BOGUS MARRIAGES

Contents

Foreword

Marriages of convenience, and in general identity and civil-status fraud, capture the attention of national authorities, but also of various international bodies[1].

These questions also play an important part within the activities of the International Commission on Civil Status (ICCS)[2], which has, for many years, been running a permanent work group in order to study the issue of civil-status fraud.

Besides regular exchanges of information between ICCS member States at this work group's meetings, preoccupations relating to civil-status fraud have led the ICCS to carry out several pieces of work in this area. In 1996, it produced an important report on 'Fraud with respect to civil status in ICCS member States', summarising the various types of fraud and their causes, the means of prevention implemented in the various States to prevent or avoid giving effect to fraudulent records, and the obstacles faced by such initiatives[3]. In 2000, this study was updated and completed by a note on 'the compatibility with the European Convention on Human Rights of legislative and regulatory measures taken by States to combat fraud with respect to civil status'[4]. These same preoccupations also led the ICCS to produce the Recommendation adopted on 17th March 2005, on combating documentary fraud with respect to civil status[5].

It is within this context that the present study places itself. Its aim is to summarise the problem of bogus marriages, one of the issues that was touched upon in the study published in 1996 that seems to be increasing significantly in several ICCS member States. These unions, concluded, not with the usual aims of marriage, but in view of obtaining certain advantages generally associated with marriage, are drawing the attention of State authorities in most ICCS member States. It is noteworthy that since 1996, in more and more States, legislation has begun to appear concerning the registration of certain couples outside of marriage, these partnerships often entailing conditions that are more favourable than for ordinary unions. However, it has been decided not to systematically extend the study into this area.

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1. In particular, one will note the Council of Europe Resolution of 4 December 1997 on the measures to implement against marriages of convenience, Directive 2003/109/CE relating to the status of third-party State nationals who are long-term residents and Directive 2004/38/CE of 29 April 2004 relating to the right of Union citizens and their family members to reside and circulate freely within the territory of member States, as well as Resolution 1468 and Recommendation 1723 of the Council of Europe Parliamentary Assembly of 5 October 2005 on forced marriage and child marriage.

2. The ICCS is an international intergovernmental organisation which currently comprises 15 member States : Germany, Belgium, Croatia, Spain, France, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Switzerland, the United Kingdom, and Turkey. Its seat is located in Strasbourg (France) at 3 Place Arnold, where the premises of the Commission's Secretariat General are situated. Each ICCS member State has set up a national Section within its territory, which is usually made up of academics, judges, representatives of any ministries concerned and of administrations in charge of civil status, and local civil registrars. The national Sections and their members represent their countries at the various ICCS meetings and address the Secretariat General for the preparation of the works that are undertaken. More information on the ICCS and its activities is available on the ICCS website at http://www.ciec1.org.

3. Study published in French in the journal "Revue critique de Droit international privé" (Editions Dalloz Sirey, Paris, 1996, pp. 541-571). Several translations have since been made and published, notably in Spain (Boletin de Informacion, Ministerio de Justicia, Madrid, 1 septiembre 1997, núms 1803-1804, pp. 1779-1813, in Spanish), en Italy (I Servizi Demografici, Maggioli Editore, Rimini, 1997, n° 4, pp. 461- 503, in Italian), in the Netherlands (Fraude inzake de Burgerlijke Stand, La Haye, 1997, in Dutch), in Poland (Oszustawa w sprawach z zakresu stanu cywilnego w krajach członkowskich MKSC, in Polish) and in Portugal (Boletim do Ministerio da Justiça, maio 1998, n° 476, pp. 5-53).

4. This update was published by the ICCS Secretariat General in a bilingual French and English version in December 2000. Both versions may be consulted on the ICCS website.

5. The full text of the Recommendation is available on the ICCS website in the original French and in several translations (English, German, Spanish, Dutch and Turkish).

The present note is mainly based on the following national legislation in force[6] :

- Germany *: Law on Residency (Aufenthaltsgesetz [AufenthG]), in force since 1 January 2005 ; Law on nationality (Staatsangehörigkeitsgesetz [StAG]) ;*
- Belgium *: Law of 15 December 1980 on access to territory, residency, settlement and repatriation of foreigners, modified by the laws of 15 September 2006 (M.B. 6.10.2006, in force since 1 June 2007) and of 25 April 2007 (M.B. 10.05.2007, in force since 1 June 2008) ; the royal decree of 17 May 2007 describing the procedure for the execution of the 15 September 2006 Law (M.B. 31.05.2007), the memorandum of 21 June 2007 (M.B. 04.07.2007) relating to the changes made in the regulation concerning foreign residency following the implementation of the 15 September 2006 Law and the royal decree of 7 May 2008 describing the procedure for executing the 25 April 2007 Law (M.B. 13.05.2008) [see 'Regulation' on http://www.dofi.fgov.be] ; Code of Belgian Nationality, modified by the Law of 1st March 2000 and by the Law of 27 December 2006 entailing various provisions (M.B. 28.12.2006, in force since 28 December 2006) ; Civil Code [Cc] ; Code of International Private Law ;*
- Croatia *: Law on Foreigners (n° 79/2007, modified by law 36/2009) ; Croatian nationality Law (n° 53/1991, 28/1992 and 113/1993); Family Law (Obiteljski zakon, 116/2003, modified by laws n° 17/2004, 136/2004 and 107/2007) ;*
- Spain *: Royal Decree 178/2003 of 14 February 2003) ; Civil Code [Cc];*
- France *: Code of entry and residency of foreigners and the right to asylum [CESEDA], in force since 1 March 2005, and modified by immigration and integration Law n° 2006-911 of 24 July 2006; Civil Code [Cc]; control of the validity of marriages Law 2006-1376 of 14 November 2006*
- Greece *: Law 3386/2005 on the entry, residency and social integration of nationals of third-party States within Greek territory; Law 3384/2004, Code of Greek nationality ;*
- Hungary *: Law 1/2007, on the entry into the territory and residency of persons enjoying the right to circulate and reside freely, and law 2/2007 on the entry into the territory and residency of third-party State nationals, in force since 1 July 2007; Law 55/1993 on Hungarian nationality;*
- Italy *: Civil Code[Cc]; Legislative order [D.lgs.] n° 286 of 25 July 1998 (Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [T.U.]), published in la Gazzetta Ufficiale n° 191 of 18 August 1998, and modified several times (in particular by the following texts: D.lgs. n° 380/1998; D.lgs. n° 113/1999 ; Décret-loi [D.L.] n° 51 of 4 April 2002 ; Law n° 189/2002 ; Law n° 289/2002 ; D. lgs. n° 87/2003 ; D.L. n° 241/2004 ; D.L. n° 144 /2005 ; D.lgs. n° 3 and n° 5 of 8 January 2007; D.L. n° 10 of 15 February 2007 ; Law n° 68 of 28 May 2007 ; D. Lgs. n° 154 of 10 August 2007; D.L. n° 92 of 23 May 2008 ; D. lgs. n° 160 of 3 October 2008) ; Order of the President of the Republic [D.P.R.] n° 394 of 31 August 1999 modified several times (Regolamento d'attuazione del Testo Unico); Modified Law n° 91 of 5 February 1992 on nationality [Nuove norme sulla cittadinanza]. Law n° 94/2009 of 15 July 2009, Disposizioni in materia di sicurezza, published in la Gazzetta Ufficiale n. 170 of 24 July 2009 and in force since 8 August 2009, modified both the Testo Unico and Law n° 91/1992 on nationality.*
- Luxembourg *: Law of 29 August 2008 on free circulation of persons and immigration (Memorandum A N° 138 of 10 September 2008, page 2024) ; Law of 23 October 2008 on Luxembourg nationality (Memorandum A N° 158 of 27 October 2008, page 2222) ;*
- Netherlands *: modified Foreigners Law, 2000 ; Modified law of 19 December 1984 on the qualities of Netherlands citizenship;*
- Poland *: Law of 13 June 2003 on foreigners (o cudzoziemcach), Dz.U 2006, Nr 234, pos. 1694 ; Modified law of 15 February 1962 on Polish nationality (o obywatelstwie polskim), Dz.U 2000, Nr 28, pos. 353 ;*
- Portugal *: Law 37/2006 of 9 August 2006 ; Law nº 23/2007 of 4 July; Law n° 37/1981 on Portuguese nationality, modified by Incorporating Law 2/2006 of 17 April 2006 and Order n° 23-A/2006 of 14 December 2006;*
- United Kingdom*: Immigration and Asylum Act 2004 (Asylum and Immigration [Treatment of Claimants, etc.] Act 2004), in force since 1 February 2005 (whose provisions have been extended to civil partners: Civil Partnership Act 2004, in force since 5 December 2005); British Nationality Act 1981;*
- Switzerland *: Federal Law of 16 December 2005 on foreigners [LEtr], in force since 1 January 2008; Federal Law of 29 September 1952 on the acquiring and loss of Swiss nationality (LN), modified;*
- Turkey *: Civil Code [Cc]; Marriage by-law ; Law n° 5683 on residency and circulation of foreigners in Turkey; Law n0 5901 of 29 May 2009 on Turkish nationality*

6. Attention should be drawn to a major difficulty that prevailed during the elaboration of this note, which is that, for the full duration of its preparation, legal provisions never stopped evolving in various States, particularly in terms of right of entry and residency, which brought about many exchanges between the Secretariat General and the Sections of the ICCS and multiple successive versions of the summary note. An intermediate version was published on the ICCS website at the end of 2008, while the schedules were being finalised, but new measures, once more, meant that information relating to certain countries quickly became obsolete. As a result, in September 2009, a decision was reached to take into consideration the latest modifications reported by the national Sections and to close the study at the date of 1 September 2009, and to publish it, including its schedules and annexes.

Introduction

Marriages of convenience are a known phenomenon in all of the ICCS member States. Although, with the exception of the Netherlands and the United Kingdom, this problem seems to be increasing everywhere, it is difficult to quantify since, aside from Belgium which has a few figures, none of the member States is able to offer any official statistics.

In Belgium, administrative enquiries carried out by the Foreign Office reveal an increase in the number of proposed marriages (822 in 2003; 1343 in 2004; 2247 in 2005; 5474 in 2006 and 7775 in 2007), enquiries being focused mainly on this point; as for celebrated marriages, there were 1076 in 2003; 1267 in 2004; 985 in 2005; 877 in 2006 and 1278 in 2007, although these figures do not mean that there has been a decrease, as enquiries concentrated on projected marriages. In most other States, it is noteworthy that the number of mixed marriages celebrated within their territory or abroad, between a national and a foreigner, is increasing noticeably : for instance, in Greece, in Italy, in Luxembourg (where it seems that a certain number of asylum seekers have married a Luxembourg or European Community national with the sole aim of obtaining a residency permit) and in Switzerland ; in Spain, 13,000 in 2003 and approximately 20,000 in 2004 ; in France, 15,809 in 1960 and 34,585 in 2003, taking into account that 45,000 more marriages celebrated abroad were transcribed in 2004 into French registers, which means that the occurrences of the phenomenon have doubled over ten years, with, in parallel, an increase in the number of marriages celebrated abroad and submitted to the public prosecutor to check for suspected fraud ; that is to say, 224 in 2000, 222 in 2001, 352 in 2002, then 759 in 2003 and 1186 in 2004 ; in Portugal, where the number of marriages celebrated in 2004 between a Portuguese national and a national of a country outside the European Union has increased, 531 concerning a spouse from a non-member European country, 1676 with a spouse from South or Central America, 637 with a spouse from an African country, and 180 with a spouse from an Asian country.

In contrast, two States (the Netherlands and the United Kingdom) reported that municipalities seem to be noticing a decrease in the number of bogus marriages. In the United Kingdom, the phenomenon of marriages of convenience has always been less common in Scotland than in England and Wales, whereas Northern Ireland did not trace any occurrences in 2003 and reported 121 in 2004, but the predicted decrease seems to be a consequence of the new measures put in place all over the United Kingdom since February 2005.

It should also be pointed out that marriages of convenience have also been known to be the object of decisions on the part of competent authorities; in Spain, for instance, hundreds of resolutions are taken every year by the General Direction of Registers and of Notaries Public, mainly during the procedure leading up to the celebration of the marriage, or for the delivery of a certificate of legal capacity to marry.

It is true that certain effects linked to marriage by different State legislation can be quite attractive and constitute an incitement to this type of fraud, particularly concerning marriages between a European Union national and a non-European Union national (I). In order to combat this practice, measures have been adopted, some preventative (II), some a posteriori (III), one of the major difficulties being to avoid infringing on the freedom to marry, as it is guaranteed to all by Article 23 of the International Pact relating to civil and political rights, and by Article 12 of the European Convention on Human Rights.

I - Desirable effects linked to marriage, a medium for fraud

The desirability of European Union States for numerous nationals of countries outside of the Union has led European institutions to become preoccupied with the regulation of immigration, and to coordinate their management policy in this respect, most notably by Community Directive n° 2003/86/CE of 22 September 2003 relating to the right to family reunification. Excepting the United Kingdom, Denmark and Ireland where it does not apply, this directive aims to establish the conditions of execution of this right for nationals of third-party States legally residing within the territory of a member State. Consequently, it is applicable to nationals of non-Union States when they are in possession of a residency permit for a duration of one year at least in one of the European Union States, and they are able to establish themselves there in the long term. It tends to allow them to be joined by their spouse and their children under the age of majority, and each State may adopt specific provisions in order to authorise the arrival of first-degree ascendants in direct line, single adult children, or unmarried partners. On the other hand, the directive does not apply to nationals of third-party countries who

claim refugee status, and whose application is being considered, or to members of the family of a European Union citizen.

Within its field of application, it entails proving identity and kinship between the sponsor and the relatives he intends to welcome to his home. On this point, in the absence of official documents, the interested party may be offered the possibility of DNA tests; however solutions vary from State to State.

Depending on the legislation, the provisions in force may concern entry and residency first and foremost, and beyond this, acquisition of nationality, and the possibility of benefitting from other rights or advantages.

A – Obtaining a right of entry into and residency within the territory of a member State, or acquiring its nationality

Marrying a national is not enough, in any ICCS member State, for a foreign spouse to acquire nationality ipso jure, but privileged access to nationality is provided. Marrying a national also makes it easier for a foreign spouse to enter into the territory or become a resident, as it does in other cases for a future spouse, a registered partner, or a future registered partner.

1°) Entry and residency

In **Germany**, *the new Law on Residency (Aufenthaltsgesetz [AufenthG]), in force since 1 January 2005, contains, as does the previous Law on Foreigners (Ausländergesetz), provisions aiming to prevent marriages of convenience, without, however, any official enquiry allowing to evaluate its concrete effects. According to paragraph 28 of the Law on Residency (AufenthG), a limited residency permit (Aufenthaltserlaubnis) is issued to the foreign spouse of a German national who habitually resides in Germany, then an unlimited residency permit (Niederlassungserlaubnis) after three years of living together; these provisions are also applicable under certain conditions to marriage between two foreigners when one of them is legally resident in Germany (§ 30 of AufenthG).*

However, according to § 27 Abs. 1a AufenthG, family reunification is refused whenever the marriage is carried out with the sole aim of facilitating entry into and residency in Germany. The same provisions apply to registered partners.

In **Belgium**, *the Law of 15 September 2006, in force since 1 June 2007, modifies the Law of 15 December 1980 on access to the territory, residency, settlement and repatriation of foreigners (M.B. 6.10.2006) and transposes, among other things, directive 2003/86/CE relating to family reunification of members of families of non-European Union nationals. The new law contains provisions aiming to counter 'bogus marriages' and, in particular, changes the provisions relating to residency based on family reunification.*

In order to prevent the breaches that have been noticed (marriage or adoption for reasons of convenience, abandonment of the naïve spouse once the residency permit has been issued), the aforementioned Law provides that the right to family reunification is conditional on respecting a number of supplementary conditions. Other than conditions relating to proving family or marriage bonds and the protection of public order and health and national security, the reunifying spouse will have to provide proof that he has access to housing of a size that is considered normal for a similarly-sized family in the same region, and which is in compliance with local safety and sanitary regulations, and that he has health insurance covering, for himself and his family members, all of the risks normally covered for Belgian nationals. These conditions aim to avoid certain inacceptable situations (insalubrious or dangerous living space, 'sleep merchant' practices, lack of medical insurance…).

In order to ensure that forced marriages are prevented more effectively, directive 2003/86/CE provides that member States may request that the reunifying party and his spouse be at least 21 years of age before the spouse may join him. This condition is reproduced in Article 10, § 1, number 4, in the Law of 15 December 1980, the minimum age being reduced to eighteen when a conjugal relationship already exists at the arrival of the foreigner within the Kingdom.

Furthermore, in application of Article 16 of the directive, Belgian law now provides not only that family reunification may be refused (Art. 11, § 1-4), but also that this right may be revoked (Art. 11, § 2, 4° new). The right to residency may be refused and revoked if it is noticed that no family group is formed, that the mandatory conditions are no longer met, or that fraud has been committed, particularly if the marriage was celebrated only to allow the foreigner to enter into or reside within the Kingdom.

A system of control (Art. 11, § 2-3, new) has been provided in view of extending or renewing a residency permit, in order to make sure the foreigner meets the required conditions. The Minister or his delegate may at any point proceed with or initiate specific controls, when well-founded presumptions of fraud exist, or if the marriage was celebrated in order to allow the interested party to enter into or reside within the Kingdom.

The system for recognising the right to residency is now implemented in two stages, since the Law of 15 September 2006 has come into force. During the first phase, over the first two years, residency may be revoked based on an objective observation that the main conditions for family reunification are no longer being met (divorce, lack of actual conjugal living). During the second phase, in the third year, the residency may be terminated if the lack of cohabitation is combined with indications of a situation of convenience. From this point, it is only after the end of this three-year period that a residency permit of unlimited duration may be issued to the beneficiary of the family reunification.

The residency permit of a person already residing in Belgium may also be revoked in case of fraud, or if it has been established that a marriage has been concluded only in order to allow a foreigner to enter into or reside within the Kingdom (Art. 10 ter, § 3, new).

Finally, it is appropriate to mention the Law of 25 April 2007 (M.B. 05.10.2007) which modifies the Law of 15 December 1980 on access to the territory, residency, settlement and repatriation of foreigners, in force since 1 June 2008, and the Royal Decree of 7 May 2008, modifying the Royal Decree of 8 October 1981 on access to the territory, residency, and the settlement and repatriation of foreigners, which determines the application of this law.

The aforementioned law follows two main objectives:

1) To introduce the Community notion of long-term residency as well as the consequences of such in the Law of 15 December 1980, following the adoption of directive 2003/109/CE relating to the status of third-party State nationals who are long-term residents.

This law determines, on the one hand, the conditions for granting and revoking the status of long-term resident granted to a national of a third-party State who legally resides within the Belgian territory, and on the other hand, the conditions for residing in Belgium for beneficiaries of this status in another member State.

2) This Law modifies the regulations relating to the residency of EU nationals and their family members. It transposes directive 2004/38/CE of 29 April 2004 relating to the rights of European Union citizens and their family members to freely circulate and reside within the territory of the member States. Residency for members of Belgian families is also modified.

This law provides that European Union citizens and their family members will, from now on, obtain a right to permanent residency after only three years. Furthermore, an unmarried partner who is registered now also obtains a legal right to family reunification. Also, it is provided that right to residency will always be lost in case of fraud. Thus, the law employs various principles of common law relating to family reunification, as recently modified by the Law of 15 September 2006, for instance, relating to health insurance and sufficient resources.

In **Croatia**, *a residency permit is granted to a foreigner if he meets the conditions enumerated in Article 31 of the Law on Foreigners 79/2007 modified by Law 36/2009, which is to say: the foreigner must have a valid passport, or failing this, a visa; he must have sufficient means of subsistence; he must provide a motivation for wishing to reside in Croatia; he must not be the object of a decision which prohibits his residency in Croatia; his residency must not be a threat to public health and public order nor to national security. These conditions are controlled by local police, which then grants the right to residency. A temporary residency permit is necessary for a period of more than three months and less than six months; this temporary permit must be renewed after six months (Art. 51 of the aforementioned law). In principle, a permanent residency permit is granted at the end of five years (Art. 78 of the aforementioned law). Marriage, with a Croatian national or a foreigner with a residency permit, does not change these general rules; nevertheless, Art. 57 of law 79/2007, modified by Article 16 of law 36/2009, provides that a temporary residency for the purposes of family reunification will not be granted if the circumstances lead to believe that a bogus marriage has been carried out to this end (for instance, if the spouses do not live together, have no language in common, or one of the spouses was paid).*

In **Spain**, *marriage to a Spanish national means that the foreign spouse may obtain a residency permit (Art. 2 and 3 of Royal Directive 178/2003 of 14 February 2003).*

*In **France**, this area is covered by the Code of Entry and Residency of Foreigners and the Right to Asylum [CESEDA], in force since 1 March 2005 and modified by law n° 2006-911 of 24 July 2006 relating to immigration and integration. In France, only the spouse of a French national, and not his future spouse, may, by virtue of Article L313-11 of CESEDA, claim a residency permit. Entry into French territory, for spouses of French nationals who are nationals of non-EU States, excepting Algerian nationals, implies that French consular authorities issue a long-term residency visa in relation to French people's spouses, which may be refused, as far as a French person's spouse is concerned, in case of fraud, annulment of the marriage, or threat to public order. Refusal of an entry visa needs no motivation, unless it applies to certain categories of people, particularly the foreign spouse of a French national (Art. L. 211-2 of CESEDA). Marriage between two foreigners, one of whom has a regular residency permit in France, opens up, within certain limits, the right to family reunification, but other conditions must be fulfilled in terms of resources and housing.*

Unless he constitutes a threat to public order, and as long as he satisfies the conditions imposed by the law, a foreigner married to a French person obtains full entitlement to a temporary residency permit with the mention 'private and family life', valid for a duration of one year and renewable ; this card can be issued to him provided he is not living in a polygamous relationship, is married to a French national who has not lost his nationality, is still in a conjugal relationship with that person after the marriage has been celebrated and he entered into the French territory under a long-term visa. Furthermore, in cases where the marriage has been celebrated abroad, it must have been entered in French civil-status registers (Art. L. 313-11, 4° of CESEDA).

Before the aforementioned Law n° 2006-911 of 24 July 2006 came into force, it was also possible for a foreigner to be fully entitled to a residency permit which was valid for ten years and renewable, if he had been married for at least two years to a French person having kept his nationality and with whom conjugal life had not ceased and, in the case of a marriage celebrated abroad, if it had been entered in French civil-status registers (former Art. L. 314-11, 1° of CESEDA). Law n° 2006-911 cancelled the automatic nature of issuing the residency permit; this may now be issued to a foreigner married to a French national for at least three years, as long as conjugal life between the spouses has not ceased since the wedding, as long as the spouse kept his French nationality, and as long as, where the marriage has been celebrated abroad, it was previously entered in the French civil-status registers and satisfied the condition of republican integration (new Art. L. 314-9, 3° of CESEDA).

*In **Greece**, according to Law 3386/2005 on the entry, residency and social integration of third-party State nationals into Greek territory, nationals of non-EU States may, after a legal residency in Greek territory of at least two years, request entry and residency in Greece for members of their family, if they meet the conditions set out in Article 53 of the said Law. A person is considered to be a family member if he is a spouse aged over eighteen, but not if he is a future spouse. A renewable residency permit valid for a year may be delivered to such a person (Art. 57 § 1 of the aforementioned Law).*

A foreigner, who is a national of a third-party State and married to a Greek national or to a national of another European Union country (Art. 1b of the aforementioned law) residing legally in the country may, in the case where his residency is longer than three months, obtain a 'family member of a Greek national or of a national of a European Union member State residency permit'. This permit is issued by decision of the Secretary General of the district where the couple lives, after examination of public order and security reasons, and of whether the applicant meets the conditions required by the Law; the said permit is issued for a duration of five years or for the projected duration of the stay of the EU member State national if this stay is to last less than five years (Art. 61 of the aforementioned Law). At the end of this period, a 'permanent residency permit' may be issued by decision of the Secretary General of the district where the couple resides, on the condition that all public order and security criteria are met; this permit is fully legally renewable every ten years (Art. 63 § 1 of the aforementioned Law).

A five-year residency permit, renewable for an identical period, is issued to the spouse of a person who has returned to Greece or is of Greek origin (Art. 60 of the aforementioned Law, as completed by Art. 38 of Law 3731/2008).

*In **Hungary**, since 1 July 2007, the provisions of Laws 1/2007 on entry into the territory and residency of persons who have the right to circulate and reside freely and 2/2007 on the entry into the territory and the residency of persons having the nationality of a third-party country are applicable.*

Law 1/2007 is applicable to persons having the nationality of a third-party State and whose spouse has Hungarian nationality or the nationality of a member State of the European Economic Area. These persons may enter into Hungary with a valid passport and visa, in the absence of provisions to the contrary set out in an international convention or by European Union law.

The foreign spouse, but not the future spouse, benefits from a right to residency of a duration of three months as long as he has a visa; he may obtain this if he meets the following conditions: he must not be a threat to public order and security, he must have a home and means of subsistence including health fees and he must be able to justify the motivations for his stay, marriage being a possible motivation.

A right to residency of more than three months may be obtained if the person or his spouse meets the conditions above (Law 1/2007, Art. 6, § 2 and Art. 7, § 2). If the Hungarian spouse, or the spouse originating from a European Economic Area member State, is deceased, the right to residency of the spouse is maintained, except if he does not have paid employment, or if the conditions of residency are not met (Law 1/2007, Art. 11, §1). If the marital relationship is dissolved in the six months following the date when the residency permit was obtained, the permit is cancelled if it is established that the marriage was celebrated with the sole aim of securing this residency permit (Law 1/2007, Art. 14, § 2).

The spouse of a European Economic Area member State national residing legally in Hungary obtains a permanent residency permit in Hungary if he has resided there legally for an uninterrupted period of five years (Law 1/2007, Art. 16, § 1b). The spouse of a Hungarian national may obtain a permanent residency permit if the marriage has been concluded for two years and if conjugal living has been continuous (Law 1/2007, Art. 16, § 2b).

Law 2/2007 concerns the family reunification of a third-party State national married to another third-party State national who resides legally in Hungary. In order to enjoy a right to residency greater than three months, the spouse must obtain a residency permit, which is renewable and authorises him to remain within the territory for two years at the most. For this, he must be in possession of a valid passport, not pose any threats to public order and public security and establish that he has a residency permit, housing, and means of subsistence including medical fees (Law 2/2007, Art. 13, § 1).

The old 'settlement permit' has been replaced by three categories of permits: on the one hand, the 'national settlement permit' [nemzeti letelepedési engedély], that the spouse may obtain in compliance with the provisions set out above; on the other hand, the 'permit of settlement within the European Economic Area' [EGT letelepedési engedély], which ensures very wide mobility in compliance with directive 109/2003/CE of the Council of Europe; finally, the 'permit of temporary settlement for a determined period' [ideiglenes letelepedési engedély], delivered to persons holding a long-term residency permit granted by another member State and wishing to reside in Hungary (for professional reasons or in order to study, etc.).

In **Italy**, *this area is governed by the Legislative Decree n°286 of 25 July 1998 (Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [T.U.]), published in La Gazzetta Ufficiale on 18 August 1998. This text was modified and completed several times, in particular by legislative decree n°5 of 8 January 2007 (modified by d.lgs. n° 160 of 3 October 2008) for the implementation of directive 2003/86/CE relating to family reunification, and by Law n° 94 of 15 July 2009 (Disposizioni in materia di sicurezza) published in la Gazzetta Ufficiale n° 170 of 24 July 2009, in force since 8 August 2009. The Testo Unico applies to nationals of non-European Union States and to stateless persons, defined as 'foreigners' in the sense of the text, and does not apply to member State nationals (Art. 1 T.U., §§ 1-2).*

As long as he presents no danger to public order or national security, the 'Testo Unico' provides that a foreigner who has entered legally into Italian territory may receive a residency permit for a duration that varies from three months to two years (depending on the reason for applying: visit, business, studies, work). This residency permit can be renewed for a duration that does not exceed that which was assigned when it was initially issued (Art. 5 §§ 3 to 3c and § 4 T.U.). Article 4bis of the 'Testo Unico', as modified by Law n° 94/2009, establishes that, at the moment of applying for the residency permit, a foreigner who has legally entered into Italy has to sign an agreement, containing a system of points, which determines certain objectives for integration, to be met during the validity period of the residency permit. The stipulation of this agreement is a necessary condition for issuing the residency permit. For brief stays of a duration of less than three months (visits, business, tourism, studies), the residency permit is not required (Law n° 68 of 28 May 2007, Disciplina dei soggiorni di breve durata degli stranieri per visite, affari, turismo e studio).

A residency permit for family reunification may also be granted to his spouse as long as they are not legally separated and the spouse is not aged under eighteen, and to his unmarried children who are aged under eighteen, including those of his spouse or those born outside of marriage, to his children over eighteen who cannot permanently meet their own needs for health reasons, to his parents if they have no other children in the country of origin or to his parents aged over sixty-five, if the other children cannot support them for serious, documented health reasons. This may be granted for a duration of two years and is renewable, (Art. 5 § 3-e T.U.). The application will be rejected if the marriage took place with the sole aim, for the interested party, of obtaining the right to enter and reside within the territory (Art. 28 and 29 T.U., as modified by legislative decree n° 160/2008).

If the statuses mentioned in the said articles cannot be documented beyond doubt through certifications delivered by competent foreign authorities, or if there are any doubts founded on the authenticity of such documentation, then diplomatic or consular missions may issue certifications based on DNA tests conducted at the cost of the interested parties. The family reunification of the interested party's spouse or his parents is forbidden when the relative whose reunification is being requested is married to a foreign citizen residing permanently with another spouse within Italian territory.

A foreigner requesting family reunification must also demonstrate that he has (a) adequate housing that meets hygienic and sanitary conditions as certified by local authorities; (b) an annual income of a specified minimum; (c) health insurance or an equivalent certification which guarantees coverage of all risks within Italian territory for relatives aged sixty-five and over, or the registration of any said relatives with the national insurance service.

The « Testo unico » also mentions, in Article 30, other hypotheses according to which a residency permit for family reasons may be issued to a foreigner. This is, in particular, the case for a foreigner who has been legally residing within Italian territory for at least a year and who has concluded a marriage in Italy with an Italian citizen or a citizen of a European Union member State, or with a foreign citizen legally residing in Italy (Art. 30 § 1b). This residency permit for family reasons is granted for a duration that is equal to that of the foreign residency permit holder who met the conditions for being joined by a relative, and may be renewed at the same time as the latter's residency permit (Art. 30 § 3). In the cases of death, legal separation or dissolution of the marriage, this residency permit granted for family reasons may be converted into a residency permit for work or study reasons (Art. 30 § 5) but will be revoked immediately if it is proven that there is no effective cohabitation after marriage, unless any children resulted from the marriage (Art. 30 § 1-bis).

A foreigner who has held, for five years at least, a valid residency permit, may request a long-term residency permit that will be for an unlimited duration, for himself or his family members, if he can demonstrate that his income is sufficient to meet his needs or, where applicable, his family's, and that he has adequate housing. The granting of such a long-term residency permit is conditional on passing an Italian language test (Art. 9 §§ 1-2-a of T.U.) This residency permit may be revoked, in particular if it has been acquired by fraudulent means, if its holder is being deported, or if the conditions for issuing it are not or are no longer met (Art. 9 § 7 T.U.).

When a decision is made to refuse the issue or renewal of a residency permit to, or to remove a residency permit from, a foreigner who has exercised his right to family reunification or who has been joined by a family member in compliance with Article 29 T.U., the nature and the reality of the family bonds of the interested party, as well as the existence of family and social bonds with the country of origin, are taken into account, as well as, for a foreigner who is already present within Italian territory, the length of the stay (Art. 5 § 5 T.U., completed by the aforementioned d.lgs of 8 January 2007).

In **Luxembourg**, *the delivery, renewal and revocation of residency permits are governed by the 29 August 2008 Law on the free circulation of persons and immigration (see schedule 1). Where the marriage has only been concluded in order to allow the spouse to enter into and reside within Luxembourg territory, Article 75 of the aforementioned Law gives the minister in charge of immigration the power to refuse the spouse entry into and residency within Luxembourg territory. Furthermore, this authority may remove the spouse's residency permit, or, if relevant, refuse to grant him a residency permit.*

In the **Netherlands**, *the issue of a residency permit, which marriage alone is not sufficient to allow, is conditional on the following: the marriage must have been celebrated in the Netherlands or be recognised there if the marriage was celebrated abroad, and it must have been entered into the electronic population register; furthermore, the spouses must cohabit and have income for the foreseeable future of an amount that has been increased, which may contribute to discouraging the conclusion of marriages of convenience; finally, in order be able to enter Dutch territory, the foreign spouse must not present a danger to public order or national security (Art. 3 § 1b of the Law on Foreigners 2000). The same solutions are applicable in the case of registered partnerships. Anyone wishing to enter the Netherlands only for the purposes of marriage or registered partnership will require a visa for access, and will be able to apply for it, indicating that they have no intention of establishing themselves in the Netherlands after the marriage or partnership has been concluded.*

In **Poland**, *a temporary residency permit may be granted to a foreigner married to a Polish citizen (Art. 53, § 1, n° 6 of the Law on Foreigners), unless circumstances reveal that the marriage was celebrated fraudulently, in which case the application would be denied (Art. 57, § 1, n° 4 of the Law on Foreigners). Subsequently, a permanent residency permit will be issued to the foreigner after three*

years of marriage and two years of residency in Poland by virtue of a temporary permit (Art. 64, § 1, n° 2 of the Law on Foreigners).

In **Portugal**, *since the changes to the legislation carried out in 2007, entry and residency for nationals of certain non-European Union member States is conditional on the issue of a visa. A right of entry into and residency within Portuguese territory is granted to any foreign spouse of a Portuguese national without any conditions of cohabitation, unless he is a threat to public order, safety or health (Art. 98, 99, 101 and 106 of Law nº 23/2007 of 4 July 2007).*

In the **United Kingdom**, *the Asylum and Immigration [Treatment of Claimants, etc] Act 2004, in force since 1 February 2005, has set out new measures applicable to foreigners who are not nationals of European Economic Area member States, who wish to marry within British territory, with the exception of persons who have permanent residency in the United Kingdom. In order to enter the United Kingdom, from now on, such persons must apply, in their country of origin, to a British embassy or consulate or to the Bureau of the High Commissioner, for a special engagement visa, or a 'marriage visitor' visa. If they already reside in the United Kingdom, they must request a 'certificate for approval of marriage' from the Home Office. In each of these two situations, they will also be the object of a check carried out by immigration services during their stay and must request a public proclamation from one of the 76 civil-status offices empowered to this effect in England and Wales. This must be done in person in the company of the prospective spouse. If they live in Scotland or Northern Ireland, they must make a written declaration of their intention to marry to one of the civil-status offices empowered to this effect. It should be noted that, since the Civil Partnership Act 2004 came into effect in December 2005, the same formalities are applicable to foreigners wishing to register a civil partnership in the United Kingdom.*

In **Switzerland**, *on 1 January 2008, the Federal Law on Foreigners (LEtr), adopted by the Parliament on 15 December 2005 and accepted by popular vote on 24 September 2006, came into effect. The new Law sets out prescriptions relating to conditions of entry into and residency within Switzerland in Articles 42 to 45 and 49.*

A foreigner married to a Swiss national and the foreign children of Swiss citizens, if they are single and aged less than eighteen, may receive a residency permit, and have its validity prolonged, as long as they are living in the same household as the aforementioned Swiss national (Art. 42 § 1 LEtr). Where the request concerns members of a Swiss national's family who are the beneficiaries of a long-term residency permit delivered by a State with whom Switzerland has concluded an agreement on the free circulation of persons - which is to say: the spouse and his descendents aged less than 21 or whose upkeep is guaranteed, or the ascendants of a Swiss national or his spouse whose upkeep is guaranteed - they also have a right to hold a residency permit, and it may be renewed; however for this to be the case there is no need for the person concerned to be sharing a household with the Swiss national (Art. 42 § 2 LEtr). Children aged less than 12 (Art. 42 § 4 LEtr) and, after an uninterrupted legal residency of five years, the spouse, will be entitled to a settlement permit (Art. 42 paragraph 3 LEtr).

Furthermore, the foreign spouse of the holder of a settlement permit and the foreign children of the beneficiary of such a permit, if they are single and aged at least 18, are entitled to a residency permit that may me renewed as long as they share a household with the aforementioned person (Art. 43 § 1 LEtr). A settlement permit is granted to children under twelve years of age (Art. 43 § 3 LEtr) and, after a legal and uninterrupted residency of five years, to the spouse (Art. 43 § 2 LEtr).

The competent authority may grant a residency permit to the foreign spouse of a residency permit holder and his foreign children, if they are single, aged less than 18 and sharing a household with him, and have appropriate housing at their disposal and do not depend on social benefits (Art. 44 LEtr).

In the case of the foreign spouse of a holder of a short-term residency permit, and this holder's single children aged under 18, they may obtain a short-term residency permit under identical conditions (Art. 45 LEtr).

However, in these various situations, the requirement for shared living quarters stipulated by Articles 42 § 1, 43 and 44, is not relevant where family community is maintained and major reasons justify the existence of separate living quarters (Art. 49 LEtr). This requirement is not applicable to the family reunification of the foreign spouse of a European Union or EFTA citizen holding a long-term residency permit in an EU or EFTA member State [see the Agreement of 21 June 1999 between the Swiss Confederation on the one hand, and the European Community and its member States on the other hand, on the free circulation of persons and the Convention of 4 January 1960 instituting the European Free Trade Association (EFTA)]. The aforementioned provisions apply by analogy to registered partnerships (Art. 52 LEtr).

*In **Turkey**, the foreign spouse of a Turkish national or of a foreigner living legally in Turkey will, as soon as the marriage has been celebrated, obtain the right to reside in Turkish territory. If any behaviour is observed that breaks the rules relating to residency in Turkey, the residency permit may be cancelled.*

2°) Acquiring nationality

*In **Germany**, barring any contrary interest in relation to State security, a foreigner married to a German national may be naturalised easily if he loses his previous nationality or gives it up, if he shows sufficient knowledge of the German language or sufficient assimilation in German society, if he has been residing there for at least three years, and if he has had a shared marital life with the German spouse for at least two years (§ 9-1 of the Nationality Law : Staatsangehörigkeitsgesetz [StAG]).*

*In **Belgium**, Article 16 § 1 of the Nationality Code, as modified by the 1 March 2000 Law, provides that marriage has no ipso jure effect on nationality. That said, a foreigner who marries a Belgian spouse, or whose spouse acquires Belgian nationality during the marriage may, if the spouses have lived together in Belgium for at least three years and as long as community of life in Belgium lasts, acquire Belgian nationality by declaration (Art. 16, § 2, 1° and Art. 15). A foreigner who marries a Belgian national or whose spouse acquires Belgian nationality over the course of the marriage may, if the spouses have lived together in Belgium for at least six months and as long as community of life in Belgium lasts, acquire Belgian nationality by declaration (Art. 15), provided that, at the time of the declaration, he has been authorised or allowed, for at least three years, to reside for more than three months or establish himself in the Kingdom (Art. 16, § 2, 2°). Shared life abroad can be considered equivalent to shared life in Belgium, if the declarant proves that he has acquired genuine links to Belgium (Art. 16, § 2, 4°). In order to be able to present a request or a declaration with the aim of obtaining Belgian nationality, a foreigner must be legally residing there at the moment of presenting this request or declaration (Art. 7 bis introduced by Article 379 of the 27 December 2006 Law stipulating various provisions (M.B. 28.12.2006), in effect since 28 December 2006). By legal residency, it is meant that the foreigner must have been allowed or authorised to reside for more than three months in the Kingdom or authorised to establish himself there (15 December 1980 Law on access to the territory, residency, settlement and repatriation of foreigners).*

*In **Croatia**, a foreigner married to a Croatian national may acquire Croatian nationality in more favourable conditions: if he has been authorised to reside there permanently, he may be naturalised as a Croatian citizen without meeting the usual conditions provided by Article 1, § 1, points 1 to 4, of the Law on Croatian Nationality, which is to say, to have the age of majority and to have legal capacity, to have renounced his foreign nationality, or have proven his renunciation when acquiring Croatian nationality, to have lived legally and continuously in Croatia for at least five years at the date of the request and to be able to prove sufficient knowledge of the Croatian language and the Latin alphabet (Art. 10 of the Croatian Nationality Law: n° s 53/1991, 28/1992 and 113/1993).*

*In **Spain**, marriage does not, of itself, have any effect on nationality, but it allows a foreign spouse to acquire Spanish nationality through residency, after a very brief period of one year. The Minister of Justice may grant Spanish nationality to a foreigner who has been married to a Spanish national for one year if certain conditions are met, among which the most important are the following: the couple must not be legally or de facto separated, the foreign spouse must hold a legal residency permit and have resided in Spain continuously for the required period immediately prior to his request (Art. 22, § 2d and § 3 Cc).*

*In **France**, marriage has no ipso jure effect on nationality (Art. 21-1Cc). However, for a foreign spouse, it opens up the possibility of acquiring French nationality by marriage according to a declarative process, whose conditions of implementation are set out by 24 July 2006 Law n° 2006-911 relating to immigration and integration.*

Thus, the condition is that affective and material community of life must have lasted at least four years from the date of the marriage, on the condition that at the date of the declaration, community of life has not ceased between the spouses since the marriage, and that the declarant is able to prove either that he has lived in France legally and continuously for at least three years since the marriage, or that the French spouse has been registered, during the community of life abroad, in the register of French persons living abroad. Failing this, the time of community of life necessary in order to present the declaration is five years.

The declarant must be able to prove that he has been residing legally and continuously for at least three years in France, by producing documents which establish this fact (residency permit, tenancy agreement,

rent receipts, electricity bills, payslips…), and, if appropriate, that his French spouse has been registered in the register of French persons living abroad for the duration of the community of life abroad, by producing a certificate of registration in the register of French persons living abroad. If the marriage was celebrated abroad, it must have been previously registered in the French consular civil-status registers.

Furthermore, the time period for the Government to implement a procedure of opposition to an acquisition of French nationality through marriage has been increased to two years instead of one from the date of the receipt, or from the day when the court decision confirming the legality of the declaration comes into effect.

Further to this, the foreign spouse must prove that he has sufficient knowledge, depending on his condition, of the French language. This circumstance is controlled during the enquiry by consular or prefectural services and the district court or the consul may make any useful observations when transmitting the request to the Ministry of immigration, integration, national identity or solidary development.

Maintaining 'affective and material' community of life is not a simple matter of cohabitation, and consequently, the declaration will not be valid when this community of life has ceased, and in particular when the marriage has been dissolved by divorce or by death of the French spouse, or where it has been legally annulled.

As far as procedure is concerned (Art. 26 and following Cc), the following rules are applicable: as for competent authorities, if the couple resides in France, the declaration of nationality is made to the district court; if the couple lives abroad, it is made to the territorially competent French consular authorities. A receipt is given to the declarant once all of the required documents have been provided. The registration of the declaration is within the exclusive jurisdiction of the ministry in charge of naturalisation in virtue of Article 21-2 of the Civil Code. According to the third paragraph of Article 21-2 of the Civil Code,

> 'The declaration shall be made as provided for in Articles 26 and following. Notwithstanding the provisions of Article 26-1, it shall be registered by the Minister in charge of naturalisations'.

Counting from the date of the receipt, he will have one year to refuse to register the declaration thus made if its author does not meet the aforementioned legal conditions. The decision to refuse must be motivated and opens up a recourse before the first-instance court for a duration of six months. If a refusal has not been made within this time, the declaration will be registered and the declarant will acquire French nationality from the date of subscription. A copy of the declaration mentioning the registration will then be issued to him.

However, registration may be contested by the Department of the Public Prosecutor, either for not respecting legal conditions, this grievance to be presented within two years of the date of registration, or for reasons of false declaration or fraud, a grievance which may be invoked within two years of discovering said false declaration or fraud, taking into account that discontinuing community of life within twelve months of registration leads to a presumption of fraud (Art. 26-4Cc). Finally, for the two years (Art. 21-4 of the Civil Code modified by the 24 July 2006 Law) following the delivery of the receipt or the date of the judgment demanding the registration of the declaration, the Government may oppose the acquiring of French nationality by order of the Council of State for reasons of indignity or a lack of assimilation in respects that are other than linguistic (Art. 21-4Cc).

In **Greece**, *in order to acquire Greek nationality by naturalisation, a foreigner must reside legally in Greece for a period of ten years within the twelve years preceding his request for naturalisation. This period is reduced to three years where the foreigner is married to a Greek national and they have children together; to five years for refugees and stateless persons (Art. 5 § 2a of Law n° 3284/2004, Code of Greek Nationality).*

In **Hungary**, *Law n° 55/1993 on nationality provides that any foreigner holding a residency permit may apply for Hungarian nationality, having resided in Hungary continuously for eight years prior to the date of his request, and meeting the following conditions: he must have a blank criminal record and not be the object of penal legal proceedings before a Hungarian court, have sufficient housing and means of subsistence assured in Hungary, and pass a Hungarian language exam on knowledge of the Constitution, unless he is exempt by law; in any case, the acquiring of nationality may not be contrary to the interests of Hungary (Law 55/1993, Art. 4, § 1). However, a foreigner married to a Hungarian national enjoys more favourable conditions, since in order to be able to acquire Hungarian nationality, he needs only to have resided legally and continuously in Hungary for three years, and for the marriage to be valid and to have lasted three years; it must be the same marriage (Law 55/1993, Art. 4, § 2) and the premature death of the Hungarian spouse is not an obstacle to acquisition of his nationality by the surviving spouse.*

In **Italy**, *marriage between an Italian and a foreigner allows the foreigner to apply for Italian nationality after a period of two years of residency in Italy, or three years of marriage if he is resident abroad, on the condition that at the moment of the attribution order the marriage has not been dissolved or annulled, that its civil effects have not ceased, and that there is no legal separation. These periods are reduced by half in the presence of children born of the spouses or adopted by them (Art. 5 of Law n° 91 (1992), as modified by Law n° 94/2009).*

Article 6 of Law n° 91/1992 sets out the reasons for forbidding the acquiring of nationality by marriage (conviction of certain crimes, reasons of national security). For the request to be admissible, the effective and durable conjugal bond must last for the whole required duration of legal residency. It follows that the request for nationality may be made not only by the spouse of a naturalised foreigner, who was naturalised before the date of the marriage, but also by the spouse of a person having acquired Italian nationality after the date of the marriage, as long as at the moment of proceeding the conditions provided by the Law are met. Applications for nationality by marriage or residency must be accompanied by relevant certification showing that the applicant meets the required conditions. This cannot be certified by the applicant himself, who will also have to contribute 200 Euros.

In **Luxembourg**, *the 23 October 2008 Law on Luxembourg nationality came into effect on 1 January 2009. Marriage does not entail any specific advantages in terms of acquiring Luxembourg nationality. In other words, the conditions to fulfil and the procedure to follow are identical for all applicants for Luxembourg nationality, whether they are married or not.*

In the **Netherlands**, *a foreigner over the age of majority (18 years), married or involved in a registered partnership with a Netherlands national, may acquire Netherlands citizenship by naturalisation after a reduced delay of three years of marriage or partnership if the partners or spouses have lived together for this period (Art. 8 § 2 of the Law on the qualities of Netherlands citizenship). Furthermore, he must be integrated into Netherlands, Netherlands Caribbean or Aruban society and there must be no objections to his staying for an indeterminate period.*

In **Poland**, *a foreigner having obtained a permanent residency permit and who has been married for three years to a Polish national can apply for Polish nationality (Art. 10 § 1 of the 15 February 1962 Law: Dz.U.2000, Nr 28, pos. 353).*

In **Portugal**, *a foreigner married to a Portuguese national may obtain Portuguese nationality by declaration after three years of marriage (Art. 3 of the Nationality Law), as long as the marriage is still in effect at the moment of the declaration, and as long as the interested party proves that he has an effective link to the Portuguese community. The Portuguese State, represented by the Department of the Public Prosecutor, may however oppose the declaration within a year before the Lisbon Court of Appeal (Art. 9 and 10 of the Nationality Law), on the basis of lack of proof of an effective link to the Portuguese community (which link may be proved by establishing the applicant's knowledge of the Portuguese language or his residency in Portuguese territory), or if the applicant has been convicted of a crime which is punishable by a prison sentence longer than three years according to Portuguese law, or else if the applicant is carrying out non-mandatory public or military functions in the service of a foreign State. The 17 April 2006 Law has extended these possibilities to* de facto *unions: a foreigner cohabiting with a Portuguese national in conditions similar to marriage for more than three years may obtain Portuguese nationality by declaration, on the condition, however, that he has previously obtained legal recognition of this union (Art. 3 n° 3 L. 37/81, modified, and Art. 14 n° 2 DL 237-A/2006).*

In the **United Kingdom**, *marriage alone is not sufficient to obtain British Citizenship or British Dependent Territories Citizenship. However, as far as naturalisation applications are concerned, the British Nationality Act 1981 makes specific provisions for the foreign spouse or civil partner: in order to obtain British citizenship, a person over the age of majority must have been settled in the United Kingdom for five years, this duration being reduced to three years if he is the spouse or civil partner of a British citizen. Similarly, for obtaining citizenship in British Dependent Territories, a person aged over eighteen must have been settled for over five years in one of these territories, this duration being reduced to three years if he is the spouse or civil partner of a citizen of the British Dependent Territories.*

In **Switzerland**, *the federal law on acquiring and losing Swiss nationality (LN) provides that the foreign spouse of a Swiss national is entitled to Swiss nationality if he meets the following conditions: he must*

have resided in Switzerland for a total duration of five years, have resided there for a year at the date of the request and have lived with his Swiss spouse for three years (Art. 27 LN).

As for the foreign spouse of a Swiss national who lives or has lived abroad, he may also benefit from expedited naturalisation if he has been living for six years in marriage with a Swiss national and has close links to Switzerland (Art. 28 LN). In both cases, the foreign spouse acquires his Swiss spouse's local and district citizenship right. The naturalisation is granted by decision of the Federal Office of Migrations, after consulting with the relevant canton (Art. 32 LN).

Foreign nationals linked to a Swiss national by a civil partnership are not entitled to expedited naturalisation, and must instead undergo the ordinary procedure, which requires the authorisation of naturalisation from the Federal Office of Migrations and acceptance for citizenship by a canton and a local authority (triple authorisation). The minimal conditions of Swiss residency, as fixed by federal law, are however shortened for foreign nationals who have been living in registered partnership with a Swiss citizen for at least three years (five years at least of residency in Switzerland, including the year prior to the request for naturalisation, instead of twelve; see Art. 15 § 5 LN).

In **Turkey**, *since the changes that were made to it in 2003, the Turkish Nationality Law no longer provides for obtaining Turkish nationality simply by marrying a Turkish citizen, unless the foreigner loses his original nationality through this marriage. But it does allow a foreigner to acquire his spouse's Turkish nationality on the following privileged terms: the marriage must have been celebrated in a valid manner and be in compliance with public order and general morals; it must have lasted at least three years and still be in effect at the moment of the request; the spouses must be living together in Turkey or abroad, the residency authorisation in Turkey being necessary in the former case (Marriage by-law, Art. 12 and 20 and Law n° 5901 of 29 May 2009 on Turkish Nationality, Art. 16).*

It is usual to proceed with an enquiry in order to be certain of the reality of the marriage; in the context of the process of acquiring Turkish nationality, the foreign spouse will be auditioned in Turkey by a nationality exam commission, instituted in the prefectures and sub-prefectures under the presidency of the Deputy Prefect, or by consulates abroad, and the Turkish spouse will be invited to the interview. If the marriage is null and void, as long as both spouses were in good faith when the marriage was concluded, the spouse who has acquired Turkish nationality may keep it.

B – Benefitting from other rights or advantages

Unlike certain States which do not mention any rights or advantages in particular for the foreign spouse of one of their nationals (for instance, Croatia, Hungary, or Switzerland - where it is even mentioned that marriage makes it more difficult to obtain public or social benefits due to the mutual support duty between spouses and most often has the effect of taxing married couples more highly than simply cohabiting couples - or in Turkey), the others associate such advantages, sometimes with marriage itself, sometimes with the residency permit.

In terms of rights or social advantages, entitlement to social benefits in Germany is not linked to the existence of a marriage to a German national or to a foreigner residing legally in German territory; but it will be refused if a foreigner has entered into Germany with the sole aim of benefitting from it (§ 23 of the Social Code, book 12: Sozialgesetzbuch 12- SGB 12) and, on this point, a bogus marriage can be considered an indication of such an intention.

In **Spain**, *a foreigner who holds a legal residency permit enjoys various social rights in the same way as nationals, without any requirement to be married to a Spanish national (Art. 13 of the Constitution and Art. 7 of Incorporating Law of 11 January 2000 relating to the rights and freedoms of foreigners in Spain and their social integration).*

In **France**, *legislation confers certain social rights on the married spouse (social coverage, non-separation of spouses in case of professional transfer, survivors' pension benefits, etc.) according to specific provisions which, in addition to the general rules of social protection, can also follow contractual regimes negotiated within the different professional sectors. Marriage has no direct effect in terms of attribution of social benefits to the foreign spouse, who may, however, in the same way as any foreigner residing in France, enjoy certain benefits, particularly those relating to childhood or State medical care (Art. L. 111-2 of the Code of Social Action and Families); other forms of social benefit (for instance, the Revenu Minimum d'Insersion (Minimum Insertion Revenue) and family allowances) are conditional on the legality of residency in France. Since the annulment of an illegal marriage operates retroactively any benefits received will have to be repaid.*

In **Greece**, *third-party State nationals residing legally in Greece enjoy the same rights as Greek nationals in terms of social security (Art. 71 §§ 1 and 2 of Law 3386/2005). The spouses of third-party State nationals have in principle access to education as well as paid work and independent economic activities (Art. 59 of Law 3386/2005) for a duration of twelve months following the issue of the initial residency permit (depending on the conditions defined in the common ministerial decision of Art. 90, § 1). Spouses who hold a residency permit by virtue of being related to a Greek national or a national of a European Union member State are entitled to work (Art. 61 § 1 of Law 3386/2005).*

In **Italy**, *although benefitting from social benefits (such as health insurance, family benefits, the right to study, and so on) is facilitated by marriage, it is directly linked to the possession of a valid residency permit and to registration in the local authority register. Part V of the Testo Unico contains provisions in terms of health, instruction, housing, participation in public life and social integration applying to foreigners residing legally within the national territory.*

In **Luxembourg**, *the Code of Social Insurance regulates the accident insurance (Book II) and pension insurance (Book III) that is available to spouses.*

In the **Netherlands** *also, marriage itself does not make a person more easily eligible for social benefits, this being linked rather to the holding of a residency permit (Art. 8b and 8c of the 26 March 1998 Law which modified the Law on foreigners and several other Acts, in order to link to the legal residency of a foreigner in the Netherlands his right to apply to administrative authorities to obtain indemnities, allowances, exemptions and permits).*

To obtain various rights such as health insurance, housing benefits or family benefits, the 1998 Law requires that the foreigner be registered in the basic local authority register (electronic population register), which is in turn conditional on the legality of his residency.

In **Poland**, *a foreigner married to a Polish national benefits, in the capacity of a family member, from health insurance (27 August 2004 Law relating to health insurance).*

In the **United Kingdom**, *spouses enjoy various provisions in terms of taxation and social benefits liable to be granted to them, depending on their situation.*

II- Measures of preventative control

As well as the existence of a posteriori sanctions provided by numerous legislations (see III), there are also, in several States, measures of preventative control.

German *legislation provides no control of the legality of a foreigner's residency before he celebrates a marriage with a German national in Germany, the illegality of the residency (for instance, absence of a residency permit, refused asylum application, or person devoid of identity papers), however, being a possible indication of a marriage of convenience. In such a situation, a civil registrar must refuse to celebrate a marriage that could be annulled for absence of matrimonial intention (§ 1310 -1 ; § 1314 -2, n° 5 BGB).*

Indeed, according to § 5-4 of the Civil Status Law (Personenstandsgesetz [PStG]), if there are any concrete indications that could point to an annullable marriage according to § 1314-2 of BGB, a civil registrar may interview the prospective couple, together or separately, and require that they produce all relevant documents and, if need be, require that they declare under oath the circumstances that will determine the validity of the planned marriage.

The civil registrar may also search for any useful information by way of administrative collaboration, in particular with the Foreign Office (Ausländerbehörde). If he concludes from this that he may be in the presence of a marriage of convenience, he will refuse to proceed with its celebration by a reasoned decision, against which the couple may appeal (§ 45-1 of the Civil Status Law - PStG) before the High Court (Amtsgericht).

In **Belgium**, *according to Article 44 of the Private International Law Code, the Belgian authorities have the competence to celebrate marriages in Belgium when one of the future spouses is Belgian, domiciled in Belgium, or has been residing habitually in Belgium for more than three months, at the time of celebrating the marriage. "Domiciled" implies that the interested party is registered in the population register or in the foreigners' register or the waiting register (Art. 4, § 1, 1°, Private International Law Code).*

A habitual residence implies that the interested party has his principal residence there even in the absence of registration and independently of an authorisation to reside or settle there; in order to determine this place, in particular, personal or professional circumstances are taken into account when they reveal lasting links with this place or an intention to create such links (Art. 4, § 2, 1°, Private International Law Code).

The Ministry of the Interior and Ministry for Justice memorandum of 13 September 2005 (M.B. 6.10.2005) reiterates that freedom to marry is not conditional on the residency situation of the future spouses, so that the civil registrar may not refuse to draft the declaration record or celebrate the marriage if a foreigner's residency is illegal; however, he must take care to avoid marriages of convenience.

The preventative role of the civil registrar comes into play twice: during the marriage declaration, the civil registrar may refuse to draft the declaration record if the parties have failed to produce the documents listed in Article 64 of the Civil Code (this also holds true in cases where the documents requested are insufficiently legalised or in case of obvious and proven fraud (fake or falsified documents)); later on, the civil registrar may refuse to celebrate the marriage. Article 167 of the Civil Code confers upon him power of appreciation and control.

Thus, a civil registrar must refuse to celebrate a marriage if all the required conditions are not met or if it is contrary to public order. The control carried out by the civil registrar also includes a control aiming to establish that the planned marriage is not a bogus marriage (see Art. 146a Cc). If there are serious grounds to believe that the conditions for concluding a marriage have not been met, the civil registrar may also stay the celebration of the marriage, having obtained the opinion of the Prosecutor for the district where the applicants are intending to celebrate the marriage, for a duration of two months from the chosen marriage date, in order to proceed with a complementary enquiry. If he refuses to celebrate the marriage, the civil registrar will communicate his decision to the interested parties. This refusal is open to appeal for a duration of one month before the High Court.

In order to carry out his mission of control, the civil registrar must have complete and exact information at his disposal, in particular through an exchange of information between civil registrars, which is already provided in the Civil Code (Art. 63 §§ 3 and 4 and Art. 167 § 5, Cc), but a central system based on exchange of information regarding foreigners who are illegally residing in the country has been organised, concretely implementing a collaboration with the Aliens Office. The Memorandum of 13 September 2005 prescribes such collaboration with the twin objectives of offering a foreigner who is illegally residing in the country the possibility to marry legally in Belgium and to prevent marriages of convenience. It also provides for the suspension of the execution of an order to leave the territory which may have been served on the illegally-residing foreigner when he has made a declaration of marriage to a Belgian national or a foreigner who has been allowed or authorised to stay more than three months in the Kingdom or to settle there.

An authentic record of a marriage celebrated abroad in compliance with local legislation is recognised in Belgium (Art. 27 § 1 of the Private International Law Code), as long as its validity is established in compliance with the law applicable under Belgian private international law, unless it is contrary to public order or constitutes fraud before the law (Art. 18 and 21 of the same Code). When the authority refuses to accept the validity of the record, it is possible to appeal before the High Court (following the procedure described at Article 23 of the aforementioned Code).

Furthermore, the record may be mentioned in the margin of a civil-status record or transcribed in a civil-status register, or be the basis for a registration in a population register, a foreigners' register or a waiting list only after its legality according to the terms set out in Article 27 § 1 of the Private International Law Code has been verified. If the depositary of the record then refuses to mention it or proceed with its transcription, an appeal can be made before the General Court of the district where the register is kept (Art. 23 of the Private International Law Code).

In **Croatia**, *the marriage of a foreigner to a Croatian national will first be checked by a civil registrar (Art. 10 of the Family Law). This check will cover the conditions stipulated for the celebration of the marriage (Art. 9 and 29 of the Family Law). The civil registrar does not have the competence to check the legality of the interested party's residency.*

In **Spain**, *there are no checks as to whether a foreigner who wishes to marry a Spanish national is residing legally in the country; a future spouse needs only to be resident in Spain. Any checks prior to the celebration, carried out by a civil registrar in compliance with the formalities described in the Order of the Directorate-General for Registries and Notary Services of 31 January 2006, only concern the capacity to marry and the existence of real consent to marry (Art. 45Cc and Art. 238 of the Civil-status Register By-law); they can lead to non-approval of the application, which gives the future spouses the*

possibility to appeal before the Directorate General and then the Civil Court if it concerns a planned celebration within the national territory; if it is to be celebrated abroad, the foreign civil-status record will not be entered in the Consular and Central Spanish civil-status Register if there is suspicion of a marriage of convenience (Art. 65Cc and Art. 23 of the Civil-Status Register Law), such refusal entailing the same possibilities of appeal as in the situation described previously.

In **France**, *the laws that have changed the right to marriage since 1993 have introduced or reinforced measures that are meant to prevent or sanction unions that have been concluded only for reasons that are unrelated to the effects of marriage, particularly those to do with migration. Nevertheless, the fundamental principle of the freedom to marry, reinforced by the Constitutional Council in its decision of 13 August 1993 and echoed in its decision of 20 November 2003, strictly forbids to make the celebration of marriage for a foreign national conditional on the legality of his entry into or residency within French territory. Illegal residency, on its own, is not a sufficient indication that matrimonial intentions are absent or lacking in sincerity.*

However, the Constitutional Council has admitted (in its decision of 9 November 2006; http://www.conseil-constitutionnel.fr/) that

'the freedom to marry, a personal freedom protected by Articles 2 and 4 of the Declaration of the Rights of Man and of the Citizen of 1789, does not prevent legislators from taking preventative precautions against marriages that are concluded to ends other than matrimonial union'[i].

Since 1 March 2007, when Law n° 2006-1376 of 14 November 2006, relating to controlling the validity of marriage, came into effect, the publication of banns, or the celebration of marriage in case the need for such a publication is waived, is conditional on meeting both of the following conditions: an application file must be put together, and the future spouses must previously undergo an interview (Art. 63 Cc).

Putting together the application file means that full copies of the birth records of each future spouse must be produced, or failing this, equivalent civil-status documents (Art. 70 and 71 Cc). Their identity must be proven by producing an identity document that has been established and issued by a public authority, and the identity of the respective witnesses must be indicated, to be confirmed by the future spouses during the ceremony, unless they were to choose, at that moment, different witnesses (Art. 74-1 Cc).

The obligation to produce a prenuptial medical certificate was repealed by the Law of 20 December 2007 simplifying the law. Once this application file has been put together, the civil registrar has to interview the future spouses. The interview of the future spouses, a formality which was introduced in order to prevent marriages of convenience, is a formality whose remit has grown to include the prevention of forced marriages (Art. 180Cc). This formality is mandatory.

This being the case, the civil registrar may derogate from this obligation if it is materially impossible to carry out, or if there is no doubt whatsoever regarding the matrimonial intentions of the future spouses. The interview is carried out by the Mayor and his deputies. It may be delegated to municipal officers in charge of civil status. When one of the future spouses resides abroad, the interview may be carried out by a French diplomatic or consular agent with relevant competence. The future spouses are heard separately or together, in the presence of no other person whatsoever. If the future spouse has not attained the age of majority, he must be auditioned out of the presence of his future spouse or any other person (including legal representatives).

In the case of marriages celebrated in France, this procedure provides any civil registrar experiencing serious doubts on the matrimonial intentions of the future spouses or one of them, with the opportunity to alert, without delay, the Public Prosecutor, on the basis of Article 175-2 of the Civil Code. The Public Prosecutor then has fifteen days in order to decide either to let the marriage proceed, or to stay the celebration for a duration not exceeding one month renewable once, or to oppose the marriage. A decision in favour of suspension may be contested before the Presiding Judge of the first-instance court, who must adjudicate within ten days. The decision of the Presiding Judge of the first-instance court may be appealed, in which case the court must adjudicate within the same length of time. If the marriage is opposed by the Public Prosecutor, the marriage may not be celebrated as long as the future spouses have not obtained a court order setting aside the opposition (Art. 176 Cc). In all of these hypotheses, the civil registrar may not refuse to celebrate the marriage unless it is under suspension or opposition from the Department of the Public Prosecutor. A refusal on his part would constitute an illegal action for which he would be considered responsible. These provisions are applicable to all marriages whose celebration has been planned, in France, before municipal civil-status officers, irrespective of whether the future spouses have French nationality or not.

Moreover, in the case of marriage of French nationals abroad, Law n° 2006-1376 of 14 November 2006 relating to the control of the validity of marriages has meant that a real rethinking of marriage law for French people abroad has been carried out, resulting in the abrogation of Articles 170 and 170-1 of the Civil Code. Indeed, the Law inserted into section V of Book I of the Civil Code a chapter II-a entitled 'Concerning the marriage of French nationals abroad', made up of Articles 171-1 to 171-8. The new chapter applies to marriages celebrated from the date of 1 March 2007. The principle that the validity of the marriage abroad of a French person is conditional on respecting local formalities, but French substantive conditions, has not been called into question.

The legislature sought to align the system for French people marrying abroad before a local authority with that of marriage celebrated in France by a French civil registrar, which translates into reinforced means of control before the celebration of the marriage by the foreign authority, but also after the celebration.

The impact of the formalities to be observed prior to marriage has been reinforced. The formalities described in Article 63 of the Civil Code, for the most part, are applied when the marriage is celebrated before a foreign authority. The necessary documents (birth record copies, proof of identity) must be produced before the publication of banns, whose mandatory nature has been reinforced. The spouses must be interviewed in the context of these formalities, except if there is no suspicion of a marriage of convenience or a forced marriage.

Where the future spouse resides in France, the French diplomatic agent who has the relevant competence may delegate the conducting of this interview to the municipal officer of his place of residence. A report of the interview will then be sent to him by the municipal civil-status officer. The requirement for a certificate of legal capacity to marry attesting compliance with these formalities as well as the substantive conditions set out by French law is also reinforced, since it is now enshrined in the law. Obtaining a certificate of legal capacity to marry, established by French consular agents, also facilitates the transcription of the marriage record.

Furthermore, the procedure for opposing marriage has been re-ordered. In accordance with the legislature's objective, the case may now be referred to the Public Prosecutor even before the marriage is celebrated, where consular authorities have found serious indications that the validity of the marriage is in doubt. The Public Prosecutor's Department then has two months to make an objection to the celebration.

If, in spite of this, the marriage is still celebrated, the record may not be transcribed until the spouses have obtained confirmation that the opposition has been lifted, by instituting legal proceedings to this effect. Finally, control when transcription of the marriage record is requested has been reinforced. The transcription of the record henceforth conditions the validity of the marriage in France vis-à-vis third parties. Until the Law of 14 November 2006 came into effect, transcribing a foreign marriage record was obligatory only in order to obtain a residency permit, a visa, or for acquiring French nationality by declaration in virtue of Article 21-2 of the Civil Code. The conditions of transcription now depend on whether the formalities prior to marriage have been carried out or not.

Where the formalities prior to marriage have been respected, and the certificate of legal capacity to marry has been issued, the request for transcription of the marriage record must in principle be accepted, unless any new elements should justify a reference to the Public Prosecutor. However, if the marriage has been celebrated without the certificate being issued, the transcription must be preceded by an interview of the spouses, unless French diplomatic agents have waived this necessity if there is no suspicion of bogus marriage.

Furthermore, if they refer the matter to the Public Prosecutor in Nantes, who has exclusive jurisdiction, on the ground that such a marriage is invalid, he may oppose the transcription, which will force the spouses to commence legal proceedings themselves in order for the record to be transcribed. In the absence of a response from the Public Prosecutor, the spouses must commence legal proceedings with the same aim, the silence of the Public Prosecutor being equivalent to an opposition to the transcription.

In **Greece**, *the general provisions on marriage are applicable, which means that before the celebration, the marriage authorisation issued by the Mayor or President of the local authority of the last place of residence of each future spouse must be produced (Art. 1368 Cc).*

In **Hungary**, *measures of preventative control are implemented within civil-status procedures prior to the celebration of a foreigner's marriage in Hungary and the registration of marriages celebrated abroad, and within the measures applicable by the immigration control. In the first two cases, it is up to the competent authority to check that the legal conditions for the celebration are met. As for the procedure prior to the celebration of the marriage, the civil registrar will check that the legal*

conditions are met and that there are no impediments. A foreigner may marry a Hungarian national or another foreigner residing legally in the country as long as he produces a certificate of legal capacity to marry.

According to Order n° 13/1979 on Private International Law, a foreigner must, during the procedure prior to the celebration of a marriage, prove that there are no impediments to the marriage according to his personal law, his identity, his nationality, his civil status (and family situation) and his residence; Articles 8 and 13 of Order n° 17/1982 on civil-status registers, the celebration of marriages and surnames indicate which proofs of identity and nationality will be required.

Before the celebration of the marriage of a foreigner, these documents are transferred to the regional administrative headquarters, which will decide whether they are admissible and may, in this case, grant a dispensation regarding the certificate of legal capacity to marry. If the interested party does not hold these documents, his marriage may not be celebrated, but the civil-status officer does not have the competence to check whether he is legally resident in Hungary.

As for procedures relating to the registration of a marriage celebrated abroad, the competent authority – the office of immigration and nationality in Budapest – examines the application before entering the record in Hungarian registers.

For procedures concerning foreigners, the immigration control checks that the spouses are living together before issuing the visa, residency permit or settlement permit. It will refuse to deliver or renew these documents if the marriage was concluded with the sole aim of obtaining them. Methods of enquiry in order to detect marriages of convenience consist in interviewing the spouses simultaneously and examining their situation.

In **Italy**, *Article 116 of the Civil Code, as modified by Law n° 94/2009, establishes that the marriage of a foreigner in Italy is conditional on his residing legally within the national territory. A foreigner who wishes to marry in Italy must produce to the civil registrar: a) a declaration by the competent authority in his country of origin, establishing that, in compliance with the laws applicable to him, there are no obstacles to the marriage, and b) a document certifying the legality of his residency within Italian territory. Such a condition must continue to be met at the moment of publication and of celebrating the marriage. Without this documentation, the civil registrar may not proceed with drafting the required records. The legality of residency may be proven by a) a residency permit; b) an EU residency period for long-term stays; c) the residency permit of the relative of a European Union citizen.*

In the case of a short stay of less than three months, requiring no residency permit, a foreigner wishing to marry must apply for one. In this case, the legality of his residency is certified by the following documents: a) for foreigners from countries that are not members of the European Union, by a Schengen stamp attached to his travel documents by border authorities; b) for foreigners from the Schengen zone, a copy of the declaration of presence made to the Police Prefect within eight days of arrival; c) by a declaration made in compliance with Article 109 of R.D. n° 773/1931 to the management of hotels and other equivalent establishments.

There are specific provisions in Italy for the marriage of persons falling into the following categories: a) a foreigner who is waiting for a residency permit to be granted for conditional work, who must produce the work permit he has signed with the employer at the 'Sportello Unico per l'immigrazione' (Art. 5 § 3-a and Art. 5-a T.U.), the application for a residency permit presented to the same 'Sportello' and the certificate relating to the residency permit application; b) a foreigner who is awaiting the issue of a residency permit for family reunification, who must produce his entry visa, a copy of the authorisation issued by the 'Sportello', and the certificate relating to the application for a residency permit; and c) a foreigner awaiting the renewal of his residency permit, who must produce the certificate relating to the application for renewal and the permit to be renewed. The mayor has a duty to inform the competent authorities, whether judicial or of public safety, of the condition of a foreigner who has turned out to be in an illegal situation following a matrimonial procedure (Art. 54 § 10-a of Law n° 267 of 18 August 2000).Furthermore, each public officer (including the civil registrar) gaining knowledge of a case of illegal immigration (illegal entry into or residency within State territory: Art. 10-a of D. Lgs N°286 of 25 July 1998) must denounce it to the Department of the Public Prosecutor or to a judicial police officer (Art. 331 of the Code of Penal Procedure).

In **Luxembourg**, *the legislation in force does not make the celebration of a marriage conditional on the legality of a future foreign spouse's residency within the territory, and consequently, no checks are carried out in the matter. Furthermore, Luxembourg law does not provide any specific measures in case a marriage of convenience is suspected. A civil registrar may not stay the celebration, and the Department of the Public Prosecutor does not have the competence to oppose it. However, a bill aims, among other things, to reinforce the powers of these authorities in case of a marriage of convenience.*

*In the **Netherlands**, Article 44 of Book I of the Civil Code lays down, in case a marriage or registered partnership is concluded with a foreigner, the obligation to present to the civil registrar a declaration from the Chief of Police relating to the legality of the residency of the future spouse or partner. This declaration is not required if the couple is to reside abroad after the marriage or the registration of the partnership, or if both spouses are nationals of European Union member States or States who are parties to the Convention on the European Economic Area.*

If the civil registrar suspects a marriage of convenience, he will refuse to celebrate it, in which case the future spouses may appeal to the High Court (Art. 18b and Art. 27, Book I Cc); the Public Prosecutor's Department may also oppose the marriage (Art. 53, § 3, Book I Cc). The same procedure is applicable for the recognition of a marriage celebrated abroad or a registered partnership registered abroad; if the marriage or the registered partnership is recognised in the Netherlands, it will be entered in the basic municipal register. The legality of the residency is checked by the immigration control. Checks made in view of recognising a marriage concluded abroad or a partnership that has been registered abroad are carried out by the officer of the basic municipal register, in some cases under advice from the Hague civil registrar (Art. 36a and 40, § 2 on the Basic Municipal Administration Law); he may refuse to enter it if there is any doubt, and the interested parties may then introduce an administrative appeal (Art. 83 and 86 of the Law on the Basic Municipal Administration Law, referring to the general Law on administrative matters).

*In **Poland**, marriage between a foreigner and a Polish national is not placed under any particular conditions, but must meet the general provisions relative to the celebration of any marriage: the identity of the future spouses will be checked, as will the existence of any impediments, and a certificate of legal capacity to marry must be produced, or failing this, an equivalent Polish judgment. However, there is no a priori control by the civil registrar that both spouses consent to the marriage, an a posteriori check being the only possibility (see below). Similarly, control of the legality of a foreigner's residency is not provided for by legislation, or by the Family and Guardianship Code, or in law relating to immigration.*

*In **Portugal**, for a marriage application to be examined, a foreigner wishing to marry a Portuguese national must provide a certificate of capacity to marry issued by his national authorities (Art. 166 of the Civil Status Code); but the civil registrar is not empowered to check whether the foreigner's residency is legal and may not refuse to celebrate a marriage on these grounds. Furthermore, he may not proceed with an a priori control of the consent of the spouses, only an a posteriori control being possible (see below).*

*In the **United Kingdom**, according to Article 19 of the Asylum and Immigration [Treatment of Claimants, etc] Act 2004, in order to declare a marriage to the civil-status authority designated to this end, a foreigner who is not a national of a European Economic Area State must hold a 'marriage visa' or an 'engagement visa' issued by the consulates or British High Commissioner or a Certificate of Approval issued by the Home Office (Immigration and Nationality Division), whose cost has risen from 135 to 295 Pounds; the officers in charge of registering the marriage must check this condition before accepting a marriage declaration. However, in England and Wales, these provisions are not applicable to marriages celebrated according to the rites of the Church of England or the Church in Wales, which are preceded by a public proclamation.*

It should be noted that the bishops of London and Southwark have informed the members of their clergy that it was appropriate to ask all couples wishing to marry in the Church of England, when one or both of the future spouses are subject to immigration control, to request an authorisation from a superintendent registrar before the celebration of their union, thus applying to these marriages the requirements of the Home Office, which would not be the case if there was simply a public proclamation. The officers in charge of registration must report to the Home Office any marriage that, in their opinion, has been concluded with the aim of circumnavigating immigration regulations, and in such cases, the Immigration and Nationality Department (IND) of the Home Office will launch an enquiry (Art. 24 of the Asylum and Immigration Act 2004).It should be noted that the provisions of this law have been contested before the British courts. In the case of Mahmoud Baiai and others v. the Secretary of State for the Home Department, the Court of Appeal heard an appeal brought before it concerning two High Court decisions. In the first decision, the applicants alleged that the provisions in question and the policy applied in terms of certificates of approval (hereafter, 'scheme') were illegal as they infringed Articles 12 and 14 (the right to marry and prohibition of discrimination) of the European Convention on Human Rights; in the second, the applicant (an 'illegal immigrant' with no residency permit) contested the application of the 'scheme' in his particular case. Before the High Court, the applicants were successful in the first case, the Home Secretary's in the second.

In its decision of 23 May 2007, the Court of Appeal recognised that the objective of preventing bogus marriages concluded in order to avoid immigration checks is sufficiently important to justify certain restrictions on the right guaranteed by Article 12.

However, it concluded that the 'scheme' does not satisfy the proportionality criterion: there is no rational link between the aim of preventing bogus marriages and the 'scheme', since the 'scheme' does not take into account the facts and circumstances relating to each case.

The effect of the 'scheme' is that a marriage involving a person without a six-month residency permit cannot be a genuine marriage. In other words, the application of the 'scheme' does not depend on the quality of the marriage, but only on the status of the interested party with regards to immigration legislation.

According to the Court, the Ministry of the Interior can interfere in the exercise of the rights bestowed by Article 12 only in cases concerning, or probably concerning, bogus marriages aiming to improve a person's status in the eyes of immigration law. In order to be properly proportioned, the 'scheme' should have included either an investigation of each individual case, or provisions for identifying the cases which probably fall into that category. As for the second decision, the Court of Appeal accepted the appeal: the problem of the 'scheme', that it prevents marriages based on a person's status under immigration law rather than on an examination of the genuine nature of the marriage, applies just as well to a person without a residency permit as to a person with a short-term residency permit.

The Secretary of State for the Home Department was authorised to appeal to the House of Lords, and until decreed otherwise, civil registrars were encouraged to apply the 'scheme'. In its judgment of 30 July 2008, the House of Lords found that the British State had a right to attempt to prevent marriages of convenience, and that Article 19 of the Asylum and Immigration Act 2004 is not incompatible with the Human Rights Act 1998 as far as this particular aspect is concerned. However, the House of Lords expressed its agreement with the judgments pronounced previously, considering that the certificate of legal capacity to marry scheme implemented in 2005 was illegal, and rejected the appeal brought by the Home Office. Similarly, the House of Lords criticised the high fee to be paid in order to obtain a certificate. The United Kingdom Border Agency is currently proceeding with the examination of this judgment; in the meantime, it will continue to apply its own scheme for obtaining a certificate (for more information, see www.bia.homeoffice.gov.uk/sitecontent/documents/visitingtheuk/coaguidance).The Court of Appeal did not rule on the grievances founded on Article 14 of the European Convention on Human Rights (prohibition of discrimination), the Home Office not having appealed against the conclusion of the High Court that the exception concerning marriages celebrated in the Church of England constituted discrimination in the sense of Article 14. However, as the courts considered that, in England and Wales, the exclusion in the legislation (Art. 19 of the Immigration and Asylum Act 2004) of ecclesiastic preliminaries to marriage (publication of banns and marriage licence) infringed Article 14 and was incompatible with the Human Rights Act 1998, the Home Office undertook to remove this discriminatory measure; discussions with the Church of England and the Church in Wales are ongoing.

*While the **Swiss** legislation in force until 31 December 2007 provided no control by a civil registrar, the Office of the Public Prosecutor, a judge or an administrative authority concerning the legality of a foreigner's residency before the celebration of a marriage to a Swiss national, the federal Law on foreigners in force since 1 January 2008 introduces into the Civil Code various measures aiming to prevent marriages of convenience.*

The new Article 97a of the Civil Code allows civil registrars to refuse to celebrate an obviously fraudulent marriage that a foreigner is planning to conclude with the sole aim of obtaining residency; a civil registrar may then interview the future spouses and request any information necessary from other authorities or from third parties. Furthermore, Article 105 of the Civil Code on the causes of absolute nullity of a marriage has been supplemented, and provides henceforth that a marriage must be annulled when one of the spouses does not wish to enter into married life but wishes simply to elude the provisions on the admission and residency of foreigners (Art. 105, chapter 4Cc). These new measures implemented by Articles 97a and 105 § 4 of the Civil Code for marriage have also been inserted into the Registered Partnership Law (Art. 6 §§ 2 and 5 and Art. 9, § 1 of the Partnership Law).

A marriage that has been legally celebrated abroad is in principle recognised in Switzerland, except if both spouses are resident in Switzerland and have concluded the marriage abroad with the manifest intention of eluding the provisions on marriage annulment laid down by Swiss Law (Art. 45 LDIP), but it will be transcribed in the Swiss registers only by virtue of a decision of the district surveillance authority (Art. 32 LDIP). When neither of the spouses is Swiss and an application for family reunification is presented, it is up to immigration control to decide the matter.

The refusal of a civil registrar to celebrate a marriage may be contested by the spouses before the registrar's district surveillance authority; its decision may also be contested before the competent district authorities, which must include at least one judicial authority. The decision of the immigration control authority may also be contested before district authorities, and as a last resort, before the Federal Tribunal.

Two conflicting parliamentary initiatives should also be mentioned: the first requires that the future spouses be able to prove that they reside legally in Switzerland by producing a valid residency permit or visa (initiative n° 05.462, presented on 16 December 2005 by National Councillor Toni Brunner, entitled 'preventing fictitious marriages'; the parliamentary procedure is in progress); the second requests the Federal Council (Swiss Government) to intervene with the Cantons so that the right to marry should be guaranteed independently from the legal status of the future spouses, and also to undocumented persons (interpellation n° 06.3341 of 22 June 2006 by National Councillor Ms Menetrey-Savary, 'Dual nationality marriages in the time of suspicion'). The Parliament is currently working on a bill following the initiative to 'prevent fictitious marriages' while the conflicting interpellation opposed to it has been shelved due to lack of any follow-up.

In **Turkey**, *there is no legislative provision on the control of the legality of a foreigner's residency before allowing him to marry a Turkish national, only the production of a certificate of legal capacity to marry being required (Marriage by-law, Art. 12 and 20).*

III - A posteriori *Penalties*

When it is established that a marriage of convenience has been concluded, various types of penalties (civil, penal, administrative) may be applied in most cases.

A – Civil penalties

In **Germany**, *a marriage of convenience may be annulled by legal decision (§§ 1313 and 1314-2, n°5 BGB), unless the spouses shared marital life after its celebration (§ 1315-1, sentence 1, n°5 BGB). The rules of the Code of Civil Procedure relating to divorce (Zivilprocessordnung [ZPO]) are also applicable (§§ 606 and following and § 631 ZPO).*

In **Belgium**, *if it becomes apparent that a marriage has been concluded by at least one of the spouses with the sole aim of obtaining an advantage in terms of residency (Art. 146-bis Cc), it may be legally annulled on the request of the Department of the Public Prosecutor, or one of the spouses, or any interested party (Art. 146-a and 184 Cc). Belgian courts are competent to judge, in application of common law procedural rules, any request for annulment by the Department of the Public Prosecutor if the marriage was celebrated in Belgium, or if one of the spouses is Belgian or is currently residing in Belgium when the request is made (Art. 43-2 of the Code of Private International Law).*

They are also competent to rule on any demand concerning the marriage or its effects, and thus also on any demand for the annulment of the marriage where, in case of a joint request (an improbable hypothesis in the case of a bogus marriage), one of the spouses habitually resides in Belgium when the request is made, or where the last known common residence of the spouses was located in Belgium less than twelve months before the request was made, or when the requesting spouse resides habitually in Belgium and has done so for at least twelve months before making the request, or else where the spouses are Belgian when the request is made (Art. 42 of the Private International Law Code).

In **Spain**, *a bogus marriage can be annulled for lack of consent (Art. 73 Cc). The request for annulment of marriage is subject to procedural rules pertaining to civil status, in such a way that the Department of the Public Prosecutor must take part in it (Art. 749 of the Civil Procedure Law).*

In **France**, *lack of matrimonial intent is considered to be a cause for absolute nullity of a marriage, in such a way that nullity is not subject to confirmation. The action may be introduced within thirty years by any interested party, particularly by the Department of the Public Prosecutor. In the case of a marriage concluded abroad by a French national or a person with dual nationality (French and other), the Public Prosecutor in Nantes is the only authority competent to assess its validity and seek its annulment (Art. 1056-1 NCPC), in particular where there is no real matrimonial intent (Art. 146Cc) or in case it was celebrated in the absence of the French spouse.*

Once the nullity of a marriage of convenience has been pronounced, it is retroactive. The marriage record made in a French municipal or consular registers is annulled and may no longer be publicised through copies or extracts. When the annulment proceedings follow a request for the transcription of the record of a marriage celebrated abroad, the marriage will be transcribed into consular registers only with a view to being annulled, and may no longer be publicised once the annulment has been noted in the margin of the register.

In **Italy**, *the bogus nature of a marriage is cause for annulment, and the marriage can thus be annulled in compliance with the rules of common law by a court decision that will have retroactive effect from the date of celebration (Art. 123 Cc). Consequently, this will lead to the cancellation of the residency permit that was delivered to the foreign spouse, and possibly the said spouse's deportation (Art. 30-a of T.U.).*

In **Luxembourg**, *there are currently no specific sanctions that deal with marriages of convenience, but a bill provides for the introduction of civil penalties. In general, the Civil Code stipulates that there is no marriage when there is no consent (Art. 146), and that any marriage concluded without the free consent of both spouses or one of them may be contested by the spouses themselves or by the spouse whose consent was not free (Art. 180). Article 184 of the Civil Code empowers the Department of the Public Prosecutor to contest marriages concluded in breach of the provisions of Articles 144 (age condition), 147 (bigamy), 161, 162 and 163 (incestuous marriages). The annulment of the marriage is declared by the district Tribunal, or the High Court of Justice. The marriage record, which derives from a fraudulent situation, is annulled, and subsequent civil-status records are updated with an annotation.*

In the **Netherlands**, *if the marriage was celebrated within Dutch territory, the Department of the Public Prosecutor can request its annulment, in which case the record will be cancelled (Art. 71a, Book I Cc). If it was celebrated abroad, the municipal administrative officer may refuse to enter it in his register (Art. 37, § 2 of the Basic Municipal Administration Law). For the annulment of the marriage, it is necessary to prove that the future spouses have concluded the marriage with the sole aim of obtaining a residency permit for one of them. To this end, various indications are taken into consideration (for instance, a large age difference between the future spouses, the fact that they do not speak the same language, that they find it hard to understand each other, or that they know very little about each other), which, when combined, may lead to the conclusion that a marriage of convenience has indeed taken place.*

In **Portugal**, *a bogus marriage celebrated within the territory may be annulled by a court decision made at the request of the Department of the Public Prosecutor, as informed by a civil registrar (Art. 1631b, 1632, 1635d and 1640 Cc); the Public Prosecutor must then provide proof of the absence of matrimonial intention. If the marriage was celebrated abroad, and has been transcribed into the Portuguese registers, the civil registrar discovering the truth must inform the Department of the Public Prosecutor, who can similarly proceed to seek the annulment.*

In **Switzerland**, *in principle, for all procedures relating to marriage, the courts appraise the proof produced, the cost of which is borne by the person making the request (Art. 8 Cc). They may consider the facts invoked in support of a request for annulment to be established only if they are convinced of their relevance (Art. 139Cc, Art. 110) in order to preserve the right to marry guaranteed by the Federal Constitution (Art. 14) and Article 12 of the European Convention on Human Rights.*

If the request for annulment is based on an absolute cause for annulment, such as a fraudulent marriage, the action can be introduced at any time, either by the competent district authority of the spouses' place of residence, or by any interested party (Art. 106 Cc). In civil terms, new penalties have been provided by the Federal Law on Foreigners, in force since 1 January 2008: thus, a fictitious marriage must be annulled when it has been concluded not with the aim of common marital life, but with the sole aim of eluding rules relating to the admission and residency of foreigners (Art. 105, chapter 4Cc) and the presumption of paternity ceases to apply to a child resulting from such an annulled relationship (Art. 109, § 3 Cc). Partnerships of convenience are also annulled under the same conditions (Art. 9 § 1c LPart).

In **Turkey**, *there are no specific civil penalties. However, according to the common law on marriage annulment, a union concluded between a foreigner and a Turkish national in order only to have easy access to Turkish nationality could be annulled at the request of the Turkish spouse who has thus been the victim of an error regarding his spouse's matrimonial intention (Art. 149 Cct).*

The legislations of **Croatia**, **Greece**, **Hungary** *and* **Poland** *do not provide for any civil penalties, and a bogus marriage cannot be annulled on these grounds alone. In Croatia, any marriage concluded in breach of Articles 26 to 30 of the Family Law may be annulled (Art. 30 of the Family Law).*

Similarly, in the **United Kingdom**, *any marriage concluded according to the provisions of marriage law applicable to England, Wales, Scotland or Northern Ireland will be considered valid, including a marriage concluded only with the aim of circumventing immigration law (or with any other aim). Consequently, a marriage of convenience will not be considered illegal and there will be no particular penalty. It is also not possible to annul a marriage only because it has been concluded in order to circumvent regulations relating to immigration. For this, there would need to be other grounds, for instance if the marriage was bigamous in the sense set out in marriage law as applicable in England, Wales, Scotland or Northern Ireland.*

B – Penal sanctions

Several States mention the possibility of applying general provisions relating to document fraud; others also provide more specific penalties related to bogus marriages.

In **Germany**, *penalties are incurred if the marriage was simulated with the aim of obtaining a residency permit: penalties can be up to three years of imprisonment or a fine (§ 95-2, n°2 of the Residency Law: Aufenthaltsgesetz).*

In **Belgium**, *as well as the general provisions on the use of false documents that may be applied, since the Law of 12 January 2006 came into effect on 21 February 2006, modifying the Law of 15 December 1980 on access to the territory, residency, settlement and the repatriation of foreigners, any partner concluding a bogus marriage is punishable if he concludes this marriage with the sole aim of obtaining a residency permit for himself or his spouse. Anyone concluding a marriage in the circumstances described in Article 146-a of the Civil Code will be punished by imprisonment of eight days to three months, or a fine of 26 to 100 Euros; anyone receiving payment in retribution for such a marriage will be punished by imprisonment of fifteen days to one year, or a fine of 50 to 250 Euros; anyone resorting to violence or threats to another person in order to force him to conclude such a marriage will be punished by imprisonment of one month to two years or a fine of 100 to 500 Euros (Art. 79-a, § 1 of the aforementioned Law). An attempt to commit any of these crimes is also punishable.*

In **Spain**, *only marriages that are illicit for reasons of bigamy, or concluded by one spouse in order to harm the other, are punishable by penalties (Art. 217 and 219 of the Penal Code).*

In **France**, *a marriage contracted in view of obtaining a residency permit or French nationality constitutes a crime as stipulated by Law n° 2003-1119 of 26 November 2003. Before this Law, the French spouse could be liable for penal sanctions for aiding an illegal resident. Henceforth, Article L. 623-1 of the Code of Entry and Residency of Foreigners and the Right to Asylum (CESEDA) provides that*

> 'the fact of contracting a marriage with the sole aim of obtaining, or aiding in the obtaining of, a residency permit, or with the sole aim of obtaining or aiding in the obtaining of French nationality is punishable by five years of imprisonment and a 15,000-Euro fine. These same penalties are applicable to anyone organising or attempting to organise a marriage to the same ends. They are increased to ten years of imprisonment and a 750,000-Euro fine if the crime is committed by an organised gang'.

Furthermore, Article L. 623-2 lists further penalties: offenders will be banned from residing in France for five years at the most, though they may under certain conditions be barred from the French territory for a maximum of ten years or definitively; finally, if the crime was committed by a third party, he will be forbidden for five years at the most to carry out the professional or social activity in the context of which the crime was committed.

In **Italy**, *there are no specific penal sanctions punishing bogus marriages, but more general provisions are applicable. Article 10-bis of the Testo Unico, introduced by Law n° 94/2009, stipulates that a foreigner entering into or residing within Italian territory in violation of the provisions of the Testo Unico and Law N° 68 of 28 May 2007 will be liable for a fine of 5,000 to 10,000 Euros. A foreigner who is convicted of illegal entry and residency is liable to be deported immediately.*

Whoever contributes to facilitating, organising, directing, financing or effecting the transport of foreigners into Italian territory or carries out other actions aiming to aid illegal entry into Italian territory, or any other State where the person does not hold its nationality or a residency permit, is liable for imprisonment of one to five years and a fine of up to 15,000 Euros per person (Art. 12, § 1 TU); if the interested party has benefitted financially, even indirectly, the penalties go from four to fifteen years of imprisonment and a fine of 15,000 Euros per person (Art. 12, § 3 TU).

These penalties could be increased even further in certain cases (particularly if the illegal entry and residency has been provided to five people or more, as an organised gang, or using false or falsified documents, or with the aim of exploiting minors or foreigners, etc.; Art. 12 § 3-a and 3-b of TU). Other than the applicable civil penalties applicable in case of bogus marriages, the spouses will also be liable to the aforementioned penalties.

In **Luxembourg**, *concluding a marriage of convenience is not currently considered punishable in itself, but a bill plans to create specific penal sanctions. However, the provisions on document fraud (Art. 193 to 197 of the Penal Code) may apply. Also, a civil registrar may be punished if he has neglected to mention in the marriage record the consents required by law, or if he has proceeded with celebrating a marriage without checking that these consents existed; he would then be liable for a fine ranging from 251 to 5,000 Euros (Art. 264 of the Penal Code).*

In the **Netherlands**, *the following crimes are punishable by imprisonment or fines: in the case of creation and use of a false document, or for the falsification of a document that was to serve as proof, imprisonment of six years at the most and a fifth-category fine (whose maximum amount is 74,000 Euros) is applicable (Art. 225 of the Penal Code), the sentence being increased to seven years in prison if the crime involved authentic records such as civil-status records (Art. 226 of the Penal Code); the same sanctions will be applied to persons using, issuing or holding a false or falsified record.*

A false declaration made in an authentic record, as well as using such a record, are punishable by incarceration of a maximum of six years, or a fifth-category fine (Art. 227 of the Penal Code). If false data are provided in order to obtain advantages for oneself or for a third party (Art. 227 a of the Penal Code) or if a person withholds mandatory information required by law beyond the stipulated time period in order to obtain illegitimate advantages for himself or for a third party, he will be liable to a prison sentence of a maximum of four years or a fifth-category fine (Art. 227 b of the Penal Code).

In **Poland**, *the Penal Code does not provide any specific penalties regarding bogus marriages, but a Polish citizen may be liable for penal sanctions if he illegally facilitates the residency of a foreigner: he will in principle be liable for a prison sentence ranging from three months to five years, but if he has derived no material gain from the situation, the court may decide not to apply the sentence (Art. 264 of the Penal Code, introduced in 2004).*

In the **United Kingdom**, *there are no specific sanctions applicable to bogus marriages, but there are general provisions that are applicable. In England and Wales, any individual who is found guilty of false declarations may be prosecuted under the Perjury Act 1911 and will be liable to penal servitude for a term not exceeding seven years, or to imprisonment for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.*

In Scotland, any individual found guilty of false declarations, falsifications, or use of false extracts, certificates, declarations or civil-status records is liable to prosecution under section 53 of the 1965 Act or section 24 of the Marriage (Scotland) Act 1977, and will risk a penal sanction which, depending on the nature of the crime and the court that is competent in the matter, may be a prison sentence not exceeding two years, an unlimited fine, or both.

In Northern Ireland, any individual found guilty of false declarations is liable to prosecution under the Births and Deaths Registration (NI) Order 1976, Article 45, the Marriage (NI) Order 2003, Article 38, or the Perjury (NI) Order 1979, Articles 8 and 9; such an individual would be liable to a prison sentence not exceeding two years, an unlimited fine, or both.

In **Switzerland**, *the Federal Law on Foreigners (Art. 118, § 2 LEtr), in force since 1 January 2008, provides for a sentence of three years' imprisonment or a fine for any person misleading the authorities in charge of the application of the said Law by giving them false information or by concealing essential information, thus obtaining fraudulently an authorisation for himself or for a third party or avoiding the cancellation of an authorisation.*

Furthermore, anyone concluding a marriage with a foreigner, or intervening with a view to its conclusion, or facilitating it or making it possible, in order to circumvent rules relating to the right of entry and residency of foreigners, will be liable to a prison sentence not exceeding three years or a fine.

No specific penal sanction is provided by the legislation of **Croatia**, **Greece**, **Hungary**, **Portugal** *or* **Turkey**. *However, in the latter country, the sanctions provided at Article 230 of the Turkish Penal Code are applicable to the parties concerned when brought before the Public Prosecutor by an interested party, the General Management of civil-status and nationality services dependant on the Ministry of Internal Affairs (Nüfus ve Vatandaslik Isleri Genel Müdürlügü) or a civil registrar (regarding a marriage concluded in the conditions set out in Article 56 of the Rules on Marriage (any person concluding a marriage with someone who is already married, concluding a marriage by hiding one's true identity or celebrating a religious marriage without celebrating a secular marriage)). The court will then annul the marriage and decide on the sentence to be passed.*

C – Administrative and other penalties

In **Germany**, *a residency permit is granted to a foreign spouse in accordance with Article 6 of the Fundamental Law (Grundgesetz) relating to the protection of marriage and the family (§ 27 of the Law on Residency: Aufenthaltsgesetz). But if the immigration service (Ausländerbehörde) notices that following the celebration of the marriage there is no community of life, it may revoke the residency permit and end the foreigner's residency in Germany (§§ 50 and following of the Residency Law: Aufenthaltsgesetz).*

In **Belgium**, *Article 16 of the Belgian Nationality Code sets out the conditions for the foreign spouse of a Belgian national to acquire Belgian nationality. Provision is now made for the forfeiture of nationality to be extended to cases of fraud.*

Article 23 of the law pertaining to the Nationality Code, as modified by the 27 December 2006 Law (M.B. 28.12.2996) pertaining to miscellaneous provisions (Art. 387), provides that Belgian nationals who did not acquire their Belgian nationality from a Belgian parent on the day of their birth and Belgian nationals who did not have their nationality attributed pursuant to Article 11 (a child born in Belgium of a parent also born in Belgium) may have to forfeit their Belgian nationality in the following cases: if they acquired Belgian nationality on the basis of facts that they altered or concealed, or on the basis of false declarations or false or falsified documents which had a determining role in the decision to grant nationality (Art. 23-1); or if they seriously fail to fulfil the duties of a Belgian citizen (Art. 23-2). The forfeiture of nationality provided in article 23-1 is time-barred after five years from the date of obtaining Belgian nationality.

Furthermore, since the law of 15 September 2006 came into force on 1 June 2007, modifying the law of 15 December 1980 on access to the territory, residency, settlement and repatriation of foreigners (M.B. 6.10.2006), which transposes directive 2003/86/CE relating to the family reunification of the family members of nationals of non-European Union member States, the family reunification application may henceforth not only be refused (Art. 11, § 1-4) but also revoked (Art. 11, § 2-4). The right to residency may be refused and revoked if it is noticed that no family unit is formed, that the conditions imposed are no longer met, or that a fraud has been committed, in particular if the marriage was concluded only to allow the foreigner to enter into or reside within the Kingdom. A system of checks (Art. 11, § 2-3, new) has also been provided when it is a question of extending or renewing the residency permit, to check whether the foreigner meets all of the required conditions. The Minister or his delegate may at any moment carry out or order specific checks if there are any well-founded suspicions of fraud or if the marriage was concluded in order to allow the person concerned to enter into or reside within Belgium. As for the residency permit of a person already residing in Belgium, this may also be cancelled in cases of fraud or if it established that the marriage was concluded only to allow the foreigner to enter into or reside within the Kingdom (Art. 10-d, § 3, new).

In **France**, *illegal entry into and residency within French territory by a foreigner are punishable by an administrative measure of deportation, but this may not be applied to a foreigner who has been married for at least three years to a French spouse, as long as the community of life has not ceased since the marriage and that the spouse has retained his French nationality. However, this same foreign national may be deported if it is necessary for the safety of the State or public security. If this foreigner has been residing legally in France for more than ten years and, without living in a state of polygamy, has been married for at least four years to a French national who has retained French nationality (community of life having continued since the marriage), a ministerial deportation order may only be applied to him if he behaves in such a way as to endanger the fundamental interests of the State, if he*

is linked to activities of a terrorist nature, or if he has uttered explicit and deliberate incitements to hate or violence against a specific person or group of persons (Art. L. 511-5, 7°, L. 521-2, 2° and L. 521-3, 3°, CESEDA).

In **Greece**, *when various indications (absence of cohabitation or possibility of communication between spouses or ignorance of the spouse's personal civil-status information) lead to the conclusion that the marriage was contracted with the sole aim of procuring a residency permit for a national of a non-European Union State, this will be refused, not renewed, or revoked, depending on the case (Art. 58, § 1-b of Law 2286/2005). Identical penalties are applicable in the same circumstances as concerns the residency permit of a Greek or European Union national's family member (Art. 61, § 5-b of Law 2286/2005).*

In **Hungary**, *the applicable rules have recently been modified. According to the legislation in force until 30 June 2007, the issue or renewal of a residency permit based on family reunification could be refused if it was proven that the person concerned had concluded a marriage with a Hungarian national or with a non-European Economic Area member State national residing legally in Hungary with the sole aim of obtaining this permit (Law 39/2001, Art. 17, § 1e). This decision to refuse could be appealed before the immigration authority, either immediately and orally, or a written appeal could be made within three days (Law 39/2001, Art. 17, § 5). Furthermore, since Law 39/2001 was modified in order to combat marriages of convenience, the immigration authority has been able to revoke a settlement permit based on family reunification if the marriage was dissolved in the three years following the issue of the permit, unless the dissolution of the conjugal relationship was the result of the death of a spouse; these rules, however, were inapplicable to foreigners having resided legally in Hungary for four years (Law 39/2001, Art. 23, § 1c). The settlement or immigration permit could also be revoked without notice if the person concerned was a national of a third-party State and had provided false information in order to obtain it (Law 39/2001, Art. 23, § 2h). For a foreigner who is a national of a third-party State and married to a national of a European Economic Area member State, an application for the issue or renewal of a residency permit based on family reunification had to be rejected if community of life ceased within the six months following its issue and had been established exclusively in order to obtain this permit (Law 39/2001, Art. 20, § 1c). The same provisions applied to the spouse having the nationality of a European Economic Area member State as long as he was residing as a family member within Hungarian territory (Law 39/2001, Art. 30, § 2).*

Laws 1/2007 and 2/2007, in force since 1 July 2007, have changed the applicable rules. According to Law 1/2007, a national of a third-party State married to a Hungarian national or a national of a European Economic Area member State may lose his right to residency if community of life ceases within the six months following its obtaining or it is established that marriage had only been concluded in order to obtain this right (Law 1/2007, Art. 14, § 2). According to Law 2/2007, applicable to nationals of non-European Economic Area States, one of whom resides legally in Hungary, the issue or renewal of a residency permit based on family reunification will have to be revoked where the marriage was constructed by the spouses with the sole aim of obtaining this permit (Law 2/2007, Art. 18, § 1d). Prescriptions relating to the revocation of the settlement permit have not been altered. Law 55/1993 on Hungarian nationality allows the revocation of Hungarian nationality if it has been acquired in violation of legal rules, and in particular if false information was provided in order to obtain it. This sanction ceases to be applicable after ten years following the acquisition of nationality.

In **Italy**, *a request for family reunification will be rejected if it is found out that the marriage was concluded with the sole aim of obtaining the right to enter into or reside within Italian territory (Art. 29, § 9 T.U.).*

Furthermore, a residency permit issued for family reasons to a foreigner residing legally within Italian territory for at least a year, who has married, in Italy, an Italian or European Union citizen or a foreign national residing legally in Italy, will immediately be revoked if it is found out that the marriage was not followed by cohabitation, unless children have been born from this marriage. A request for the granting or renewal of a residency permit to a foreigner for family reasons is instantly revoked if it is found out that the marriage took place only in order to allow the person concerned to reside within Italian territory (Art. 30, § 1a T.U.). The annulment of the marriage may result in the revocation of the foreigner's residency permit and in his deportation.

In **Luxembourg**, *a marriage of convenience is liable to be penalised on the basis of Article 75 of the 29 August 2008 Law on the free circulation of persons and immigration, by the revocation or non-renewal of the residency permit. In this case, the foreign spouse must leave Luxembourg territory within a certain time period. If he refuses to leave the country, he may be deported or even placed in administrative detention.*

Against these decisions, the person concerned can appeal to the Administrative Tribunal, then to the Administrative Court. The administrative responsibility of the civil registrar may not be engaged, by virtue of the modified Communal Law of 13 December 1988.

In the **Netherlands**, *it is possible to revoke a residency permit issued to a foreign spouse (Art. 14, § 1d; Art. 20, §1b; Art. 28, § 1c and Art. 33b of the Foreigners Law 2000). If the bogus marriage was celebrated abroad, the refusal to register the marriage record in the basic municipal registry entails the refusal to grant the right to residency (Art. 3.17b of the Royal Decree on Foreigners), which also means that benefits and allowances allocated by other authorities and linked to the holding of a residency permit will be refused.*

In **Poland**, *the law on foreigners lays down that an application for residency will be rejected where a marriage has been concluded fraudulently with respect to the law; the competent administrative authority (wojewoda) may also revoke a residency permit following an a posteriori check of the marriage's legality, fraud being possibly detected by various indications such as those enumerated in Article 55, § 1 of the law on foreigners, as follows: one of the spouses has accepted remuneration or does not know his spouse's personal information; the spouses do not carry out their matrimonial obligations, or do not cohabit, or had not met before the marriage was celebrated, or do not speak a common language; or one of them has, in the past, already concluded a bogus marriage. It should be noted that the Civil Code and the Family Code do not know the notion of bogus marriages, which means that a marriage may not be annulled on these grounds, whereas in such a situation the law on foreigners deprives the foreign spouse of any advantages in terms of residency.*

In **Portugal**, *bogus marriages constitute fraud which can entail the revocation of the residency permit (Art. 108 of Law n° 23/2007).*

In **Switzerland**, *the Federal Law on Foreigners, in force since 1 January 2008, sets out several measures: on the one hand ,the extinction or revocation of the right to family reunification if this was invoked fraudulently, in particular to elude the legal rules concerning entry and residency or their implementing provisions (Art. 51 LEtr).*

On the other hand, the possibility for the competent authority to revoke an authorisation, unless it is a settlement authorisation, or another legal decision (in particular when the foreigner or his legal representative has made false declarations or has concealed essential information during the authorisation process, or when the foreigner has been sentenced to a long-term jail sentence or has been the object of a penal sanction by virtue of Articles 42 or 100 of the Penal Code, or when he seriously or repeatedly endangers security and public order in Switzerland or abroad, or poses a threat to Switzerland's internal or external security, or if he does not respect the conditions attaching to the decision, or if he himself or a person he is responsible for is dependent on social benefits: Art. 62 LEtr). Finally, if none of these cases apply, if his Swiss naturalisation was obtained fraudulently, it may be revoked by virtue of Article 41 of the Nationality Law.

In **Turkey**, *there are no specific sanctions, but it is possible, where a foreigner married to a Turkish national has behaved in a manner that is contrary to the legal rules concerning residency in Turkey, to revoke his residency permit. It is also possible to cancel the decision conferring Turkish nationality, if it was obtained by providing false information or concealing important facts (Art. 31 L. 5901 of 29.5.2009); furthermore, if the marriage is annulled, the foreigner having acquired Turkish nationality will retain it only if he is in good faith (Art. 16, 3 L., aforementioned).*

In **Croatia**, *in* **Spain** *and in the* **United Kingdom**, *there are no administrative penalties.*

Conclusion

The subject matter is politically very sensitive, and the margin of appreciation left to the States is reduced by their international engagements. However, no ICCS member States have mentioned any decisions or opinions according to which their legislation would be contrary to these engagements, with the exception of the United Kingdom, and the decisions of the Court of Appeal and House of Lords.

As we have seen previously, most States have, over the last few years, adopted various measures in order to prevent marriages of convenience or discourage them. The last country to do this is Italy, with Law n° 94/2009 adopted on 15 July 2009 and in force since 8 August 2009, which has modified a) the 'Testo Unico' on immigration by introducing, several times, the condition that the spouses must cohabit effectively in order to obtain or renew a residency permit for family reunification purposes, or a residency permit for family purposes; b) Article 116 of the Civil Code on the marriage of foreigners in Italy, which henceforth requires that proof be provided of the legality of the foreigner's residency within Italian territory; c) the Nationality Law, which lengthens by two years the necessary legal residency for a foreign spouse to acquire Italian nationality.

Certain States have also indicated that they are undertaking revisions.

In the **Netherlands**, *the legislation was liberalised during the last reform carried out in 2001 in favour of nationals of European Union member States and of States who are parties to the Convention on the European Economic Area, who need not prove the legality of their residency in Dutch territory before concluding a marriage or having their partnership registered there. Following a study of the implementation of these new provisions, it has been suggested to take measures in order to promote cooperation between the institutions concerned and to facilitate the administrative procedure. A working group has been set up with the aim of making some concrete proposals.*

In **Luxembourg**, *the Government has filed a bill in Parliament on 28 July 2008 in order to combat forced marriages or partnerships, or marriages or partnerships of convenience (parliamentary document n° 5908). This bill contains a preventative element and a repressive element. In order to detect and prevent marriages of convenience, the powers of the following authorities will be reinforced: a civil registrar will be able to interview future spouses. A State Prosecutor will be able either to suspend the marriage celebration or else oppose it. However, the future spouses will be able to take court proceedings seeking the cessation of the suspension or opposition. The cessation procedure will be regulated. As for the repressive element, penal and civil sanctions are proposed: the State Prosecutor will be able to request the annulment of the marriage if it was concluded with the sole aim of obtaining for oneself or another person a residency permit. This will be considered a breach of the law, and punishable by imprisonment or fines. More severe sentences have been proposed when a marriage of convenience has been concluded either in exchange for remuneration or following violence or threats. It is proposed to punish not only a committed crime, but also any attempt to commit the crime.*

In **Portugal**, *a working group has been entrusted with the task of studying the measures to be introduced into the Civil Code, in view of preventing bogus marriages and the transcription of any bogus marriages celebrated abroad; work is also being undertaken in these areas in penal law concerning entry into and residency within Portuguese territory.*

In **Switzerland**, *as well as the parliamentary initiative filed in 2005 by National Councillor Toni Brunner, entitled 'preventing fictitious marriages' (aforementioned), it is also relevant to mention the initiative filed by National Councillor Ruedi Lustenberger in March 2006, entitled 'Law on nationality: longer time period for revoking a naturalisation' (n° 06.414). It aims to lengthen the time period during which a measure naturalising a person or reintegrating him within Swiss nationality can be revoked, if such nationality was obtained fraudulently on the basis of false declarations or concealment of essential facts, a situation which may be relevant to around 400 cases of naturalisation that are currently being examined by the Federal Office of Migrations, which may have been granted in fraudulent circumstances. These two parliamentary initiatives are being dealt with together, and a bill on these questions was submitted to the cantons, political parties and other relevant organisations for consultation in 2007.*

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
Germany	*Law on residency - Aufhenthaltsgesetz [AufenthG.]* ➢ ***Marriage between a German national and a foreigner, European Union national or not:*** *§ 28 AufenthG.* - *Limited residency permit (Aufenthaltserlaubnis) if the person concerned habitually resides in Germany.* - *Unlimited residency permit (Niederlassungserlaubnis) after three years of common life.* *If he is employed, a foreign spouse who is a national of a European Union member State will obtain a residency permit based on this alone.* ➢ ***Marriage between two foreigners, one of whom is legally resident in Germany:*** *§ 30 AufenthG. – Same measures.*
Belgium	*Law of 15 December 1980 on access to the territory, residency, settlement and repatriation of foreigners.* ➢ ***Marriage between a Belgian national and a third-party State national:*** *Article 40 a, §2, 1° of the aforementioned law.* ➢ ***Marriage between a Belgian national and a European Union national:*** *Article 40a, §2, 1° of the aforementioned law.* ➢ ***Marriage between two nationals of a third-party State, one of whom resides legally in Belgium:*** *Art. 10 §1, 4° and Art. 11 §1, 4° and §2, 4°* *Will obtain a residency permit for more than three months ipso jure as long as the person concerned:* - *poses no threat to public order and public health or to national security;* - *has a stable means of subsistence, a marriage record, sufficient housing and health insurance;* - *is, as well as his foreign spouse (or partner), aged over 21 at least (or 18 if the marriage or partnership predates the arrival of the spouses in the Kingdom).*
Croatia	*Law on foreigners 79/2007, modified by law 36/2009* ➢ *Marriage, whether with a Croatian national or a foreigner with a residency permit, makes no difference to the conditions of entry into and residency within Croatian territory.* - *No residency permit is necessary for a period of less than three months.* - *A temporary entry and residency permit is granted for a residency period longer than 3 months and shorter than 6 months if the person concerned:* o *holds a valid passport or a visa;* o *has sufficient means of subsistence;* o *can provide a motive for residing in Croatia;* o *is not the object of a decision banning him from residing in Croatia;* o *poses no threat to public health or public order or national security.* *These conditions are checked by local police, which then issues the residency permit. The temporary residency permit must be renewed after 6 months (Art. 51). A permanent residency permit is, in principle, granted after five years (Art. 78). However, Art. 57 of Law 79/2007, modified by Art. 16 of law 36/2009, provides that a temporary residency for family reunification will not be issued if circumstances lead to the belief that a bogus marriage was concluded in order to obtain it (for instance if the spouses do not live together, have no common language, or one of the spouses was paid).*
Spain	➢ ***Marriage between a Spanish national and a foreigner, whether a European Union national or not:*** *Art. 2 and 3 of Royal Decree n° 178/2003 of 14 February 2003.* *The spouse is entitled to a residency permit (covering the right to enter, leave, circulate within and freely remain within Spanish territory).* ➢ ***Marriage between two foreigners, one of whom legally resides in Spain:*** *the right to enter and reside in Spain is dependent on the right to family reunification, which is subject to stricter conditions (such as exhibiting proof of means of economic subsistence in Spain).*

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
France	➢ ***Marriage between a French national and a foreigner who is not a Non-European Union national, excepting Algerian nationals****:* *Law n° 2006-911 of 24 July 2006 relating to immigration and integration [CESEDA]* - *Entry into the territory by virtue of a long-term visa. Obtaining of a temporary residency permit ipso jure with the mention 'private and family life', valid for one year and renewable if the marriage celebrated abroad has been transcribed into French registers.* - *Issue of a residence permit after three years of marriage if community of life has not ceased, if the French spouse has retained his nationality, if the marriage celebrated abroad has been transcribed into the French registers, and if the foreign spouse fulfills the condition of republican integration.* ➢ ***Marriage between a French national and a European Union national:*** - *No visa required.* - *No obligation to have a residency permit unless the spouse wishes to carry out a professional activity ('Residency permit for a family member of a Community citizen' issued for the duration of the residency with a five-year limit). Obligation to be registered with the town hall of the town of residence.* - *After five years of residency in France: right to permanent residency.* ➢ ***Marriage between two foreigners, one of whom resides legally in France:*** *The rules relating to family reunification apply unless the foreigner residing legally in France is a European Union citizen:* - *Entry into the territory by virtue of a long-term visa.* - *Obtaining of a temporary residency permit with the mention 'private and family life' valid for one year if the conditions for family reunification are met; this permit is renewable, but its first renewal may be refused if the holder has not complied with the obligations set out in his settlement and integration contract.*
Greece	*Law 3386/2005 on the entry, residency and social integration of third-party State nationals.* ➢ ***Marriage between a Greek national and a foreigner, whether he is a European Union national or not:*** - *If the residency is for a duration greater than three months (and, for a European Union national, legal residency): issue of a 'residency permit for a family member of a Greek or European Union national' for a maximum of five years, when the conditions required by law are met.* - *Thereafter, permanent residency permit, renewable ipso jure every ten years.* - *A five-year residency permit is issued to spouses from third-party States, to persons who have been repatriated or have returned to Greece or are of Greek origin (Art. 60 of Law 3386/2005, as completed by Art. 38 of Law 3731/2008). This permit gives the person concerned access to the job market and is renewable for the same length of time each time.* ➢ ***Marriage celebrated between two foreigners, one of whom resides legally in Greece:*** - *A renewable one-year residency permit.* - *To be 'legally resident' in Greece a foreigner must have been residing legally there for at least two years.* - *The spouse must be at least 18 years of age.*

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
Hungary	***Marriage between a Hungarian national or a national of a European Economic Area (EEA) member State and a third-party State national:*** *Law 1/2007 on entry into the territory and residency of persons who have the right to circulate and reside freely.* ***Residency of at least 3 months, with valid visa and passport, as long as the person concerned:*** - *is not a threat to public order and safety;* - *has sufficient accomodation and means of subsistence, including health costs; and* - *can provide a motive for the residency (including the marriage).* - *May be revoked if the marriage is dissolved in the six months following the obtaining of the residency permit if the marriage was celebrated to that sole end.* *Permanent residency permit :* - *In the case of a marriage between a Hungarian national and a non-European Economic Area foreigner, after two years of common life;* - *In the case of a marriage between a Hungarian national and a national of a European Economic Area member State residing legally in Hungary, after an uninterrupted legal residency of five years.* ➢ ***Marriage between two foreigners, one of whom is legally resident in Hungary:*** *Law 2/2007 on entry and residence of third-party State nationals. Renewable residency of three months, renewable for a maximum length of two years, as long as the person concerned:* - *holds a valid passport and residency permit;* - *poses no threat to public order and health; and* - *has sufficient accomodation and means of subsistence including health costs.*

Italy	*Legislative decree n° 286 of 25 July 1998 [Testo Unico – T.U.], modified.*
	➢ ***Marriage between an Italian national and a foreigner (whether or not be a European Union national), or marriage between two foreigners, one of whom resides legally in Italy:*** *same measures.*
	- *No residency permit for a stay under three months.*
	- *Individual residency permit between three months and two years, depending on the reason for entering the country, and renewable for the same period (Art. 5, § 3 to 3c and 4 T.U.). At the moment of applying for the permit, the foreigner who has entered legally into Italian territory must sign an 'integration contract' containing a points system in order to determine certain integration objectives to be reached during the residency period (Art. 4a T.U.); fingerprints will be taken (Art. 5 § 2a T.U.).*
	- *Residency permit for family reasons, for a duration of two years, renewable, issued to a spouse of at least 18 years of age who is not legally separated (Art. 5, § 3e and Art. 29 § 1a T.U.). It may also be issued, for a duration equal to that of the permit granted to a foreign permit holder meeting the conditions for family reunification, if the foreigner resides legally in Italy and has done for at least a year, and concluded a marriage with an Italian citizen or a European Union national or a foreigner in a legal situation (Art. 30, §1b and §3).*
	- *Unlimited residency permit (Art. 9, §§1, 2a and 4, and Art. 9a §§ 1 to 3, T.U.) if the foreigner poses no threat to public order and safety and*
	  - *Has held a valid residency permit for at least five years (issued by Italian authorities or by a European Union member State),*
	  - *Meets his own needs (or those of his family if applicable),*
	  - *Has passed an Italian language test.*
	The application will be rejected or revoked if the marriage was celebrated only in order for the foreign spouse to obtain a residency permit (Art. 29 § 9 T.U.) and when the spouse whose reunification is being requested is married to a foreign citizen residing legally with a different spouse in Italian territory (Art. 30 §1ter T.U.).
	The residency permit will be revoked in the absence of cohabitation after the marriage, unless children resulted from it (Art. 30, §1bis T.U.).

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
Luxembourg	*Law of 29 August 2008 relating to the free circulation of persons and immigration (Memorandum A-N° 138 of 10 September 2008), in force since 1 October 2008.* ➢ ***Marriage between a Luxembourg national and a national of a European Union (or EFTA) member State:*** - *A national of a European Union member State or an assimilated country (Norway, Iceland, Liechtenstein and Switzerland) has the right to enter into Luxembourg territory and to reside there for a period of up to three months if he holds a valid residency permit or passport.* - *If such a national wishes to reside for longer than three months in Luxembourg, he must apply to his town of residence for a certificate of registration.* - *After five years of uninterrupted residency in Luxembourg, this national will be entitled to permanent residency.* ➢ ***Marriage between a Luxembourg national and a national of a non-European Union member State:*** - *In order to enter into the territory legally, a national of a non-European Union member State, as well as holding a valid passport and a visa if this is required, must fulfill the following conditions:* *1) he must not have an entry in the Schengen Information System (SIS);* *2) he must not have been forbidden to enter into the territory;* *3) he must not be considered to be a possible threat to public order, national security, public health, or international relations for Luxembourg or one of the States who are a party to an international convention relating to the crossing of outer borders to which Luxembourg is a party;* *4) he must justify the motive and the conditions of his planned residency and prove that he has sufficient personal resources, for the length of the proposed stay and to return to the country of origin or for transit towards a third-party State where his admittance is guaranteed, or prove that he has the means to acquire these resources legally, and he must also have health insurance covering all risks when in the territory.* - *A third-party State national who wishes to reside in Luxembourg for a duration of three months must make a declaration on arrival to the town hall at the place of residence.* - *Before entering into Luxembourg territory, a third-party State national who wishes to reside in Luxembourg for longer than three months must apply for a residency permit from the minister in charge of immigration. In the three working days from his date of entry into the territory, the person concerned must declare his arrival, with his residency authorisation, to the town hall of the place where he intends to reside. He will retain a copy of the declaration by way of receipt. Holding this receipt and a residency authorisation will serve to justify the legality of his residency until the residency permit is issued. The person concerned will need to undergo a medical examination. Within three months, he must go before the Immigration department in order to obtain a residency permit.* - *A third-party State national, who has been legally residing in Luxembourg for five uninterrupted years, may apply for a long-term residency permit to the minister in charge of immigration.* ➢ ***Marriage between two foreigners, one of whom legally resides in Luxembourg:*** - *Marriage between a European Union national and a third-party State national: the third-party State national will undergo the same procedure as if he was marrying a Luxembourg national.* - *Marriage between two third-party State nationals: a renewable residency permit will be issued to the spouse for a duration of one year, on demand, as long as the conditions for obtaining such a permit remain fulfilled. The duration of the validity of the issued residency permit may not exceed the expiry date of the other spouse's residency permit.*

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
Netherlands	➢ ***Marriage between a Netherlands national and a national of a non-European Union member State:*** *Law on foreigners, 2000.* *A residency permit may be issued if:* - *the marriage was celebrated in the Netherlands or recognised in the Netherlands and registered in the population register;* - *the spouses are cohabiting;* - *the spouses are over 18 years of age in the case of family reunification, or over 21 if they are starting a family;* - *each foreign spouse holds travel papers;* - *the spouses have sufficient and durable income;* - *the spouses have health insurance;* - *the foreign spouse has passed an integration exam (covering knowledge of the Dutch language as well as State organisation and society) abroad;* - *the foreign spouse poses no threat to public order or national security;* - *where applicable, depending on nationality, the foreign spouse holds a temporary residency permit and a medical declaration (tuberculosis) or a declaration of availability for a medical examination.* ➢ ***Marriage between a Netherlands national and a national of a European Union member State:*** *The European Union national is entitled to residency based on the European Community Treaty.* *The following are required :* *- an identity document,* *- sufficient income,* *- health insurance.* *Restrictions may be imposed for reasons of public order, national security or public health.* ➢ ***Marriage between two foreigners, one of whom resides legally in the Netherlands:*** - *Marriage between two non-European Union nationals, one of whom legally resides in the Netherlands: the same conditions apply as to a marriage between a Netherlands national and a non-European Union national.* - *Marriage between a European Union national and a non-European Union national: the same conditions apply as for a marriage between a Netherlands national and a European Union national.* ➢ ***Registered partnership :*** *the same conditions apply as for marriage.*

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
Poland	➢ ***Marriage between a Polish national and a non-European Union national:*** *Law of 13 June 2003 on foreigners (o cudzoziemcach), Dz. U 2006, Nr 234, pos. 1694.* - *Automatic temporary residency permit, unless the marriage was celebrated fraudulently with respect to the law.* - *Permanent residency permit issued after three years of marriage and two years of residency in Poland with a temporary residency permit.* ➢ ***Marriage between a Polish national and a European Union national:*** *Law of 4 July 2006 on entry into Polish territory, residency, and departure from this territory of European Union member State citizens (o wjeździe na terytorium Polski, pobycie oraz wyjeździe z tego terytorium obywateli państwa członkowskich Unii Europejskiej, Dz.U. 2006, nr 144, pos. 1043), art. 16, al. 1, p. 4 :* - *Automatic right to permanent residency.* ➢ ***Marriage between two foreigners, one of whom resides legally in Poland:*** *The aforementioned Law on foreigners, Art. 53, §1, p.9:* - *Right to temporary residency, as long as the foreigner already residing in Poland has already been doing so on the basis of a temporary residency permit for at least five years.*
Portugal	➢ ***Marriage between two European Union nationals or between a national residing in Portugal and a non-national:*** *Right to residency of both spouses (Art. 7 of Law n° 37/2006 of 9 August; transposition of Directive n° 2004/38/CE).* ➢ ***Marriage between two non-European Union nationals, one of whome resides legally in Portugal:*** *Right of entry and residency for the spouse, if the spouse requiring the reunification has sufficient accomodation and means of subsistence, unless the spouse is forbidden from entry into Portugal, or the presence of the spouse poses a threat to public order, national security or public health (Art. 98, 99, 101 and 106 of Law n° 23/2007 of 4 July 2007).*
United Kingdom	*Asylum and Immigration [Treatment of Claimants, etc.] Act 2004, whose provisions have been extended to civil partners by the Civil Partnership Act 2004.* ➢ ***Marriage between a British national and a foreigner or between two foreigners:*** - *If the foreigner is not resident in the United Kingdom or does not hold a permanent residency permit: a special engagement visa or 'marriage visitor' visa, obtained in the country of origin, from the British embassy or consulate or from the Bureau of the High Commissioner.* - *If the foreigner resides in the United Kingdom: certificate for approval of marriage, obtained from the Home Office.* ➢ ***The same solutions are applicable for the registration of a civil partnership.***

SCHEDULE 1 : ***Effects in the matter of residency*** *attributed by States to marriage between one of their nationals and a foreigner, whether he is or is not a national of a European Union [European Economic Area (EEA)/ European Free Trade Association (EFTA)] State or between two foreigners.*

SCHEDULE 1	***Conditions for issuing a residency permit***
Switzerland	*Federal law of 16 December 2005 on foreigners [LEtr] (Art. 42 to 45 and 49).* ➢ ***Marriage between a Swiss national and a foreigner or two foreigners, one of whom resides legally in Switzerland:*** - *Residency permit and prolongation of its validity period if community of life between the spouses is maintained.* - *Settlement permit after an uninterrupted legal residency of five years.* *Common life is not required when family community is maintained and major reasons justify the existence of separate homes. This requirement is not applicable to family reunification of a foreign spouse of an EU or EFTA citizen holding or a durable residency permit in an EU or EFTA State [see the Agreement of 21 June 1999 between the Swiss Confederation on the one hand, and the European Community and its member States on the other hand, on the free circulation of persons, and the Convention of 4 January 1960 instituting the European Free Trade Association (EFTA). It is also no longer applicable to the family members of a Swiss national holding a durable residency permit issued by a State with whom Switzerland has concluded an agreement on the free circulation of persons (Art. 42 paragraph 2 LEtr).* ➢ ***The aforementioned provisions apply by analogy to registered partners (Art. 52 LEtr).***
Turkey	*Civil Code, Marriage by-law and Law 5683 on residency and circulation of foreigners in Turkey.* ➢ ***Marriage between a Turkish national and a foreigner or two foreigners, one of whom resides legally in Turkey:*** *same measures.* *- The foreign spouse obtains, once the marriage has been celebrated, the right to reside within the territory.* *- If the foreign spouse behaves in a manner that is contrary to the rules of residency in Turkey, the residency permit may be revoked.*

SCHEDULE 2 : ***Effects of marriage in the matter of nationality.***

SCHEDULE 2	***Conditions for acquiring nationality***
Germany	*§ 9 -1 of the law of 22 July 1913 on nationality - Staatsangehörigkeitsgesetz [StAG]* *Naturalisation is facilitated in the following cases :* *- 3 years of residency including two years of cohabitation,* *- Sufficient accomodation and means of subsistence,* *- Loss of (or giving up of) the original nationality,* *- Sufficient knowledge of the German language to be assimilated into German life.*
Belgium	*Art. 16 § 2 of the Code of Belgian nationality.* *Acquiring nationality by declaration during the marriage:* *- The spouses must have resided together in Belgium for at least three years, but if they reside or have resided abroad for the legally-required period, they will also have to prove that they have real ties to Belgium.* *- The three-year time period is reduced to six months if the foreign spouse, at the moment of declaring his Belgian nationality, has been legally residing in Belgium for at least three years.* *A foreigner must imperatively be legally resident in Belgium at the moment of declaring his nationality. THe procedure to be followed is set out in Art. 15 § 2 of the Code of Belgian Nationality.*
Croatia	*According to Art. 8 of the law on Croatian nationality, a foreigner may apply for Croatian nationality if the following conditions are met:* *1) ne must be at least 18 years of age and have full capacity,* *2) he must renounce his previous nationality,* *3) he must have been legally resident for at least five years,* *4) he must be able to read and write in the Croatian language,* *5) he must respect Croatian law and order as well as cultural traditions.* *Art. 10 of the aforementioned law provides facilitated naturalisation if the foreign spouse holds a permanent residency permit; he will then be exempt from the above conditions 1 to 4.*
Spain	*Art. 22 § 2d and § 3Cc.* *Nationality can be granted in the following conditions :* *- one year of marriage to a Spanish national without legal or de facto separation,* *- one year of continuous residency immediately previous to the application, and* *- a valid residency permit.* *To this end, it is understood that a spouse living with a Spanish diplomatic or consular agent abroad is considered to be legally resident in Spain.*
France	*Art. 21-2Cc.* *Nationality can be acquired by declaration in the following conditions:* *- 4 years of affective and material community of life since marriage, continuing at the date of the application.* *- Legal and uninterrupted residency in France for at least three years since the marriage or registration of the French spouse during the time of community of life abroad in the register of French persons established abroad. If these conditions are not met, five years of community of life.*
Greece	*Art. 5 § 2a of the Code of Greek nationality (L. 3284/2004).* *Naturalisation on the condition that one has been legally resident for 10 of the 12 years preceeding the application (3 years for the spouse of a Greek national if children have resulted from the union; 5 years for refugees and stateless persons).*
Hungary	*Art. 4, Law 55/1993.* *Naturalisation as long as the person concerned poses no threats to the national interest and:* *- holds a residency permit* *- has resided continuously in Hungary for the 8 years prior to the application,* *- has no criminal record and is not the object of a penal procedure before a Hungarian court at the time of application,* *- has sufficient means of subsistence and assured accomodation in Hungary,* *- has been tested successfully on knowledge of the Hungarian language and constitution (except in cases of legal exemption).* *Naturalisation is facilitated for a foreign spouse legally married to a Hungarian national if:* *- they have been married for 3 years and* *- he has lived legally and continuously in Hungary for 3 years.*

SCHEDULE 2 : ***Effects of marriage in the matter of nationality.***

SCHEDULE 2	***Conditions for acquiring nationality***
Italy	*Art. 5 of Law n° 91 of 5 February 1992 (new legal provisions in the matter of nationality), modified.* *Naturalisation facilitated in the following conditions:* *- 2 years of legal residency in Italy or three years of marriage if the person concerned resides abroad;* *- no legal separation, and the marriage has not been dissolved or annulled and continues to produce civil effects, and the spouses are still effectively cohabiting;* *- production of certification that the required conditions are met and payment of a 200-Euro contribution.*
Luxembourg	*Law of 23 October 2008 on Luxembourg nationality (Memorandum A n° 158 of 27 October 2008), in force since 1 January 2009.* *Generally,* - *the principle of dual or multiple nationality is recognised: applicants for nationality are no longer obliged to renounce their original nationality in order to acquire Luxembourg nationality;* - *naturalisation is the only procedure for acquiring Luxembourg nationality;* - *marriage does not entail any specific advantages in terms of acquiring Luxembourg nationality: the conditions to be met and the procedure to follow will be identical for all applicants for naturalisation, whether they are married or not.* *Art. 6 and 7 of the aforementioned law set out the conditions for naturalisation, of which there are five; applicants must:* *1) be aged eighteen or over at the moment of applying for naturalisation;* *2) have held a residency permit in Luxembourg for at least seven consecutive years immediately preceeding the application and have lived there in effect for the same period;* *for applicants recognised in Luxembourg as being refugees in the sense of the Convention on refugee status signed in Geneva on 28 July 1951, the period between the date of applying for asylum and the date when refugee status was granted by the competent minister is assimilated to authorised residency in legal terms;* *3) have passed an oral test of knowledge of the Luxembourg language;* *applicants will be exempt from passing this test if:* - *they have been schooled in Luxembourg public schools, or private schools applying public teaching syllabusses, for at least 7 years;* *OR* - *they have held a residency permit in Luxembourg since before 31 December 1984, and have been resident in the country at least since that date.* *4) have taken lessons in civic education;* *applicants will be exempt from passing this test if:* - *they have been schooled in Luxembourg public schools, or private schools applying public teaching syllabusses, for at least 7 years;* *OR* - *they have held a residency permit in Luxembourg since before 31 December 1984, and have been resident in the country at least since that date;* *5) meet honourability requirements;* *a naturalisation application will be turned down if :* - *when applying, the applicant has provided false information, concealed important facts, or committed fraud;* *OR* *- he is the object, either within the country or abroad, of a criminal sentence or a prison sentence of one year or more and that the reason for this sentence also constitutes a breach of Luxembourg law and, if relevant and without the benefit of rehabilitation, the sentence was definitively carried out less than 15 years before the application for naturalisation.*

SCHEDULE 2 : ***Effects of marriage in the matter of nationality.***

SCHEDULE 2	***Conditions for acquiring nationality***
Netherlands	*Art. 8 of law n° 628 of 19 December 1984 on nationality.* *Naturalisation is facilitated if :* - *the spouse or registered partner is aged 18 or over;* - *there are no objections to the applicant residing for an indetermined length of time in the Netherlands, the Netherlands Caribbean, or Aruba;* - *the applicant has been in a marriage or registered partnership for three years, during which the spouses or registered partners have cohabited;* - *the applicant is integrated in Netherlands, Netherlands Caribbean or Aruban society (that is to say: has knowledge of the Dutch language and of the organisation of the State and society and is generally integrated in society). For residents of the Netherlands Caribbean and Aruba, it is required that the applicant should have knowledge of the Dutch language and also of the language in use locally.*
Poland	*Art. 10 § 1 of the modified law of 15 February 1962 on Polish nationality (o obywatelstzie polskim), Dz.U 2000, Nr 28, pos. 353.* *Acquisition is facilitated if the applicant:* - *holds a permanent residency permit and* - *has been married for three years to a Polish national.*
Portugal	*Art. 3 of Law n° 37/1981 of 3 October 1981 (modified by Law n° 2/2006 of 17 April 2006) on Portuguese nationality, and nationality by-law (By-law n° 237-A/2006 of 14 December 2006).* *Portuguese nationality is acquired by declaration if the applicant:* - *has been married for three years and is still married at the time of the declaration; and* - *can prove that he has effective links to the Portuguese community.* *The same solutions apply to a de facto union, which has previously been legally recognised.*
United Kingdom	*British Nationality Act 1981.* *Facilitated naturalisation for a spouse or registered partner: settlement time reduced to 3 years instead of 5:* - *Obtaining of British Citizenship: 3 years of settlement in the United Kingdom for a foreigner having attained the age of majority and contracted a marriage or civil partnership with a British citizen.* - *Obtaining of British Dependent Territories Citizenship: 3 years of settlement in one of these territories for a foreigner having attained the age of majority and contracted a marriage or a civil partnership with a citizen of one of the British Dependent Territories*
Switzerland	*Federal Law of 29 September 1952 on acquiring and losing Swiss nationality (LN), modified.* *Facilitated naturalisation (Art. 27, 28 and 32 LN):* - *residence in Switzerland for five years in total, and for one year at the date of the application, and three years of common life with one's Swiss spouse;* - *if the Swiss national lives or has lived abroad: conjugal community for six years and close links to Switzerland.* *In both cases, the foreign spouse acquires his Swiss spouse's right to district and municipal citizenship, the naturalisation being granted by decision of the Federal Office of Migrations, after consulting the relevant canton.* *For registered partners, the ordinary naturalisation procedure is applicable, but the minimum duration of residency in Switzerland is reduced to a five-year stay, including the year preceeding the naturalisation application, which will suffice for the registered partner of a Swiss national if they have been living together for three years (Art. 15 § 5 LN).*
Turkey	*Marriage by-law (Art. 12 and 20) and Art. 16 of Law 5901 of 29 May 2009 on Turkish nationality:* *Naturalisation will be facilitated for a foreigner married to a Turkish national if:* *- the marriage has lasted 3 years (instead of 5 previously) and, unless the spouse is deceased, the marriage is still in effect;* *- the marriage has been celebrated legally and is real and complies with public order and general morals;* *- the foreign spouse holds the necessary residency permit;* *- the spouses live together, in Turkey or abroad.* *Generally, an enquiry is conducted in order to ascertain the reality of the marriage; the foreign spouse is interviewed in Turkey by an Examination of Nationality Commission, instituted in the prefectures and sub-prefectures, or by consulates abroad; the Turkish spouse is invited to the interview. The children of a Turkish citizen and a foreigner automatically acquire Turkish nationality by birth.*

***SCHEDULE 3* : Sanctions applying to bogus marriages.**

SCHEDULE 3	**Civil penalties**	**Penal sanctions**	**Administrative or other penalties**
Germany	- Preventative: no specific provisions, but the civil registrar may refuse to celebrate the marriage if it seems evident that it is a marriage of convenience. - A posteriori : annulment ot the marriage (Aufhebung; §§ 1313 and 1314 and § 2 BGB), unless the spouses have lived in matrimony since the marriage (§1315- BGB) and updating of the civil-status records.	A maximum of three years' imprisonment or a fine if the marriage was shammed with the sole aim of obtaining a residency permit (§95-2 of the law on residency [AufenthG]).	- Possibility of the residency permit being revoked in spite of the validity of the marriage (§§ 50 and s. of the law on residency [AufenthG]). - Possibility of the naturalisation being revoked if its obtaining was based on false pretences.
Belgium	- Preventative: - refusal by the civil registrar to establish the marriage declaration record if the application is incomplete (missing or insufficiently legalised documents or evident fraud) – Art. 167 and 146aCc; - refusal to celebrate the marriage if all the qualities and conditions are not met (with a possibility of staying the celebration for further enquiries), or if the marriage is contrary to public order and if it appears that the marriage is bogus (Art. 167 and 146aCc). - A posteriori: absolute nullity of the marriage if it is bogus (Art. 146a and 184Cc) and updating of the civil-status records.	- Art. 79 a § 1 of the law of 15 December 1980 on access to the territory, modified: - Whoever concludes a marriage with the intention of obtaining an advantage in terms of residency: 8 days to 3 months of imprisonment or a fine between 26 and 100 Euros. - Whoever receives payment for such a marriage: imprisonment of 15 days to a year, or a fine between 50 and 250 Euros. - Whoever forces someone to engage in such a marriage by violence or threat: imprisonment from 1 month to 2 years or a fine from 100 to 500 Euros. - Sanctions provided by the penal provisions relating to fraud and false documents (Art. 193, 196 and 214): imprisonment and fine, may apply.	- Revocation of Belgian nationality in case of fraud (Art. 23 §1 of the Code of Nationality). - Application for family reunification may be refused (Art. 11 §1 of the Law of 15 December 1980, modified) or the authorisation revoked (Art. 11 §2 of the Law of 15 December 1980, modified) for third-party State nationals. - The residency permits of family members of a Union citizen may be revoked under Art. 42b, §1 or 4 or Art. 42c §1 or 4 of lthe law of 15 December 1980. The right to residency of a Union citizen or the members of his family may be revoked (Art. 41f of the law of 15 December 1980).
Croatia	- Preventative: none. - A posteriori : none.	None.	None. However, Art. 57 of law 79/2007, modified by Art. 16 of law 36/2009, provides that a temporary residency permit for family reunification will not be issued if circumstances lead to believe that a bogus marriage has been concluded to this end (for instance, if the spouses do not live together, have no common language, or one of the spouses has been paid).

***SCHEDULE 3* : Sanctions applying to bogus marriages.**

SCHEDULE 3	**Civil penalties**	**Penal sanctions**	**Administrative or other penalties**
Spain	*- Preventative: the civil registrar may refuse to celebrate the marriage if it becomes obvious that it is a bogus marriage (Art. 45Cc and 238 RRC)* *- A posteriori: nullity of the marriage due to lack of consent (Art. 73Cc) and update of the civil-status records (Art. 306 RRC).*	*None (no incrimination).*	*- None. But a legal decision of annulment will be immediately communicated to the Ministry of the Interior (Art. 25 and 26 of the law of 1 July 1985).* *- There will be a binding decision declaring that the person concerned resorted to false information, concealment and fraud in order to acquire Spanish nationality, which will have the effect of revoking such nationality. The annulment will be carried out by the Public Prosecutor by virtue of a denunciation within 15 years (Art. 25.2Cc, law 36/2002 of 8 October 2002).*
France	*- Preventative: if the civil registrar expresses a serious doubt, the Public Prosecutor can stay the celebration (Art. 175-2Cc) or oppose the marriage (Art. 176Cc).* *- A posteriori: absolute nullity of the marriage due to lack of real and serious consent (Art. 146Cc) and updating of the civil-status records.*	*- Attempt to conclude or conclusion of a marriage with the sole aim of obtaining a residency permit or French nationality (Art. L.623-1 of CESEDA):* *- whoever concludes a marriage or aids to obtain a residency permit or acquire nationality: five years of prison and a fine of 15,000 Euros;* *- the sentence is increased in the case of a crime committed as an organised gang: 10 years of prison and a fine of 750,000 Euros.* *- Complementary penalties (Art. L. 623-2 of CESEDA): the person concerned will be forbidden to reside in France for a maximum of five years; will be forbidden from entering French territory under certain conditions for 10 years at the most or definitively; in the case of a crime committed by a third party in the exercise of his professional or social activities, this party will be forbidden from exercising these activities for 5 years at the most.*	- *Before the court annulment of the marriage, it is possible for the administrative authority to refuse to issue the residency permit (see Memo from the Council of State of 9 October 1992).* *The revocation of the residency permit is possible in case of fraud or threat to the public order; see CE 13 June 2003 n° 250503 (temporary residency permit) and CE 8 November 2006 n° 291624 (residency permit).* - *Consequences on French nationality acquired as result of the marriage:* *In application of Art. 26-4 §2Cc, the registration of a declaration of nationality may be contested by the Public Prosecutor within two years of the date when it was made if legal requirements are not fulfilled.* *In cases of lying or fraud, the registration of the declaration may be contested within two years of their discovery. The cessation of community of life within the twelve months following the registration of a declaration of nationality that was made based on marriage with a French spouse will lead to presumption of fraud.*

***SCHEDULE 3* : Sanctions applying to bogus marriages.**

SCHEDULE 3	***Civil penalties***	***Penal sanctions***	***Administrative or other penalties***
Greece	*- Preventative: none.* *- A posteriori: no annulment of the marriage (Art. 1372Cc).*	*None (no incrimination).*	*Residency permit will be refused, not renewed, or revoked if the marriage was concluded with the sole aim of obtaining it (Art. 58 §1b and 61§5b of Law 3386/2005)It is not provided that naturalisation may be revoked when based on a bogus marriage.*
Hungary	*- Preventative: none.* *- A posteriori: none.*	*No specific incrimination, but the person concerned will be liable for three years' imprisonment for document fraud (Art. 274 §1 of the Penal Code).*	*Residency or settlement permit may be revoked or not renewed if community of life ceases in the six months following their issue and if it is established that the marriage was concluded with the sole aim of obtaining them (Art. 14 §2 of Law 1/2007 and Art. 18 §1 of Law 2/2007). Naturalisation may be revoked if legal rules are violated, in particular by communicating false information (Law 55/1992 on Hungarian nationality). This penalty will no longer be applicable once ten years have passed.*
Italy	*- Preventative: The civil registrar may proceed with the public proclamation and celebration of a foreigner's marriage only if the person concerned produces a certificate of legal capacity to marry issued by the competent authority in his country of origin and a document proving the legality of his residency in Italy (Art. 116Cc, modified). Although a residency permit is not necessary for a stay shorter than three months, if a foreigner wishes to marry during this time, he will need to apply for one.* *Furthermore, if during the matrimonial procedure the Mayor becomes aware of an illegal situation, he is obliged to report it to the relevant judicial or national security authorities (Art. 54, §10a, Law n° 267 of 18 August 2008). This also applies to any public officer (including the civil registrar) who must report to the Public Prosecutor or to a police officer any illegal residency he is aware of (Art. 10a of Legislative Decree n° 286 of 25 July 1998 and Art. 331 of the Code of Penal Procedure).* *- A posteriori: bogus marriages will be annulled according to the rules of common law (Art. 123Cc). The decision will be transcribed into the marriage register and mentioned in the margin of the spouses' birth records (Art. 63§2 and 49 DPR n° 396/2000).*	*No specific incrimination, but more general provisions are applicable, according to which the spouses are liable for:* *- a fine of 5,000 to 10,000 Euros applicable to any foreigner who has entered into the territory or resides within it illegally (Art. 10a T.U.);* *- a prison sentence of 1 to 5 years and a fine up to 15,000 Euros applicable to anyone facilitating, directing, organising, financing or effecting the transport of foreigners or carrying out any other actions in order to facilitate illegal entry (Art. 12 §1 T.U.). If the person concerned has gained profit, even indirectly, from this activity, the penalties he is liable to are aggravated: 4 to 15 years of imprisonment and a fine of 15,000 Euros (Art. 12 § 3 T.U.). Certain aggravating circumstances (illegal entry and residency provided to 5 persons or more, crime committed as part of an organised gang or using fake or falsified documents or in order to exploit children under the age of majority or foreigners, etc.) may give rise to more severe penalties (Art. 12 §§ 3a and 3b T.U.).*	*Any foreigner found guilty of illegal entry or residency is liable to be deported immediately.* *An application for family reunification will be rejected if it is proven that the marriage took place only in order to allow the person concerned to enter and reside within the territory (Art. 29 §9 T.U.).* *A residency permit obtained for family reunification will be immediately revoked if the spouses do not effectively live together unless children have resulted from such a marriage (Art. 30 §1a T.U.).* *If a marriage is annulled, the residency permit of the person concerned will be revoked, and he may be deported.* *Where applicable, naturalisation will be revoked.*

***SCHEDULE 3* : Sanctions applying to bogus marriages.**

SCHEDULE 3	***Civil penalties***	***Penal sanctions***	***Administrative or other penalties***
Luxembourg	*No civil penalties currently specifically apply to marriages of convenience. But a bill (parliamentary document n° 5908) is aiming to introduce such penalties.* *- Preventative : none.* *The aforementioned bill provides that:* *1) the future spouses will be interviewed by the civil registrar;* *2) the State prosecutor may suspend the celebration of the marriage;* *3) The State prosecutor may oppose the marriage.* *- A posteriori: none.* *The aforementioned bill aims to empower the State prosecutor to request the annulment of marriages of convenience before civil courts.*	*No penal sanction specific to marriages of convenience is currently provided. However, penal sanctions relating to false documents and their use (Art. 193 to 209-1 of the Penal Code) are likely to apply where they are relevant.* *A bill (parliamentary document n° 5908) provides for prison sentences or fines for a person having contracted a marriage with the sole aim of obtaining ,or helping someone to obtain, a residency permit. Stricter sentences are provided where the marriage of convenience was contracted either following financial compensation or following threats or violence. It is proposed to punish not only the crime once it is committed, but any attempt to commit it.*	*Where the marriage was concluded with the sole aim of allowing a spouse to enter into or reside within Luxembourg territory, Art. 75 of the Law of 29 August 2008 on the free circulation of persons and immigration allows the minister in charge of immigration to refuse to permit the spouse to enter into and reside within Luxembourg territory. Furthermore, this authority may revoke or not renew the spouse's residency permit.* *In the case of a marriage of convenience, the law of 23 October 2008 on Luxembourg nationality provides for neither the refusal of naturalisation nor the revocation of Luxembourg nationality.*
Netherlands	*- Preventative : the public prosecutor may oppose the marriage (Art. 53, Book 1Cc); refusal to celebrate the marriage if it poses a threat to public order (Art. 18b and 27, Book 1Cc). These penalties also apply to registered partnerships.* *- A posteriori : nullity of the marriage pronounced by the Court of First Instance at the request of the public prosecutor (Art. 71a, Book 1Cc). It is provided for this penalty to be extended to apply also to registered partnerships.* *- Annulment of the record.*	*No specific sanctions applying to bogus marriages, but it is possible for the general provisions of the Penal Code to be applied for:* *- Document fraud or use of false documents, or falsification of a document meant to serve as proof (Art. 225): prison sentence up to 6 years or a fine of a maximum of 45,000 Euros. The prison sentence may be extended to 7 years if the crime was committed with regard to authentic records such as civil-status records. These sanctions are applicable to the perpetrators of the crimes as well as the persons using, issuing or holding a fake or falsified record.* *- False declarations made in the context of an authentic record, and use of this record: prison sentence of a maximum of 6 years or a fine of 45,000 Euros at the most (Art. 227).* *- Declaration of false data in order to obtain advantages for oneself or a third party (Art. 227a) or failure to provide obligatory data required by law in order to obtain undue advantages for oneself or a third party (Art. 227b): prison sentence of up to 4 years or a fine of 45,000 Euros at the most.*	*The residency permit may be revoked (Law on Foreigners 2000, Art. 14 §1d, Art. 20 §1b, Art. 28 §1c and Art. 33b).* *Naturalisation may be revoked, if nationality was obtained or attributed on the basis of a false declaration, concealment or withholding of an important fact for acquiring or attribution of nationality (Art. 14, §1 of the Law on the qualities of Netherlands citizenship).*

***SCHEDULE 3* : Sanctions applying to bogus marriages.**

SCHEDULE 3	**Civil penalties**	**Penal sanctions**	**Administrative or other penalties**
Poland	- Preventative: none. - A posteriori: none.	There are no specific sanctions applying to bogus marriages, but a Polish citizen may be liable for a prison sentence from 3 months to 5 years if he illegally facilitates the residency of a foreigner, unless he is exempted from such sentence by the judge if he has not gained any material benefit from his actions (Art. 264a of the Penal Code).	A residency application may be rejected if a marriage was concluded fraudulently. A residency permit may be revoked if it is found a posteriori that a marriage has been concluded illegally (Art. 55 §1 of the Law on Foreigners).
Portugal	- Preventative: none. - A posteriori: nullity of the marriage (Art. 1635 § d of Civil Code), pronounced by a court on application by one of the spouses or any interested party (Art. 1640Cc).	None (no incrimination).	A residency permit issued in irregular circumstances or in case of fraud resulting from a bogus marriage will be revoked (Art. 8 of Law n° 23/2007). After the annulment of a bogus marriage, Portuguese naturalisation may be revoked if it was fraudulently obtained, unless the spouse having obtained Portuguese nationality acted in good faith (Art. 3 of Law n° 37/2007).
United Kingdom	- Preventative: none. - A posteriori : none.	No specific sanctions applying to bogus marriages, but one of the following general provisions may apply: - England and Wales : Perjury: a maximum of 7 years in prison or a maximum of 2 years in prison or a fine or a fine and one of the other 2 sentences (Perjury Act 1911). - Scotland : Perjury, falsification or production of false extracts, certificates, declarations or civil-status records: a maximum of 2 years in prison or an unlimited fine (sum to be determined by the judge), or both sentences at once (Art. 53 of the 1965 law on the registration of births, deaths and marriages in Scotland and section 24 of the Marriage Act 1977). - Northern Ireland: Perjury: a maximum of 2 years in prison or an unlimited fine (sum to be determined by the judge), or both sentences at once (Art. 45 of the 1976 law on the registration of births and deaths, Art. 38 of the 2003 law on marriage and Art. 8 and 9 of the False Witness Act 1979).	None. Where applicable, naturalisation may be revoked, the Nationality Act 1981 providing for a penalty in any case where nationality has been acquired following a proven marriage of convenience.

***SCHEDULE 3* : Sanctions applying to bogus marriages.**

SCHEDULE 3	***Civil penalties***	***Penal sanctions***	***Administrative or other penalties***
Switzerland	*- Preventative : the civil registrar may refuse to act if one of the spouses is obviously not interested in conjugal community, but rather in eluding the provisions on the admission and residency of foreigners (Art. 97aCc). This sanction is also applicable to partnerships of convenience (Art. 6 §2 LPart).* *- A posteriori : annulment of fictitious marriages concluded only in order to elude the rules relating to admission and residency of foreigners (Art. 105 chapter 4Cc, modified by LEtr of 16 December 2005). This sanction also applies to partnerships of convenience (Art. 9 §1c LPart).* *- The electronic civil-status register will be updated on the basis of the transmitted legal decision.*	*The following will be sentenced to a maximum of three years in jail or a financial penalty (Art. 118 LEtr):* - *anyone misleading the authorities in charge of applying the present law by giving them false information or by concealing essential facts and thus fraudulently obtaining an authorisation for himself or for a third party or avoiding the revocation of an authorisation;* - *anyone who, in order to elude the conditions of admission and residency of foreigners, concludes a marriage with a foreigner, and anyone planning such a marriage, facilitating it, or making it possible.*	*Revocation of the residency (Art. 62 LEtr) or settlement (Art. 63 LEtr) permit in the case of:* - *false declarations or concealment of essential facts in order to obtain such a permit; or* - *serious or repeated threat to Swiss or foreign security or public order or where the person poses a threat to Swiss security at home or abroad; or* - *non-fulfilment of the conditions required in the decision; or* - *situation of dependency with respect to assisting the foreigner or a person the interested party is in charge of; or* - *certain penal sanctions by virtue of Art. 42 or 110 of the Penal Code.* *Extinction or revocation of the right to family reunification if it has been invoked fraudulently, particularly in order to elude the rules on the admission and residency of foreigners (Art. 51 LEtr).*
Turkey	*- Preventative: none.* *- A posteriori: no specific penalties, but the marriage may be annulled under common law on application by a Turkish spouse who has been the victim of an error on the matrimonial intention of his spouse, if the union was concluded by the latter with the sole aim of obtaining Turkish nationality more easily (Art. 149 of the Turkish Civil Code).* *- Updating of the family register if the marriage is annulled.*	*- None : no specific incrimination, but the sanctions provided by Art. 230 of the Turkish Penal Code are applicable if there is an application to the public prosecutor regarding a marriage contracted in the conditions set out in Art. 56 of the marriage by-law (a person concluding a marriage with someone who is already married, or a person concluding a marriage while hiding his true identity, or a person concluding or celebrating a religious marriage without a civil marriage). Proceedings may be instituted by an interested party, the General Directorate of the Civil Status and Nationality Department of the Ministry of the Interior (Nüfus ve Vatandaslik Isleri Genel Müdürlügü) or a civil registrar. Where applicable, the court will annul the marriage and decide what penal sanction to apply.*	*In principle, no specific penalties apply, but* *- the residency permit of a foreigner married to a Turkish national may be revoked in case of behaviour that is contrary to the legal rules relating to residency in Turkey;* *- the decision conferring Turkish nationality may be cancelled, if the nationality was acquired by false declaration or concealment of important information (Art. 31 L. 5901 of 29 May 2009). Furthermore, in case of annulment of a marriage, the foreigner having thus acquired Turkish nationality may retain it only if he is acting in good faith (Art. 16, 3 L. aforementioned).*

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