loss of nationality in the absence or on the cessation of such a link. At the same time, however, the Court held that, even when the loss of nationality occurs automatically by operation of law, the individual concerned must be afforded the possibility of an individual assessment of the consequences resulting from the loss of Union citizenship. Such an assessment must make it possible to evaluate the impact on the fundamental rights of the person concerned and on those of his or her family members and, where appropriate, to allow for the reacquisition *ex tunc* of nationality on the basis of a review of compliance with the principle of proportionality.

In *Wiener Landesregierung*, the Court further clarified the content of the proportionality review, holding that a revocation decision adopted by national authorities was disproportionate when it was based on administrative infringements (traffic offences) which were punishable only by pecuniary sanctions, because this was capable of producing particularly severe consequences, such as rendering the individual stateless and, consequently, leading to the loss of Union citizenship.

From a procedural perspective, in *Udlændinge- og Integrationsministeriet* the Court held that, if the loss of national citizenship also entails the loss of Union citizenship, the procedural rules laid down by national law must comply with the principle of effectiveness and must not render it impossible or excessively difficult to exercise rights conferred by EU law. In particular, the individual concerned must be informed of the right to request, within a reasonable period, an assessment of the proportionality of the consequences of the loss of nationality, and to apply for its retention or reacquisition, even in cases in which the loss occurs automatically under national law.

Finally, in *Stadt Duisburg*, the Court, for the first time, addressed a situation involving the loss of the nationality of a Member State as a consequence of the acquisition of another nationality. In doing so, it confirmed the neutrality of EU law with regard to

multiple nationalities: Member States remain free to permit or prohibit the holding of multiple nationalities. In that case, the Court, while reaffirming the principles established in its earlier case law, clarified that the compatibility with EU law of a mechanism of loss *ipso iure* may also be ensured through a structured and genuinely accessible *ex ante* procedure. Accordingly, the proportionality review need not necessarily be conceived as *ex post* and contingent, but may instead be organised in advance and institutionalised.

Taken together, these judgments reveal a general tendency towards the attenuation of the significance traditionally attributed to state sovereignty in this field, insofar as the consequence of the loss of national citizenship is the loss of Union citizenship status.

3. *Commission v. Malta*: citizenship by investment and the question of limits to state discretion in the acquisition of nationality.

While the cases discussed thus far concerned situations involving the loss of nationality, in *Commission v Malta* the Court of Justice, for the first time, had the opportunity to rule on the limits imposed by EU law on the freedom enjoyed by Member States with regard to the acquisition of nationality⁷. In particular, the Court addressed the well-known issue of citizenship-by-investment schemes, whereby nationality is granted on the basis of financial contributions or investments, a practice that has been described as the acquisition of citizenship according to the criterion of *ius pecuniae*⁸.

Since 2013, Malta has allowed the possibility that an individual may be granted Maltese nationality by naturalisation through participation in an investor programme⁹. The requirements governing access to that programme were initially laid down in a regulation adopted in 2014 which was subsequently replaced by a regulation adopted in 2020¹⁰. Under the latter, a foreign investor could apply for Maltese naturalisation on the basis of «exceptional services», subject to the fulfilment of several conditions: (a) payment of a contribution to the Maltese government amounting to EUR 600,000 after a residence period of 36 months, or EUR 750,000 after a residence period of 12 months; (b) acquisition or holding of immovable property in Malta with a minimum value of EUR 700,000, or alternatively the lease of residential property with a minimum annual rent of EUR 16,000; (c) a donation of at least EUR 10,000 to a non-governmental organisation active in the field of philanthropy, culture, sport, science, art or animal welfare; and (d) successful completion of a due diligence assessment by the competent authorities.

⁷ Court of Justice, *Commission v. Malta*, cit.

⁸ See, for example, A.M. CALAMIA, *Riforme abusive dei modi di acquisto della cittadinanza nell'Unione europea? Considerazioni intorno alla prassi recente di alcuni Stati membri*, in ID. (ed.), *L'abuso del diritto. Casi scelti tra principi, regole e giurisprudenza*, Torino, 2017, p. 3 and, in particular, p. 12 ff.

⁹ See Art. 10(9) of the Maltese Citizenship Act, as amended by [Act XV](#) of 2013 – Maltese Citizenship (Amendment).

¹⁰ See [Legal Notice](#) No 437 of 2020 – Granting of Citizenship for Exceptional Services Regulations.

Similar citizenship schemes had also been introduced elsewhere, notably, by Bulgaria and Cyprus. While those States suspended their programmes following pressure from the European Commission, which considered them incompatible with EU law¹¹, Malta persisted with its scheme, ultimately prompting the Commission to bring infringement proceedings before the Court of Justice.

In its action, the Commission argued that the grant of nationality in the absence of a genuine link is contrary to the essence, integrity and very concept of Union citizenship as set out in Art. 20 TFEU, as well as to the principle of sincere cooperation under Art. 4(3) TEU. According to the Commission, the Member States share a common conception of citizenship, according to which nationality reflects a genuine link between a State and its citizens¹². On that basis, Member States accept that the rights attached to Union citizenship are automatically extended to nationals of other Member States, in reliance on the principle of mutual trust, which presupposes that each Member State grants its nationality only on the basis of a genuine link with the person concerned. If, by contrast, a Member State grants nationality without regard to such a common understanding, the unconditional acceptance of the nationality conferred by other Member States would be called into question¹³.

For its part, Malta, while acknowledging that state competence is not absolute and must be exercised in compliance with EU law, argued before the Court that the control exercised by EU institutions cannot extend so far as to call into question political choices linked to the national identity of the Member States, the respect for which is enshrined in Art. 4(2) TEU¹⁴. On that basis, Malta contended that the review of national legislation on nationality is permissible only if such legislation entails a serious breach, of a general and systematic nature, of the values and objectives of the Union¹⁵.

As regards the requirement for a genuine link, Malta further argued that this cannot be derived either from EU law or from international law. In this respect, the arguments advanced by the defendant State largely mirrored those set out in the opinion delivered on 4 October 2024 by Advocate General Collins¹⁶. According to the Advocate General, the obligation of each Member State to recognise the nationality granted by another

¹¹ In particular, Bulgaria abolished its scheme on 5 April 2022 without the need for the European Commission to initiate a formal infringement procedure, but following an informal dialogue with it. Cyprus, by contrast, ceased accepting new applications for naturalisation as of 1 November 2020 after the Commission initiated an infringement procedure in October 2020. That procedure was, however, closed only on 11 March 2026 following the definitive abandonment of the citizenship-by-investment scheme, effected by a law adopted by the Cypriot Parliament on 4 December 2025, to which reference will be made below (Section 7).

¹² Court of Justice, *Commission v. Malta*, cit., para. 50.

¹³ Court of Justice, *Commission v. Malta*, cit., para. 51.

¹⁴ Court of Justice, *Commission v. Malta*, cit., para. 65.

¹⁵ Court of Justice, *Commission v. Malta*, cit., para. 56.

¹⁶ Advocate General Collins, opinion of 4 October 2024, [case C-181/23](#), *Commission v. Malta*, EU:C:2024:849, paras. 41 ff.

Member State is an expression of respect for state sovereignty. If the freedom of Member States were made conditional upon the existence of a genuine link, the balance between national citizenship and Union citizenship established by the Treaties would be fundamentally altered¹⁷.

On that basis, Advocate General Collins, after observing that the Commission had failed to demonstrate that Art. 20 TFEU requires the existence of a genuine link between the Member State and the individual as a condition for the lawful grant of nationality, proposed that the action brought by the Commission be dismissed¹⁸.

However, in its judgment of 29 April 2025, the Court of Justice departed from the solution proposed by the Advocate General and held that the Maltese citizenship-by-investment programme infringes both Art. 20 TFEU and Art. 4(3) TEU.

4. The centrality of Union citizenship in the process of European integration, and the issues left unresolved by the judgment.

In *Commission v. Malta*, the Court forcefully reaffirmed the centrality of Union citizenship in the process of European integration. After recalling the rights attached to Union citizenship, the Court stated that those rights form an integral part of the constitutional framework of the European Union¹⁹, and that the status of Union citizen «constitutes the fundamental status of nationals of the Member States».

This formulation marks a departure from the Court's earlier case law, in which it had consistently held that Union citizenship was «destined to become» the fundamental status of nationals of the Member States. It has been convincingly argued that this change is intentional and reflects a stronger affirmation of the importance of Union citizenship, which would have reached a degree of maturity enabling its further development²⁰. It is noteworthy that this revised formulation has also been confirmed in the Court's more recent case law²¹.

The Court further stated that Union citizenship constitutes one of the principal expressions of the solidarity underlying the process of European integration and that, as such, it forms part of the identity of the European Union as a specific legal order accepted by the Member States on the basis of reciprocity²². The Court went so far as to assert that Union citizenship is grounded in the common values set out in Art. 2 TEU and in the

¹⁷ Opinion of Advocate General Collins, *Commission v. Malta*, cit., para. 57.

¹⁸ See para. 58 of the opinion of Advocate General Collins, *Commission v. Malta*, cit.

¹⁹ Court of Justice, *Commission v. Malta*, cit., para. 91.

²⁰ See Advocate General Ćapeta, opinion of 4 September 2025, [case C-147/24](#), *Safi*, EU:C:2025:650, footnote 40.

²¹ See, in particular, Court of Justice, judgment of 25 November 2025, [case C-713/23](#), *Wojewoda Mazowiecki*, EU:C:2025:917, para. 40; judgment of 11 December 2025, [case C-789/23](#), *Tatrauské*, EU:C:2025:956, para. 33.

²² Court of Justice, *Commission v. Malta*, cit., para. 93.

mutual trust which Member States place in one another, on the assumption that none of them will exercise its competence in matters of nationality in a manner incompatible with the very nature of Union citizenship²³.

The Court also relied on its previous case law to support the proposition that the foundation of the bond of nationality lies in the particular relationship of solidarity and loyalty between a State and its nationals, as well as in the reciprocity of rights and duties²⁴.

From this premise, the Court inferred that a Member State manifestly undermines the relationship of solidarity and loyalty that binds it to its nationals – and thereby jeopardises the mutual trust upon which Union citizenship is based – when it establishes and implements a naturalisation scheme based on a transactional procedure under which nationality is granted in exchange for predetermined payments or investments²⁵.

Accordingly, the commercialisation of the grant of the status of being a national of a Member State – and, by extension, of Union citizenship – is regarded as incompatible with the very conception of that fundamental status²⁶.

This constitutes one of the key passages of the judgment and calls for closer scrutiny, insofar as the Court brought together, in a manner that is not entirely linear, the notions of solidarity, reciprocity of rights and duties, mutual trust between Member States, and the fundamental status of Union citizenship.

5. The logical leap between solidarity, reciprocity, and the commercialisation of citizenship.

The issues outlined just above now require closer examination, in order to assess whether the Court's reasoning is indeed persuasive from a legal standpoint²⁷.

The repeated reference to solidarity in the Court's judgment undoubtedly constitutes one of its most evocative aspects; at the same time, however, it is also one of its most problematic features.

As a general matter, it is reasonable to accept that national citizenship is based on a particular relationship of solidarity and loyalty between a State and its nationals²⁸. What is less clear, however, is why that relationship should also be regarded as forming the

²³ Court of Justice, *Commission v. Malta*, cit., para. 95.

²⁴ See Court of Justice, *Commission v. Malta*, cit., para. 96, where the Court of Justice, in support of its reasoning, refers to the judgments of 17 December 1980, [case 149/79](#), *Commission v Belgium*, EU:C:1980:297, para. 10; of 3 July 1986, [case 66/85](#), *Lawrie-Blum*, EU:C:1986:284, para. 27; of 26 April 2007, [case C-392/05](#), *Alevizos*, EU:C:2007:251, para. 70; *Rottmann*, cit., para. 51; *Stadt Duisburg*, cit., para. 37.

²⁵ Court of Justice, *Commission v. Malta*, cit., para. 99.

²⁶ Court of Justice, *Commission v. Malta*, cit., para. 100.

²⁷ Among those who have expressed particular criticism regarding the legal soundness of the Court's reasoning are, for example, D. KOCHENOV, G. ÍÑIGUEZ, *EU Citizenship's New Essentialism*, cit., para. 3; M. VAN DEN BRINK, *Why Bother with Legal Reasoning?*, cit.

²⁸ Court of Justice, *Commission v. Malta*, cit., para. 96.

basis of the rights which the Treaties confer on Union citizens. In this respect, one may legitimately ask whether the judgment suggests that the relationship of solidarity and loyalty between an individual and a Member State constitutes not only a precondition of national citizenship, but also a structural element of Union citizenship, endowed with autonomous relevance under EU law.

The Court asserted that Union citizenship constitutes one of the principal expressions of solidarity underlying the process of European integration²⁹.

In this regard, it may be recalled that the founding Treaties contain numerous references to solidarity, which is invoked in a variety of different contexts³⁰. These include, for example, solidarity among peoples³¹, solidarity between generations³², solidarity with overseas countries and territories³³, solidarity as part of the Union's common values³⁴, and solidarity among Member States, which is articulated in various policy areas such as economic, social and territorial cohesion³⁵, external action³⁶, migration and asylum policy³⁷, and responses to natural or man-made disasters and terrorist attacks³⁸. By contrast, the Treaties do not expressly refer to a form of solidarity between the Member States and their respective Union citizens.

In the absence of such an explicit reference, the normative or systemic basis on which the Court grounded its assertion that Union citizenship constitutes one of the principal expressions of solidarity is not immediately apparent³⁹, and nor is it immediately apparent how that assertion can give rise to a legal limitation on the freedom of Member States to determine the conditions for the acquisition of nationality, beyond the general references to mutual trust and the principle of sincere cooperation.

Given that Union citizenship is additional to, and does not replace, national citizenship, and that it does not introduce requirements other than those determined by each Member State, the Court's reference to solidarity should, in our view, be interpreted not as the recognition of an autonomous bond of solidarity between the individual and the

²⁹ Court of Justice, *Commission v. Malta*, cit., para. 93.

³⁰ On the different meanings of solidarity in European Union law, see, for example, N. RUCCIA, *La nature juridique de la solidarité en droit de l'Union européenne*, in *Revue trimestrielle de droit européen*, 2023, pp. 203-216; F. CROCI, *Solidarietà tra Stati membri dell'Unione europea e governance economica europea*, Torino, 2020, p. 1 ff.; A. BIONDI, E. DAGILYTĖ, E. KÜÇÜK (eds.), *Solidarity in EU Law. Legal Principle in the Making*, Cheltenham, 2018; G. MORGESE, *La solidarietà tra gli Stati membri dell'Unione europea in materia di immigrazione e asilo*, Bari, 2018, spec. p. 20 ff.

³¹ See the preamble to the TEU and Art. 3(5) TEU.

³² See Art. 3(3) TEU.

³³ See the preamble to the TFEU.

³⁴ See Art. 2 TEU.

³⁵ See Art. 3(3) TEU.

³⁶ See Art. 24 (2) TEU.

³⁷ See Arts. 67 and 80 TFEU.

³⁸ See Art. 222 TFEU.

³⁹ On the ambiguous use of the notion of solidarity in the judgment in question, see, for example, S. POLI, L. LONARDO, *The Attribution of National Citizenship by Member States and Its Impact on EU Values*, in *federalismi.it*, 2026, No 1, p. 135 and, in particular, p. 148 ff., available [online](#).

Union, but rather as a reflection of the fact that the traditional relationship of solidarity between a citizen and his or her State may continue to be relevant within the EU legal order, without thereby giving rise to an independent legal relationship between the individual and the Union itself.

At present, and in the absence of further clarification by the Court, it does not appear possible to maintain the position that solidarity must also characterise the relationship between the individual Union citizen and the Union as a whole, at least not in the sense that this is a legal principle sufficiently defined in its content and implications, rather than merely a rhetorical reference lacking clearly identifiable legal substance.

A further problematic issue concerns the reasons why a naturalisation programme such as the Maltese one should be regarded as infringing the reciprocity of rights and duties, and more generally as undermining the relationship of solidarity and loyalty, between a State and its citizens.

According to the Court, the Maltese programme, by virtue of its transactional nature and its resemblance to a commercialisation of citizenship, constituted a manifest breach of that relationship. Admittedly, monetising the status of Union citizen may be said to diminish, or even «degrade», the institution of Union citizenship. However, the transition from a symbolic or constitutional devaluation to a legal violation of reciprocity and loyalty is neither straightforward nor convincingly demonstrated from a legal perspective.

In particular, it is difficult to argue that individuals benefiting from such a programme behave «disloyally» towards the State. The conditions for the acquisition of citizenship are established by the State itself; the individual merely complies with them. If there is a problem of loyalty, it would seem to lie, rather with the State, which places on the «market» a status endowed with supranational relevance and then expects that status to be automatically recognised by other Member States. From this perspective, the compromised loyalty may be that between Member States – and thus vis-à-vis the Union – rather than that between the State and the individual.

It is precisely here that a logical leap appears in the Court's reasoning. The Court moved from the principle of mutual trust between Member States to the presupposition of a substantive requirement – solidarity and loyalty – that is neither clearly defined nor adequately substantiated. The Court argued that the obligation to recognise the nationality granted by another Member State derives from mutual trust, and that such mutual trust rests on the assumption that nationality is granted on the basis of a relationship of solidarity and loyalty. However, it remains unclear, within the Court's reasoning, between which actors this solidarity operates and, more importantly, why the commercialisation of citizenship should, in itself, amount to the negation of that relationship.

The reasoning thus appears to take the form of a *petitio principii*: citizenship «must» be based on solidarity and loyalty; therefore, citizenship granted in a «commercial» manner violates solidarity and loyalty; and, for that very reason, mutual trust is

undermined. However, the Court did not clarify whether it is the mere presence of a financial transaction, or, instead, the possible absence of a substantive link between the individual and the State, that gives rise to the breach of solidarity and loyalty, nor how such a breach translates into a legally relevant impairment of mutual trust between Member States.

This line of reasoning may be tested through a deliberately provocative example. One may ask whether the relationship of solidarity and loyalty would be respected in a situation in which citizenship were granted indiscriminately to anyone entering the territory of a State. If, for instance, a Member State were to confer its nationality – and thus Union citizenship – on any person present on its territory, without any financial consideration, would this undermine solidarity and loyalty between the State and the individual? In such a scenario, would the absence of a financial transaction suffice to render the practice compatible with EU law, despite the absence of any substantive link?

In such a case, a genuine link between the individual and the Member State would clearly be lacking. This example illustrates the distinction between the financial character of the acquisition of nationality and the actual existence of a substantive connection between the individual and the State: the absence of a financial transaction does not, in itself, guarantee the existence of a genuine link, nor, consequently, the presence of a relationship of solidarity and loyalty between the citizen and the State.

Notably, the Court did not hold – contrary to what had been argued by the Commission – that the existence of a genuine link constitutes a necessary condition for the acquisition of Union citizenship, or at least it did not do so in an explicit and unequivocal manner⁴⁰.

On this point, the position adopted by Advocate General Collins appears more consistent with the framework of citizenship as derived from the Treaties: to assert, as the Commission did, that the grant of nationality in the absence of a «genuine link» is contrary to the very essence of Union citizenship would amount to introducing a requirement not clearly grounded either in international law or in EU law.

Admittedly, the Court observed that Maltese law did not require effective residence. However, this was not – and could not have been – the decisive argument underlying the finding of a breach of EU law. It follows that the Court's reasoning is centred not so much on the absence of a substantive link between the individual and the Member State, but rather on the exclusion of the «commercial» nature of the conferral of nationality.

In other words, what is ultimately decisive is the transactional logic underpinning the programme, rather than the substantive criteria connecting the individual to the State.

⁴⁰ The view that the existence of a genuine link between the individual and the State of which he or she is a national does not constitute a criterion that the State is required to verify in order to confer its status civitatis is also shared by B. NASCIMBENE, *Cittadinanza: riflessioni su problemi attuali di diritto internazionale ed europeo*, in *Rivista di diritto internazionale privato e processuale*, 2025, pp. 5-20, at p. 18.

From this perspective, the discretion of Member States to determine the conditions for the acquisition of nationality, including the possible requirement for a genuine link, remains intact, provided that such conditions do not take the form of a mere financial transaction.

Ultimately, the impression is that the Court, in seeking to preserve the constitutional dignity of Union citizenship and to prevent its commodification, constructed a legal justification – based on references to solidarity and loyalty between citizens and Member States, as well as on the reciprocity of rights and duties – that is not entirely convincing, or at least is not sufficiently substantiated from a legal standpoint, in order to justify a limitation on the freedom of Member States to confer nationality.

6. The indeterminacy of the limits to state competence in matters of acquisition of nationality.

The judgment in *Commission v. Malta* is significant not only for what it establishes, but also for what it leaves unresolved. While some doctrinal interpretations have suggested the desirability of a degree of continuity between the limits developed in the Court's case law on the loss of nationality and those applicable to the acquisition of nationality⁴¹, it does not appear that the judgment itself establishes a genuine parallel between the rules governing the limits imposed by EU law in cases of loss of nationality and those applicable to the grant of nationality. At the very least, the judgment does not explicitly rebut Advocate General Collins' assertion in his opinion that it is not possible to draw an exact parallel between the grant and the withdrawal of the nationality of a Member State⁴².

Rather, the Court rejected Malta's argument that, in matters of the conferral of nationality, EU scrutiny would be permissible only in the presence of serious, general and systematic breaches of the Union's values, while failing to articulate a general criterion delimiting state competence in matters of the acquisition of nationality. This omission gives rise to a broader condition of normative indeterminacy that permeates the subsequent analysis.

6.1. The absence of a general criterion: neither a requirement for a genuine link nor symmetry between acquisition and loss.

⁴¹ See, for instance, S. BARBIERI, *La cittadinanza dell'Unione come parte della sua identità: la sentenza Commissione c. Malta*, cit., at pp. 350, who observes that, although the Court's previous case law concerned only the loss of nationality, the judgment in *Commission v Malta* makes explicit that Member States are bound by EU law also when granting nationality, on the premise that the two situations do not diverge; M. CHAMON, *Commission v Malta (C-181/23) and the Trilemma of EU Citizenship*, cit., at p. 476, arguing that, once limits to Member States' discretion in cases of loss are acknowledged, it becomes difficult to deny the existence of analogous constraints in relation to the conferral of nationality.

⁴² See para. 52 of the opinion of Advocate General Collins, *Commission v. Malta*, cit.

First, the Court did not state – at least not in an explicit and generalisable manner – that EU law requires the existence of a genuine link as a necessary condition for the acquisition of the nationality of a Member State and, consequently, of Union citizenship. The notion of a genuine link is present in the background of the dispute (including in the Commission’s submissions), but the judgment does not lay down a general principle according to which citizenship would be incompatible with the absence of substantive connections, such as effective residence, social integration or family ties.

This omission is significant, as such a step would have entailed a structural redefinition of the relationship between national competence and Union citizenship status, with potentially far-reaching consequences for traditionally accepted models of nationality acquisition (such as *ius sanguinis* «at a distance» or discretionary naturalisation).

In other words, the Court avoided grounding its review on a single substantive criterion (the existence of a genuine link), preferring instead an approach that is formally anchored in primary law (Art. 20 TFEU) and in the principle of sincere cooperation (Art. 4(3) TEU), without, however, translating these into clearly defined substantive parameters.

As a result, the unlawfulness of the Maltese programme was not presented as the necessary consequence of the absence of effective residence, but rather as the outcome of an overall assessment centred on the transactional nature of the scheme.

Similarly, the Court did not affirm the existence of a strict symmetry between the rules governing the loss of nationality and those governing its acquisition. In this respect, it is worth recalling that Advocate General Collins had emphasised that it is not possible to draw a strict parallel between the grant and the withdrawal of nationality by Member States, since EU law does not necessarily impose identical obligations in the two situations⁴³. The scope of that assertion, however, remains unclear, and raises broader systemic questions as to the relationship between the rules governing the loss and those governing the acquisition of nationality.

The Court’s case law, beginning with *Rottmann*, primarily concerns situations of loss of nationality, and is structured around an individual proportionality assessment. In the Maltese case, by contrast, the Court operated within the distinct context of acquisition, without transposing those parameters or developing an equivalent test.

In this context, the ambiguity present in the opinion of Advocate General Collins becomes relevant⁴⁴: while rejecting the existence of an «exact» parallel between the conferral and the withdrawal of nationality, the opinion does not clarify which obligations differ between the two scenarios.

⁴³ See para. 52 of the opinion of Advocate General Collins, *Commission v. Malta*, cit.

⁴⁴ See para. 52 of the opinion of Advocate General Collins, *Commission v. Malta*, cit.

This leaves open a systemic question: does Union citizenship, as a «fundamental status», require more intensive scrutiny when a national decision deprives an individual of that status (loss), or, conversely, may the Union may be justified in intervening more strongly in relation to the conferral of that status, insofar as that is the moment at which the subjective scope of the European *demos* is determined.

The judgment does not take a clear position on this issue, thereby leaving a significant margin of interpretative uncertainty.

6.2. The rejection of Malta's high threshold of serious and systematic breaches of the Union's values.

Secondly, the Court rejected Malta's argument that, in matters of the acquisition of nationality, EU review is permissible only where there are serious, general and systematic violations of the values of the Union referred to in Art. 2 TEU.

This is an important point, as it defines – negatively – the scope of EU scrutiny: the Court did not anchor its assessment to an extreme «political-constitutional» threshold (comparable, for instance, to that underlying Art. 7 TEU procedures), but accepted that review may take place even in the absence of a systemic breach of the rule of law or of the Union's foundational values.

However, this conclusion was not accompanied by the identification of an alternative, clearly-defined threshold, nor by the clarification of the criteria on the basis of which the compatibility of national regimes other than the Maltese one should be assessed.

The Court merely indicated that the scheme at issue, by virtue of its transactional nature, infringed the obligation of sincere cooperation and undermined the proper functioning of the citizenship regime established by the Treaties, without specifying, in general terms, the parameters that should guide the assessment in other situations.

6.3. The «unsaid»: the absence of a criterion delimiting state competence.

The central point, therefore, is that the Court, while producing a significant symbolic and systemic effect – as already mentioned – failed to articulate a clearly-defined criterion delimiting national competence in matters of the acquisition of nationality.

The judgment targets the Maltese programme as a paradigmatic case of commodification, but does not clarify which elements, outside that specific scenario, would render a national regime compatible or incompatible with EU law.

As a result, a range of questions remains open: which forms of «selective» naturalisation are considered permissible; where the balance lies between a State's

discretion and the integrity of the concept of Union citizenship; and the extent to which the Court intends to extend its review of national choices without transforming the obligation of mutual recognition into a form of general substantive scrutiny of Member States' citizenship policies.

From this perspective, what the judgment leaves unsaid is not merely a descriptive gap, but a structurally relevant area of normative indeterminacy, stemming precisely from the absence of a general delimiting criterion. This indeterminacy allows for targeted intervention in extreme cases – such as overtly transactional models – without the articulation of a general principle (such as that of a genuine link), while at the same time leaving uncertain the criteria that should guide, *ex ante*, the design of national citizenship regimes compatible with EU law.

7. Subsequent developments: the Maltese and Cypriot reforms and the persistence of uncertainty.

On 24 July 2025, Malta adopted a reform of its legislation on nationality, abolishing the citizenship-by-investment programme and reformulating the naturalisation regime on the basis of merit⁴⁵.

Under the new framework, eligibility is granted to individuals who have rendered exceptional services to Malta, such as scientists, researchers, athletes, artists, entrepreneurs or philanthropists. A key requirement is that such services or contributions ensure a significant advantage or benefit for the national interest of Malta by, for instance, creating employment opportunities.

A central element of the reform – clearly intended to comply with the requirements set out by the Court of Justice – is the removal of any reference to a predetermined financial contribution as a legal condition for the grant of nationality. As a result, the conferral of citizenship no longer formally takes the form of a transaction.

Applicants must submit a proposal to a designated evaluation body, in the form of a letter describing the exceptional services and contributions that they have already provided or that they intend to continue to provide for the benefit of Malta or of humanity. They are also required to indicate how such contributions will be pursued following naturalisation.

The competent authority examines the proposal and conducts a thorough due diligence process. If the assessment is positive, the applicant may then submit a formal application for naturalisation on the basis of merit.

⁴⁵ See, in particular, the Maltese Citizenship (Amendment) Act, 2025 (Act XXI of 2025), of 24 July 2025, which redefines the primary legal framework, and [Legal Notice](#) No 159 of 2025, *Granting of Citizenship for Exceptional Services (Amendment) Regulations*, Government Gazette of Malta No 21,478 of 29 July 2025, laying down the implementing rules.

The application must demonstrate, in particular: a period of residence in Malta (with a minimum duration of eight months, according to the applicable rules) prior to the application; the availability of accommodation in Malta; an adequate knowledge of the Maltese or English language; and the existence of links with Malta as described in the proposal.

If the application is approved, the competent minister may impose ongoing obligations. Overall, the revised programme is no longer based on a predetermined transaction and does not, at least formally, display a commercial character, while it requires a minimum period of residence of eight months.

However, the legislation does not clarify whether such residence must be effective or merely formal. Moreover, the residence requirement applies prior to the application for citizenship, but not necessarily prior to the submission of the proposal. This means that an applicant may submit a proposal outlining a programme of contributions, obtain approval, subsequently establish residence, and only thereafter submit their formal application.

A further problematic aspect concerns the scope of «exceptional services» and of «significant advantages or benefits for the national interest», within which contributions of an economic nature could still be included. The new Maltese legislation does not explicitly exclude such a possibility.

It follows that, while the reform eliminates the most explicit form of commodification, it does not entirely resolve the issue of the relationship between merit, economic contribution and access to the status of Union citizen.

The Maltese reform, adopted in the immediate aftermath of *Commission v. Malta*, offers a concrete illustration of how a national legal system may respond to a judgment which, while targeting a paradigmatic model of commodification, leaves unresolved the question of the general criteria delimiting state competence in matters of nationality acquisition.

A partially analogous dynamic, albeit unfolding through different modalities and timelines, can be observed in the case of Cyprus. Cyprus ceased accepting new applications for naturalisation as of 1 November 2020, following the initiation, in October of the same year, of infringement proceedings by the European Commission⁴⁶. However, as Cyprus initially continued to process applications that had already been submitted, the Commission decided, on 9 June 2021, to pursue the proceeding further by issuing a reasoned opinion.

The infringement procedure remained dormant until after the judgment of the Court of Justice in *Commission v. Malta*. Following that judgment, the Commission, in the context of its monitoring activities, called upon Cyprus to draw the necessary

⁴⁶ See INFR(2020)2300.

consequences from the Court's ruling⁴⁷. It is likely that that judgment constituted the decisive impetus for the Cypriot legislature to adopt a more far-reaching reform, culminating in the enactment, on 4 December 2025, of legislation definitively abandoning the citizenship-by-investment scheme. This, in turn, led the Commission to close the infringement procedure on 11 March 2026.

The recent Cypriot reform is characterised, in particular, by the introduction of review mechanisms – to be completed within a period of 60 days – concerning citizenships already granted under the scheme, a task entrusted to an independent body (the *Independent Committee for the Examination of Deprivation of Citizenship*), as well as by the requirement to publish, in the Cypriot Official Gazette, the names of individuals whose citizenship has been revoked, with a view to enhancing transparency⁴⁸.

Overall, the Maltese and Cypriot reforms reveal a convergent trend: the abandonment of the most explicit forms of commodification of citizenship, and their replacement of those schemes with models formally based on qualitative or discretionary criteria.

At the same time, however, the two reforms do not operate at the same level of determinacy. While the Cypriot reform appears to result in a relatively clear-cut abandonment of the citizenship-by-investment model, the Maltese framework continues to raise questions as to the substantive criteria governing access to nationality.

More broadly, this evolution is not accompanied, at the level of EU law, by the identification of clear and general legal parameters; rather, it unfolds within a framework characterised by persistent uncertainty.

Significant areas of uncertainty remain, both with regard to the substantive criteria governing the acquisition of nationality and with regard to the scope of EU scrutiny over national choices. In this respect, the developments following *Commission v. Malta* confirm that the Court has targeted a specific model – namely, one that is overtly transactional – without, however, defining a comprehensive general criterion delimiting state competence.

As a consequence, while Member States may formally comply with the Court's case law, they continue to operate within a considerable margin of discretion in which the boundaries between merit, national interest and economic contribution remain rather blurred.

⁴⁷ See Commission Staff Working Document, *2025 Rule of Law Report. Country Chapter on the Rule of Law Situation in Cyprus*, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [SWD\(2025\) 913 final](#) of 8 July 2025, p. 10.

⁴⁸ See *Golden passport era ends, but debate rages on*, in *Knews*, 5 December 2025, available [online](#); see also Republic of Cyprus, Office of the Attorney General of the Republic, *The European Commission Closed the Infringement Procedure against Cyprus in relation to the Cyprus Investment Program*, press release, 11 March 2026, available [online](#).

Ultimately, the developments following the judgment do not eliminate, but rather confirm, the difficulty of identifying legal criteria capable of guiding, *ex ante*, the conduct of Member States in matters of nationality acquisition, thereby leaving unresolved the tension between state discretion and the integrity of Union citizenship status.

This persistent indeterminacy provides the analytical background against which national reforms must be assessed.

8. The Italian reform of *ius sanguinis*: the legal characterization of its effects and possible responses by the Constitutional Court.

Against this background, the Italian case may usefully be examined. In this context, the judgment in *Commission v. Malta* operates as an interpretative benchmark, prompting reflection on the limits that may be imposed by EU law on legislative choices in matters of nationality. The significance of the judgment lies less in the establishment of a binding general criterion than in the way that it sheds light on the systemic tensions – above all, the relationship between the acquisition of nationality and the loss of that status – that have emerged with particular clarity in the domestic litigation following the reform of *ius sanguinis*.

In this respect, the reform introduced by Decree-Law No 36 of 28 March 2025⁴⁹, as converted with amendments by Law No 74 of 23 May 2025⁵⁰, significantly altered the legal framework governing the acquisition of Italian citizenship on the basis of *ius sanguinis*⁵¹. In particular, through the introduction of Article 3-*bis* into Law No 91 of 1992⁵², the legislation provides that individuals born abroad who possess another nationality are to be regarded as never having acquired Italian citizenship, unless specific conditions are met.

This provision, which also applies to persons born prior to its entry into force, has raised important interpretative questions concerning the legal characterization of its effects, especially with regard to the boundary between original acquisition and loss of *status civitatis*.

⁴⁹ [Decreto-legge 28 marzo 2025, n. 36](#), Disposizioni urgenti in materia di cittadinanza.

⁵⁰ [Legge 23 maggio 2025, n. 74](#), Conversione in legge, con modificazioni, del decreto-legge 28 marzo 2025, n. 36, recante disposizioni urgenti in materia di cittadinanza.

⁵¹ For commentaries on this reform of Italian citizenship law and its potential constitutional issues, see, for example, G. BONATO, *La cittadinanza italiana dopo la Legge n. 74 del 2025: i dubbi di costituzionalità della nuova disciplina*, in *Judicium*, 2026, pp. 1-66, available [online](#); E. CAVASINO, *La cittadinanza al tempo delle migrazioni: oltre lo ius sanguinis, ma con ragionevolezza*, in *Diritto, Immigrazione e Cittadinanza*, 2026, No 1, pp. 1-28, available [online](#); G. PERIN, «La patria dei padri è la patria dei figli». *Le conseguenze della riforma della cittadinanza sui minori nati all'estero e residenti in Italia*, in *Diritto, Immigrazione e Cittadinanza*, 2025, No 3, pp. 1-21, available [online](#). On the possible private international law implications of the reform in question, see in particular C. CAMPIGLIO, *Cittadinanza iure sanguinis e nazionalità: riflessioni internazionalprivatistiche*, in *Rivista di diritto internazionale privato e processuale*, 2025, pp. 563-591.

⁵² [Legge 5 febbraio 1992, n. 91](#), Nuove norme sulla cittadinanza.

The orders by which the Tribunals of Turin (25 June 2025)⁵³, Mantua (24 October 2025)⁵⁴ and Campobasso (6 and 9 February 2026)⁵⁵ have referred questions of constitutionality to the Italian Constitutional Court constitute, in this respect, a particularly revealing field for observation. While grounded in domestic constitutional parameters, the referring courts structure their reviews around a conceptual question that closely mirrors, by structural analogy, the distinction developed in EU law between the acquisition and the loss of nationality: namely, whether, and to what extent, a rule formally presented as governing the acquisition of nationality may, in substance, produce effects equivalent to a loss (or implicit withdrawal) of *status civitatis*.

With regard to the order of the Tribunal of Turin, the Italian Constitutional Court, in a press release of 12 March 2026, has already indicated that the claims raised are partly unfounded and partly inadmissible, and has, in particular excluded a violation of Art. 20 TFEU and Art. 9 TEU⁵⁶. Pending the publication of the full reasoning and of the decisions on the other orders, this outcome does not exhaust the problematic aspects emerging from the litigation, and nor does it preclude a different assessment in the cases still pending.

As already emphasised in the preceding sections, one of the central features of the Court of Justice's judgment in *Commission v. Malta* lies precisely in what it leaves unsaid: the absence of a general criterion of compatibility, under EU law, for national reforms governing the acquisition of nationality. This leaves Member States with a wide margin of manoeuvre at the normative level, while at the same time rendering decisive the substantive classification of the effects produced by such legislation, particularly where the legislation affects situations predating its entry into force. It is precisely within this space of indeterminacy that the debate arising in Italy following the introduction of Article 3-*bis* of Law No 91 of 1992 must be situated.

The Tribunal of Turin characterises the reform introduced by the decree-law as being akin to an implicit revocation of *status civitatis*, emphasising that the application of the new rules to individuals born prior to their entry into force of these rules, combined with the introduction of an immediately operative peremptory time limit, produces effects tantamount to a loss of status in the absence of a reasonable transitional period. Thus understood, the reform does not merely redefine the conditions for the acquisition of citizenship for the future, but retroactively affects positions which, under the previous

⁵³ [Order of the Court of Turin of 25 June 2025](#), in the Official Gazette of the Italian Republic, 17 September 2025, No 38, p. 61.

⁵⁴ [Order of the Court of Mantua of 24 October 2025](#), in the Official Gazette of the Italian Republic, 14 January 2026, No 2, p. 42.

⁵⁵ [Orders of the Court of Campobasso of 6 February 2026 and 9 February 2026](#), in the Official Gazette of the Italian Republic, 18 March 2026, No 11, respectively p. 92 and p. 82.

⁵⁶ See Constitutional Court, press release of 12 March 2026, *La Corte costituzionale respinge le questioni di legittimità costituzionale relative al decreto-legge 36/2025 in materia di cittadinanza*, available [online](#).

legal framework, would have entailed its acquisition *ex lege* from birth, albeit pending formal recognition.

The Tribunal of Mantua, adopting an even more explicit line of reasoning, refers to an automatic and *ex tunc* loss of citizenship, construing Article 3-*bis* of Law No 91 of 1992 as a mechanism of normative deprivation of a status already accrued. A similar approach emerges, albeit with different emphases, in the order of the Tribunal of Campobasso, further consolidating the interpretation of the provision as having effects tantamount to a loss of status.

From this perspective, the characterization of the legal position that is affected becomes central. According to the settled case law of the Italian Court of Cassation, most recently reaffirmed by the Joint Chambers in 2022⁵⁷, citizenship acquired *iure sanguinis* constitutes an original, permanent and imprescriptible status, the recognition of which is declaratory rather than constitutive in nature. It follows that the new legislation affects not a mere expectation, but rather a legal situation already perfected at the moment of birth.

If this classification were to be upheld, the reform would functionally fall within the domain of loss of nationality, thereby potentially triggering, by analogy or structural affinity, the application of the principles developed by the Court of Justice in relation to the loss of Union citizenship. In particular, this would raise questions of compliance with the principle of proportionality, the requirement for an individualised assessment, and the protection of legitimate expectations. It is also relevant that, according to the case law of the Court of Justice, the loss of status should not operate in an automatic and generalised manner, but must allow for a concrete assessment of its consequences for the individual concerned.

In this perspective, the absence of a transitional regime is also of particular importance. The 2025 reform operates with immediate and retroactive effect, without providing a period of adjustment enabling the individuals concerned to initiate procedures for the formal recognition of their citizenship. The introduction of an immediately effective peremptory deadline that is not accompanied by a reasonable transitional period or safeguarding measures, reinforces the loss-of-status character of the reform and significantly affects the legitimate expectations of those concerned, who could reasonably rely, on the basis of the previous legal framework and settled case law, on the acquisition of citizenship from birth.

Moreover, the temporal criterion identified by the legislature – namely, the submission of an application within a specified time limit – may, in practice, depend on bureaucratic factors beyond the control of the individual, such as access to consular services or the time required for the processing of their applications. As a result, the inability to act in a timely manner may stem not from inertia, but from the structural

⁵⁷ See Court of Cassation (Joint Chambers), judgments of 12 July 2022, Nos 25317 and 25318.

limitations of the administration, which may also has potential implications for the principle of effectiveness.

In the light of the partial outcome of the constitutional proceedings, which, for the time being, excluded a direct violation of EU law in the case arising from the Turin order, the role of EU law cannot, however, be regarded as exhausted. It continues to provide relevant parameters for assessing the substantive legal characterization of the effects of the reform, and may assume a different significance in the cases still pending, as well as in any future reconsideration by the Constitutional Court, in particular should it consider appropriate to make a preliminary reference to the Court of Justice of the European Union in order to further clarify the obligation arising under EU law in this field.

9. Concluding remarks: findings and outstanding issues.

The analysis conducted here allows for the identification of a number of relatively stable findings, while at the same time highlighting the main points of tension that remain unresolved in the recent case law.

A first consolidated element concerns the derivative nature of Union citizenship: the Treaties confirm its structural dependence on national citizenship, and yet such dependence does not entail the complete neutrality of EU law with regard to State's choices in matters of nationality. Indeed, the case law on the loss of nationality demonstrates that a State's competence is subject to a form of «conditional» review if a national decision results (even indirectly) in the loss of Union citizenship status. In this area, the Court of Justice has progressively developed a set of substantive and procedural guarantees – proportionality, individual assessment of consequences, and effectiveness of remedies – which significantly reduce the absolute nature of a State's discretion and, at least in this field, attenuate the traditional centrality of national sovereignty.

The second, more recent and systemically significant, finding is that *Commission v. Malta* marks a further step: for the first time, the Court has intervened in the field of nationality acquisition and affirmed that a national model may infringe Art. 20 TFEU and the principle of sincere cooperation. The judgment undoubtedly reinforces the centrality of Union citizenship in the process of European integration, and strengthens its constitutional dimension, notably through a more assertive formulation of Union citizenship as the «fundamental status» of nationals of the Member States.

However, this development is achieved through a line of reasoning that presents notable conceptual tensions. In particular, the transition from the commercialisation of citizenship to the violation of solidarity, loyalty and the reciprocity of rights and duties is neither entirely linear nor fully substantiated from a legal perspective. The reasoning thus appears more convincing as a reaction to a paradigmatic case of commodification than as

the articulation of a general criterion capable of guiding national legislative choices in a predictable manner.

It is precisely here that the central issue of this analysis emerges: the systemic relevance of what the Court leaves unsaid. As has been shown, the judgment does not establish a general requirement for a genuine link, does not clarify whether a symmetry exists between acquisition and loss, and does not define a clear threshold for reviewing «ordinary» national policies on the acquisition of nationality. While the Court rejects Malta's maximalist argument – according to which only serious, general and systematic violations of the Union's values could justify EU intervention – it does not replace this with a fully developed alternative standard.

As a result, EU scrutiny is extended, yet remains selective and incomplete: it decisively targets overtly transactional models, but does not clarify, in general terms, which elements render other national regimes compatible or incompatible with EU law.

Subsequent developments confirm this ambivalence. On the one hand, the Maltese reform adopted in July 2025 reflects a clear legislative response aimed at removing the transactional element and replacing it with a model formally based on merit. The evolution of the Cypriot legal framework likewise confirms the abandonment of the most explicit forms of commodification, albeit through a more clear-cut legislative disengagement from the citizenship-by-investment model. On the other hand, however, the Maltese reform, in particular, demonstrates that the elimination of a predetermined financial contribution is not, in itself, sufficient to dispel all uncertainties: grey areas persist with regard to indirect economic contributions, the substantive nature of the link with the State, and, more broadly, the boundaries between merit, national interest and political discretion.

In this respect, the developments following the judgment do not contradict, but instead confirm, that the Court has targeted a specific model without yet defining a comprehensive general standard of compatibility.

The Italian case illustrates these dynamics particularly clearly. Here, what the Court leaves «unsaid» operates not as an immediate and direct constraint, but rather as an interpretative background against which constitutional litigation following the reform of *ius sanguinis* must be understood. The questions of constitutionality raised by the Tribunals of Turin, Mantua and Campobasso shift the focus to the substantive classification of the temporal effects of the reform, asking whether a rule formally presented as governing the acquisition of nationality may, in substance, produce effects equivalent to an *ex tunc* loss of status.

From this perspective, the case law of the Court of Justice on the loss of nationality may continue to play a significant role, not necessarily as a directly infringed standard, but as a set of criteria guiding the legal characterization of a measure, the assessment of

its proportionality, and the evaluation of the reasonableness of the absence of an adequate transitional regime.

In this sense, EU law operates less as a fully defined external limit than as a criterion for the legal qualification of the situation: it is the legal characterization of the measure as one governing the acquisition of nationality, or conversely as one substantively amounting to a loss of status, that determines the applicability of the principles developed by the Court of Justice.

From this perspective, even the most recent indications emerging from the national constitutional adjudication do not, at this stage, allow the issue to be regarded as definitively settled. The fact that, in an initial assessment, a complaint based on Arts. 9 TEU and 20 TFEU has not been upheld does not yet clarify the underlying reasons for that conclusion, nor does it exclude the possibility that more complex or differentiated issues may arise in the cases still pending.

It follows that EU law, although not thus far recognised by the Constitutional Court as supplying a directly infringed standard, retains a critical and interpretative function, capable of influencing both the reconstruction of the nature of the effects of the reform and a possible future reconsideration of the solution adopted.

In this context, EU law may enter both constitutional and ordinary proceedings through the mechanism of the preliminary reference under Art. 267 TFEU. The Constitutional Court, if it considers that the scope of the relevant EU law principles remains unclear, may refer a question to the Court of Justice; similarly, ordinary courts may make a direct reference, even independently of constitutional proceedings, if they consider that a question concerning the interpretation of EU law is relevant and not manifestly unfounded, with a view to assessing the compatibility of the national measure with EU law.

In particular, the preliminary reference may serve to clarify whether, and to what extent, the principles developed in relation to the loss of Union citizenship are applicable to situations which, although formally framed as rules on acquisition, produce effects tantamount to a loss of status.

Recent preliminary references may already be seen as early indications of this possible development. In case C-653/25, currently pending before the Court of Justice, a Romanian court raises the question of whether a national legislative amendment extending, with retroactive effect, the time limit for processing applications for the reacquisition of nationality from five months to two years is compatible with EU law⁵⁸. More broadly, the case highlights the question of whether Member States remain free to modify, at their discretion, their procedural frameworks governing access to nationality,

⁵⁸ See request for a preliminary ruling from the *Tribunalul București* (Romania) lodged on 3 October 2025 – *EM v Autoritatea Națională pentru Cetățenie*, [case C-653/25](#), *Autoritatea Națională pentru Cetățenie*.

or whether they must instead comply with limits deriving from EU law when such changes affect access to Union citizenship and the exercise of the rights attached thereto. In this sense, it illustrates the persistent – and, at present, unresolved – indeterminacy of the limits imposed by EU law in this field.

In conclusion, recent case law confirms that Union citizenship can no longer be regarded as a mere accessory of national citizenship. While it remains structurally dependent upon it, that dependence does not prevent EU law from imposing, in certain circumstances, significant constraints on the exercise of state competence. At present, however, such constraints are clearly consolidated primarily in the field of loss of nationality, whereas in the field of acquisition they remain largely confined to intervention in extreme or paradigmatic cases.

The result is an equilibrium that remains unstable: the Court of Justice intervenes decisively both in situations involving the loss of status and, in the field of nationality acquisition, in cases of manifest commodification of citizenship, but has not yet articulated a general criterion capable of ensuring predictability and uniformity in the review of national citizenship policies.

It is precisely this space of indeterminacy that represents both the current limit and the main vector for the future development of the case law: it leaves open the possibility for «borderline» litigation on questions that are likely to be progressively clarified through future preliminary references and further interventions by the Court of Justice, ultimately leading to a more explicit definition of the relationship between State discretion and the integrity of Union citizenship.

ABSTRACT: This article examines the evolving limits imposed by EU law on Member States' competence in matters of nationality. While the Court of Justice has developed a coherent framework of constraints in cases concerning the loss of nationality, the extension of such limits to the field of acquisition remains uncertain. The judgment in *Commission v. Malta* marks a significant step in this direction, yet fails to articulate clear and general criteria. The article argues that this results in a structural indeterminacy, which is reflected in recent legislative and judicial developments at national level. In particular, the reforms adopted in Malta and Cyprus, as well as the constitutional litigation arising in Italy, illustrate the persistence of uncertainty as to the scope of EU scrutiny. The analysis concludes that, although Union citizenship has acquired a central role, the limits it imposes on State competence in nationality law remain uneven and largely unsettled.

KEYWORDS: Union citizenship; Nationality; Acquisition and loss of nationality; Citizenship by investment; State discretion.