

**Policy Paper**

Citizenship and residency  
by investment in the EU

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## Summary

Whilst the granting of citizenship and residence rights remain a national competence, they represent a challenge for the entire Union. Indeed, in addition to being ethically questionable, Residency and Citizenship by Investment (RCBI) schemes pose a serious security threat to the European Union as a whole. The evidence gathered suggests that companies specializing in citizenship consultancy have become experts in exploiting the schemes' loopholes, using this knowledge on behalf of their clients to circumvent EU rules. The lack of transparency of the programs allows corruption to bloom and thrive, and the COVID-19 pandemic is likely to increase the demand for such schemes. Hence, this paper calls for a major redesign of the existing programs and for an EU-wide debate on the schemes at the occasion of the Conference on the Future of Europe.



## What are RCBI schemes<sup>1</sup>?

In *The Count of Monte Cristo*<sup>2</sup>, Alexandre Dumas already mentioned the possibility of buying a passport ‘under the cloak’. Still, the commerce of citizenship only reached a high propensity in the 1980s, as Citizenship-by-investment (CBI) schemes developed. Indeed, a few governments started handing out passports in exchange for a substantial investment in their country’s economy. Citizenship was being commodified, meaning it had become a merchandisable commodity.<sup>3</sup> The first CBI scheme was created in 1984 in Saint Kitts and Nevis, and since then Immigrant Investor Programs (IIPs) sprouted all over the globe. However, there is strong evidence to suggest that IIPs present a risk in terms of corruption, money laundering and tax evasion.<sup>4,5</sup> In light of these concerns, this paper aims to present the main challenges European RCBI schemes pose to the EU as well as to outline new tendencies in the market induced by the COVID-19 pandemic.

IIPs have a high tendency to be created in the midst of a crisis. For instance, most of the schemes based in the European Union (EU) were created in the aftermath of the subprime crisis.<sup>6</sup> In addition to the CBI schemes—that provide the so-called “golden passports”—a new kind of program was created: Residency-by-Investment (RBI). These schemes provide applicants with the right to reside in the country in which they invest, thus providing the applicant with a “golden visa”. Generally speaking, the “golden visas” are at the very least two or three

times less expensive than “golden passports”. Still, the cost of the programs makes them solely suitable for the super wealthy, the High-Net-Worth-Individuals (HNWI). It has been established that CBI programs attract investors for three main reasons: increase their mobility, having some sort of an insurance policy, and accessing better business opportunities than in their home countries.<sup>7</sup>

The programs shape a whole new approach in terms of international mobility: the super-wealthy are increasingly shielded against global crises, defying the “birthright lottery”.<sup>8</sup> Whether the crisis is of an economic, environmental or even sanitary nature, the investors may simply “go where they are treated best”<sup>9</sup> and find a new place of residence where they can be more protected. For instance, a citizen of a country struggling to secure COVID-19 vaccine jabs might consider investing in Dominica’s CBI scheme and, as a Dominican citizen, benefit of the country’s excellent vaccine rollout.<sup>10</sup> Thus, the current crisis makes the study of RCBI programs all the more relevant.

<sup>1</sup> RCBI is the acronym for Residency and Citizenship By Investment.

<sup>2</sup> Dumas, A. 1844. *The Count of Monte Cristo*. Chapter 25 “The Unknown” and Chapter 97 “The Departure for Belgium”. London: Chapman and Hall.

<sup>3</sup> Scherrer, A. and Thirion, E. 2018. Citizenship by investment and residency by investment schemes in the EU, European Parliament, pp. 26.

<sup>4</sup> Xu, X., El-Ashram, A. and Gold, J., 2015. Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs. *IMF Working Papers*, 15(93).

<sup>5</sup> Brillaud, L. and Martini, M., 2018. European Gateway: inside the murky world of golden visas. *Transparency International and Global Witness*.

<sup>6</sup> Džankić, J., 2018. Immigrant investor programs in the European Union (EU). *Journal of Contemporary European Studies*, 26(1), pp.64-80.

<sup>7</sup> Surak, K., 2020. Millionaire mobility and the sale of citizenship. *Journal of Ethnic and Migration Studies*, 47(1), pp.166-189.

<sup>8</sup> Shachar, A., 2009. *The birthright lottery: citizenship and global inequality*, Cambridge, MA: Harvard University Press.

<sup>9</sup> Motto of the firm “Nomad Capitalist”.

<sup>10</sup> Anon, 2021. Interest in secret bay magnified by vaccine rollout. *Investment Migration Insider*.



### Granting citizenship: a national competence but a challenge for the whole Union

	<b>Citizenship-by-Investment (CBI)</b> <i>"Golden passports"</i>	<b>Residency-by-investment (RBI)</b> <i>"Golden visas"</i>
<b>EU members offering the scheme</b>	Austria, Bulgaria, Malta	Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Greece, Ireland, Italia, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, Slovakia
<b>Status granted by the scheme</b>	The status of citizen is deemed permanent.	The status of resident is meant to be temporary. In most cases, RBI may also lead to the acquisition of citizenship in the country of residence.
<b>Mobility in the EU</b>	Once citizenship is granted to an individual, he or she benefits from the same rights as any EU citizen and can therefore chose to settle it any of the 27 member states.	Residence rights are limited to the Member State which issued the visa.
<b>International mobility</b>	✓ Possibility to travel visa-free in the Schengen area. ✓ EU passports are considered amongst the most powerful as they allow a mostly visa-free access to other countries.	✓ Possibility to travel visa-free in the Schengen area (for no more than 90 days in a 180 days term). ✗ A visa-holder cannot enjoy the same rights regarding international mobility as a passport-holder.

The right to grant citizenship is an exclusively national competence.<sup>11</sup> Hence, it might appear puzzling to study the schemes with a focus on the whole Union. However, talking about the RCBI schemes existing in the European Union (EU) is of a paramount importance, especially of the schemes offering citizenship. Indeed, since 1992, the access to the citizenship of one of the Member States automatically gives access to the European citizenship.<sup>12</sup> For instance, a third-country national who becomes a Maltese citizen may subsequently

choose to settle in any country of the Union. As citizenship connects all Member States, the question of accession to a citizenship is of interest for all of the EU members. Hence, as it appears that CBI schemes may affect the Union in a greater proportion than RBI programs, this paper will put an emphasis on the effects of economic citizenship schemes.

<sup>11</sup> A right reaffirmed by the European Court of Justice in the Rottmann case (2010).

<sup>12</sup> As per the articles 20 and 21 of the TFEU.



At the time of writing, three EU members hold active CBI programs: Austria,<sup>13</sup> Bulgaria and Malta<sup>14</sup>. Furthermore, no less than nineteen Member States have an RBI program.<sup>15</sup> In a report published in 2018, Transparency International and Global Witness found that “in the last ten years, **the EU has welcomed more than 6,000 new citizens and close to 100,000 new residents**” through the schemes.<sup>16</sup> These figures seem significant enough to warrant a closer look at these programs: who exactly is allowed to become an EU citizen or resident? What are the effects of their integration to the Union?

## A Path to Citizenship that undermines its very Value

As it bides all of its citizens, the Union gives a primary importance to the European citizenship. Indeed, as spelled out in the chapter V of the TFEU, EU citizenship grants strong rights and freedoms to its holders. Hence, it can be stated that putting a price tag on such a precious asset undermines the value of citizenship,<sup>17</sup> especially knowing that investors do not necessarily hold a “genuine link”<sup>18</sup> with the country offering naturalization for investment. Indeed, in October 2020, the European Commission decided to initiate infringement proceedings against Malta and Cyprus as it considers

that “the granting of EU citizenship for pre-determined payments or investments without any genuine link with the Member States concerned undermines the essence of EU citizenship” and that the schemes go against the principle of sincere cooperation between Member States.<sup>19</sup>

The lack of connection between applicants and the host country is particularly blatant in the case of the Maltese scheme. In point of fact, the “Passport papers”<sup>20</sup>—a recent leak of documents from the citizenship broker Henley & Partners—showed that many applicants to the scheme did not respect the residency requirement they were supposed to meet.<sup>21</sup> Indeed, many successful applicants managed to live in the country for merely three weeks—instead of the twelve months required. Besides, other applicants even rented an unbuilt apartment as to provide the Maltese authorities the proof that they met the residency requirement.

The opacity of the programs and their implementation process is gradually being removed thanks to the work of investigative journalists. The evidence gathered suggests that companies specializing in citizenship consultancy have become experts in exploiting the schemes’ loopholes, using this knowledge on behalf of their clients.

<sup>13</sup> However, it must be mentioned that, to the contrary of the Maltese and Bulgarian programs, the Austrian scheme is informal. This paper goes against the common belief that Austria does not have a citizenship-by-investment program as such. In Austria, citizenship can be granted to foreigners of « extraordinary merit » or in the name of « national interest » (Article 10-6 of the Austrian Citizenship Act). As explained by the European Commission, CBI is not « done through a specific program, but rather through the State's discretion to equalize investment with an exceptional contribution to Austria's economy » (See page 4: [https://ec.europa.eu/info/sites/info/files/deliverable\\_d\\_final\\_30.1\\_0.18.pdf](https://ec.europa.eu/info/sites/info/files/deliverable_d_final_30.1_0.18.pdf)). Besides, it must not be disregarded that citizenship consultant firms “sell” the Austrian program as accessible to an investor willing to pay 3 million euros (See the website of Henley & Partners). The Austrian citizenship is conferred on the basis of investment alone. Thus, although informal, the Austrian program does exist in practice.

<sup>14</sup> The highly popular Cypriot program was suspended in October 2020, following revelations on the corruptness of the scheme.

<sup>15</sup> European Commission, 2019. 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. COM.

<sup>16</sup> Brillaud, L. and Martini, M., 2018. European Gateway: inside the murky world of golden visas. *Transparency International and Global Witness*.

<sup>17</sup> European Parliament, 2014. EU citizenship should not be for sale at any price, says European Parliament. *EuroParl*.

<sup>18</sup> The International Court of Justice introduced this concept in the *Nottebohm* case (1955).

<sup>19</sup> European Commission, 2020. Investor citizen schemes: European Commission opens infringements against Cyprus and Malta for “selling” EU citizenship.

<sup>20</sup> Meilak, N., 2021. The Passport Papers | How phantom building Vista Point was rented to IIP applicants. *Malta Today*.

<sup>21</sup> Pegg, D., Harding, L. & Goodley, S. 2021. Revealed: residency loophole in Malta’s cash-for-passports scheme. *The Guardian*.



The Passport papers is the umpteenth scandal involving a private company, thus raising doubts about the capacity of private firms to manage a market as sensitive as that of citizenship.

The granting of citizenship is also concerning from a security perspective as there does not seem to be a serious vetting of the applicants. Indeed, through the schemes wealth criminals managed to obtain citizenship of an EU Member State, and consequently secured their entry into the whole Union. The most recent investigation studied the Cypriot economic citizenship scheme and revealed that “convicted fraudsters” and “money launderers” managed to obtain golden passports.<sup>22</sup>

This is especially striking in contrast of the other side of the Maltese immigration policy. Indeed, whilst Malta turns away refugees,<sup>23</sup> it still welcomes applicants of questionable backgrounds with open arms. This underscores the hypocrisy of the Maltese authorities: the easiness to immigrate seems determined by the amount on the immigrant's bank account. In 2017, a delegation from the EU parliament stated the Maltese CBI scheme risked “importing criminals and money laundering into the whole EU”.<sup>24</sup> The lack of transparency over the schemes allows corruption to bloom and thrive, opening the doors of the Union to applicants who would be rejected if a proper background check was completed.<sup>25</sup>

## Foreign Direct Investment on a silver platter

The most palpable argument for maintaining the schemes whilst they present security risks is that they powerfully encourage foreign investment. Hence, RCBI schemes present a great interest for policymakers as they can be remarkably lucrative. A case in point is the Maltese CBI scheme. Indeed, the island's individual investor program is quite attractive for foreigners as the Maltese passport opens the doors to the Schengen area and to the European Union and offers a good “passport power”.<sup>26</sup> The economic citizenship scheme has therefore been exceedingly fruitful. Created in 2013 and enshrined in the Maltese Citizenship Act, the scheme has brought a total amount of €841,779 million to the Maltese authorities between 2014 and 2019.<sup>27</sup> As shown by the following graphics, the investments received are substantial.

<sup>22</sup> Al Jazeera Investigative Unit, 2020. Cyprus sold passports to criminals and fugitives. *Al Jazeera*.

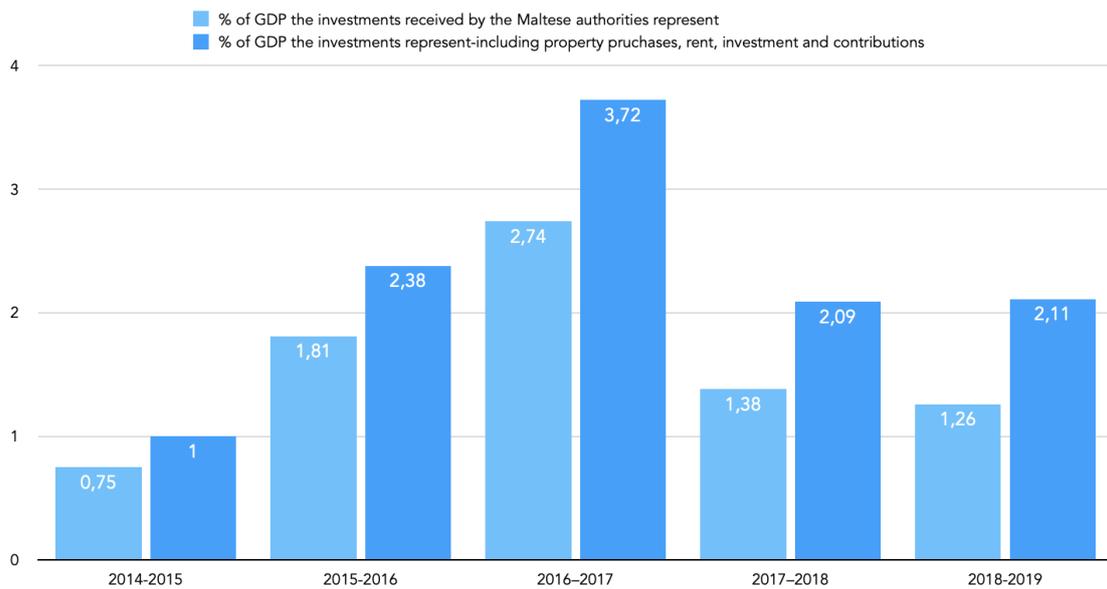
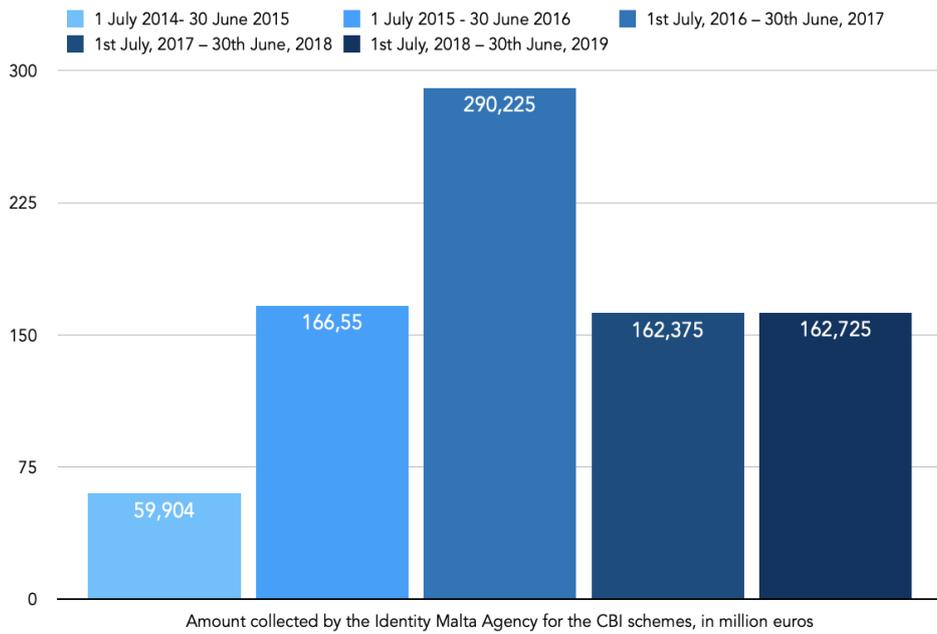
<sup>23</sup> Tondo, L. 2020. ‘We give you thirty minutes’: Malta turns migrant boat away with directions to Italy, *The Guardian*.

<sup>24</sup> European Parliament, 2017. European Parliament delegation concludes visit to Malta to investigate rule of law. *Europarl*.

<sup>25</sup> Brillaud, L. and Martini, M. 2018. European Gateway: inside the murky world of golden visas. *Transparency International and Global Witness*.

<sup>26</sup> According to the Quality of Nationality Index (QNI) created by C. Kälin and D. Kochenov. You may find it at the following link: <https://www.nationalityindex.com/#>.

<sup>27</sup> Every year the Maltese authorities publish a report on the Immigrant Investor Program (IIP) in which they precise the amount of money collected. The exact amount received in the year 2013-2014 was not clearly stated in the annual report. Therefore, it was not taken into account in this estimation. You may find the reports at the following link: <https://orgces.gov.mt/en/pages/documents-and-links.aspx>.





As the economic crisis induced by the pandemic is looming over policymakers, the pecuniary perspective on the schemes may be heightened. Indeed, as they offer a quick and easy entry of Foreign Direct Investment (FDI), the programs may appear even more attractive in times of crisis. As previously stated, EU-based CBI schemes were mostly created in the aftermath of the subprime crisis, when the Eurocrisis hit. Still, it is worth reminding that even if the amounts received are significant, the new high-income Maltese citizens are unlikely to bring in any other revenues in the future as few actually plan to live in Malta. As Pr. Peter Spiro puts it, “The attraction of Maltese citizenship has been Berlin or Milan, not Valetta”.<sup>28</sup> Nonetheless, the fall in GDP entailed to the pandemic seems to keep Maltese policymakers committed to maintaining the schemes.<sup>29</sup>

## Expected effects of the pandemic on the RCBI market

The COVID-19 pandemic is often presented as a transformative and destabilizing force for all spheres of society. This section will show that whilst the health crisis did not transform the RCBI market, it did accelerate trends that were already underway.

### A boost on the demand-side for both CBI and RBI

Policymakers can count on the demand for such schemes. At least on the short term, the demand for golden passports has been strengthened by the

pandemic. To a certain extent, having a second passport shields the investor from potential crises in their home country. The pandemic has “rebranded” the second passport as an insurance card.<sup>30</sup> Indeed, citizenship brokers explain that now more than ever, many of their clients see CBI as an ‘insurance’ that allows them to leave their home country if the situation there becomes too unstable—or if the institutional climate becomes unsuitable for business.

One of the leading firms in so-called “identity management”, Henley & Partners, ventures that the pandemic has helped many HNWI realize that dual citizenship could act as a “parachute” in the context of a global crisis<sup>31</sup>. Indeed, the firm noted a “nearly 50% increase in enquiries overall (...) in the six months to June 2020 compared to the same period last year”.<sup>32</sup> As traveling has become more challenging, it is expected that HNWI will enter the market of golden passports and visas as to create “mobility portfolios”<sup>33</sup> that allow them to preserve their access to international mobility.<sup>34</sup>

### A potentially low supply of CBI, but an upsurge in the RBI offer

Dual citizenship has become widely accepted in the European Union<sup>35</sup> and the pandemic seems unlikely to change that.<sup>36</sup> And, as previously stated, the schemes do provide substantial investments in the country’s economy—which become even more valuable in times of crisis. Still, although this assertion cannot be extended outside of the EU, in all likelihood the CBI schemes will be decreasingly available in the Union as the European Commission might take the infringements procedures initiated in October 2020 to the next step, a referral to the

<sup>28</sup> Spiro, P., 2020. COVID-19 and the future of dual citizenship. *Global Citizenship Observatory - Robert Schuman centre*.

<sup>29</sup> Anon., 2021. Robert Adela defends passport scheme despite abuses being found. *Times of Malta*.

<sup>30</sup> Džankić, J., 2020. Will the global market for investor citizenship survive COVID-19? *Global Citizenship Observatory - Robert Schuman centre*.

<sup>31</sup> Henley & Partners, 2021. Covid-Related Surge in Interest in Investment Migration. *Financial Times*.

<sup>32</sup> *Ibid.*

<sup>33</sup> Surak, K., 2020. Who wants to buy a visa? Comparing the uptake of residence by investment programs in the European Union. *Journal of Contemporary European Studies*, pp.1–19.

<sup>34</sup> Henley and Partners, 2021. Q2 Global Mobility Report.

<sup>35</sup> Spiro, P., 2017. *At home in two countries: the past and future of dual citizenship*, New York: New York University Press.

<sup>36</sup> Spiro, P., 2020. COVID-19 and the future of dual citizenship. *Global Citizenship Observatory - Robert Schuman centre*.



European Court of Justice (CJEU). Indeed, the "passport papers" are far from being the first controversy regarding European investment-based citizenship programs. In fact, the four most recent programs have been engulfed by scandals ever since their inception.<sup>37</sup>

Moreover, it seems highly hypocritical from the European Commission to official state it has "reservations" concerning Montenegro's program—pushing the authorities to suppress the scheme—whilst letting dysfunctional CBI schemes inside of the EU persist.<sup>38</sup> It is therefore expected that the European Commission will take the process of regulating EU programs further.<sup>39</sup> Although it is not known whether the programs could be cancelled altogether, it is very likely that they will become more regulated and that a "genuine link" with the state will have to be robustly established.

As the conditions for the accession to a golden passport may become more complicated to meet, it can be expected that HNWI would decide to invest into schemes outside of the EU. Besides, the context of gradual regulation of CBI programs combined with a climate of distrust over the schemes makes it rather unlikely that other Member States would create new programs. However, as the economic crisis may render FDI scarcer, the Member States' interest of RBI schemes should increase. Furthermore, programs especially designed for "entrepreneurial migrants", such as the one created by France, may stimulate national economies in a time of need for innovation.

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<sup>37</sup> Indeed, scandals exposed the Austrian program regarding the corruption of politician Uwe Scheuch. Moreover, it has been shown at multiple times that the Bulgarian, Cypriot and Maltese schemes were bathed in corruption and critically lacked transparency.

<sup>38</sup> Savic, M., Bratanic J. 2021. EU bid makes Montenegro end its citizenship-for-investment plan. *Bloomberg*.

<sup>39</sup> Pegg, D., Harding, L. & Goodley, S. 2021. Revealed: residency loophole in Malta's cash-for-passports scheme. *The Guardian*.



## Recommendations

### 1. Addressing the existence of the schemes during the Conference on the future of Europe

Whilst they have been questioned in the Member States where they have been put in place—notably in Malta and Cyprus—the schemes remain unknown to most EU citizens. As RCBI programs affect the Union as a whole, it is essential that all citizens may have a say in the commerce made of their citizenship. The debates organized for the Conference on the Future of Europe could be an appropriate platform for the opening of an EU-wide debate on the compatibility of RCBI programs and EU values.

### 2. Shedding light on the programs by making all data public

Since it appears the reformation of the programs has not sufficiently reduced the risk of corruption, money-laundering and circumvention of the EU rules, one may conclude that RCBI schemes are inherently at odds with functional democratic systems. The only element that might make RCBI schemes consistent with European values is transparency. At the time of writing, there is no sufficient data on the schemes to properly assess the programs, notably concerning the successful applications to the programs. The EU institutions will only be able to make an informed decision on the issue when they have access to the relevant data. Therefore, it is vital that Member States make the statistics public.

### 3. Arranging a major redesign of the existing CBI schemes, without the interference of the private sector

The aforementioned scandals on CBI schemes push governments to modify the programs, but these cosmetic changes never seem to reform them sufficiently. At least, not enough to prevent the exploitation of the loopholes that circumvent the established rules. The problem may partly stem from the fact that these legal modifications are designed by the very firms that sell their services to potential applicants, which represent a considerable conflict of interest. Member States must rethink their programs in compliance with European values and rules.



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