



INVESTMENT MIGRATION AND THE STATE OF PLAY IN EUROPE



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Introduction: Investment migration refers to the attainment of citizenship or residential rights in return for a financial investment or other contributions to the host country. Today, investment migration is a global industry and is featured in immigration law in most UN recognized countries, albeit in different forms and shapes. Indeed, while there are currently 12 citizenship by investment (CBI) programs *stricto sensu*,¹ many countries offer facilitated naturalization paths that allow for acquisition of citizenship under lessened requirements. Facilitated

1 These include 12 formal citizenship programs specifically designed to attract foreign investors offered by: Antigua and Barbuda, Cyprus, Dominica, Grenada, Jordan, Malta, Moldova, Montenegro, St Kitts and Nevis, St Lucia, Turkey, and Vanuatu.

naturalization is often allowed on grounds of “special achievements” of applicants or “special interest” of states. Residence by investment (RBI) programs have similar paths to residency: while some RBI programs are specifically designed to attract foreign investors in return for residential rights, many countries with no investment programs issue business visas, international talent visas, and/or other economic residence options.

Five of the twelve formal citizenship by investment programs are in Europe, introduced by Cyprus, Malta, Moldova,² Montenegro, and Turkey.³ Furthermore, the Albanian Prime Minister, Mr. Edi Rama, recently announced that Albania may also introduce a citizenship by investment program soon, which would add one more investment migration program in the “old world”. Other European states, including

2 On 31 July 2019, the Moldovan Parliament passed a four-month moratorium law, which has been recently extended until 20 February in which period relevant authorities will assess possible risks associated to the Program. Once reports are received, decision will be made about the future of the Program.

3 ‘Europe’ is not only about geography but is also a historical, political and a cultural concept. For instance, Cyprus is geographically in Asia, but is rather European and a fully-fledged EU Member State (except for Northern Cyprus, which is not part of the EU); the largest part of Turkey is in Asia, but the country is candidate for EU membership; Greenland is geographically part of North America, but is politically and culturally associated with Europe, to name but a few examples.

EU Member States, allow discretionary naturalization on the grounds of special achievements — including economic achievements — of applicants. Reportedly, 22 EU Member States allow discretionary naturalization.⁴

The number of investment programs in Europe (specifically in EU Member States) has, naturally, triggered the interest of EU policymakers. The freedom of movement enjoyed by EU citizens means that citizens of any EU Member State can settle in any other Member State as well as in Switzerland, Iceland, and Norway.⁵ Thus, a Cypriot or Maltese citizen who has obtained his citizenship through an extraordinary investment, can freely relocate to Germany and enjoy most rights domestic citizens do, including the right to stay, establish, or work there. Therefore, the EU has a legitimate

4 EU Globalcit database – information under ‘Mode A24, Special Achievements’, available at: <<http://globalcit.eu/acquisition-citizenship/>> last accessed 11 February 2020. As of 1 February 2020, the United Kingdom is not a part of the EU and has been treated as a non-EU Member State for the purposes of this analysis. It is worth mentioning, however, that the UK Tier 1 Investor visa program attracts a large number of candidates from around the world.

5 For detailed information on free movement of all nationalities see Dimitry Kochenov and Justin Lindeboom (eds), ‘Kälän and Kochenov’s Quality of Nationality Index Nationalities of the World in 2018’ (Hart, Oxford 2020).

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interest in following developments related to the acquisition and loss of citizenship in EU member States.

EU institutions have a lot of criticism about these programs and initiate a lot of discussions (and potential legislation) to address them, but this criticism and activity is one sided. The IMC works to balance the discussions and is encouraging other groups to work with them to do the same. In doing so, the integrity of the programs will be strengthened all around.

EU Criticism

Investment migration has attracted strong criticism from EU institutions ever since the launch of the Maltese CBI program, which triggered proactive EU involvement. Since this time, various EU institutions and bodies have initiated discussions and levied numerous critiques of CBI and RBI programs. Criticism was related to the general principle of fairness and discrimination, the EU principle of sincere cooperation, the principle of genuine link, the commodification of citizenship, and specific issues surrounding corruption, money laundering, and other criminal activity.

In 2014, the European Parliament (EP) questioned whether investment programs aligned with EU values, asking the European Commission (EC) to analyze the matter further.⁶ The TAX3 Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance, established in March 2018, demanded that all CBI and RBI programs be phased out in EU Member States,⁷ stressing that CBI and RBI programs carry significant risks related to devaluation of EU citizenship, corruption, money laundering, tax evasion, lack of proper due diligence checks, and uncertain economic sustainability and viability of the investments provided through the programs.⁸ The European Parliamentary Research Service (EPRS) researched investment migration in somewhat greater detail. However, the EPRS study ignored several relevant legal arguments related to the

subject of sincere cooperation between EU Member States, the principles of fairness and discrimination in light of citizenship, and the principles of fairness and discrimination.

In January 2019, the EC issued its report on investment programs, relying heavily on previous documents of EU institutions and bodies. While recognizing that applicants may invest in a Member State for legitimate reasons, the EC underscored the risks associated with investment migration programs, including money laundering, corruption and tax evasion, as well as the possibility of criminal infiltration in the EU. Following the report, and through the lobbying efforts of the Investment Migration Council, the EC set up a group of experts from EU Member States to look at the specific risks associated with investment migration, develop a common set of security checks in this respect, and address the aspects of transparency and good governance with regard to the implementation of investment migration programs. It also consulted with civil society and industry representatives (including IMC) who were given the opportunity to provide their feedback on a number of questions raised in the report.

Most recently, the European Economic and Social Committee reaffirmed the stance of the EP's TAX3 Special Committee in its Opinion on investment programs,⁹ calling for phasing out all investor programs and urging EU Member States to follow that recommendation "or provide reasonable arguments and evidence for not doing so".¹⁰ It further recommended that "while working towards a phase-out of existing schemes in the EU, accession countries should not be allowed to run CBI or RBI schemes when they join, so that no new schemes are added to the ones currently in place".¹¹

With the new MEP's and European Commission in place for the ninth parliamentary term, discussions on investment migration in the EU are expected to continue in the upcoming years. The European Parliament Committee on Economic and Monetary Affairs (ECON) has confirmed the establishment of a permanent subcommittee on tax and financial crime (TAX4) for the 2019 – 2024 parliamentary term, which can be seen as a confirmation

that the EP intends to continue to focus strongly on these issues during the mandate. Various intergroups, and especially the recently formed intergroup on anticorruption, are also expected to raise questions related to investment migration in the future.

Involvement of the Investment Migration Council

The Investment Migration Council (IMC) supports discussions by civil society, governments, policymakers, and industry professionals aimed at strengthening the legal and security aspects of citizenship and residency programs. Unfortunately, reports from EU institutions are often unbalanced, focusing too heavily on the critiques of the programs and rarely taking into account the benefits and evident legal arguments in favor of investment migration. Furthermore, these reports are largely shaped by negative stereotypes and bias against the industry, which leads to unbalanced information and wrong conclusions. Investment migration is indeed a sensitive and highly politicized matter. This is primarily because of the money involved in trade with (what seem to be) non-tradable goods.¹² Money makes investment migration different than other forms of facilitated naturalization, such as fast-track naturalization of talented sportsmen or naturalization through marriage or ancestry. Yet, sensitivity and politics are one thing; law is quite another. In the eyes of the law, citizenship and residency through investment are perfectly legal ways of acquiring citizenship or residency in the country providing for such options and not much different from other legal ways of facilitated naturalization or immigration.

The IMC works to paint the whole picture of investment migration and create balance in the discussion, by interacting with other professional associations, governments, and international organizations daily. Furthermore, the IMC continuously assesses various aspects of the investment migration industry through vigorous research, including academic articles, reports, forums, education, and more. The aim is twofold: first, the IMC seeks to improve public understanding of all aspects of the investment migration industry; and second, it aims to promote education and high standards among its members. In

⁶ European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)).

⁷ Para. 91, Draft Report of the Special Committee on financial crimes, tax evasion and tax avoidance on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).

⁸ Para. 87, Draft Report of the Special Committee on financial crimes, tax evasion and tax avoidance on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).

⁹ EESC Opinion, 'Investor Citizenship and Residence Schemes in the EU' SOC/618-EESC-2019 (EESC Opinion).

¹⁰ Para 1.1. EESC Opinion.

¹¹ Para 4.2.2 EESC Opinion.

¹² Christian H. Kälin, Ius Doni in International Law and EU Law (Brill Nijhoff, Leiden/Boston 2019) 48.

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pursuing these objectives, the IMC is guided by three important edicts:

1. The IMC is primarily focused on the legal aspects of investment migration. When it comes to the acquisition of citizenship, national laws and EU law are rather clear: citizenship matters, and the criteria for acquiring citizenship remain the sole competence of Sovereign States/ EU Member States.¹³

Accordingly, the IMC has addressed points made by EU institutions that go against the sovereign rights of states to decide on questions related to acquisition of citizenship. Furthermore, the IMC participated constructively in the investment migration discussion hosted by the European Commission and arranged

¹³ This is notwithstanding the growing importance of EU law with regard to certain aspects of citizenship matters, such as loss of EU citizenship. States' sovereignty and respect for their freedom of deciding on citizenship criteria is of paramount importance and a starting point for every discussion of investment migration.

numerous meetings to make EU and other policymakers aware of their standpoint and work.

2. Various studies and analyses aside, investment migration remains largely an unregulated industry. Establishing minimum standards across the industry would contribute to creating a common regulatory framework that would address the risks associated with investment migration.

The IMC has started bridging the gap created by the lack of standards. The IMC, in coordination with BDO, Exiger, and Refinitiv, formed a Due Diligence Working Group to examine the state of play of due diligence and explore the potential for minimum standards across the investment migration industry. An independent research think tank, commissioned by the IMC, has drawn on industry-wide insights to conduct independent research on these questions and produce two reports.¹⁴

¹⁴ The two reports on 'Due Diligence in Investment Migration

3. Any objective assessment of the investment migration programs should include all relevant aspects and players in the industry.

The IMC repeatedly called EU institutions to involve them in discussions and other activities related to CBI and RBI programs. Challenges and issues can be successfully addressed only if policymakers and stakeholders are willing to hear all arguments and assess objectively all relevant aspects of the industry. The IMC is open to different opinions and arguments that would contribute to a healthy and regulated industry.

Finally, all actors working in the field of investment migration — within or outside of Europe — should join the IMC's efforts and work together to put an end to abuse of investment migration programs, and maintain high standards for the industry. ▶

tion Current Applications and Trends' and 'Due Diligence in Investment Migration Best Approach and Minimum Standard Recommendations' are available at <<https://investmentmigration.org/industry-reports/>> last accessed 11 February 2020.

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