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CITIZENSHIP BY INVESTMENT - LATEST DEVELOPMENT IN THE EUROPEAN UNION

Lucia Bocková – Rudolf Kucharčík*

ABSTRACT

This paper covers citizenship by investment (CBI) schemes in the European Union (EU) context which allow to acquire nationality of the EU member state through targeted investments. We were verifying whether the negative attitude of the EU towards the CBI schemes of member states and the ongoing war in Ukraine threaten their very existence. In order to achieve the objective, we analysed the rules on the acquisition of citizenship by naturalization as well as the relationship between nationality of the EU member states, which is still their exclusive competence and the EU citizenship status. Subsequently, we compared CBI schemes of three EU member states (Bulgaria, Cyprus, Malta). The results show that the EU has put pressure on member states to cancel their CBI programs because of the complex relationship between the national citizenship on the one hand and the EU citizenship and related rights enforceable across the whole EU on the other hand. This EU pressure has been further intensified following the war in Ukraine. The reason is that Russian nationals made up a significant number of CBI applicants and also because some Russian or Belarusian nationals who are supporting the war in Ukraine might have acquired EU citizenship under CBI schemes. Of the three countries we analysed, only Malta currently has a valid CBI program. Bulgaria and Cyprus abolished their CBI programs. This development indicates that the EU has gradually succeeded in eliminating the existence of CBI in the EU member states. However, it is not yet clear whether this practice of member states is contrary to the EU law. We assume that the Court of Justice of the EU will resolve this question in the ongoing infringement procedure initiated by the European Commission against Malta.

Key words: Nationality, Naturalisation, Citizenship by Investment, European Union Member States, European Union Citizenship

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Introduction

Granting citizenship to investors is becoming increasingly commonplace in state practice in different parts of the world and the European Union (EU or Union) is no exception. Recently, the EU member states have witnessed a growing trend in investor citizenship schemes or citizenship by investment programmes (CBI schemes or CBI programmes) which aim to attract investment in exchange for citizenship of the country concerned. That is why these programmes tend to be informally called “citizenship for sale” or “golden passports”.¹ CBI can be described as official programme launched by the state to bring in investors who donate money to the state or invest in its territory. Then they are granted citizenship of the state concerned as a reward under less stringent conditions than under ordinary naturalisation regime. CBI can be obtained under the substantive and procedural conditions, that have to be fulfilled. CBI schemes of states cover “*naturalisation on the basis of broadly defined national interest grounds*” or “*naturalisation of investors, in particular through separate provisions in citizenship laws and subsidiary legislation*” (Džankić, Psaila, Leigh, Gómez Rojo, 2018, p. 5). Despite having common features, national CBI schemes vary in terms of these requirements including residency and investment criteria incumbent on the applicants (Scherrer, Thirion, 2018). A specific feature of CBI programmes in the EU member states is their interconnection with EU citizenship which is dependent on and additional to national citizenship. As part of the facilitated naturalisation procedures, CBI is available in number of countries worldwide and has grown to become a huge global industry. In the last few years, CBI programmes have triggered debate and criticism, notably in relation to the question of fairness, the genuine link criterion and the EU principle of sincere cooperation. In addition, naturalisation of investors via CBI schemes is associated with potential risks in terms of security, money laundering, tax evasion and corruption.

CBI topic has received the special attention and has become the subject of literature in recent years. A leading author in the field of wealth-based citizenship acquisition is **Džankić** and her study “*The Global Market for Investor Citizenship*” (Džankić, 2019). Her earlier works include inter alia working papers “*The pros*

¹ Beside CBI schemes, states have also legal mechanisms for granting residence rights (including valid residence permit) in exchange for investment, so called investor residence schemes or residence by investment programmes (RBI) known as “golden visa”. In this paper, we will focus purely on CBI schemes.

and cons of *ius pecuniae*: investor citizenship in comparative perspective” (Džankić, 2012b) and “Investment-based citizenship and residence programmes in the EU” (Džankić, 2015). Other authors also deal with the issue. **Carrera** in his paper “How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?” analyses relevance of CBI schemes for current and future configurations of citizenship of the EU (Carrera, 2014). **Kochenov** in his study “Genuine Purity of Blood: The 2019 Report on Investor Citizenship and Residence in the European Union and its Litigious Progeny” critically evaluates the EU’s position towards CBI schemes (Kochenov, 2020). “The Quality of Nationality Index” of the creators **Kochenov and Kälin** ranks the objective value of all nationalities of the world and is relevant in that provides information on CBI (Kochenov, Kälin). Many reports and analyses regarding citizenship topic of different authors are available at the Global Citizenship Observatory (Globalcit)² with a focus on citizenship laws around the world. Relevant sources include official documents and reports adopted at the EU level by the European Parliament (EP) and European Commission (EC), particularly “Resolution on EU citizenship for sale” (EP, 2014), study of **Scherrer and Thirion** “Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU” published within the European Parliamentary Research Service, focusing on state of play, issues and impacts (Scherrer, Thirion, 2018) and report “Investor citizenship and residence schemes in the European Union” mapping the existing practices and risks such programmes imply for the EU, in particular as regards security, money laundering, tax evasion and corruption (EC, 2019). Furthermore, the other global international institutions published their documents on the topic. The risks arising from CBI and RBI schemes are highlighted in critical report “European Getaway: Inside the Murky World of Golden Visas” (Transparency International and Global Witness, 2018). OECD in its press release “OECD clamps down on CRS avoidance through residence and citizenship by investment schemes” pointed out that these schemes can also be potentially misused to hide their assets offshore by escaping reporting under the OECD/G20 Common Reporting Standard and identified those schemes that potentially pose a high-risk (OECD, 2018). At the national level, CBI schemes of individual states are regulated in their legislation and we focused on the legislation of Bulgaria, Cyprus and Malta. In conclusion,

² Global Citizenship Observatory is the successor of EUDO Citizenship Observatory established in 2008.

this paper takes into account all relevant sources, including recent publications and laws on CBI topic.

The aim of this paper is to verify whether the negative attitude of the EU and the ongoing war in Ukraine threaten the very existence of CBI schemes in EU member states. A key concept in the context of CBI is the acquisition of citizenship by naturalisation which is clarified in the first section. We also focus on the main characteristics and typology of CBI schemes. In the second section consideration is given to the relationship between nationality of the EU member states and the EU citizenship status from the perspective of CBI schemes. At the same time, we identify the reasons for the EU's critical attitude towards the CBI schemes of member states, for which these national programs represent an economic benefit. The third section of the paper analyses CBI schemes of three EU member states (Bulgaria, Cyprus, Malta). We focus on mapping and comparing the various approaches of these European states regarding CBI programmes. By identifying general conditions across these states and analysing different CBI programmes, we highlight their variability. In the fourth section we point out the latest development of CBI programs in the context of international relations. It is clear that Russia's invasion of Ukraine has a major impact on the functioning and existence of CBI schemes not only in the EU member states but also outside the EU.

1. Naturalisation - a way of obtaining citizenship by investment

Citizenship denotes the relationship between the individual and the state which requires citizens to undertake certain responsibilities including obedience to the laws governing the state and the state then rewards the citizens by giving them rights to work, own property, vote, etc. **Mentzelopoulou** and **Dumbrava** explain that “*citizenship is a complex legal and socio-political concept with three major components, firstly, legal status which describes a legal bond between a person and a state, secondly, series of rights and obligations and thirdly, national identity, which have regained the spotlight in the context of recent debates about immigration and integration*” including CBI topic (Mentzelopoulou, Dumbrava, 2018, p. 2). According to the CJEU “*the special relationship of solidarity and good faith between state and its nationals and also the reciprocity of rights and duties form the bedrock of the bond of nationality*” (CJEU, 2010, Rottman, para 51). Essentially, “citizenship” and “nationality” are treated as synonymous and they

will also be considered as such for the purpose of this paper. *“While ‘nationality’ is preferred legal term, ‘citizenship’ is used more broadly to describe the rights and obligations linked to this formal status”* (Mentzelopoulou, Dumbrava, 2018, p. 2).

Under the Hague Convention on Nationality, states themselves decide on who their citizens are (League of Nations, Convention, 1930, Article 1). Generally, we can identify different ways of acquisition of citizenship of the state. Acquisition of citizenship at birth can be by either by descent (*ius sanguinis*) or by birth in the territory (*ius soli*) which is automatic acquisition linked to circumstances of birth. States also give possibility to those who are not “natural born” citizens to acquire citizenship through naturalisation. Naturalisation is never automatic but requires an application by the individual concerned. States tend to have provisions for the naturalisation of the immigrants in their legal systems. There is a lot of variation with regard to naturalisation conditions and procedures among states. Moreover, there exist different categorizations of naturalisation. EC classifies three types of naturalisation (EC, 2019, p. 2-3). Firstly, citizenship can be acquired on the basis of a various “ordinary” naturalisation procedures, provided the immigrants fulfil certain conditions (EC, 2019, p. 2). They often entail *the “physical link with the state (residency), knowledge of socio-cultural norms (language and culture tests), moral standing and financial sustainability”* (Džankić, 2012b, p. 1). In this context **Bauböck** argues that *“naturalization should be an entitlement for those who meet the residence condition rather than a discretionary decision by the authorities”* (Bauböck, 2018, p. 66). Secondly, we can identify discretionary naturalisation procedures under which *“states award their citizenship to third-country nationals in individual cases on the basis of national interests in different areas e. g. sport, culture, science”* and legislation of some states provides that *“national interest can be equated with economic or commercial interest”* (EC, 2019, p. 2-3). Thirdly, some states have specific programmes, broader CBI schemes, that are considered as a *“new form of naturalisation because they systematically grant citizenship, provided the applicant fulfils certain criteria for naturalisation including making required investment”* (EC, 2019, p. 3). **Džankić, Psaila, Leigh, Gómez Rojo** in their study distinguish between ordinary naturalisation, discretionary naturalisation on the grounds of national interest and discretionary facilitated naturalisation on the grounds of national interest (Džankić, Psaila, Leigh, Gómez Rojo, 2018, p. 4-5), whereas both types of naturalisation procedures on the grounds of national interest can be used to naturalise foreign investors. *“Discretionary naturalisation on the grounds of national interest entails waiving all*

of the substantial criteria applicable to ordinary naturalisation. Discretionary facilitated naturalisation on the grounds of national interest refers to naturalisation whereby substantial naturalisation criteria constituting the notion of genuine link are alleviated but not waived” (Džankić, Psaila, Leigh, Gómez Rojo, 2018, p. 5). In CBI context even these different categorizations of types of naturalisation prove that there is no uniform consensus on the definition of CBI schemes.

Van den Brink distinguishes two opposing trends in the evolution of rules on the acquisition of citizenship by naturalization. The first one is related to the adoption of tougher rules of acquiring citizenship through naturalisation by many states in recent years. The essence of the second trend is the lowering of rules for those with financial resources large enough to acquire citizenship by investment (Van den Brink, 2020, p. 1, 8). In practice, these developments lead to inequalities in respect of the possibility of acquiring national citizenship. On the one hand, states with strict naturalisation rules may deny the possibility of naturalisation of foreigners whose social membership cannot be in doubt. On the other hand, as CBI schemes show, states allow a selected group of third-country nationals without any meaningful social ties to acquire their citizenship. From this perspective the concept of granting citizenship to investors is problematic while rich people can simply “buy” citizenship but there are many people who have put their roots even in Europe or refugees and they are still waiting for citizenship from EU countries.

These inequalities can be “*tackled via conditioning the acquisition of citizenship on a genuine link requirement*” (Van den Brink, 2020, p. 1). **Bauböck** explains that “*genuine link is a doctrine in public and private international law that is invoked to establish or dispute the right of states to award their nationality and to grant diplomatic protection to or impose duties on individuals whom other states also claim as their nationals*” (Bauböck, 2018, p. 44). This doctrine was established in the *Nottebohm* case of 1955 in which the International Court of Justice (ICJ) ruled that the conferral of citizenship should depend on the existence of the genuine link with the conferring state. In other words, citizenship should only be granted to people who can demonstrate a real bond with their new country. **Bauböck** furthermore argues, that “*genuine link can serve as a critical standard for assessing the strength of ties between an individual and a particular polity.*” However, the content of the genuine link varies from state to state and “*cannot be measured in a uniform way either as a subjective sense of belonging or through objective indicators such as duration of residence or family ties in the territory of the state*” (Bauböck, 2018, p. 44). Previous residence in the country

can arguably “constitute one of the more objectively verifiable factors” of the genuine link (Scherrer, Thirion, 2018, p. 24). Generally, CBI programmes “may or may not require the applicant to reside in the country prior to naturalisation” (Džankić, 2012b, p. 3). Obligatory residence is beneficial for the country because the investor pays taxes and also helps to improve the state’s economy by creating additional jobs or increasing the consumption of goods (Džankić, 2012a). In case investors are not bound by residence, “the granting of citizenship is based on the assumption that the investment is a sufficient proof of an individual’s commitment to the new polity” (Džankić, 2015, p. 5). The genuine link argument and in particular physical residence factor has been used by EU institutions in order to tackle CBI programmes of its member states. The absence of “physical presence requirement for a stipulated period of time meaning effective residence” is one of the reasons why CBI schemes have their critics (EC, 2019, p. 4) because they simply cannot create a link between the applicant for citizenship and the country concerned. Should the genuine link to the country be a prerequisite to the granting of citizenship by state? The requirement of a genuine link in the form of an effective residence criteria for the applicant to benefit from the fast-track naturalisation poses a “fundamental dilemma from the angle of EU citizenship” (Carrera, 2014, 27). EP and EC place a strong emphasis on whether CBI schemes are in accordance with the genuine link criteria. But there is also growing resistance to the idea of making the acquisition of citizenship subject to a genuine link requirement. **Kochenov** argues “that not caring about the county and its purported “values” will not make you less of a citizen in the eyes of the law, just as caring a lot about some officially endorsed “culture” or language will not make you a citizen, unless you are named as such by law” (Kochenov, 2020, p. 20).

Džankić explains that “in the context of the competitive market pressures that exist in the era of global economic interconnectedness, citizenship has become a good with which both states and investors seek to optimise their performance” (Džankić, 2012b, p. 2). CBI schemes reduce citizenship to a commodity that is traded for money and not for genuine ties with the state, as is the case in ordinary naturalisation. Those states who grant citizenship by investment are of the opinion that individuals who support the economy via investment or donation have fulfilled their responsibility and should deserve citizenship in return. Wealth becomes an essential factor that provides advantages for getting citizenship. However, this “economic logic behind facilitated naturalisation for investors undermines the very nature of citizenship” (Džankić, 2012b, p. 2). **Džankić** further argues that the investor citizenship schemes have an economic rationale

because these programs are either aimed at recovering the state's economy, or to have a positive spill-over on the state's economy (Džankić, 2012b, p. 6). For example, in the aftermath of the collapse of the banking sector and the financial crisis in 2009 these schemes became part of citizenship legislation of some member states within the EU. In this economic context CBI programmes differ greatly by their goals. Usually, the more developed states prefer to attract new wealthy citizens, who will effectively invest their capital into the country's economy. This brings long-term economic advantages for the states and via applying such approach the states are trying to avoid their CBI programmes being labelled as "passport for sale" schemes. Other countries prefer requiring irrevocable contributions or donations to the state or combination of both, making the investment in the economy of the state and irrevocable contribution. The higher the irrevocable contribution requirement, the more the program is considered to be "passport for sale" scheme. While states seek individuals that will maximize their wealth, investors aspire to citizenship in those states whose domestic policies best matches their preferences. *"Investors coming from countries issuing low-quality citizenships are more than ready to pay a lot of money for a more dignified, more useful and often less abusive status, given the role which citizenship plays in our lives"* (Kochenov, 2020, p. 8). But the motivation of third-country nationals to apply for CBI schemes can vary:

- personal safety via gaining a nationality of peaceful country can be life-saving in the event of any kind of political unrest in investor's home country;
- holding a citizenship of particular state can offer investor increased global mobility if that state has visa-free regime with a large number of countries worldwide, such as citizenship of EU member states;
- new business opportunities on the territory of the host country, in case of holding citizenship of EU member state, even on the territory of the whole EU;
- tax optimization;
- access to a good quality of life including high level of social welfare, health care and education (Scherrer, Thirion, 2018, p. 17-18).

Furthermore, the CBI schemes are usually available to the family members (e. g. spouse, children) of the main applicant, which means that investor can secure all benefits of holding citizenship of another country to the whole family. It follows that CBI schemes bring benefits to both states and individuals.

Worldwide we can distinguish in CBI context three categories of states:

- where gaining of citizenship for investment is not possible;
- where gaining of citizenship for investment is possible but it is more complex and accompanied by multiple naturalisation conditions, which commonly correspond to the ones for “ordinary” migrants;
- where gaining of citizenship for investment is possible and their CBI programmes have low bar for investors to access the national citizenship, e. g. clean criminal record, an oath of allegiance, residence requirements that are as low as one year (Džankić, 2015, p. 4).

In this paper we focus on the last category of states which has developed CBI programmes aimed at attracting wealthy foreign investors by facilitating an accelerated access to their citizenship. Since 1984, when Saint Kitts and Nevis introduced CBI scheme (Džankić, 2012a)³, investment in the host country has been another way of acquiring citizenship. CBI programmes have their origins and are common in Caribbean states (Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis and Saint Lucia). Within the EU, three member states pioneered the idea of enabling qualifying candidates to obtain fast-track citizenship by making investment, namely Bulgaria (2005), Cyprus (2007), and Malta (2013). Currently, only Malta has legitimate CBI program, Cyprus abolished it from 1 November 2020 and Bulgaria abolished its CBI scheme on 24 March 2022.

2. Citizenship by investment from European Union citizenship perspective

CBI programmes of EU member states “*present an evident European dimension*” (Carrera, 2014, p.1). Granting of member state nationality goes hand in hand with the supranational status enshrined in citizenship of the EU. “*The EU is the first and so far, the only supranational entity in the world to extend citizenship status to some of the persons within its jurisdiction*” (Kochenov, 2009, p. 171). The way the CBI schemes have developed in some EU member states can be seen as a “*step forward in the Union’s role in the changing relationship*”

³ Saint Kitts and Nevis runs the oldest program for granting citizenship on grounds of investment. The program was established in 1984 and the main rationale for establishing CBI was the islands’ weak economy.

between nationality and citizenship of the EU" (Carrera, 2014, p. 3).

The national citizenship is attribute of state sovereignty and is therefore governed by national law. The nationality matters, including the right to regulate the acquisition and loss of national citizenship in way that reflects member states interests, lie within their exclusive competence. All EU member states have their own laws covering nationality issues therefore these matters are regulated differently within the EU. At the same time *"the process of integration will inevitably result in a certain harmonization of nationality legislation of all EU member states"* (Kochenov, 2009, p. 183). However, although the EU has no legal competences in the area of national citizenship, the autonomy of the member states in the regulation of nationality has *"become increasingly contested"* (Carrera, 2014, p.1). *"Years of cooperation have meant that both legal orders have become so intertwined, that an exclusive member state competence cannot be separated from an EU competence"* (Oosterom-Staples, 2018, p. 433). In particular, the CJEU by its rulings slightly pushes boundaries of the role of EU law in nationality matters. CJEU *"has gradually broadened the scope of EU citizenship in relation to national citizenship by imposing certain limits to the power of member states to regulate nationality"* (Mentzelopoulou, Dumbrava, 2018, p. 8). The question is the extent to which member states are still free to lay down the grounds for the acquisition and loss of nationality without any *"EU supervision and accountability"* (Carrera, 2014, p. 2). It is established case law, that member states must exercise their powers in the sphere of nationality *"having due regard to EU law"* (CJEU, 1992, Micheletti, para 10; CJEU, 2004, Zhu and Chen, para 37). **Van den Brink** explains that *"existing case law of the CJEU imposes two restrictions on the powers of the member states in the sphere of nationality, the first concerns the recognition of nationality (CJEU, 1992, Micheletti, para 10; CJEU, 2003, Garcia Avello, para 28) the second concerns the loss of nationality (CJEU, 2010, Rottman, para 42; CJEU, 2019, Tjebbes, para 32), but none of these decisions concerns the acquisition of nationality"* (Van den Brink, 2020, p. 15).

The EU citizenship has been formally established in the EU law by the Treaty on European Union (TEU) in 1992 as a mechanism of promoting European values and identity.⁴ The idea behind its introduction was that by according the status of

⁴ The TEU was signed on 7 February 1992 and entered into force on 1 November 1993. Following the latest Lisbon revision of founding Treaties (the Treaty of Lisbon signed on 13 December 2007, entered into force on 1 December 2009), the EU citizenship is regulated in the TEU (Article 9), Treaty on the

EU citizen to the nationals of member states this would bring the EU closer to its citizens. The EU citizenship is the legal and political expression of membership in a larger community than a state, namely, EU. Every national of any EU member state holds the status of EU citizenship. Nationality of EU member state is a necessary prerequisite for the acquisition of EU citizenship. Holding the nationality of EU member state is the one and only condition for being EU citizen. In this aspect, EU citizenship is the derivative status of nationals of the EU member states which “*mediates the relationship of nationals of EU member states with those member states of which they are not nationals*” (Van den Brink, 2020, p. 4). In this connection **Kochenov** is talking about “*ius tractum*”, since the EU citizenship status is purely derivative (Kochenov, 2009). Furthermore, the EU citizenship has complementary nature. It does not replace national citizenship, but it entails a series of additional rights that can enjoy nationals of member states at the EU level. Over the years, we have witnessed an extension of rights associated with the EU citizenship, which include political rights (voting in EP and municipal elections, accessing documents of EU institutions, petition to the EP, apply to the Ombudsman, right to communicate with the EU institutions in official languages, citizens’ initiative), rights of free movement (right to free movement and residence) and rights abroad (right to consular protection). From CBI perspective, naturalised citizens by investment enjoy all the rights that pertain to member states citizens. The right to move and reside freely within the territory of the member states (Article 21 of the TFEU) is considered as most attractive for investors from third countries. It is not surprising because holding a citizenship of the EU member state ensures more freedom than any other citizenship in the world. The passport of any of the EU member state provides free movement and residence in the EU and visa-free travel to virtually any country in the world.

The investment schemes were previously connected with the granting of long-term residency on the territory of the EU member states, but never to the granting of citizenship. The criterion of investment in the economy of the country as a valid ground for the granting of citizenship introduces a new value in the citizenship policy of EU member states. Although CBI are national schemes of member states, they are often “*marketed and advertised as a means of gaining citizenship of the EU, together with all rights and privileges associated with it*”

Functioning of the EU (TFEU) (Articles 20-25) and Charter of Fundamental Rights of the EU (Articles 39-46).

(EC, 2019, p. 1). Subsequently, rights deriving from the EU citizenship, additional to those of national citizenship, “*create an opportunity for member states to treat their citizenship as a commodity and exchange it for investment*” (Džankić, 2015, p. 1). Member states concerned use the benefits of EU citizenship to “*increase the value of their national citizenship*” and to attract a greater number of investors (Džankić, 2015, p. 10).

Carrera emphasizes that CBI schemes have placed at the forefront the EU general principle of sincere cooperation in nationality matters (Carrera, 2014). It is because the access to the rights deriving from the EU citizenship has a cross-border dimension, affecting all member states. The principle of sincere cooperation or loyalty is enshrined in Article 4 (3) of the TEU, which “*provides for an obligation of member states: 1. to actively ensure compliance with the EU Treaty, 2. to facilitate the achievement of Union tasks, and 3. to abstain from any contravening measures*” (Klamert, 2014, p. 1). Loyalty requires that member states also in the case of CBI schemes refrain from adopting regulatory measures that could jeopardise the attainment of the EU’s objectives. This principle “*applies to the member states even when they act within their own competences*” (Klamert, 2014, p. 24).

CBI programmes generated controversy at the EU level and have been perceived with reluctance by the EU institutions for some time now. It even led the EC President **Ursula von der Leyen** to state in her speech on 16 September 2020 that “*European values are not for sale*”, explicitly mentioning sale of golden passports (Von der Leyen, 2020). The main reason that EU institutions have criticised these practices relates to the fact that the EU citizenship is derived from the citizenship of the member states. The EP and EC responded to the outright “selling” of nationality to rich foreigners and they issued number of documents which were generally negative towards CBI schemes. The EP was the first to draw attention to such nationality granting rules. On 16 January 2014, the EP adopted non-binding resolution on EU citizenship for sale (EP, 2014) in which it expressed its general concerns about the practices of some member states, specifically mentioning Malta, introducing citizenship schemes which directly or indirectly result in the sale of EU citizenship to third-country nationals. The EC’s action in this area was a critical report on investor citizenship and residence schemes operated by EU member states published on 23 January 2019 (EC, 2019). The document mapped the existing practices and identified the risks such programmes implied for the EU. Although individuals who “purchase” citizenship in the EU member states can do it for legitimate reasons, the EC considered the

schemes pose risks of infiltration of non-EU organised crime groups in the economy, money laundering, corruption and tax evasion (EC, 2019). Recently, the EC had hardened its position against CBI schemes. On 20 October 2020, the EC formally launched infringement procedures under Article 258 of the TFEU against Cyprus and Malta by sending a formal notice regarding their investor citizenship schemes. The EC considers that both states may have violated EU law by granting of their nationality and thereby EU citizenship in return for a fee without a genuine link with the member state concerned. In the opinion of the EC, the investor citizenship programs are “*not compatible with the principle of sincere cooperation enshrined in Article 4 (3) of the TEU*” and they “*undermine the integrity of the status of EU citizenship provided for in Article 20 of the TFEU*” (EC, 2020a). EC announced, that it had decided to take further steps in the infringement procedures against both countries in this matter. In case of Cyprus, the EC issued a reasoned opinion (9 June 2021). In case of Malta, the EC sent additional formal notice (9 June 2021) and issued a reasoned opinion (6 April 2022) (EC, 2021). Because the reply of Malta was not satisfactory, the EC decided to refer Malta to the Court of Justice of the EU (29 September 2022) (EC, 2022c). The EC has not yet initiated the infringement procedure against Bulgaria, only wrote to that member state about its concerns regarding Bulgarian CBI scheme (EC, 2020a).

In conclusion, **Kochenov** argues, that “*not only the refugees and asylum seekers coming to Europe are demonised and subject to intense prejudices, but millionaires can also be a problem for “fortress Europe”, especially if they “buy” the sacred privileges of Europeaness.*” He further explains that EU resistance against the phenomenon of investment migration in Europe “*can be extremely costly, as the marketisation on citizenship and residence can bring billions of euros to the member states’ crisis-stricken budgets*” (Kochenov, 2020, p. 1-2).

3. Citizenship by investment in practice of the European Union member states

The important factor for the potential citizenship candidate is whether the country that offers CBI scheme is the European country or the EU country. The EU member states nationality provides right to live in all EU countries. The European states, but non-EU, allow via their nationality the residency only within their own territory, which is much more limiting for the citizenship candidate. In this section, we will focus on CBI programmes operated in the past and at the

present in the three EU member states, namely Bulgaria, Cyprus and Malta.

CBI programmes vary from country to country in several areas, notably residence or other required links to the state and amount and type of investment required. From the perspective of potential applicants for CBI, the timeframe to obtain citizenship, the required investment amount and cost of the programme are the most important characteristics of any CBI scheme. As regards residency requirement in Bulgaria, Cyprus and Malta applicants can apply for citizenship after holding a residence permit for the required timeframe. However, the investors are not obliged to reside in practice in the territory of the state concerned. Required amount of money invested in Cyprus is significantly the highest. Furthermore, there can be identified various types of investment options, including capital investment in a company and in financial institutions' instruments, investment in real estate, investment in state bonds, donation supporting an activity contributing to the public good (e. g. art, sport, health, culture, education, philanthropy, research), one-time contribution to the state budget, or non-financial investment (e. g. creation of jobs) (Džankić, Psaila, Leigh, Gómez Rojo, 2018, p. 30). From all these three European countries, only Bulgaria requires investment and no donation or contribution. Cyprus and Malta apply the model of donations or contributions and investment. In addition to meeting the investment requirements, applicants have to pay non-refundable administrative fees, which are part of the application process (EC, 2019, p. 3). Apart from residency and financial requirements, to qualify for citizenship, applicants have to meet additional criteria. These usually refer to age (18 years in all four countries), health insurance and clean criminal record. The potential criminal history disqualifies applicants from the process of acquiring citizenship by naturalization. For this purpose, each application is subject to a due diligence assessment and control, focusing on security aspects as well as the source of the applicant's funds used in the investment. If the applicant meets all requirements, the citizenship by naturalization can be granted. These states also allow the acquisition of citizenship by family members (e. g. children, spouse) of a CBI applicant, under certain conditions.

Despite proclamation about stringent application process and strict due diligence standards, the reputation of investments programmes, in particular CBI of Cyprus and Malta, is questionable. The application of CBI schemes of these two states shows *"the ways in which insufficient due diligence, wide discretionary powers of states authorities and conflicts of interest can open Europe's door to the corrupt"* (Transparency International and Global Witness, 2018, p. 3).

3.1 Bulgaria

Bulgaria is a member state of the EU since 2007 and is currently in the process of joining the Schengen area. The country is not yet member of Eurozone (the Bulgarian lev is the official currency (BGN)). The status of the foreigners and their naturalisation through investment in order to become Bulgarian citizens is covered in the Bulgarian Citizenship Act and the Foreign Nationals in the Republic of Bulgaria Act which are the main acts regulating Bulgarian CBI. First CBI scheme was introduced in the Bulgarian legislation in 2005 (Vasileva, 2018, p. 1), which allowed granting of permanent residency in Bulgaria to foreigners who invested in the Bulgarian economy and after holding the investment and permanent residency for a period of five years, the investor was eligible to apply for Bulgarian citizenship. Since then, the CBI scheme has been further developed and in 2013 the other so-called fast-track procedure was introduced (Paskalev, 2013). Despite the information from the past about closing CBI programme because of the criticism of the EU and due to lack of interest from foreign investors (Weingerl, Tratnik, 2019, p. 99) Bulgaria did not cancel it. On the contrary, an amended CBI programme with updated conditions was introduced in March 2021. Only the war in Ukraine led Bulgaria to abolish its CBI scheme on 24 March 2022. Regardless of this fact, we will explain the Bulgarian CBI programme.

Since 2013, we could identify two Bulgarian CBI schemes:

- under “ordinary” or “standard” CBI scheme (Bulgarian Citizenship Act, 1998, Article 12a) a non-Bulgarian citizen who has obtained a permit for permanent residence in Bulgaria on the grounds of making certain type of investments and maintained the validity of such permanent residence permit for at least five years from the date of its issuance, could obtain a Bulgarian citizenship through naturalization,
- under “fast-track” CBI scheme (Bulgarian Citizenship Act, 1998, Article 14a) a non-Bulgarian citizen who has obtained a permanent residence permit at least a year ago on one of the grounds of making certain types of investments and has increased the investment up to certain levels as provided for by the law could acquire Bulgarian citizenship by naturalization.

The main difference between these two options was the speed of obtaining citizenship and the required investment. The fast-track scheme allowed investors to apply for citizenship faster by doubling their investment.

Bulgarian CBI programme was two-staged process. The first step was obtaining permanent residence for the applicant (Foreign Nationals in the Republic of Bulgaria Act, 1998, Article 25 (1) 6, 7, 13, 16), which was the prerequisite for gaining Bulgarian citizenship. In order to obtain it, applicant had to make first investment in Bulgaria ranging from €256,000 (500,000 BGN) to €1,024,000 (2,000,000 BGN) in one of the investment choices (see Table 1). The investment could be done in financial instruments (shares, bonds, investment funds) and direct investments in Bulgaria.

Table 1: First investment for obtaining permanent residence permit in Bulgaria (amendments 2021)

Type of investment	Amount of investment
Shares or bonds of Bulgarian companies traded on the Bulgarian Stock Exchange	€1,024,000
Bulgarian concession contracts and rights	€512,000
Shares of investment funds with investment focus on Bulgaria	€512,000
Shares of alternative investment funds with investment focus on Bulgaria	€512,000
Participation in Bulgarian company carrying on a Certified Priority Investment Project	€1,024,000
Participation in certified investment project	depends on the particular project
Participation or creation of Bulgarian trading company/ employing 10 Bulgarian nationals	€256,000

Source: own compilation based on the Foreign Nationals in the Republic of Bulgaria Act as amended and supplemented in 2021.

Once the applicant received the permanent residence permit, there were two options to obtain Bulgarian citizenship via ordinary CBI scheme or fast-track CBI scheme. The ordinary scheme enabled applicant, without any further investment, to obtain Bulgarian citizenship after a waiting period of five years. The fast-track scheme enabled the citizenship candidate to make additional second investment (see Table 2) and obtain Bulgarian citizenship in only one year after permanent residency status has been granted. In the case of fast-track procedure required total investment (first and second) was from €512,000 (1,000,000 BGN) to €2,048,000 (4,000,000 BGN).

Table 2: Second investment for obtaining Bulgarian citizenship (amendments 2021)

Type of investment	Amount of investment
Ordinary CBI scheme	
No additional investments	
Fast-track CBI scheme	
Option 1: Doubling of the investment	
Shares or bonds of Bulgarian companies traded on the Bulgarian Stock Exchange	from €1,024,000 to €2,048,000
Bulgarian concession contracts and rights	from €512,000 to €1,024,000
Shares of investment funds with investment focus on Bulgaria	from €512,000 to €1,024,000
Shares of alternative investment funds with investment focus on Bulgaria	from €512,000 to €1,024,000
Participation in Bulgarian company carrying on a Certified Priority Investment Project	from €1,024,000 to €2,048,000
Option 2:	
Additional investment in Bulgarian company carrying on a Certified Priority Investment Project	€512,000
Option 3:	
Increasing the investment in the capital in Bulgarian trading company/ increasing the number of Bulgarian employees from 10 to 20	from €256,000 to €512,000
Option 4:	
Maintaining the participation in certified investment project and the investments in the project have been maintained above required minimum investment class "A" as per the Bulgarian Investment Promotion Act ⁵	

Source: own compilation based on Bulgarian Citizenship Act as amended and supplemented in 2021.

There was no limitation on the number of admissions to CBI in Bulgaria. Regarding the residency, there was no requirement for physical presence in the country for stipulated period of time prior the application, or even after naturalisation. Bulgarian CBI programme allowed investors to apply for citizenship without satisfying some of the conditions for the ordinary naturalisation, namely they did not need to pass any language or history tests, nor to surrender their existing citizenship (Paskalev, 2013). The investors had to prove that the source of their funds is legitimate with a clear origin. The money could be invested in one or more options at the same time. Applicants were not

⁵ Bulgarian Investments Promotion Act, SG No. 97, 24 October 1997, as subsequently amended and supplemented.

required to buy any non-liquid assets such as real estate or to pay any irrevocable donations. After passing the amendments in 2021, the option to invest in Bulgarian government bonds had been replaced by other alternatives allowing wider investment diversification and that were more beneficial to the investor and more sustainable for the economy. While the government bond option was a passive, guaranteed investment, the new investment requirements reflected a higher risk profile. New amendments foresaw stricter control by the authorities on the investment process and more throughout checks of the candidates prior the initiation of the investment. Condition of the CBI programme was for the investment to be maintained by investor at least five years what was supposed to keep it in the Bulgarian economy longer. There were no non-public bodies officially involved in the CBI programme. Applicants could choose to employ consultants or lawyers to offer advice during the preparation of the documents, but these were not part of the CBI procedure (Vasileva, 2018).

The Bulgarian CBI programme was not as popular with investors as programmes of Cyprus and Malta despite prospect of becoming EU citizens. The Bulgarian officials conducted robust background checks which may have discourage some investors. As a result, Bulgaria had granted citizenship to less investors and there were fewer cases of citizenship being granted to internationally sought people, compared to Cyprus and Malta.

Since adoption of amended CBI programme in 2013 until 23 February 2021, a total of 452 CBI applications have been submitted. Of these, 206 have been filed under fast-track CBI scheme and another 246 applications have been filed under ordinary CBI scheme. A total of 93 individuals were granted citizenship, 84 under fast-track CBI scheme, 9 under ordinary CBI scheme and 186 applications have been rejected (Bulgaria amends its citizenship law, 2021).

One of the reasons why Bulgaria could have retained CBI programme, and ended it only after the war in Ukraine started, was that the country was not marketing it aggressively. It was not presented as passport for sale scheme and the Bulgarian budget did not benefit from CBI candidates. The investment was and remained applicants' investment. However, after eight years of running of CBI programme Bulgaria has not benefitted from it and the scheme has not brought any significant foreign investment in the country. In most cases the investment did not materialise. The *"benefits for Bulgaria are dubious, while the risks of infringement procedure from EC, and of opening the EU doors to fraudsters, are significant"* (Bulgaria's golden passports, 2020).

3.2 Cyprus

Cyprus is a member state of the EU since 2004 and is currently in the process of joining the Schengen area. The country adopted euro in 2008. Cyprus launched CBI programme in 2007, but it was largely unpopular in the beginning because of the high investment criteria (How Cyprus citizenship prices, 2019).⁶ Granting citizenship to investors became especially attractive after President of Cyprus **Nicos Anastasiades** rose to power in 2013 (Over Half of Passports in Cyprus, 2021). The amended CBI programme has been introduced as government policy in the aftermath of the collapse of the banking sector and the financial crisis that prompted its international bailout (Trimikliniotis, 2015, p. 23). The aim of CBI scheme was to attract capital to the country in exchange of Cypriot citizenship as well as to compensate foreign investors who lost their investments due the governmental measures targeting the crisis (Mentzelopoulou, Dumbrava, 2018, p. 8). Following that, Cyprus amended the Civil Registry Law and introduced its revised CBI programme in 2013.⁷ The citizenship could have been granted to investors in virtue of the officially known "Scheme for naturalisation of investors in Cyprus by exception" (Civil Registry Law, 2002, Section 111A (2)) which allowed the discretionary naturalisation of foreign investors who did not otherwise fulfil the requirements of the law for ordinary naturalisation as a Cypriot (Trimikliniotis, 2015, p. 14). The Cypriot CBI scheme has undergone a number of amendments since its adoption whereas changes to the criteria of the programme have been made to make it more targeted and its reputation improved after criticism from the EU and negative publicity in media. The latest version of the CBI scheme was published in August 2020. Despite the updating of the programme in recent years, Cyprus announced it would end its CBI scheme on 1 November 2020. Since then, no new applications were accepted only applications submitted before that day are considered (EC, 2021). Regardless of this fact, we will also clarify the Cypriot CBI scheme as well as investment requirements set in 2020, shortly before the closing of the programme.

Initially, the annual cap was not set; only in 2018 a cap of 700 applicants per year (it referred to the main applicants, not family members) that could apply for

⁶ The criteria in 2007 included investments at least 15,000,000 Cyprus Pounds (equivalent to €25,000,000). In 2011, amount of investment was reduced to €10,000,000.

⁷ The Civil Registry Law was amended with the Law N. 36(I)/2013. Under the amendment, new section 111A was introduced. The subsection (2) of section 111A became the legal basis for the scheme for naturalisation of investors in Cyprus by exception regulated pursuant to the Council of Ministers decision of 2013.

citizenship was introduced (Transparency International, Global Witness, 2018, p. 27). The substantial requirements for applying CBI scheme included holding a permanent residence permit in Cyprus for at least six months⁸ prior to the naturalisation and total minimum investment from €2,200,000 to €2,700,000⁹ depending on the mode of investment which also covered the investment in the residential property in Cyprus and two separate mandatory donations (Table 3).

Table 3: Total investment under the CBI scheme of Cyprus (amendments 2020)

Type of investment	Amount of investment
Investment in residential property	
Purchased residential property for the main applicant	€500,000
I.1 - Investment in real estate, land development and infrastructure projects (purchase or construction)	
Residential real estate investment	€2,000,000 (including €500,000 purchase of residential property)
Commercial investment	€2,000,000 (not including €500,000 purchase of residential property)
I.2 - Investment in business (purchase, establishment or participation)	
Business or company based in Cyprus (with at least 9 Cypriot/ EU employees)	€2,000,000
I.3 - Investment in alternative investment funds or financial assets	
Investment in alternative investment funds or financial assets of Cypriot companies or Cypriot organisations that are licensed by the Cyprus Securities and Exchange Commission	€2,000,000
Combination of the above investments I.1+I.2+I.3	
No restriction to the type of investment	€2,000,000 (not including €500,000 purchase of residential property)
Mandatory donations	
Donation to one of the government organisations ¹⁰	€100,000
Contribution to the Land Development Corporation (to be used for affordable housing)	€100,000

Source: own compilation based on Civil Registry Law and Council of Ministers

⁸ The requirement of holding a residence permit in Cyprus was introduced in 2016.

⁹ In 2013 the required amount of investment was €3,000,000 or €5,000,000 in case of bank deposits. In the following years the amount was reduced to encourage more investment (How Cyprus citizenship prices, 2019).

¹⁰ Donation to one of the following organisations: the Cypriot National Solidarity Fund, the Fund for Renewable Energy Sources and Conservation of Energy, the Research and Innovation Foundation, the Industry and Technology Service.

decision as amended and supplemented in 2020.

The applicants for CBI could invest rather than donate, compared to Malta, thus they were getting a return on their investment. The scheme offered the option of combining the criterion related to permanent residence with the investment criterion in case of investments in residential property as long as at least one of the units purchased was worth at minimum €500,000. Under such a scenario the total investment made by the investor was reduced to a minimum of €2,000,000 instead of €2,500,000. The applicant should have made the necessary investments during the three years preceding the date of the application. For example, if the applicant submitted application in 2020, the investment must have been concluded during the period 2017-2020. Additionally, the programme allowed to include on application dependants (spouses, children up to the age of 28, parents), however parents of the main applicant or spouse could have been included in the same application provided that they acquired additional residential property in Cyprus worth at least €500,000. Successful applicants had to maintain required investments for a period of five years from the date of naturalisation, after which they may sell them, provided that they permanently kept their residential property (Weingerl, Tratnik, 2019, p. 101). As a consequence, two elements of the CBI scheme were open to question, first, applicants had to have retain residential property permanently in Cyprus to preserve their citizenship status and second, non-compliance with the criterion mentioned resulted in the retroactive revocation of their Cypriot and EU citizenship (Kudryashova, 2020).

To qualify for citizenship, applicants had to declare residency in Cyprus, but the country did not require from them to be present in Cyprus before or after the approval of the application. The unique feature of the Cyprus scheme was that investors were able to obtain citizenship within just six - eight months and because of that it became one of the fastest routes to EU citizenship. In 2018, the length of time for assessing applications was doubled up to approximately twelve months (Transparency International, Global Witness, 2018, p. 27). There were no tests or language requirements for investors. In addition, they should not be included on the list of persons whose property was ordered to be frozen within the EU.

Cypriot CBI programme was aggressively marketed from 2013. It was proving successful in attracting foreign investors despite the relatively high investment requirement. According to available statistics, between June 2013 and December 2019, 2.855 investors (main applicants) received Cypriot citizenship via CBI

scheme. Most of them were from Russia, China, Ukraine, Lebanon and Saudi Arabia. In these seven years the Cypriot economy have received €9,7 billion and real estate was the most popular investment option under the CBI programme (The government of Cyprus has published, 2020).

However, the programme ended because of criticism by the EU and obvious irregularities, corruption and scandals exposed by the media. In 2017, The Guardian reported on a leak of the names of people who had applied for Cyprus's CBI programme (Transparency International, Global Witness, 2018, p. 28). Additionally, investigation by Al Jazeera revealed how Cypriot high-ranking politicians were willing to issue passports to convicted criminals (Cyprus abolishes citizenship, 2020). Lately, special Inquiry Committee that probed naturalisations granted to foreign businessmen and investors from 2007 to 17 August 2020 handed its final report in June 2021, saying out of the 6779 naturalisations of physical persons, 3609 (53%) were family members and company executives who had been naturalised outside the legal framework. Furthermore, the Cypriot CBI scheme operated with gaps, proper legal guidance and adequate oversights (Cyprus' passport committee issues..., 2021). Therefore, not only doubts about compliance of the Cypriot CBI scheme with EU law, but also the abusive exploration of the programme on national level can be considered as its greatest weaknesses.

3.3 Malta

Malta is a member state of the EU since 2004 and is part of the Schengen area since 2007. The country adopted the euro in 2008. Reform in 2013 introduced a new route for the acquisition of Maltese citizenship through the investment scheme. Surprisingly, because "*there was no other CBI scheme in existence up until then*" (Buttigieg, DeBono, 2015, p. 1) but the then Prime Minister **Joseph Muscat** had insisted that the investment programme would attract direct foreign investment to Malta (The passport scheme's problem, 2021). Via amendments made to the Maltese Citizenship Act and adoption of the Individual Investor Programme of the Republic of Malta Regulations,¹¹ there was established the Individual Investor Programme (IIP) which enabled granting of Maltese citizenship by naturalisation to foreign individuals and their families "*who*

¹¹ The Maltese Citizenship Act was amended through the Act No. XV of 2013, Article 10 (9) (b) and Article 24. These amendments provided the framework for the adoption of the Individual Investor Programme of the Republic of Malta Regulations of 2014.

contribute to the economic development of Malta” (Individual Investor Programme of the Republic of Malta Regulations, 2014, Article 10 (9) (b)). The IIP was operating for seven years (2014-2020).

The IIP set a quota of 1,800 approved Maltese citizenship applications (this number did not include dependants) that could be successfully passed through CBI programme for its whole duration (Buttigieg, DeBono, 2015, p. 9). The quota was added to the IIP because of concerns that the programme would have an impact on the population levels of Malta. As of early 2020, the estimated remaining balance of the IIP quota was between 100-150 (Malta Citizenship Quota, 2020). Applicants had to meet substantial requirements, in particular residence in Malta for at least twelve months and total investment of €1,150,000, which consisted cumulatively of non-refundable financial contribution, investment in the purchase or rental of high value real estate in Malta and significant investment in approved local financial instruments (see Table 4).

Table 4: Total investment under the IIP of Malta

Type of investment	Amount of investment
Contribution	
Main applicant	€650,000
Spouse	€25,000
Child below 18 years of age	€25,000
Unmarried child between 18 years of age and 26 years of age	€50,000
Dependant parent above 55 years of age	€50,000
Investment in residential immovable property/ retained for at least five years	
Purchased	€350,000
Leased/ minimum annual rent	€16,000
Other investment in Malta	
Investment in stocks, bonds, debentures, special purpose vehicles etc./ retained for at least five years	€150,000

Source: own compilation based on the Individual Investor Programme of the Republic of Malta Regulations of 2014.

Among the key components of the IIP that attracted criticism after establishment of the programme was that anyone applying for Maltese citizenship would not be required to reside in the country (Carrera, 2014). Already in 2014, after the EU criticised the absence of residence requirement, there was adopted amendment of the Maltese Citizenship Act which added a proof of residence for minimum of twelve months as a precondition for naturalisation under the IIP

(Buttigieg, DeBono, 2015). The Office of the Regulator of the IIP (ORIIP), an independent body formally appointed in 2014 order to monitor the IIP in practice, in its first annual report had flagged that the “residency requirement remained a “grey” area, with no specific metric upon which residency was based” (ORIIP, 2014, p. 17). There was initial uncertainty regarding what this requirement meant in practice. This requirement was considered fulfilled if the applicant obtained a residence permit to reside in Malta. Maltese authorities clarified that it was not necessary to physically reside in or move to the country, or to learn Maltese (Transparency International, Global Witness, 2018, p. 31-32). It meant that applicant’s residence status was based on commercial and financial commitments, not on genuine links to the country. The proofs of link included, e. g., providing boarding passes, renting property, opening a personal bank account with a local bank, membership of local sports clubs, donations to charitable organisations in Malta, payment of income tax to Malta (EC, 2019, p. 6).

The IIP was managed by a government agency Identity Malta Agency established in 2013. In 2015 there was established the National Development and Social Fund (NDSF) as a government agency. The NDSF received 70% of contributions received by Identity Malta Agency from the IIP and had to use them in the public interest inter alia for the advancement of education, research, innovation, social purposes, justice and the rule of law, employment initiatives, the environment and public health. Non-public bodies with a significant role throughout the application process were also involved as concessionaires responsible for the programme’s operation, international promotion and involved in the examination of applications and in the due diligence process (international company “Henley & Partners” specialising in CBI schemes became official concessionaire of the Maltese IIP (ORIIP, 2014)) and approved agents authorised to act as intermediaries on behalf of applicants (Džankić, Psaila, Gómez Rojo, 2018).

The IIP was officially closed after it reached the cap of 1,800 applications and in November 2020 Malta promulgated the new programme. In 2020, relevant amendments to the Maltese Citizenship Act and Granting of Citizenship for Exceptional Services Regulations¹² were passed, aiming to renew the old IIP. Under the new naturalisation for exceptional services by direct investment

¹² The Maltese Citizenship Act was amended through the Act No. XXXVIII of 2020, Article 10 (9). These amendments provided the framework for the adoption of the Granting of citizenship for Exceptional Services Regulations of 2020.

programme a person who is “willing to contribute through an exceptional direct investment in the economic and social development of the Republic of Malta” may apply for citizenship (Granting of Citizenship for Exceptional Services Regulations, 2020, Article 5 (2) (d)).

The number of applications under this programme shall not exceed 400 yearly and 1,500 in total. Under the new rules, investors will be able to apply for citizenship in one or three years after receiving a residence permit. Applicant must comply with the criteria which were modified compared to the IIP. Residence in Malta can lead to citizenship in two ways. The first allows for the acquisition of citizenship after three years if the financial contribution to the Maltese economy amounts to €600,000. The second allows for the acquisition of citizenship after only one year, if this contribution amounts to €750,000. This distinction will allow applicants willing to pay more, acquiring Maltese citizenship faster. The substantial requirements for obtaining citizenship include residence in Malta for thirty-six months (standard procedure) or twelve months (accelerated procedure) and total investment between €690,000 - €1,450,000 consisting cumulatively of financial contribution, investment in the purchase or rental of high value real estate in Malta and donation to a registered philanthropic, cultural, sport, scientific, animal welfare or artistic non-governmental organisation (NGO) or society (see Table 5).

Table 5: Total investment under the naturalisation for exceptional services by direct investment programme of Malta

Type of investment	Amount of investment
Contribution	
Main applicant/ 36 months	€600,000
Main applicant/ 12 months	€750,000
Each dependant	€50,000
Investment in residential immovable property/ retained for at least five years	
Purchased	€700,000
Leased/ minimum annual rent	€16,000
Donation	
Donation to a registered NGO or society	€10,000

Source: own compilation based on the Granting of Citizenship for Exceptional Services Regulations of 2020.

The new investment programme also provides for a higher level of due diligence to ensure that the funds have been legally obtained and stricter verification vis-à-vis applicants after receiving residency permit in Malta. Under

the new programme, the previous agency Identity Malta Agency was closed and replaced by a new government agency to be known as the Community Malta Agency which is responsible for administering and processing all Maltese citizenship related matters including naturalisation for exceptional services by direct investment in Malta.

According to the latest ORIIP's report published in 2019, the total number of applications received since the inception of the IIP as on 30 June 2019 stood at 1,742 and Maltese citizenship was granted to in total 1,054 successful main applicants. Each application contained an average of 2.48 dependants (2018-2019). Naturalised main applicants originated from different regions of the world, mostly from Europe, Asia, Middle East and Africa (2018-2019). Regarding the applicants' total investments up to the end of June 2019, they amounted to: financial contributions of €834,750,000; 144 purchased properties worth €141,374,459.33 (on average €981,767.08 per property) and 910 leased properties, with an annual rental income of €19,718.26 on average; investments in financial instruments in the amount of €159,767,368.53 (ORIIP, 2019). Due to the continuation of the IIP program until 2020, we assume that the overall data till the end of the IIP will differ.

The IIP programme of Malta has not been without controversy. Serious doubts about its running emerged from media investigation carried out in Malta after the assassination of Maltese journalist **Daphne Caruana Galizia** in October 2017 (Malta golden passports: "Loopholes", 2021). The investigation showed that conditions which citizenship applicants needed to meet were being flouted. Many foreign investors had little or no significant links to the country and they never had any intention of spending more than a few hours or days in Malta. The investigation further revealed that Maltese citizenship was granted to persons with criminal background (Opposition lists "criminals"..., 2019). Moreover, there were concerns about governance, transparency, and accountability in the management of contributions and decision-making, particularly discretion of public officials (Transparency International, Global Witness, 2018, p. 32). As a consequence, the Maltese IIP was facing reputational and money-laundering risks addressed at national and EU level. There are no doubts, that the IIP brought a significant amount of money to the Maltese economy, but *"the way it has been implemented has been corrupted by the very people who should have ensured that the spirit and the letter of the scheme's regulations were respected"* (The passport scheme's problem, 2021). Even after the new programme was established, the public opinion is against "selling" Maltese citizenship which is

considered as an open door to corruption. The current Prime Minister **Robert Abela** is defending Malta's CBI programme, saying Malta should keep it running with the safeguards aimed to eliminate its misusing and the government emphasises the importance of the scheme during the COVID-19 pandemic (Robert Abela defends passport, 2021).

4. Citizenship by investment in the context of international relations

Granting of citizenship to investors by EU Member States also may be related to international relations. This link became evident after Russia's invasion of Ukraine on 24 February 2022. The unprovoked military aggression and invasion of Ukraine by Russia has been deplored in the strongest terms by the overwhelming majority of states (141) in the United Nations.¹³ In response to the war in Ukraine, the Council of the EU adopted several packages of sanctions against Russia and its ally Belarus. Russia's invasion of Ukraine has cast a harsh spotlight not only on the yachts, jets and mansions owned by Russia's wealthiest citizens around the world, but there's another luxury good in high demand – passports. Granting of golden passports was condemned in the light of Western sanctions targeting Russian and Belarus individuals over Russia's invasion of Ukraine. Some Russian or Belarusian nationals who are subject to sanctions or are significantly supporting the war in Ukraine might have acquired EU citizenship under CBI schemes.

The applicants to CBI schemes have been mainly very wealthy individuals from Russia and former Soviet states, China, the Middle East and Africa. Russian nationals can account for about half of approved applications to CBI schemes in the EU (Fernandes, Navarra, De Groot and Muñoz, 2021, p. 15-16). **Surak** in her study claims, *that "both Russia and China are authoritarian states that have transitioned from communist to capitalist systems since the 1990s. Both have seen substantial growth in private wealth and inequality over the thirty years, paired with the uncertainty authoritarian rule and limited travel opportunities, which help drive demand"* (Surak, 2021, p. 20). Russian oligarchs have been among the world's largest "buyers" of multiple citizenships, including citizenships of EU member states, using alternate passports to help protect their assets and allow freer travel.

¹³ United Nations General Assembly Resolution, Aggression against Ukraine, A/ES-11/L.1 (2 March 2022).

In joint statement of the further restrictive economic measures announced on 26 February 2022, the leaders of the EC, France, Germany, Italy, the United Kingdom, Canada, and the United States committed “to acting against the people and entities who facilitate the war in Ukraine and the harmful activities of the Russian government.” Specifically, they committed “to taking measures to limit the sale of citizenship, so called golden passports, that let wealthy Russians connected to the Russian government become citizens of our countries and gain access to our financial systems” (EC, 2022a). Western allies in this statement agreed, that wealthy Russians connected to Putin's government will no longer be allowed to use the golden passport system to obtain their citizenship including European citizenship for themselves and their family members.

On the EU level, the war in Ukraine initiated a process of applying maximum pressure on those states that operate CBI schemes; not only EU member states but also third countries that have visa-free travel with the EU and candidate countries. The latest steps form part of a broader policy to take determined action against these schemes in light of Russia's ongoing invasion of Ukraine.

Firstly, on 9 March 2022 the EP adopted a resolution calling on the EC to table a proposal by the end of its mandate to address the many problems linked to CBI schemes as well as RBI schemes (MEPs demand a ban, 2022). The EP inter alia:

- proposed to phase out CBI schemes fully across the EU member states;
- called upon the EU member states to stop operating their CBI schemes for all Russian applicants with immediate effect and to reassess all approved applications from Russian nationals over the past few years to ensure that no Russian individual with financial, business or other links to the Vladimir Putin regime retains the citizenship of the EU;
- noted that a risk stems from third countries that have CBI schemes (with low or no residence requirements and weak security checks, particularly with respect to anti-money laundering legislation) and that benefit from visa-free travel to the EU because third-country nationals can purchase citizenship of those third countries with the sole purpose of being able to enter the Union without any additional screening;
- stressed that risks are exacerbated for Union candidate countries that operate CBI schemes because the expected benefits of future EU membership and visa-free travel within the Union area may be a factor (EP, 2022).

Secondly, in a recommendation of 28 March 2022 the EC was urging member states to terminate CBI schemes and to take immediate steps in the context of the Russian invasion of Ukraine. EC states that *“any Member State that has naturalised Russian or Belarusian nationals based on an investor citizenship scheme should immediately assess, in accordance with the principles resulting from the case law of the Court of Justice of the European Union, including the principle of proportionality and the protection of fundamental rights, whether these individuals’ naturalisations should be withdrawn because:*

- *the person concerned is or becomes subject to the EU restrictive measures;*
- *or because it is otherwise determined that the person concerned significantly supports by any means the war in Ukraine or other related activities of the Russian government or Lukashenko regime breaching international law.*

This should also apply in cases where these individuals have been naturalised as family members of a main applicant” (EC, 2022 b).

The war in Ukraine caused a domino effect, which has a direct impact on CBI programmes around the world. Sanctions against Russia and Belarus has led governments of CBI states to limit the granting of citizenship to investors with ties to the Russian and Belarus government or to exclude all Russian and Belarus nationals from CBI schemes or to end their lucrative CBI programs. It is posing a question whether CBI industry will survive.

After Cyprus ended its own CBI programme in 2020, Bulgaria and Malta were alone among the EU’s 27 members still offering citizenship to foreigners in exchange for large investments. The government of Malta has initially resisted growing pressure to block applicants amid the war in Ukraine. Russian citizens currently account for around a quarter of all those who have obtained the golden passport in Malta. But following pressure from the EU and the civil society, on 2 March 2022 Malta has suspended the processing of applications for CBI from the nationals of the Russian Federation and Belarus, because recent developments meant the necessary due diligence on prospective investors could not be done (Malta scraps citizenship, 2022). During compliance checks, however, Malta had not found anyone subject to the EU’s sanctions list (Malta suspends ‘golden passport’ scheme, 2022). Bulgaria abolished its CBI scheme on 24 March 2022. As part of the decision, there was also authorized a full review of all passports granted since the scheme was launched. Cyprus confirmed that there are three

Russians who have been sanctioned in relation to Russia's invasion of Ukraine and received a Cypriot passport under the CBI scheme in the past. But the checks of individuals are ongoing (Three Russians on latest..., 2022). It remains to be seen how the EU states respond in the long term.

In the wider context, the EU has begun to reassess non-EU countries' CBI schemes as a factor when deciding on the third countries whose nationals are exempt from visa requirements. Five Caribbean countries (Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis and Saint Lucia) and Vanuatu, the country in the southwest Pacific Ocean, offer citizenship through investment programmes and they also have visa-free agreements with the EU. These states were among the United Nations member countries that have condemned the Russian invasion of Ukraine.

In line with their foreign policy position Caribbean countries are joining Western sanctions and they taking steps to suspend CBI programmes for individuals from Russia and Belarus in the light of the current conflict in Ukraine, but also to preserve credibility of CBI programmes. During March 2022, Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis and Saint Lucia already announced to suspend the consideration of applications from Russians and Belarussian CBI investors. The decisions these states made should be considered as a matter of maintaining their international relationship with the rest of the world including EU.

In the case of Vanuatu, the situation is different. In the course of meetings between the EU and Vanuatu held in October 2017, November 2019, June 2020 and March 2021, the EC expressed serious concerns and warned the government of Vanuatu of the possibility of the visa requirement being reintroduced. The explanations provided by Vanuatu were not sufficient to mitigate those concerns. The Council of the EU on 3 March 2022 decided to partially suspend the visa waiver agreement with Vanuatu, due to the risks posed by its CBI schemes. The suspension concerns only citizens of Vanuatu holding passports issued since 25 May 2015, when the number of successful applicants under Vanuatu's investor citizenship schemes started to increase significantly. The extremely low rejection rate raised doubts as to the reliability of the security screening and due diligence carried out by the national authorities. Holders of such passports will need a visa to travel to the Schengen area.¹⁴

¹⁴ Council Decision (EU) 2022/366 of 3 March 2022 on the partial suspension of the application of the Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver.

Montenegro, the EU membership candidate country, has stated that it will join EU sanctions adopted in connection with Russia's aggression against Ukraine and follow its policy of full alignment with the EU's foreign policy. However, Montenegro has a problem with the implementation of these sanctions because of the current political crisis and lack of support within the government (Divided Montenegro, 2022). However, in order to ensure a well-managed migration system and security environment, Montenegro must completely abolish the investor citizenship scheme. Further existence of such a programme may complicate and slow down the Montenegro's process of joining the EU (EC, 2020b, p. 42).

The survival of CBI programmes is under grave threat. The countries that run the CBI schemes say that the revenue earned by investment programmes is not insignificant. Over the last few weeks, following the war in Ukraine, the EU has taken steps that would ultimately limit access to their countries by people who carry golden passports, including wealthy Russians among whom such passports are popular. Furthermore, the Union is placing pressure on the EU and non-EU countries that operate CBI schemes to abolish them. In case of non-EU countries, they risk losing visa-free access to the EU. Loss of visa-free access to the EU would be a big blow to third countries that run such programs, because their passports would immediately lose most of their revenue earning potential (Threat to CBI programmes, 2022). In case of candidate countries, they risk slowing down the accession process.

Conclusion

The trend of granting citizenship by naturalisation on the basis of CBI programmes has been visible around the world and also among the EU member states in recent years. The introduction of investment form of citizenship acquisition by naturalisation constituted a significant shift in naturalisation policy of the EU member states concerned. CBI schemes operated by EU member states combine specific provision, that are particularly attractive to non-EU nationals. As we explained on the example of Bulgaria, Cyprus and Malta, acquiring citizenship in exchange for investment via naturalisation is legal practice of states conducted entirely through the law which should also be applied in full compliance with it. Doubts were raised about running CBI programmes in connection with their non-transparent implementation and legality of procedures including practicing in corrupt ways. Since states which have CBI schemes often

do not wish to reveal the names of those who became their citizens by investment, CBI programmes can generate problems regarding security risks, corruption, money laundering or tax evasion, which have to be tackled. The risks from these programs can spill over to other EU member states not operating CBI programmes.

The political affairs in Cyprus and Malta highlighted the failure of longstanding EU efforts to regulate CBI programmes of its member states and has raised questions over whether EU has the competence or the will to do so. By initiating the infringement procedures against Cyprus and Malta in October 2020, the EC showed the will to tackle legally the CBI question. The background to the infringement procedures reveals the complex relationship between the regulation of national citizenship on the one hand, which is still an exclusive competence of the EU member states, and the EU citizenship with the automatic attribution of additional rights enforceable across the whole EU. The answer to the question whether these schemes respect EU law and the assessment of the various CBI schemes of EU member states in the light of the European values, the EU legislation and practice can only be given by the CJEU in the ongoing infringement procedure against Malta.

Before Russia's invasion of Ukraine, CBI programmes in the EU and outside the EU were supposed to have a future, but their application needed to be improved to prevent their abuse. As investment migration is able to bring resources to states, this aspect was crucial for CBI states during the current COVID-19 pandemic. States have sought to attract more foreign investment to offset pandemic losses. At the same time, the demand for citizenship of EU member states through investments by third-country nationals has increased, e.g., due to the quality of health services or the availability of vaccines. This vision of the future development of CBI schemes has changed radically since the war in Ukraine, which has intensified pressure on those states that operate CBI schemes in order to terminate them. This puts the future of CBI programmes not only within the EU under threat. The EU proposals on amending or ending CBI schemes are limited only on member states. At the same time, the EU can put pressure on the candidate countries. Although the Union cannot force an end of global CBI programmes, the impact of the EU ending visa-waiver agreements with non-EU states operating CBI schemes could impact very significantly on their economies.

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