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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Investor Citizenship and Residence Schemes in the European Union

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

1. Introduction

Recent years have seen a growing trend in investor citizenship ("golden passport") and investor residence ("golden visa") schemes, which aim to attract investment by granting investors citizenship or residence rights of the country concerned. Such schemes have raised concerns about certain inherent risks, in particular as regards security, money laundering, tax evasion and corruption.

Three Member States operate investor citizenship schemes, where citizenship is granted under less stringent conditions than under ordinary naturalisation regimes, in particular without effective prior residence in the country concerned[1]. Such schemes have implications for the European Union as a whole, as every person holding the nationality of a Member State is at the same time a citizen of the Union. Indeed, although these are national schemes, they are deliberately marketed and often explicitly advertised as a means of acquiring Union citizenship, together with all the rights and privileges associated with it, including in particular the right to free movement.

Investor citizenship schemes differ from investor residence ("golden visa") schemes, which aim to attract investment in exchange for residence rights in the country concerned, and exist in twenty EU Member States. However, the risks inherent to such schemes are similar to those raised by investor citizenship schemes. Furthermore, these schemes impact on other Member States as a valid residence permit grants certain rights to third-country nationals to travel freely in particular in the Schengen area.

The European Parliament, in its Resolution of 16 January 2014[2], expressed concern that national schemes involving the "direct or indirect outright sale" of Union citizenship undermined the very concept of Union citizenship. It called on the Commission to assess the various national citizenship schemes in the light of European values and the letter and spirit of EU legislation and practice. The Commission contacted the Bulgarian, Cypriot and Maltese authorities for further information on their schemes. In a debate in May 2018, the European Parliament discussed a range of risks associated with investor citizenship and residence schemes.

In its 2017 Citizenship Report[3], the Commission announced a report on national schemes granting Union citizenship to investors describing the Commission's action in this area and examining current national law and practices, and providing some guidance for Member States. To prepare this report, the Commission commissioned a study on the legislation and practice pertaining to citizenship and residence schemes in all relevant Member States[4] and

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1 See Section 2.3. below for a definition of effective residence.

2 European Parliament Resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)).

3 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Strengthening Citizens' Rights in a Union of Democratic Change: EU Citizenship Report 2017 (COM/2017/030 final).

4 Fact finding study. Milieu Law and Policy Consulting, *Factual Analysis of Member States' Investor Schemes granting citizenship or residence to third-country nationals investing in the said Member State*, Brussels 2018 ("the Study").

organised a consultation with Member States. This report also takes into account other relevant sources, including recent publications on the topic[5].

This report covers both investor citizenship and residence schemes and identifies the key areas of concern and risks associated with granting citizenship of the Union or residence rights on the basis of an investment only. In particular, the report sets out the possible security gaps resulting from granting citizenship without prior residence, as well as risks of money laundering, corruption and tax evasion associated with citizenship or residence by investment. It also describes challenges with respect to the governance and transparency of such schemes, looks at how these might be addressed and provides a framework for improvement.

The report is accompanied by a Staff Working Document, which provides more detailed background information on investor citizenship and residence schemes.

2. Investor citizenship schemes in the EU

2.1. Context

As expressed in the case law of the Court of Justice, nationality is a bond between a citizen and the State, and it is "*the special relationship of solidarity and good faith between [a Member State] and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality*"[6]. Citizenship of a country is traditionally based on birth-right acquisition, be it by descent (*ius sanguinis)* or by birth in the territory (*ius soli*)[7]. States also give immigrants the possibility to naturalise as citizens, provided they fulfil certain integration conditions and/or show a genuine connection to the country, which can include marriage to one of its citizens[8]. All Member States have such ordinary naturalisation procedures.

Most Member States also have discretionary naturalisation procedures[9]. Under such procedures, Member States can, on an individual basis, award citizenship to a foreigner on the basis of "national interest". This can be for outstanding achievement, for example in the area of culture, science or sports. In some EU Member States, the legislation provides that

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5 See in particular, European Parliamentary Research Service *"Citizenship and residency by investment schemes in the EU: State of play, issues and impacts"*, October 2018, http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2018)627128; Transparency International/Global Witness, *European Getaway – Inside the Murky World of Golden Visas*, October 2018, https://www.transparency.org/whatwedo/publication/golden_visas

6 Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 51.

7 For a full overview of types of acquisition of citizenship, including birth-right citizenship, see the Global Database on Modes of Acquisition of Citizenship, available at http://globalcit.eu/acquisition-citizenship/

8 Further detail concerning naturalisation via marriage in EU Member States is contained in Annex III of the Study, ibid, note 4. Member States generally take steps to prevent the abuse of such possibilities, for example in the context of marriages of convenience. To better detect and tackle fraudulently acquired nationality, national authorities are encouraged to use interviews or questionnaires, document and background checks, inspections or community-based checks while respecting applicable legal constraints, such as those related to burden of proof or fundamental rights. They can also draw on the similarities between fraudulently acquired nationality and right of residence acquired via marriages of convenience with Union citizens (see the Commission's Handbook on marriages of convenience (COM/2014/604 final).

9 For further detail see Annex III of the Study, ibid, note 4.

"national interest" may be equated with economic or commercial interest[10]. Discretionary naturalisation procedures can be used in individual cases to grant citizenship in exchange for investment. Such discretionary naturalisation procedures are highly individualised and used on a limited basis. They are therefore not the object of this report.

Bulgaria, Cyprus and Malta introduced in 2005, 2007 and 2013 respectively[11] broader schemes aimed at attracting investment from third-country nationals by facilitating access to their citizenship. These schemes are a new form of naturalisation as they systematically grant citizenship of the Member State concerned, provided the required investment is made and certain criteria fulfilled[12].

Since Bulgaria[13], Cyprus and Malta are the only Member States which operate investor citizenship schemes, this section of the report focusses on the legislation and practice of these countries.

2.2. Type and amount of investment required

Investor citizenship schemes aim to attract investment by offering citizenship in return for a defined amount of money. In Bulgaria, an overall investment of EUR 1 million is requested under its fast-track[14] investor citizenship scheme. In Cyprus, a minimum investment of EUR 2 million is necessary, together with ownership of property in Cyprus. In Malta, a contribution of EUR 650,000 must be paid into a national investment fund, together with an investment of EUR 150,000 and a requirement to own or rent property in Malta[15]. In Cyprus and Malta, additional investments for family members are required.

Various investment options can be observed among the three Member States operating investor citizenship schemes: capital investment[16]; investment in immovable property[17]; investment in government bonds[18]; and one-off contributions to the State budget[19]. In addition to the investment requirement, applicants must also pay non-refundable administrative fees as

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10 Countries where the legislation explicitly equates "national interest" with the economic or commercial interest of the state are Austria, Bulgaria, Slovenia and Slovakia. For details, see Study Overview, ibid, note 4.

11 For details of these schemes see the Study, ibid, note 4.

12 See J. Dzankic, *The pros and cons of ius pecuniae: investor citizenship in comparative perspective*, Robert Schuman Centre for Advanced Studies, EUDO Observatory, Issue 14.

13 In Bulgaria, on 15 February 2018 a working group was set up by the Minister of Justice to draft amendments to the Bulgarian Citizenship Act, including to the investor citizenship scheme which Bulgaria is considering abolishing in the future.

14 Details of the differences between the fast-track and ordinary investor scheme in Bulgaria are set out in the Staff Working Document.

15 Regulation 7(5) of LN 47/2014 requires that the main applicant must acquire and hold a residential immovable property in Malta having a minimum value of EUR 350,000; or (b) take on lease a residential immovable property for a minimum annual rent of EUR 16,000.

16 Under the capital model, the requirement is to invest a definite sum either in (i) a company (Bulgaria, Cyprus) or (ii) credit or financial institutions instruments such as investment funds or trust funds (Bulgaria, Cyprus, Malta).

17 This model requires buying or renting a real estate property of a definite value (Cyprus, Malta). More details are included in the Staff Working Document.

18 Bonds are purchased from the governments by the investors (Bulgaria, Malta).

19 Maltese legislation requires a "contribution" be paid to the Maltese government, which is deposited in the National Development Funds.

part of the application process. Cyprus and Malta have significantly higher fees than Bulgaria[20].

2.3. Residence or other required links to the Member State

In the three Member States concerned, applicants are issued with a residence permit at the beginning of the procedure to apply for citizenship. Merely holding a residence permit for the required timeframe is sufficient to qualify for the scheme. However, effective residence, meaning physical presence for a regular and extended period in the territory of the Member State concerned, while holding the permit, is not required.

In Malta, an "e-Residence" card must have been held for at least 12 months preceding the issuance of the certificate of naturalisation. In Cyprus, the applicant must hold a residence permit for at least 6 months before the naturalisation certificate can be issued. In Bulgaria, the applicant must hold a permanent residence permit for five years (ordinary scheme) or one year (fast-track scheme) in order to be able to apply for Bulgarian citizenship.

This means that applicants can acquire citizenship of Bulgaria, Cyprus or Malta – and hence Union citizenship – without ever having resided in practice in the Member State. In Malta, the applicant must be physically present to provide biometric data for the e-Residence Card and to take the oath of allegiance[21]. A personal interview with the applicant may also be required in Malta. In Bulgaria, the applicant's presence is required for the submission of the application for citizenship and in Cyprus for the collection of the residence permit.

The study looked for other factors, besides physical residence, which might arguably create a link between the applicant for citizenship and the country concerned. In Bulgaria, the applicant must undergo an application interview, but is exempt from the conditions of being proficient in the Bulgarian language or from showing knowledge of Bulgarian public life. The Cypriot authorities consider that the investment in Cyprus is itself a sufficient bond between the applicant and Cyprus. It is to be noted that, under the relevant Cypriot Council of Ministers decision, the residence criterion required under its ordinary naturalisation procedure is replaced by an investment criterion[22]. Applicants for Maltese citizenship in the final stage of the naturalisation process are asked about their links with Malta. Applicants are asked to have boarding passes showing travel to Malta, and if they have other evidence, for instance, donations to charitable organisations in Malta, membership of a local sports, cultural or social club or pay income tax to the Maltese Inland Revenue Department[23]. Applicants are also encouraged to set up a business in Malta.

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[20] Bulgaria charges a total of EUR 650 per application; Cyprus charges EUR 7,000 for the main applicant and EUR 7,000 for the spouse; Malta charges a total of EUR 8,200 for the main applicant and EUR 5,500 for the spouse.

[21] Information confirmed through consultation with national stakeholder (Identity Malta, competent authority, 8 March 2018), obtained for the purposes of the Study, ibid, note 4.

[22] Article 111A paragraph (2) of the Civil Registry Laws, published on 30 April 2013.

[23] See Deliverable B.I of the Study, ibid, note 4; also Office of the Regulator Individual Investor Programme (ORiip), *Fourth Annual Report on the Individual Investor Programme of the Government of Malta* (1st July 2016 – 30th June 2017), November 2017, p. 32: https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf

2.4. Investor citizenship schemes and EU law

In line with the Treaties, every person who becomes a national of a Member State shall be a citizen of the Union[24]. Citizenship of the Union is destined to be the fundamental status of nationals of the Member States[25]. A decision by one Member State to grant citizenship for investment **automatically confers rights**[26] in relation to other Member States, in particular free movement rights, the right to vote and stand as a candidate in local and EU elections, the right to consular protection if unrepresented outside the EU and rights of access to the internal market to exercise economic activities. It is precisely the benefits of Union citizenship, notably free movement rights, that are often advertised as the main attractive features of such schemes.

The Court of Justice of the EU has held, in what is now settled case-law, that, while it is for each Member State to lay down the conditions for the acquisition and loss of nationality, they must do so having due regard to Union law[27]. Having due regard to EU law means taking into account all rules forming part of the Union legal order and includes having due regard to norms and customs under international law as such norms and customs form part of EU law[28].

The *Nottebohm* case of the International Court of Justice establishes that, for nationality acquired through naturalisation to be recognised in the international arena, it should be granted on the basis of a genuine connection between the individual and the State in question[29]. The "bond of nationality" is traditionally based either on a genuine connection with the people of the country (by descent, origin or marriage) or on a genuine connection with the country, established either by birth in the country or by effective prior residence in the country for a meaningful duration. Other elements may be required to attest to the existence of a genuine bond with the country, such as knowledge of a national language and/or of the culture of the country, links with the community. The existence of these requirements in Member State nationality regimes confirms that Member States generally regard the establishment of a genuine link as a necessary condition for accepting third-country nationals into their societies as citizens.

Such a common understanding of the bond of nationality also lies at the basis of Member States' acceptance that Union citizenship and the rights entailed by it under the Treaty on the Functioning of the European Union (TFEU) would accrue automatically to any person becoming one of their citizens.

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24 Article 9 TEU and Article 20(1) TFEU.

25 Judgment of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31.

26 See Article 20(2) TFEU.

27 Judgment of 7 July 1992, *Micheletti and Others v Delegación del Gobierno en Cantabria*, C-369/90, EU:C:1992:295, paragraph 10; Judgment of 11 November 1999, *Belgian State v Mesbah*, C-179/98, EU:C:1999:549, paragraph 29; Judgment of 20 February 2001, *Kaur*, C-192/99, EU:C:2001:106, paragraph 19; Judgment of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 37; Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 39; see also Case C-221/17 *Tjebbes*, pending.

28 See Opinion of Advocate-General Maduro in Case C-135/08 *Rottmann*, paragraphs 28-29; as regards impact of international law on EU law, see: Judgment of 14 May 1974, 3, *Nold KG v Commission*, Case 4-73, EU:C:1974:51; Judgment of 24 November 1992, *Anklagemindigheden v Poulsen and Diva Navigation*, C-286/90, EU:C:1992:453, paragraphs 9 and 10, and Judgment of 16 June 1998, *Racke v Hauptzollamt Mainz*, C-162/96, EU:C:1998:293, paragraphs 45 and 46.

29 Judgment of the International Court of Justice of 6 April 1955, *Nottebohm*, I.C.J. Reports 1955, p. 4, available at https://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf

Granting naturalisation based on a monetary payment alone, without any further condition attesting to the existence of a genuine link with the awarding Member State and/or its citizens departs from the traditional ways of granting nationality in the Member States and affects citizenship of the Union.

Since under Article 20 TFEU, citizenship of the Union is an automatic consequence of holding nationality of a Member State and a host Member State cannot limit the rights of naturalised Union citizens on grounds that they acquired the nationality of another Member State without any link with that awarding Member State[30], each Member State needs to ensure that nationality is not awarded absent any genuine link to the country or its citizens[31].

The Commission has discussed with the Maltese and Cypriot authorities the inclusion of an effective residence criterion in their investor citizenship scheme legislation[32]. As a result, Malta in 2014 introduced a requirement for "proof of residence" for twelve months into its legislation[33]. In practice, this requirement is considered fulfilled if the applicant obtains a residence permit to reside in Malta, even without physical residence, provides boarding passes, and possibly evidence of, for example, donations to charitable organisations in Malta, membership of local sports clubs or payment of income tax to Malta. Cyprus also changed its legislation in 2016 to require applicants under its investor citizenship scheme and their family members to hold residence permits[34]. The Commission will continue monitoring compliance with Union law.

3. Investor Residence Schemes in the EU

3.1. Context

While some investor residence schemes were initiated in the early 2000s, the financial crisis starting in 2007 led more Member States to adopt these schemes, or revive previous ones.

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30 See, in relation to freedom of establishment, the clear statement of the Court in Case C-369/90, *Micheletti*, paragraph 10: "Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty."; see also Case C-165/16, *Lounes*, paragraph 55: "A Member State cannot restrict the effects that follow from holding the nationality of another Member State, in particular the rights which are attendant thereon under EU law and which are triggered by a citizen exercising his freedom of movement.".

31 The principle of sincere cooperation with other Member States and the Union laid down by Article 4(3) TEU, obliges Member States to refrain from measures that could jeopardise the attainment of the Union's objectives.

32 See the Joint Press Statement of 29 January 2014 issued by the European Commission and the Maltese Authorities, http://europa.eu/rapid/press-release_MEMO-14-70_en.htm. Several exchanges took place between the Maltese and Cypriot authorities, respectively.

33 Regulation 7(12) of LN 47/2014 (the Individual Investor Programme of the Republic of Malta Regulations) requires proof that the main applicant has been a resident of Malta for at least 12 months preceding the day of the issuing of the certificate of naturalisation. The term "proof of residence" has not however been further defined. See the Study, ibid, note 4.

34 Council of Ministers Decision No 834 of 13.9.2016

This trend has continued over the past 10 years and these schemes exist to date in 20 Member States[35].

Their features vary greatly in particular as regards the investment to be made, both in nature and in amount. Five types of investment options can be observed: capital investment[36], investment in immovable property[37], investment in Government bonds[38], donation or endowment of an activity contributing to the public good[39], and one-time contributions to the State budget[40]. These options are not mutually exclusive, some Member States allowing for different types of investment and their combination.

In terms of amount, the scale ranges from a very low investment (below EUR 100,000[41]) to a very high investment (over EUR 5 million[42]).

In addition to these, a non-financial investment such as the creation of jobs or the contribution to the economy may be required[43].

Procedures differ greatly as well as the conditions linked to physical presence in the Member State granting residence rights[44].

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35 Bulgaria, Czechia, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia and the United Kingdom. Hungary suspended their scheme in April 2017. For more details on the identification of these schemes, see the accompanying Staff Working Document.

36 Under the capital model, the requirement is to invest a definite sum either (i) in a company irrespective of the role that the investor has in the company or title under which the investor participates in the company – owner, shareholder, manager (Bulgaria, Estonia, Ireland, Spain, France, Croatia, Italy, Latvia, Lithuania, Netherlands, Portugal, Romania, Slovakia, United Kingdom) or (ii) in credit or financial institutions instruments such as investment funds or trust funds (Bulgaria, Estonia, Ireland, Spain, Cyprus, Latvia, Netherlands, Portugal).

37 This model requires to buy, or to rent, a real estate property of a definite value (Ireland, Greece, Spain, Cyprus, Latvia, Malta, Portugal). Renting is possible in Malta and Greece. More details are included in the Staff Working Document.

38 Bonds of a definite value are purchased to the Government by the investors. These bonds imply a repayment on a maturity date, with a definite interest rate (Bulgaria, Spain, Italy, Latvia, Hungary, Malta and United Kingdom).

39 Capital is invested in a public project benefiting the arts, sports, health, culture or education philanthropic donations artistic and research activities (Ireland, Italy, Portugal).

40 This requires paying directly a certain amount of money to the State (Latvia, Malta) and does not entail repayment, contrary to bonds.

41 The minimum is HRK 100,000 (approximately EUR 13,500) in Croatia. In certain cases, such as in Greece for the "strategic investment" option, the amount is not specified by law and left to the discretion of the authorities.

42 Slovakia and Luxembourg.

43 Creation of jobs in Bulgaria, Czechia, Spain, France, Croatia, Latvia, Netherlands, Portugal, Romania and contribution to the economy in Bulgaria, Czechia, Greece, Spain. More precisely, the criterion of "contribution to the economy" has different forms: it must be "specific to an economically disadvantaged region" in Bulgaria; the investment must be made "in the interests of the country or a region" in the Czech Republic; the Greek legislation provides for a "strategic investment" without defining the concept; Spain requires a business project of "general interest".

44 See the Staff Working Document for an overview of these schemes.

3.2. Investor residence schemes and EU law on legal migration

EU law regulates the entry conditions for specific categories of third-country nationals[45]. The granting of a residence permit to third-country investors is currently not regulated at EU level and remains governed by national law[46].

However, a residence permit granted on the basis of an investor residence scheme set up in one Member State also impacts on other Member States. A valid residence permit allows a third-country national to travel freely within the Schengen area[47] for 90 days in any 180-day period. It also allows access for short stays to Bulgaria, Croatia, Cyprus and Romania based on the unilateral recognition of residence permits by these Member States. It is therefore essential that all relevant checks, particularly security checks, are carried out before the issuance of such a permit (see Section 4 below).

Moreover, there may be an impact on the acquisition of the EU Long-Term Residence status, which is conferred on third-country nationals who have been legally and continuously residing in an EU Member State for five years[48]. This status gives third-country nationals certain rights[49] on the basis of the duration of their residence in a Member State and the fact that they have put down roots in the Member State concerned. Continuity of presence in the host State is an essential aspect and condition underlying this status[50]. In contrast, the study found that in several Member States[51] the residence requirement under the investor residence schemes does not require continuous physical residence. In some of them, the law expressly

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45 The EU legal migration policy has harmonised the entry and residence conditions of certain categories of third-country nationals and has granted them rights to ensure fair treatment with EU nationals. See: the Family Reunification Directive (2003/86/EC); the Long-Term Residents Directive (2003/109/EC); the EU "Blue Card" Directive covering highly skilled workers (2009/50/EC); the Seasonal Workers Directive (2014/36/EU); the Intra-Corporate Transferees Directive (2014/66/EU); Directive (EU) 2016/801 on Research, study, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast). The Single Permit Directive (2011/98/EU) does not cover a category as such but is a framework directive establishing EU rules for a single application/permit and equal treatment provisions for third-country employees. Note that the scope of this Directive excludes self-employment. To be noted that the United Kingdom, Ireland and Denmark – based on Protocols 21 and 22 annexed to the Treaties – are not bound by the legal migration *acquis*.

46 This is one of the items currently examined in the context of the analysis undertaken by an evaluation of the EU legislation on legal migration - Evaluation according to European Commission's regulatory fitness and performance (REFIT) programme: https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en

47 The Schengen area, i.e. the area without internal border controls, currently includes 26 countries, of which 22 Member States: Belgium, Czechia, Denmark, Germany, Estonia, Greece, Spain, France, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland and Sweden) and four associated countries (Switzerland, Norway, Iceland and Liechtenstein).

48 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

49 The rights granted under this status are procedural rights, equal treatment rights in a number of areas (e.g. access to employment and self-employment, education and vocational training, recognition of professional diplomas, social security and social assistance, tax benefits, access to goods and services and freedom of association) and a facilitation of the right to move and reside (for more than three months) in a Member State other than the one which granted the long-term residence status, provided that certain conditions are met.

50 Under the Directive, the continuity of presence is interrupted by absences of more than six months consecutive absence or an overall absence exceeding ten months within five years.

51 Bulgaria, Czechia, Estonia, Ireland, Greece, France, Latvia, Lithuania, Luxembourg, Hungary, Malta, Poland, Romania, Slovakia, United Kingdom.

only requires the investors' presence for a very limited time (e.g. seven days in a year in Portugal, or just on the day of application for Malta, Greece and Bulgaria).

As effective residence under investor residence schemes may be either directly excluded, limited or not prescribed at all under these national laws, the actual monitoring of the residence condition appears challenging.

This means that there could be situations where, in the absence of an effective monitoring of continuity of residence, investors considered to be residing in a Member State on the basis of a national permit for five years could acquire EU Long Term Resident status and subsequent rights, in particular mobility rights, without fulfilling the actual condition of continuity of residence for five years. This would not be compliant with the Long-Term Residence Directive. The Commission will monitor compliance by Member States to ensure that they implement the condition related to the continuity of residence under the Directive correctly.

Additionally, holding a national investor permit allows for family reunification rights under the Family Reunification Directive[52], provided applicants meet the conditions. In this context, it is worth mentioning that in most Member States family members of investors are not subject to enhanced due diligence, which could entail security risks[53].

3.3. The link between investor residence schemes and naturalisation procedures

Investor residence schemes may also impact on the acquisition of citizenship. A residence permit acquired by investment can be used under several[54] Member States' ordinary naturalisation procedures to establish the genuine connection with the country and waive other requirements. In other words, a residence permit obtained by investment – and sometimes without requiring any physical presence – may provide fast-track access or a link to permanent residence and then citizenship[55]. It is also the case that in Member States that have both investor citizenship and residence schemes, the investment required for the residence scheme may be taken into consideration to qualify for the investor citizenship scheme[56].

4. Areas of concern

Third-country nationals may invest in a Member State for legitimate reasons[57], but may also be pursuing illegitimate ends, such as evading law enforcement investigation and prosecution in their home country and protecting their assets from the related freezing and confiscation measures. Hence investor citizenship and residence schemes create a range of risks for

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52 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003).

53 See "European Getaway: Inside the Murky World of Golden Visas", Transparency International, October 2018, p. 6 and 37.

54 Bulgaria, Czechia, Estonia, Ireland, Greece, France, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovakia, United Kingdom.

55 See in particular Study Overview, section IV.2, ibid, note 4.

56 This is the case for Cyprus and Malta. See Study, ibid, note 4, Deliverable C for both Member States.

57 Under Article 63 TFEU, the principle of free movement of capital applies between Member States and between Member States and third countries. Article 65 permits the free movement of capital to be restricted, in particular for reasons linked to public policy, public security or taxation.

Member States and for the Union as a whole: in particular, risks to security, including the possibility of infiltration of non-EU organised crime groups, as well as risks of money laundering, corruption and tax evasion. Such risks are exacerbated by the cross-border rights associated with citizenship of the Union or residence in a Member State.

There is also a concern around lack of transparency and governance of the schemes. Both citizenship and residence schemes have come under close public scrutiny following allegations of abuse and corruption linked to them in some Member States[58]. Enhancing transparency and putting in place adequate risk management, control systems and oversight mechanisms could help mitigate as far as possible some of these concerns.

4.1. Risks posed by Investor citizenship and residence schemes

4.1.1. Security

Over the past years, the Commission has presented different initiatives aimed at strengthening the security of the EU and creating a Security Union[59]. The three main centralised information systems developed by the EU and used for security checks are (i) the Schengen Information System (SIS)[60] with a broad spectrum of alerts on persons and objects, (ii) the Visa Information System (VIS)[61] with data on short-stay visas, and (iii) the Eurodac system[62] with fingerprint data of asylum applicants and third-country nationals who have crossed the external borders irregularly. These three systems are complementary, and – with the exception of SIS – primarily targeted at third-country nationals.

In addition, new IT systems like the Entry/Exit System (EES)[63] and the Electronic Travel Information and Authorisation System (ETIAS)[64] are being established and the reinforcement of the VIS[65] and the extension of the European Criminal Records Information System to Third

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58 A detailed account of reports of abuse or misuse of the schemes is set out in the Study Overview, ibid, note 4, pp. 23 & 75.

59 See for examples the measures adopted by the Commission on 17 April 2018, including the Report on progress towards an effective and genuine Security Union, http://europa.eu/rapid/press-release_IP-18-3301_en.htm

60 https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system_en

61 https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en

62 https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en

63 Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 and Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System.

64 Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

65 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA (COM/2018/302 final). On 19 December 2018, the Council adopted its negotiation mandate. The European Parliament is in the process of adopting its mandate.

Country Nationals (ECRIS-TCN)[66] have been proposed by the Commission. The Commission has also proposed to make all information systems interoperable[67].

Practices regarding investor citizenship and residence schemes can undermine these efforts by allowing third-country nationals to avoid some of these checks, with implications for other Member States and the EU as a whole. It is therefore important that any investor citizenship and residence schemes are organised in such a way as to prevent such security risks. The absence of internal border checks within the Schengen area makes it particularly important to ensure that the commonly agreed and adequate security preventive checks are implemented.

Security and investor citizenship schemes in the Member States

The study was able to identify only very limited legislation or guidelines concerning the actual practices in relation to investor citizenship.

In **Malta**, checks based on police records from the Maltese police and/or from the competent authorities in the country of origin are made on the criminal background of the main applicants and their dependants over 12 years of age. The requirement to prove a clean criminal record may be waived in exceptional circumstances, where the competent authority considers such a certificate impossible to obtain[68]. The Maltese authorities consult INTERPOL and Europol databases as part of a four-tier due diligence process covering[69]: know-your-client due diligence checks by the agent and the Malta Individual Investor Programme Agency (see section on anti-money laundering checks below); clearance by the police authorities; a check for completeness and correctness of the application and verification of the documents submitted; and an outsourced due diligence check whereby the Malta Individual Investor Programme Agency to present evidence that they have commissions two reports from international companies on every IIP application[70]. Malta excludes nationals of certain countries[71] and persons subject to travel bans imposed by the United States from applying for citizenship under its scheme, whereas applicants showing on any other sanctions or watch lists must be reported by agents to the Malta Individual Investor Programme Agency[72].

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66 Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011, COM/2017/0344 final - 2017/0144 (COD). The negotiations are at an advanced stage in the trilogue process.

67 Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 016/399 and Regulation (EU) 2017/2226.

68 For instance, if the competent authority in the country of origin would not issue certificates for short or intermittent stays. In those cases, a sworn affidavit from the applicant and any dependants, declaring a clean criminal record, will suffice.

69 Further details available at: https://iip.gov.mt/due-diligence/

70 Information gathered through consultation with national stakeholder (Identity Malta, competent authority, 8 March 2018) for the purposes of the Study, ibid, note 4. This is based on Regulation 7(2) of LN 47/2014 that states that the 'due diligence checks shall be of a four-tier nature' without further specification.

71 Nationals or residents of Afghanistan, Iran and the Democratic People's Republic of Korea, or with significant ties to these countries, are excluded from the Maltese IIP.

72 Maltese Individual Investor Programme Handbook 2018. Also excluded are persons who have been denied a visa by a country with whom Malta has a visa-free travel agreement.

In **Cyprus**, applicants must submit a criminal record report from their country of origin and residence (if different), which must be dated no more than 90 days prior to submission. The Cypriot police also undertake a search in both the Europol and INTERPOL databases[73]. The investor's name and family members' names must not be included in the list of persons whose assets, within the boundaries of the European Union, have been frozen as the result of sanctions. In addition, according to new rules introduced in July 2018[74], applicants, who submit their claims via a service provider are required to submit a due diligence report issued through an internationally accepted database (for example World-Check[75], Lexis Diligence[76], Regulatory DataCorp Inc.[77] etc.). In cases where there are concerns regarding national security, the application is additionally evaluated by the Central Intelligence Agency of Cyprus. Cyprus is not connected to the Schengen Information System.

In **Bulgaria,** legislation requires the applicant to present a clean criminal record certificate and a document showing that no criminal proceedings are pending or ongoing against the applicant. The Council for Citizenship gives an opinion on citizenship requests, following a written statement by the Ministry of the Interior and the State Agency for National Security (SANS). The latter carries out checks on all applicants for Bulgarian citizenship (including those applying through investor schemes) within the scope of its competence, such as police intelligence or police record databases. No information was available on the Bulgarian policy concerning persons subject to EU restrictive measures, nor whether the authorities use SIS to check applicants.

The study has highlighted a significant number of grey zones concerning security checks. One problem relates to the discretion of Member States regarding citizenship applications. In fact, the study shows that authorities can admit requests, even when the applicants do not meet certain security requirements[78]. Moroever, applications do not need to be submitted in person and can be submitted by agents, which is the case in Malta and Cyprus.

Moreover, Member States currently do not consult each other on applicants for investor citizenship. In comparison, prior consultation on security grounds between Member States exists for applicants for short-stay visas from certain[79] third countries[80]. This is despite the fact that citizenship entails wide-ranging rights, including residence and the right to vote and stand in EU and local elections, awarded for life rather than a mere short-term visiting right. Another problem relates to the fact that a lack of coordination and commonly agreed criteria leaves room for "shopping around" for the most lenient conditions. An applicant refused

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73 Information provided by the Ministry of Interior Officer on 29 May 2018.

74 http://www.moi.gov.cy/moi/moi.nsf/all/07F0364738A716E4C22582C40023E6C0/$file/CYPRUS%20INVESTMENT%20PROGRAMME_13.9.2016.pdf?openelement

75 https://risk.thomsonreuters.com/en/products/world-check-know-your-customer.html

76 https://www.lexisnexis.com/en-us/products/lexis-diligence.page

77 https://rdc.com/

78 For example, in Malta the requirement to prove a clean criminal record, not to be the subject of a criminal investigation and not to be a potential national security threat to Malta can be waived in exceptional circumstances – Overview Study, section II.1 (checks), ibid, note 4.

79 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/borders-and-visas/visa-policy/docs/prior_consultation_en.pdf

80 Provided in Article 22 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1) and carried out through the VISMail mechanism provided in Article 16(2) of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation).

citizenship in one territory can make a fresh request in another Member State. Member States currently do not inform each other of rejected applicants, not even of those rejected for posing a security risk.

Security and investor residence schemes in the EU

In contrast with procedures related to the acquisition of citizenship, some obligations exist under EU law in terms of security checks to be carried out prior to the issuance of visa or a residence permit to foreign investors, in order to ensure they are not a threat for public policy and public security, including of other Member States. Such checks are based on the Schengen acquis and are compulsory for those Member States that are bound by this acquis. In particular, pursuant to Article 25(1) of the Convention implementing the Schengen Agreement, a Member State considering issuing a residence permit must systematically carry out a search in the Schengen Information System (SIS)[81]. Where a Member State considers issuing a residence permit to a person for whom an alert has been issued for the purposes of refusing entry, it must first consult the Member State issuing the alert and has to take account of its interests.

While the study found that in the national laws of the Member States concerned, the check of public policy and public security is generally included as a ground for refusal (or non-renewal) of the permit, it also identified both a lack of available information and an important level of discretion in the way Member States approach security concerns[82]. This has led to some problematic cases, as highlighted also by other reports[83]. In that context, the Commission has already proposed to upgrade the Visa Information System, which – in conjunction with the proposal for the Interoperability Regulation[84] – will introduce mandatory searches in relevant EU and international security databases[85] at the external borders for *all issued* residence permits and long-term visas. Information on residence permit applications, which were refused by a Member State on security grounds, would also be stored and checks can be subsequently made against it.

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81 The SIS is currently in operation in 26 EU Member States (only Ireland and Cyprus are not yet connected to SIS), though with different access rights, and four Schengen Associated Countries (Switzerland, Norway, Liechtenstein and Iceland). While Bulgaria and Romania are not yet part of the area without internal border checks (the 'Schengen area'), they have had full access to the SIS since August 2018. Croatia, which is also not part of the Schengen area, has still some restrictions regarding its use of Schengen-wide SIS alerts for the purposes of refusing entry into or stay in the Schengen area. The United Kingdom operates the SIS but, as it has chosen not to join the Schengen area, it cannot issue or access Schengen-wide alerts for refusing entry or stay into the Schengen area. Ireland is carrying out preparatory activities to connect to the SIS, but, as is the case for the United Kingdom, it is not part of the Schengen area and it will not be able to issue or access Schengen-wide alerts for refusing entry or stay. Cyprus is not yet connected to the SIS.

82 Security checks relate generally to the background of the applicants and the origin of the funds. Authorities in charge of the management of the investor residence schemes rely on police forces and intelligence services to check the background of the applicants (Bulgaria, Estonia, Spain, Croatia, Cyprus, Hungary, Portugal, Slovakia) and on authorities in charge of health and employment policies and on the competent authorities for the civil status of the applicant. These checks relate mainly to the criminal record of the applicants and the veracity of the document provided by the applicants.

83 See Transparency International, ibid, note 5, p. 37 and Overview Study, ibid, note 4, p. 75.

84 See note 68.

85 Namely in the VIS, SIS, EES, ETIAS, ECRIS, as well as Europol and INTERPOL databases.

Ex-post checks exist to verify that the conditions under which residence rights were granted still exist during the validity of the permit, but only in a limited number of cases[86]. They consist of verifying that the holder of the permit still fulfils the conditions of the stay during the validity of the permit (for more details, see the accompanying Staff Working Document). However, as there may be no requirement for permit holders to actually reside in the host State (or residence may be required only for a very limited time as indicated above), it may be difficult to verify if permit holders still fulfil the conditions for the residence permit.

The Commission will monitor compliance by Member States to ensure that they carry out all obligatory existing border and security checks systematically and effectively, in order to ensure that investor residence schemes do not pose a threat to the security of other Member States and the EU.

4.1.2. Money laundering

Regarding checks on the origin of funds, all EU Member States except for one[87] have notified transposition measures for the fourth Anti-money Laundering Directive[88]. The Commission is currently carrying out a horizontal check of the completeness of the notified national legislation transposing the fourth Anti-money Laundering Directive and is pursuing non-communication infringement proceedings against those Member States where some gaps in transposition have been identified. Under this legislation, the obliged entities (inter alia, credit and financial institutions, notaries and lawyers, and real estate agents)[89] must carry out customer due diligence measures[90]. Obliged entities have an obligation to report suspicious transactions to the Financial Intelligence Unit in their country and they are prohibited from informing clients about reporting of suspicious transactions. In addition, the fourth Anti-Money Laundering Directive contains a specific additional requirement for obliged entities to carry out enhanced due diligence checks on transactions with customers from high-risk third countries.

The fifth Anti-Money Laundering Directive, which entered into force on 9 July 2018 and must be transposed by Member States by 10 January 2020[91], introduces an amendment that designates as high risk and requires enhanced customer due diligence for, those third-country nationals who apply, "for residence rights or citizenship in the Member State in exchange of capital transfers, purchase of property or government bonds, or investment in corporate

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86 Estonia, Spain, France, Croatia, Latvia, Lithuania.

87 Except for Romania. Source: Eur-lex, 'National transposition measures communicated by the Member States concerning Directive (EU) 2015/849' available at https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32015L0849

88 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), available at: https://eur-lex.europa.eu/legal-content/En/TXT/?uri=CELEX%3A32015L0849

89 Article 2 of Directive (EU) 2015/849.

90 Articles 10-24 of Directive (EU) 2015/849.

91 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, OJ L 156, 19.6.2018, p. 43.

entities in that Member State"[92]. However, the Directive lays down these obligations only in relation to economic operators and does not cover governmental organisations and agencies, which are not obliged entities under the Directive. This means that the authorities responsible for investor citizenship and residence schemes are not covered.

The study showed a variety of practices by investor citizenship schemes to combat money laundering and also pointed to a number of grey areas. Formally, there is no obligation on the bodies involved in carrying out the checks on the origin of funds in investor schemes to communicate to the Member States' competent authorities the results of these checks. However, in practice some cooperation exists in relation to investor citizenship schemes. Identity Malta[93] confirmed, for the purposes of the study, that the due diligence definitions and procedures of the fourth Anti-money Laundering Directive are followed in the four-tier process of due diligence it uses. The Cypriot legal framework on investor citizenship schemes makes direct cross-reference to the Cypriot anti-money laundering legislation. This requires Cypriot Banks' compliance departments to implement due diligence measures to verify and validate the origin of the funds used in the investment. In Bulgaria, the check on the origin of funds (in accordance with the Bulgarian Law on Measures against Money Laundering) is carried out by the Invest Bulgaria Agency[94]. In this procedure the applicant must provide a declaration of the origin of funds in compliance with the anti-money laundering law[95].

Similarly, there are variable practices among Member States operating investor residence schemes to guard against money laundering. While some Member States require all payments to be made through their national banks, which as obliged entities under the fourth Anti-Money Laundering Directive, must apply the necessary customer due diligence checks (Cyprus), the study also showed that some legislation does not provide for particular checks (Croatia, Portugal). In Hungary, where the scheme is currently suspended, there was no obligation to actually transfer the money to the Hungarian territory, which, as a result, excluded the funds from checks. In other cases, funds are double-checked, first through evidence submitted by the country of origin of the fund, and then by the competent services in the Member State (Ireland). The competent authorities in charge of those particular checks vary: it can be the national investment agency (Bulgaria) or a Commission dedicated to anti-money laundering (Spain). These entities can be private or public and include independent professionals. These checks differ as they can consist in validating the documents relating to the monies used to make the investment, such as bank transfer receipts, financial statements tax return report, purchase or lease contract from the land or property registries, when the investment is immovable property, or they can consist of a limited declaration of the competent authority.

As provided for by new EU anti-money laundering rules, Member States should devote particular attention to enhanced customer due diligence in the context of investor citizenship and residence schemes. Member States should ensure that the application of EU rules on anti-money laundering is not circumvented. This should be ensured when funds are paid by

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92 See Article 1, point 44, which adds an additional point into point (1) of Annex III of the fourth Anti-money Laundering Directive.

93 The due diligence checks are currently made by the Malta Individual Investor Programme Agency; at the time the interviews for the Study were conducted, the authority in charge was Identity Malta.

94 The Invest Bulgaria Agency is an executive agency of the Bulgarian Minister of Economy and supports the Minister in the application of the state policy in the field of encouragement of foreign investment.

95 Article 39, paragraph 6 of the Regulations for the Application of the Foreign Nationals in Bulgaria Act.

investor citizenship applicants and are channelled through bodies that do not qualify as obliged entities under the fourth and fifth Anti-Money Laundering Directives. Moreover, the bodies involved in carrying out the checks on the origins of the funds in investor citizenship and residence schemes should always communicate their findings to the Member State authorities competent for the processing of applications. Member States could also take into account the potential risks of money laundering linked to investor citizenship and residence schemes in their national risk assessments carried out according to the EU anti-money laundering rules and take the necessary mitigating measures[96].

In cases where payments are made in cash directly to governmental organisations, these are not covered by European anti-money laundering legislation. The rules for payments in cash are currently not harmonised throughout the EU. Member States therefore may lay down certain restrictions for payments in cash as long as these are compatible with other provisions of EU law.

4.1.3. Circumvention of EU rules

There is also the possibility that the status given by investor citizenship and residence schemes may be used to circumvent EU law. Investor citizenship schemes in particular may provide a route for third-country nationals to circumvent certain nationality requirements in EU law. For instance, EU rules stipulate that an operating licence, i.e. an authorisation to provide air services, may only be granted by the competent (national) licensing authorities where Member States or Member State nationals own more than 50% of the undertaking concerned and effectively control it[97]. The Commission has received one complaint and several enquiries from national licensing authorities about third country investors who have obtained citizenship of the Union in a Member State via an investor citizenship scheme and subsequently applied for an airline operating licence.

4.1.4. Tax evasion

Another concern is whether tax incentives derived from the use of investor citizenship and residence schemes drive demand for such schemes[98]. The use of these schemes in itself does not equate to tax evasion, although they may enable individuals to benefit from existing privileged tax rules. However, there may be room for abuse based on the misuse of the benefits and documentation obtained through the schemes, which varies from scheme to scheme, i.e. some may facilitate and be used as an instrument in aggressive tax planning and evasion.

The study did not look at the tax aspects of such schemes. The discussions at both EU and international levels focus on the impact such schemes may have on the automatic exchange of financial account information between tax authorities, implemented within the EU through Council Directive 2014/107/EU (first amendment to the Directive on Administrative Cooperation) and with third countries via the Common Reporting Standard. The first

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96 Malta carried out a national money laundering risk assessment in 2017. However, the potential risks of money laundering linked to the citizenship scheme were not analyzed.

97 Regulation (EC) 1008/2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3; See also the European Commission's forthcoming Evaluation of Regulation (EC) 1008/2008 (to be published in first half of 2019).

98 See the discussion in the European Parliamentary Research Service study, ibid, note 5, pp. 32-35.

amendment to the Directive on Administrative Cooperation and the Common Reporting Standard require the relevant banking information to be sent to all jurisdictions of tax residence of the account holder.

Tax residence can be different from other definitions of residence for non-tax purposes. The criteria for residence for tax purposes may vary considerably from jurisdiction to jurisdiction and is usually linked to the number of days of physical presence in a jurisdiction. Some jurisdictions also determine residency of an individual by reference to a variety of other factors, such as citizenship, the ownership of a home or availability of accommodation, family, and financial interests. As such, there are situations where the same individual may be deemed a tax resident in more than one jurisdiction. Moreover, being deemed a tax resident in a new jurisdiction does not extinguish other tax residence status in other countries.

However, the documentation issued under some of these schemes may make it very difficult for financial institutions to identify correctly the legitimate places of tax residence. In some cases the information on financial accounts may be sent to the wrong State and/or not sent to the correct State. For example if information is sent only to the State operating a citizenship or residence scheme (which often does not tax the income or require physical presence in the country) and not to the genuine state of tax residence the income may escape taxation in the correct State.

Schemes in countries which do not tax the income, or tax it at a very low rate, carry a greater risk of account holders hiding evidence of the real state of residence and thereby evading tax. In particular, third-country schemes carry a higher risk that Union citizens may use them to deliberately evade taxation in their EU State of residence. EU financial institutions may be less familiar with schemes in place outside the EU and although some schemes offered by EU States also do not tax foreign income most target (and limit access to) non-EU residents.

The mandatory disclosure obligations for intermediaries adopted through an amendment to the Directive on Administrative Cooperation in 2018[99] requires promoters of tax avoidance schemes and service providers involved in their design or implementation to inform tax authorities of any schemes they market or put in place. It includes specific provisions to target schemes that may have the effect of circumventing the reporting obligations laid down by the EU legislation on automatic exchange of financial account information.

In fact, the Directive includes a reporting obligation which targets schemes or arrangements that undermine or exploit weaknesses in the due diligence procedures used by financial institutions to report information to the tax authorities, such as the identification of the jurisdiction of residence of the account holder. This is the case when the account holder acquires citizenship or residence rights in a country other than that of effective residence. Whenever such a scheme is marketed, or entered into, a reporting obligation befalls the intermediary that is providing the service.

Pursuant to the 2018 amendment to the Directive on Administrative Cooperation, the schemes entered into as of 25 June 2018 will be reported to the EU tax authorities, which will exchange this information automatically with each other as of 2020, providing these

[99] Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L 139, 5.6.2018, p. 1.

authorities with intelligence that may lead to the early detection of possible abuses. This is the case both for schemes established within the EU and in third countries.

To address the risks posed by investor citizenship and residence schemes, and in addition to ensuring the effective implementation of the Directive on Administrative Cooperation, EU Member States providing such schemes should make use of the available tools in the EU framework for administrative cooperation, in particular the spontaneous exchange of information to the Member State(s) of residence, as prescribed in the Directive on Administrative Cooperation[100].

Moreover, the existence of investor citizenship and residence schemes and the issues they raise for taxation purposes should also be considered in the work being carried out by Member States in the Council, for example, in the ongoing work to reform the Code of Conduct for business taxation[101], which aims at ensuring a coordinated action at European level to tackle harmful tax competition, limited to business taxation under the current mandate. The reform of the Code is an opportunity to broaden the scope of the work to include other types of harmful tax practices, including those targeted at individuals. Member States should also note the possible role of investor citizenship and residence schemes in tax avoidance and evasion and consider if the risks posed by such schemes merit their inclusion in the EU listing criteria[102].

As part of its work to identify loopholes in the Common Reporting Standard, the international equivalent to first amendment to the Directive on Administrative Cooperation, the Organisation for Economic Co-operation and Development (OECD) analysed the potential such citizenship and residence schemes may have to circumvent the reporting obligations under this standard and therefore facilitate tax evasion. In particular, the OECD concluded that identity cards and other documentation obtained through such schemes can be potentially misused to misrepresent an individual's jurisdiction of tax residence and to endanger the proper operation of the Common Reporting Standard due diligence procedures[103]. In this respect, the OECD identified a list of investor citizenship and residence schemes that may present a high risk to the effective implementation of the Common Reporting Standard[104]. Both investor citizenship and residence schemes in Cyprus and in Malta are included on this list. The OECD has also published additional information and guidance to financial institutions in order to minimise the room for potential abuse.

On 9 March 2018, the OECD published "Model Mandatory Disclosure Rules for Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures". These model

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100 Council Directive 2011/16/EU, of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

101 Conclusions of the ECOFIN Council Meeting on 1 December 1997 concerning taxation policy - Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation - Taxation of saving (OJ C 2, 6.1.1998, p. 1).

102 Council Conclusions on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes (OJ C 461, 10.12.2016, p. 2); Council Conclusions on the EU list of non-cooperative jurisdictions for tax purposes (OJ C 438, 19.12.2017, p. 5).

103 OECD conclusions on residence/citizenship by investment schemes, 16 October, 2018: http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/

104 https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/#faqs

rules are similar to those included in the 2018 amendment to the Directive on Administrative Cooperation aimed at avoidance schemes targeting the automatic exchange of information of financial account information. However, it should be noted that these rules have not been endorsed as a minimum standard. As such, they are optional for jurisdictions to adopt.

4.2. Transparency and governance

Firm regulatory oversight and transparency of investor citizenship and residence schemes at national level are of critical importance in determining their impact. The study shows a lack of clear information about the applicable procedures and about the operation of the schemes, including the numbers and origins of the applicants and those obtaining citizenship or residence rights.

4.2.1. Transparency and governance of investor citizenship schemes today

In Malta, there is a regulator for the investor citizenship scheme, which publishes annual reports, which are subject to parliamentary scrutiny[105]. On 22 May 2018, Cyprus announced the establishment of a Supervisory and Control Committee and the introduction of a code of conduct for its investor citizenship scheme. In Bulgaria, there is neither a regulator nor a code of conduct.

In Malta, applications for investor citizenship must be submitted by the main applicant to the Malta Individual Investor Programme Agency either through Approved Agents or the concessionaire[106]. These are **non-public bodies** with a significant role throughout the application process, acting on behalf of applicants and interacting directly with the competent authorities on their behalf. In Bulgaria and Cyprus, applicants can choose to employ consultants or lawyers to advise on and make applications on their behalf. The new Cypriot Code of Conduct applies to the agents and intermediaries, which deal with citizenship applications on behalf of their clients. The Code aims to encourage high ethical standards and imposes an obligation to abstain from advertising the sale of citizenship in public places. Adverts for the sale of "EU citizenship" were common in Cyprus. It remains to be seen what effect the new Code of Conduct will have.

Under none of the three investor citizenship schemes is comprehensive information available about the identity of people who successfully obtain citizenship on the basis of investment and their countries of origin. The reports of the Maltese regulator contain information about the number of applications made and the number of those approved and turned down. These reports also contain information about the income generated by the Maltese investor citizenship scheme. Maltese legislation requires the yearly publication in the Government Gazette of the names of all persons who during the previous twelve calendar months were granted Maltese citizenship by registration or naturalisation, including (although not explicitly identifying) those persons who were granted Maltese citizenship under the investor citizenship scheme[107]. Similar information is not available for Bulgaria and Cyprus.

As regards limits on the number of applications granted, Cyprus and Malta both have caps on the numbers of applicants who can benefit from their investor citizenship schemes. The

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105 Office of the Regulator Individual Investor Programme (ORiip): https://oriip.gov.mt/en/Pages/Home.aspx

106 Regulation 4(3) of LN 47/2014.

107 Regulation 14(2) of LN 47/2014.

Cypriot Government, as of 2018, decided to limit such citizenships to 700 per year[108]. In Malta, the number of successful main applicants (excluding dependants) for the scheme as a whole is capped at 1,800[109]. However, the Maltese authorities are in the process of updating the law and, following a public consultation, intend to increase the cap by another 1,800. Bulgaria imposes no cap on the number of foreign investors who can apply for citizenship.

4.2.2. Transparency and governance of investor residence schemes today

Regarding governance of investor residence schemes, in Malta, unlike for the investor citizenship scheme, there is no regulator. In Cyprus, it is not foreseen that the Supervisory and Control Committee announced for the investor citizenship scheme be in charge also of residence permits. In Bulgaria, the only obligation provided for by the legislation is a notification by the Migration Directorate to the Bulgarian Investment Agency about the permanent residence permits issued under the scheme. Specific monitoring mechanisms and reporting obligations exist in a very limited number of Member States[110]. This means that, in most cases, the oversight of the scheme is left to general monitoring mechanisms when they exist, such as parliamentary scrutiny, administrative liability, general reporting of activities to the government, or access to documents requests, and no additional and specific diligence mechanism exists[111].

A limited number of Member States have made the choice to involve private companies in the running of their residence schemes[112], sometimes with a significant role[113]. In Cyprus, applicants are free to decide to present their application through an authorised representative whose role is limited to act as facilitators and providers of consultancy services. In Malta, applications may be submitted to the competent authorities by registered agents or accredited persons; these registered agents act on behalf of the applicant for all correspondences,

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108 Council of Ministers' Decision 906/2018.

109 Regulation 12 of LN 47/2014.

110 Spain, Ireland and Portugal. For example, in Spain, the law includes an obligation to prepare an annual report on the implementation of the rules which is prepared by the Ministry of Employment and Social Affairs on a joint request of the Ministries of Foreign Affairs, Interior Affairs and Economy and is then submitted to the Council of Ministers. In Portugal, the General Inspection of Internal Affairs carries out, at least once a year, an audit of the procedure of the investment residence permit. The conclusions and recommendations are notified to the First Commission of the Portuguese Parliament (Constitutional Affairs and Fundamental Rights, Freedoms and Guarantees) and are also made available on the Government's website. However, this website only contains one report, which dates back to 2014. It mentions several recommendations, issued due to some inefficiencies of the procedure, inter alia, the development of internal supervision mechanisms and of a procedures manual. Follow-up to this recommendation is unknown. In Ireland, the Evaluation Committee (made up of senior managers in relevant government departments and State agencies involved in Enterprise and Development) convenes at least four times per year, to assess applications for residency under the investor scheme, and provides considerations and recommendations to the Minister for Justice and Equality on the approval or rejection of applications.

111 Bulgaria, Ireland, France, Italy, Cyprus, Latvia, Hungary, Malta, Netherlands, Romania, United Kingdom. In Ireland, the Irish Naturalisation and Immigration Service has provided information via Parliamentary questions on the following items: the number and value of investor scheme applications per annum since 2012 under each investment option, the number and value of immigrant investor programme applications for social housing investment and nursing home investment in 2017, the criteria against which applications are evaluated, the number of applications approved under the investor scheme, the investment funds for which applications under the IIP have been approved to date, the four investment options available under the programme, the amount of money invested in the investor scheme, the members of the Evaluation Committee.

112 Cyprus, Hungary, Malta.

113 Hungary, Malta.

applications, submissions, filings, notifications under the regulations. In Hungary, the Hungarian Parliament's Economy Committee authorised a number of businesses whose role was to issue the residency bonds to be purchased by the applicants. Only one company could receive the authorisation to issue bonds in a given third country[114].

4.2.3. Measures to improve transparency, governance and security

The study shows that annual reporting exercises are still very limited. As regards investor citizenship schemes, there is in general a lack of transparency as regards the applications and the persons who obtain citizenship. In the case of investor residence schemes, the absence of desegregation of statistics, does not allow for the specific ground for residence or the investment option that was chosen to be identified. Data on the numbers of received applications, country of origin and on the number of citizenships and residence permits granted could be usefully published, for example in the form of annual reports. Member States could also clarify and publicise criteria for assessing applications, security checks performed in the framework of the scheme and ensure ex-post monitoring of compliance with these criteria (in particular of the investment) on a regular basis.

In addition, a characteristic of these schemes is the use of businesses which advise the governments on operating the scheme or carry out proactive tasks involving the exercise of the powers of a public authority in managing such schemes, yet at the same time also advise individuals on their applications to the scheme. In none of the Member States studied, whether for citizenship schemes or for residence schemes, is there a mechanism to deal with the risk of conflict of interest that could arise from this situation. The oversight of all other intermediaries is also important. Given the significance of citizenship and residence rights, it might be expected that the examination of applications, interviews and any other decision-making or screening activities would always be done by government authorities, as part of the general need for an effective and independent oversight of the schemes and all actors involved.

Clarity in procedures and in responsibilities, coupled with transparency through regular monitoring and reporting, is the best way to guard against the concerns that investor citizenship and residence schemes raise.

As regards the investor citizenship schemes, to ensure coherence in the practices of Member States and an efficient exchange of information, including as regards prior consultation on security grounds, a system of exchange of information and statistics on the number of applications received, accepted and rejected, as well as consultation on rejected applications for reasons of security should be established. For this reason, the Commission intends to set up a group of experts from Member States to look into the specific risks that arise from investor citizenship schemes and to address the aspects of transparency and good governance with regard to the implementation of both investor citizenship and residence schemes. More specifically, the group of experts should develop of a common set of security checks for investor citizenship schemes, including specific risk management processes that take into account security, money laundering, tax evasion and corruption risks by the end of 2019.

[114] The companies that received authorisation were located in the following countries: Grand Cayman (Hungary State Special Debt Fund), Malta (Discus Holdings Ltd.), Cyprus (Migrat Immigration Asia Ltd., Innozone Holdings Limited), Hungary (Arton Capital Hungary), Russia (VolDan Investments Limited), Liechtenstein (S & Z Program Limited), and Singapore (Euro-Asia Investment Management Pte Ltd.).

5. External dimension

There is also a rising trend in third countries setting up schemes where investors can purchase citizenship, which may have implications for the EU.

5.1. Candidate countries and potential candidates

Due to the prospect of future Union citizenship of the citizens of candidate countries and potential candidates[115], citizenship of these countries becomes increasingly attractive to investors. This is the case already during the accession process as candidate countries and potential candidates develop closer relations with the EU and can obtain the right for their citizens to enter the Schengen area visa-free for short stays[116].

A citizenship investor scheme is in place in Turkey[117] while, in Montenegro, preparations for the implementation of such a scheme, which was adopted in November 2018, were launched in January 2019[118].

In order to prevent such schemes causing risks in the areas outlined in Section 4.1 above, conditions regarding citizenship investor schemes will be included as part of the EU accession process (from the opinion on a country's application for membership up to the closing of negotiations). Countries concerned will be expected to have very robust monitoring systems in place, including systems to counter possible security risks such as money laundering, terrorist financing, corruption and infiltration of organised crime linked to any such schemes.

As concerns **candidate countries and potential candidates**, the Commission will monitor investor citizenship schemes in the context of the EU accession process.

5.2. Other third countries enjoying visa-free access to the EU

Investor citizenship schemes run by third countries can be problematic for several reasons, if the citizenship in question grants visa-free access to the European Union for short stays. For example, the Republic of Moldova, whose citizens have enjoyed a visa-free regime for short

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115 https://ec.europa.eu/neighbourhood-enlargement/countries/check-current-status_en

116 Citizens of Montenegro, Serbia and the former Yugoslav Republic of Macedonia can travel to the EU without a visa since December 2009. For citizens of Albania and Bosnia and Herzegovina, this is possible since the end of 2010. Concerning the visa liberalisation dialogue with Kosovo* launched on (19 January 2012), the Commission reported in 2018 that all established benchmarks had been fulfilled (*this designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence). Concerning the visa liberalisation dialogue with Turkey (launched on 16 December 2013), the Commission continues to support Turkey to fulfil the seven remaining benchmarks.

117 Regulation on the Application of Turkish Citizenship Act (Official Gazette 6 April 2010, 27544), amended by the Regulation on the Changes on the Regulation Regarding the Application of Turkish Citizenship Act (Official Gazette 12 January 2017, 29946) and by the Presidential Decree No. 106 (Official Gazette 19 September 2018, 30540).

118 Decision of 22 November 2018 on the criteria, method and procedure for selection of persons who may acquire Montenegrin citizenship by admission for the purpose of implementation of special investment programs pf special importance for the business and economic interests of Montenegro http://www.gov.me/ResourceManager/FileDownload.aspx?rId=344979&rType=2

stays in the EU since 2014, introduced an investor citizenship scheme in 2018[119]. Some third countries, or the contractors supporting them, have explicitly marketed their citizenship with the argument that it gives visa-free access to the European Union. Investors interested in such schemes are often wealthy nationals of visa-required countries, who could use such schemes to bypass the regular Schengen visa procedure and the in-depth assessment of individual migratory and security risks it entails, including a possible evasion of measures to prevent money laundering and financing of terrorism.

While the European Union respects the right of sovereign countries to decide on their own naturalisation procedures, visa-free access to the Union should not be used as a tool for leveraging individual investment in return for citizenship[120]. The implementation of such schemes will be duly taken into account when assessing third countries that could be considered for a visa-free regime with the European Union. Moreover, third countries that already enjoy visa-free status must carry out security and background checks of applicants for citizenship schemes to the highest possible standards; any failures in this regard could be grounds for re-imposing a visa requirement and suspending or terminating visa waiver agreements.

The Commission will monitor the impact of investor citizenship schemes implemented by **visa-free countries** as part of the visa-suspension mechanism.

6. Conclusions

Investor citizenship and residence schemes pose risks for the Member States and the Union as a whole, including in terms of security, money laundering, corruption, circumvention of EU rules and tax evasion.

The abovementioned risks are further accentuated by shortcomings in the **transparency and governance** of such schemes. The study commissioned by the Commission shows that the information available on both investor citizenship and residence schemes operated by Member States is incomplete. For instance, clear statistics on applications received, accepted and rejected are missing or insufficient. Furthermore, there are no mechanisms to ensure cooperation between the Member States on investor citizenship schemes, notably on security checks. The Commission has concerns about the risks inherent in investor citizenship and residence schemes and about the fact that the risks are not always sufficiently mitigated by the measures taken by Member States.

The Commission will monitor the steps taken by Member States to ensure transparency and good governance in the implementation of the schemes, with a view to address, in particular risks of infiltration of non-EU organised crime groups in the economy, money laundering, corruption and tax evasion. With a view to Member States improving the transparency and governance of the schemes, the Commission will establish a group of experts to further address matters of transparency, governance and security.

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[119] The *Moldova Citizenship-by-Investment (MCBI)* programme is governed by the Law No. 1024 of June 2, 2000 "on the citizenship of the Republic of Moldova" and the Government Decision No. 786 of October 4, 2017 "on acquiring citizenship by investment". On 6 November, the Moldovan Citizenship-by-Investment program was officially launched at the 12th Global Residence and Citizenship Conference, held in Dubai.

[120] See for instance: https://vic.vu/citizenship/ ("Key benefits of Vanuatu Citizenship").

The Commission will monitor wider issues of compliance with EU law raised by the schemes and it will take necessary action, as appropriate.