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

Investor Citizenship and Residence Schemes in the European Union

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

1. Introduction

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

Three Member States operate investor citizenship schemes, where citizenship is granted under less stringent conditions than under ordinary naturalisation regimes, in particular without effective prior residence in the country concerned¹. Such schemes have implications for the European Union as a whole, as every person holding the nationality of a Member State is at the same time a citizen of the Union. Indeed, although these are national schemes, they are deliberately marketed and often explicitly advertised as a means of acquiring Union citizenship, together with all the rights and privileges associated with it, including in particular the right to free movement.

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

The European Parliament, in its Resolution of 16 January 2014², expressed concern that national schemes involving the “direct or indirect outright sale” of Union citizenship undermined the very concept of Union citizenship. It called on the Commission to assess the various national citizenship schemes in the light of European values and the letter and spirit of EU legislation and practice. The Commission contacted the Bulgarian, Cypriot and Maltese authorities for further information on their schemes. In a debate in May 2018, the European Parliament discussed a range of risks associated with investor citizenship and residence schemes.

In its 2017 Citizenship Report³, the Commission announced a report on national schemes granting Union citizenship to investors describing the Commission’s action in this area and examining current national law and practices, and providing some guidance for Member States. To prepare this report, the Commission commissioned a study on the legislation and practice pertaining to citizenship and residence schemes in all relevant Member States⁴ and

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

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

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

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

organised a consultation with Member States. This report also takes into account other relevant sources, including recent publications on the topic⁵.

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

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

2. Investor citizenship schemes in the EU

2.1. Context

As expressed in the case law of the Court of Justice, nationality is a bond between a citizen and the State, and it is “*the special relationship of solidarity and good faith between [a Member State] and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality*”⁶. Citizenship of a country is traditionally based on birth-right acquisition, be it by descent (*ius sanguinis*) or by birth in the territory (*ius soli*)⁷. States also give immigrants the possibility to naturalise as citizens, provided they fulfil certain integration conditions and/or show a genuine connection to the country, which can include marriage to one of its citizens⁸. All Member States have such ordinary naturalisation procedures.

Most Member States also have discretionary naturalisation procedures⁹. Under such procedures, Member States can, on an individual basis, award citizenship to a foreigner on the basis of “national interest”. This can be for outstanding achievement, for example in the area of culture, science or sports. In some EU Member States, the legislation provides that

⁵ See in particular, European Parliamentary Research Service “*Citizenship and residency by investment schemes in the EU: State of play, issues and impacts*”, October 2018, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2018\)627128](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2018)627128);

Transparency International/Global Witness, *European Getaway – Inside the Murky World of Golden Visas*, October 2018, https://www.transparency.org/whatwedo/publication/golden_visas

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

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

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

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

“national interest” may be equated with economic or commercial interest¹⁰. Discretionary naturalisation procedures can be used in individual cases to grant citizenship in exchange for investment. Such discretionary naturalisation procedures are highly individualised and used on a limited basis. They are therefore not the object of this report.

Bulgaria, Cyprus and Malta introduced in 2005, 2007 and 2013 respectively¹¹ broader schemes aimed at attracting investment from third-country nationals by facilitating access to their citizenship. These schemes are a new form of naturalisation as they systematically grant citizenship of the Member State concerned, provided the required investment is made and certain criteria fulfilled¹².

Since Bulgaria¹³, Cyprus and Malta are the only Member States which operate investor citizenship schemes, this section of the report focusses on the legislation and practice of these countries.

2.2. Type and amount of investment required

Investor citizenship schemes aim to attract investment by offering citizenship in return for a defined amount of money. In Bulgaria, an overall investment of EUR 1 million is requested under its fast-track¹⁴ investor citizenship scheme. In Cyprus, a minimum investment of EUR 2 million is necessary, together with ownership of property in Cyprus. In Malta, a contribution of EUR 650,000 must be paid into a national investment fund, together with an investment of EUR 150,000 and a requirement to own or rent property in Malta¹⁵. In Cyprus and Malta, additional investments for family members are required.

Various investment options can be observed among the three Member States operating investor citizenship schemes: capital investment¹⁶; investment in immovable property¹⁷; investment in government bonds¹⁸; and one-off contributions to the State budget¹⁹. In addition to the investment requirement, applicants must also pay non-refundable administrative fees as

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

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

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

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

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

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

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

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

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

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

part of the application process. Cyprus and Malta have significantly higher fees than Bulgaria²⁰.

2.3. Residence or other required links to the Member State

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

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

This means that applicants can acquire citizenship of Bulgaria, Cyprus or Malta – and hence Union citizenship – without ever having resided in practice in the Member State. In Malta, the applicant must be physically present to provide biometric data for the e-Residence Card and to take the oath of allegiance²¹. A personal interview with the applicant may also be required in Malta. In Bulgaria, the applicant’s presence is required for the submission of the application for citizenship and in Cyprus for the collection of the residence permit.

The study looked for other factors, besides physical residence, which might arguably create a link between the applicant for citizenship and the country concerned. In Bulgaria, the applicant must undergo an application interview, but is exempt from the conditions of being proficient in the Bulgarian language or from showing knowledge of Bulgarian public life. The Cypriot authorities consider that the investment in Cyprus is itself a sufficient bond between the applicant and Cyprus. It is to be noted that, under the relevant Cypriot Council of Ministers decision, the residence criterion required under its ordinary naturalisation procedure is replaced by an investment criterion²². Applicants for Maltese citizenship in the final stage of the naturalisation process are asked about their links with Malta. Applicants are asked to have boarding passes showing travel to Malta, and if they have other evidence, for instance, donations to charitable organisations in Malta, membership of a local sports, cultural or social club or pay income tax to the Maltese Inland Revenue Department²³. Applicants are also encouraged to set up a business in Malta.

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

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

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

²³ See Deliverable B.I of the Study, *ibid*, note 4; also Office of the Regulator Individual Investor Programme (ORIIP), *Fourth Annual Report on the Individual Investor Programme of the Government of Malta* (1st July 2016 – 30th June 2017), November 2017, p. 32:

<https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

2.4. Investor citizenship schemes and EU law

In line with the Treaties, every person who becomes a national of a Member State shall be a citizen of the Union²⁴. Citizenship of the Union is destined to be the fundamental status of nationals of the Member States²⁵. A decision by one Member State to grant citizenship for investment **automatically confers rights**²⁶ in relation to other Member States, in particular free movement rights, the right to vote and stand as a candidate in local and EU elections, the right to consular protection if unrepresented outside the EU and rights of access to the internal market to exercise economic activities. It is precisely the benefits of Union citizenship, notably free movement rights, that are often advertised as the main attractive features of such schemes.

The Court of Justice of the EU has held, in what is now settled case-law, that, while it is for each Member State to lay down the conditions for the acquisition and loss of nationality, they must do so having due regard to Union law²⁷. Having due regard to EU law means taking into account all rules forming part of the Union legal order and includes having due regard to norms and customs under international law as such norms and customs form part of EU law²⁸.

The *Nottebohm* case of the International Court of Justice establishes that, for nationality acquired through naturalisation to be recognised in the international arena, it should be granted on the basis of a genuine connection between the individual and the State in question²⁹. The “bond of nationality” is traditionally based either on a genuine connection with the people of the country (by descent, origin or marriage) or on a genuine connection with the country, established either by birth in the country or by effective prior residence in the country for a meaningful duration. Other elements may be required to attest to the existence of a genuine bond with the country, such as knowledge of a national language and/or of the culture of the country, links with the community. The existence of these requirements in Member State nationality regimes confirms that Member States generally regard the establishment of a genuine link as a necessary condition for accepting third-country nationals into their societies as citizens.

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

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

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

²⁶ See Article 20(2) TFEU.

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

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

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

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

Since under Article 20 TFEU, citizenship of the Union is an automatic consequence of holding nationality of a Member State and a host Member State cannot limit the rights of naturalised Union citizens on grounds that they acquired the nationality of another Member State without any link with that awarding Member State³⁰, each Member State needs to ensure that nationality is not awarded absent any genuine link to the country or its citizens³¹.

The Commission has discussed with the Maltese and Cypriot authorities the inclusion of an effective residence criterion in their investor citizenship scheme legislation³². As a result, Malta in 2014 introduced a requirement for “proof of residence” for twelve months into its legislation³³. In practice, this requirement is considered fulfilled if the applicant obtains a residence permit to reside in Malta, even without physical residence, provides boarding passes, and possibly evidence of, for example, donations to charitable organisations in Malta, membership of local sports clubs or payment of income tax to Malta. Cyprus also changed its legislation in 2016 to require applicants under its investor citizenship scheme and their family members to hold residence permits³⁴. The Commission will continue monitoring compliance with Union law.

3. Investor Residence Schemes in the EU

3.1. Context

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

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

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

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

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

³⁴ Council of Ministers Decision No 834 of 13.9.2016

This trend has continued over the past 10 years and these schemes exist to date in 20 Member States³⁵.

Their features vary greatly in particular as regards the investment to be made, both in nature and in amount. Five types of investment options can be observed: capital investment³⁶, investment in immovable property³⁷, investment in Government bonds³⁸, donation or endowment of an activity contributing to the public good³⁹, and one-time contributions to the State budget⁴⁰. These options are not mutually exclusive, some Member States allowing for different types of investment and their combination.

In terms of amount, the scale ranges from a very low investment (below EUR 100,000⁴¹) to a very high investment (over EUR 5 million⁴²).

In addition to these, a non-financial investment such as the creation of jobs or the contribution to the economy may be required⁴³.

Procedures differ greatly as well as the conditions linked to physical presence in the Member State granting residence rights⁴⁴.

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

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

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

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

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

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

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

⁴² Slovakia and Luxembourg.

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

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

3.2. Investor residence schemes and EU law on legal migration

EU law regulates the entry conditions for specific categories of third-country nationals⁴⁵. The granting of a residence permit to third-country investors is currently not regulated at EU level and remains governed by national law⁴⁶.

However, a residence permit granted on the basis of an investor residence scheme set up in one Member State also impacts on other Member States. A valid residence permit allows a third-country national to travel freely within the Schengen area⁴⁷ for 90 days in any 180-day period. It also allows access for short stays to Bulgaria, Croatia, Cyprus and Romania based on the unilateral recognition of residence permits by these Member States. It is therefore essential that all relevant checks, particularly security checks, are carried out before the issuance of such a permit (see Section 4 below).

Moreover, there may be an impact on the acquisition of the EU Long-Term Residence status, which is conferred on third-country nationals who have been legally and continuously residing in an EU Member State for five years⁴⁸. This status gives third-country nationals certain rights⁴⁹ on the basis of the duration of their residence in a Member State and the fact that they have put down roots in the Member State concerned. Continuity of presence in the host State is an essential aspect and condition underlying this status⁵⁰. In contrast, the study found that in several Member States⁵¹ the residence requirement under the investor residence schemes does not require continuous physical residence. In some of them, the law expressly

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

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

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

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

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

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

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

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

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

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

Additionally, holding a national investor permit allows for family reunification rights under the Family Reunification Directive⁵², provided applicants meet the conditions. In this context, it is worth mentioning that in most Member States family members of investors are not subject to enhanced due diligence, which could entail security risks⁵³.

3.3. The link between investor residence schemes and naturalisation procedures

Investor residence schemes may also impact on the acquisition of citizenship. A residence permit acquired by investment can be used under several⁵⁴ Member States' ordinary naturalisation procedures to establish the genuine connection with the country and waive other requirements. In other words, a residence permit obtained by investment – and sometimes without requiring any physical presence – may provide fast-track access or a link to permanent residence and then citizenship⁵⁵. It is also the case that in Member States that have both investor citizenship and residence schemes, the investment required for the residence scheme may be taken into consideration to qualify for the investor citizenship scheme⁵⁶.

4. Areas of concern

Third-country nationals may invest in a Member State for legitimate reasons⁵⁷, but may also be pursuing illegitimate ends, such as evading law enforcement investigation and prosecution in their home country and protecting their assets from the related freezing and confiscation measures. Hence investor citizenship and residence schemes create a range of risks for

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

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

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

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

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

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

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

There is also a concern around lack of transparency and governance of the schemes. Both citizenship and residence schemes have come under close public scrutiny following allegations of abuse and corruption linked to them in some Member States⁵⁸. Enhancing transparency and putting in place adequate risk management, control systems and oversight mechanisms could help mitigate as far as possible some of these concerns.

4.1. Risks posed by Investor citizenship and residence schemes

4.1.1. Security

Over the past years, the Commission has presented different initiatives aimed at strengthening the security of the EU and creating a Security Union⁵⁹. The three main centralised information systems developed by the EU and used for security checks are (i) the Schengen Information System (SIS)⁶⁰ with a broad spectrum of alerts on persons and objects, (ii) the Visa Information System (VIS)⁶¹ with data on short-stay visas, and (iii) the Eurodac system⁶² with fingerprint data of asylum applicants and third-country nationals who have crossed the external borders irregularly. These three systems are complementary, and – with the exception of SIS – primarily targeted at third-country nationals.

In addition, new IT systems like the Entry/Exit System (EES)⁶³ and the Electronic Travel Information and Authorisation System (ETIAS)⁶⁴ are being established and the reinforcement of the VIS⁶⁵ and the extension of the European Criminal Records Information System to Third

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

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

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

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

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

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

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

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

Country Nationals (ECRIS-TCN)⁶⁶ have been proposed by the Commission. The Commission has also proposed to make all information systems interoperable⁶⁷.

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

Security and investor citizenship schemes in the Member States

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

In **Malta**, checks based on police records from the Maltese police and/or from the competent authorities in the country of origin are made on the criminal background of the main applicants and their dependants over 12 years of age. The requirement to prove a clean criminal record may be waived in exceptional circumstances, where the competent authority considers such a certificate impossible to obtain⁶⁸. The Maltese authorities consult INTERPOL and Europol databases as part of a four-tier due diligence process covering⁶⁹: know-your-client due diligence checks by the agent and the Malta Individual Investor Programme Agency (see section on anti-money laundering checks below); clearance by the police authorities; a check for completeness and correctness of the application and verification of the documents submitted; and an outsourced due diligence check whereby the Malta Individual Investor Programme Agency to present evidence that they have commissions two reports from international companies on every IIP application⁷⁰. Malta excludes nationals of certain countries⁷¹ and persons subject to travel bans imposed by the United States from applying for citizenship under its scheme, whereas applicants showing on any other sanctions or watch lists must be reported by agents to the Malta Individual Investor Programme Agency⁷².

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

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

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

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

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

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

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

In **Cyprus**, applicants must submit a criminal record report from their country of origin and residence (if different), which must be dated no more than 90 days prior to submission. The Cypriot police also undertake a search in both the Europol and INTERPOL databases⁷³. The investor's name and family members' names must not be included in the list of persons whose assets, within the boundaries of the European Union, have been frozen as the result of sanctions. In addition, according to new rules introduced in July 2018⁷⁴, applicants, who submit their claims via a service provider are required to submit a due diligence report issued through an internationally accepted database (for example World-Check⁷⁵, Lexis Diligence⁷⁶, Regulatory DataCorp Inc.⁷⁷ etc.). In cases where there are concerns regarding national security, the application is additionally evaluated by the Central Intelligence Agency of Cyprus. Cyprus is not connected to the Schengen Information System.

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

The study has highlighted a significant number of grey zones concerning security checks. One problem relates to the discretion of Member States regarding citizenship applications. In fact, the study shows that authorities can admit requests, even when the applicants do not meet certain security requirements⁷⁸. Moreover, applications do not need to be submitted in person and can be submitted by agents, which is the case in Malta and Cyprus.

Moreover, Member States currently do not consult each other on applicants for investor citizenship. In comparison, prior consultation on security grounds between Member States exists for applicants for short-stay visas from certain⁷⁹ third countries⁸⁰. This is despite the fact that citizenship entails wide-ranging rights, including residence and the right to vote and stand in EU and local elections, awarded for life rather than a mere short-term visiting right. Another problem relates to the fact that a lack of coordination and commonly agreed criteria leaves room for “shopping around” for the most lenient conditions. An applicant refused

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

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

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

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

⁷⁷ <https://rdc.com/>

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

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

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

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

Security and investor residence schemes in the EU

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

While the study found that in the national laws of the Member States concerned, the check of public policy and public security is generally included as a ground for refusal (or non-renewal) of the permit, it also identified both a lack of available information and an important level of discretion in the way Member States approach security concerns⁸². This has led to some problematic cases, as highlighted also by other reports⁸³. In that context, the Commission has already proposed to upgrade the Visa Information System, which – in conjunction with the proposal for the Interoperability Regulation⁸⁴ – will introduce mandatory searches in relevant EU and international security databases⁸⁵ at the external borders for *all issued* residence permits and long-term visas. Information on residence permit applications, which were refused by a Member State on security grounds, would also be stored and checks can be subsequently made against it.

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

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

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

⁸⁴ See note 68.

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

Ex-post checks exist to verify that the conditions under which residence rights were granted still exist during the validity of the permit, but only in a limited number of cases⁸⁶. They consist of verifying that the holder of the permit still fulfils the conditions of the stay during the validity of the permit (for more details, see the accompanying Staff Working Document). However, as there may be no requirement for permit holders to actually reside in the host State (or residence may be required only for a very limited time as indicated above), it may be difficult to verify if permit holders still fulfil the conditions for the residence permit.

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

4.1.2. Money laundering

Regarding checks on the origin of funds, all EU Member States except for one⁸⁷ have notified transposition measures for the fourth Anti-money Laundering Directive⁸⁸. The Commission is currently carrying out a horizontal check of the completeness of the notified national legislation transposing the fourth Anti-money Laundering Directive and is pursuing non-communication infringement proceedings against those Member States where some gaps in transposition have been identified. Under this legislation, the obliged entities (inter alia, credit and financial institutions, notaries and lawyers, and real estate agents)⁸⁹ must carry out customer due diligence measures⁹⁰. Obligated entities have an obligation to report suspicious transactions to the Financial Intelligence Unit in their country and they are prohibited from informing clients about reporting of suspicious transactions. In addition, the fourth Anti-Money Laundering Directive contains a specific additional requirement for obliged entities to carry out enhanced due diligence checks on transactions with customers from high-risk third countries.

The fifth Anti-Money Laundering Directive, which entered into force on 9 July 2018 and must be transposed by Member States by 10 January 2020⁹¹, introduces an amendment that designates as high risk and requires enhanced customer due diligence for, those third-country nationals who apply, “for residence rights or citizenship in the Member State in exchange of capital transfers, purchase of property or government bonds, or investment in corporate

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

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

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

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

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

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

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

The study showed a variety of practices by investor citizenship schemes to combat money laundering and also pointed to a number of grey areas. Formally, there is no obligation on the bodies involved in carrying out the checks on the origin of funds in investor schemes to communicate to the Member States’ competent authorities the results of these checks. However, in practice some cooperation exists in relation to investor citizenship schemes. Identity Malta⁹³ confirmed, for the purposes of the study, that the due diligence definitions and procedures of the fourth Anti-money Laundering Directive are followed in the four-tier process of due diligence it uses. The Cypriot legal framework on investor citizenship schemes makes direct cross-reference to the Cypriot anti-money laundering legislation. This requires Cypriot Banks’ compliance departments to implement due diligence measures to verify and validate the origin of the funds used in the investment. In Bulgaria, the check on the origin of funds (in accordance with the Bulgarian Law on Measures against Money Laundering) is carried out by the Invest Bulgaria Agency⁹⁴. In this procedure the applicant must provide a declaration of the origin of funds in compliance with the anti-money laundering law⁹⁵.

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

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

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

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

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

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

investor citizenship applicants and are channelled through bodies that do not qualify as obliged entities under the fourth and fifth Anti-Money Laundering Directives. Moreover, the bodies involved in carrying out the checks on the origins of the funds in investor citizenship and residence schemes should always communicate their findings to the Member State authorities competent for the processing of applications. Member States could also take into account the potential risks of money laundering linked to investor citizenship and residence schemes in their national risk assessments carried out according to the EU anti-money laundering rules and take the necessary mitigating measures⁹⁶.

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

4.1.3. Circumvention of EU rules

There is also the possibility that the status given by investor citizenship and residence schemes may be used to circumvent EU law. Investor citizenship schemes in particular may provide a route for third-country nationals to circumvent certain nationality requirements in EU law. For instance, EU rules stipulate that an operating licence, i.e. an authorisation to provide air services, may only be granted by the competent (national) licensing authorities where Member States or Member State nationals own more than 50% of the undertaking concerned and effectively control it⁹⁷. The Commission has received one complaint and several enquiries from national licensing authorities about third country investors who have obtained citizenship of the Union in a Member State via an investor citizenship scheme and subsequently applied for an airline operating licence.

4.1.4. Tax evasion

Another concern is whether tax incentives derived from the use of investor citizenship and residence schemes drive demand for such schemes⁹⁸. The use of these schemes in itself does not equate to tax evasion, although they may enable individuals to benefit from existing privileged tax rules. However, there may be room for abuse based on the misuse of the benefits and documentation obtained through the schemes, which varies from scheme to scheme, i.e. some may facilitate and be used as an instrument in aggressive tax planning and evasion.

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

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

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

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

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

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

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

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

The mandatory disclosure obligations for intermediaries adopted through an amendment to the Directive on Administrative Cooperation in 2018⁹⁹ requires promoters of tax avoidance schemes and service providers involved in their design or implementation to inform tax authorities of any schemes they market or put in place. It includes specific provisions to target schemes that may have the effect of circumventing the reporting obligations laid down by the EU legislation on automatic exchange of financial account information.

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

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

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

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

To address the risks posed by investor citizenship and residence schemes, and in addition to ensuring the effective implementation of the Directive on Administrative Cooperation, EU Member States providing such schemes should make use of the available tools in the EU framework for administrative cooperation, in particular the spontaneous exchange of information to the Member State(s) of residence, as prescribed in the Directive on Administrative Cooperation¹⁰⁰.

Moreover, the existence of investor citizenship and residence schemes and the issues they raise for taxation purposes should also be considered in the work being carried out by Member States in the Council, for example, in the ongoing work to reform the Code of Conduct for business taxation¹⁰¹, which aims at ensuring a coordinated action at European level to tackle harmful tax competition, limited to business taxation under the current mandate. The reform of the Code is an opportunity to broaden the scope of the work to include other types of harmful tax practices, including those targeted at individuals. Member States should also note the possible role of investor citizenship and residence schemes in tax avoidance and evasion and consider if the risks posed by such schemes merit their inclusion in the EU listing criteria¹⁰².

As part of its work to identify loopholes in the Common Reporting Standard, the international equivalent to first amendment to the Directive on Administrative Cooperation, the Organisation for Economic Co-operation and Development (OECD) analysed the potential such citizenship and residence schemes may have to circumvent the reporting obligations under this standard and therefore facilitate tax evasion. In particular, the OECD concluded that identity cards and other documentation obtained through such schemes can be potentially misused to misrepresent an individual's jurisdiction of tax residence and to endanger the proper operation of the Common Reporting Standard due diligence procedures¹⁰³. In this respect, the OECD identified a list of investor citizenship and residence schemes that may present a high risk to the effective implementation of the Common Reporting Standard¹⁰⁴. Both investor citizenship and residence schemes in Cyprus and in Malta are included on this list. The OECD has also published additional information and guidance to financial institutions in order to minimise the room for potential abuse.

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

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

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

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

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

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

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

4.2. Transparency and governance

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

4.2.1. Transparency and governance of investor citizenship schemes today

In Malta, there is a regulator for the investor citizenship scheme, which publishes annual reports, which are subject to parliamentary scrutiny¹⁰⁵. On 22 May 2018, Cyprus announced the establishment of a Supervisory and Control Committee and the introduction of a code of conduct for its investor citizenship scheme. In Bulgaria, there is neither a regulator nor a code of conduct.

In Malta, applications for investor citizenship must be submitted by the main applicant to the Malta Individual Investor Programme Agency either through Approved Agents or the concessionaire¹⁰⁶. These are **non-public bodies** with a significant role throughout the application process, acting on behalf of applicants and interacting directly with the competent authorities on their behalf. In Bulgaria and Cyprus, applicants can choose to employ consultants or lawyers to advise on and make applications on their behalf. The new Cypriot Code of Conduct applies to the agents and intermediaries, which deal with citizenship applications on behalf of their clients. The Code aims to encourage high ethical standards and imposes an obligation to abstain from advertising the sale of citizenship in public places. Adverts for the sale of “EU citizenship” were common in Cyprus. It remains to be seen what effect the new Code of Conduct will have.

Under none of the three investor citizenship schemes is comprehensive information available about the identity of people who successfully obtain citizenship on the basis of investment and their countries of origin. The reports of the Maltese regulator contain information about the number of applications made and the number of those approved and turned down. These reports also contain information about the income generated by the Maltese investor citizenship scheme. Maltese legislation requires the yearly publication in the Government Gazette of the names of all persons who during the previous twelve calendar months were granted Maltese citizenship by registration or naturalisation, including (although not explicitly identifying) those persons who were granted Maltese citizenship under the investor citizenship scheme¹⁰⁷. Similar information is not available for Bulgaria and Cyprus.

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

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

¹⁰⁶ Regulation 4(3) of LN 47/2014.

¹⁰⁷ Regulation 14(2) of LN 47/2014.

Cypriot Government, as of 2018, decided to limit such citizenships to 700 per year¹⁰⁸. In Malta, the number of successful main applicants (excluding dependants) for the scheme as a whole is capped at 1,800¹⁰⁹. However, the Maltese authorities are in the process of updating the law and, following a public consultation, intend to increase the cap by another 1,800. Bulgaria imposes no cap on the number of foreign investors who can apply for citizenship.

4.2.2. Transparency and governance of investor residence schemes today

Regarding governance of investor residence schemes, in Malta, unlike for the investor citizenship scheme, there is no regulator. In Cyprus, it is not foreseen that the Supervisory and Control Committee announced for the investor citizenship scheme be in charge also of residence permits. In Bulgaria, the only obligation provided for by the legislation is a notification by the Migration Directorate to the Bulgarian Investment Agency about the permanent residence permits issued under the scheme. Specific monitoring mechanisms and reporting obligations exist in a very limited number of Member States¹¹⁰. This means that, in most cases, the oversight of the scheme is left to general monitoring mechanisms when they exist, such as parliamentary scrutiny, administrative liability, general reporting of activities to the government, or access to documents requests, and no additional and specific diligence mechanism exists¹¹¹.

A limited number of Member States have made the choice to involve private companies in the running of their residence schemes¹¹², sometimes with a significant role¹¹³. In Cyprus, applicants are free to decide to present their application through an authorised representative whose role is limited to act as facilitators and providers of consultancy services. In Malta, applications may be submitted to the competent authorities by registered agents or accredited persons; these registered agents act on behalf of the applicant for all correspondences,

¹⁰⁸ Council of Ministers' Decision 906/2018.

¹⁰⁹ Regulation 12 of LN 47/2014.

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

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

¹¹² Cyprus, Hungary, Malta.

¹¹³ Hungary, Malta.

applications, submissions, filings, notifications under the regulations. In Hungary, the Hungarian Parliament's Economy Committee authorised a number of businesses whose role was to issue the residency bonds to be purchased by the applicants. Only one company could receive the authorisation to issue bonds in a given third country¹¹⁴.

4.2.3. Measures to improve transparency, governance and security

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

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

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

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

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

5. External dimension

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

5.1. Candidate countries and potential candidates

Due to the prospect of future Union citizenship of the citizens of candidate countries and potential candidates¹¹⁵, citizenship of these countries becomes increasingly attractive to investors. This is the case already during the accession process as candidate countries and potential candidates develop closer relations with the EU and can obtain the right for their citizens to enter the Schengen area visa-free for short stays¹¹⁶.

A citizenship investor scheme is in place in Turkey¹¹⁷ while, in Montenegro, preparations for the implementation of such a scheme, which was adopted in November 2018, were launched in January 2019¹¹⁸.

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

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

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

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

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

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

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

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

stays in the EU since 2014, introduced an investor citizenship scheme in 2018¹¹⁹. Some third countries, or the contractors supporting them, have explicitly marketed their citizenship with the argument that it gives visa-free access to the European Union. Investors interested in such schemes are often wealthy nationals of visa-required countries, who could use such schemes to bypass the regular Schengen visa procedure and the in-depth assessment of individual migratory and security risks it entails, including a possible evasion of measures to prevent money laundering and financing of terrorism.

While the European Union respects the right of sovereign countries to decide on their own naturalisation procedures, visa-free access to the Union should not be used as a tool for leveraging individual investment in return for citizenship¹²⁰. The implementation of such schemes will be duly taken into account when assessing third countries that could be considered for a visa-free regime with the European Union. Moreover, third countries that already enjoy visa-free status must carry out security and background checks of applicants for citizenship schemes to the highest possible standards; any failures in this regard could be grounds for re-imposing a visa requirement and suspending or terminating visa waiver agreements.

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

6. Conclusions

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

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

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

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

¹²⁰ See for instance: <https://vic.vu/citizenship/> (“Key benefits of Vanuatu Citizenship”).

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



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COMMISSION STAFF WORKING DOCUMENT
Accompanying the document

**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(2019) 12 final}

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I. INTRODUCTION

This Commission Staff Working Document accompanies the Report on Investor Citizenship and Residence Schemes in the European Union. It gives an overview of current national law and practice in EU Member States concerning investor citizenship and investor residence schemes¹.

Citizenship, the status of a person as a legal member of a sovereign state, can be acquired through different means. Traditionally, citizenship is obtained based on one's descent or place of birth. States also grant citizenship to persons that fulfil certain requirements (*naturalisation*), such as extended residence, completion of language and citizenship tests and good conduct. A "genuine link"² between person and state is generally required.

Three Member States – Bulgaria, Cyprus and Malta – use citizenship to attract foreign investment in the form of so-called "investor citizenship schemes". Under these schemes, certain ordinary naturalisation requirements are waived or softened provided the applicant invests a certain amount in the Member State concerned. Some other Member States grant discretionary naturalisation on grounds of special achievements in the national interest. Such special achievements are typically in the area of culture, sports or science, but can also cover economic achievements.

A person who becomes, through birth or naturalisation, a citizen of an EU Member State automatically acquires Union citizenship as well. Union citizens enjoy a number of rights based on this status, for example the right to move and reside freely within the territory of the Member States, the right to vote and stand as a candidate in European Parliament and local elections and specific market access rights.

Similarly, a number of Member States grant residence in exchange for investment. While the rights granted in this context are more limited than those granted through Union citizenship, they also impact other Member States. In particular, a valid residence permit issued by a Member State applying the Schengen acquis in full allows a third-country national to enter any other Schengen Member State³ for a duration of up to 90 days in any 180-day period. It also allows access for short stays to Bulgaria, Croatia, Cyprus and Romania based on the unilateral recognition of residence permits by these Member States⁴.

¹ The document is based on the external fact-finding study carried out by Milieu Law and Policy Consulting, *Factual Analysis of Member States' Investor Schemes granting citizenship or residence to third-country nationals investing in the said Member State*, Brussels 2018 ("the Study"). After the conclusion of the Study, BG, CY and MT were invited to provide factual feedback on the parts of the study relating to their investor citizenship schemes. The comments received from the three Member States were duly taken into account, where relevant, for the preparation of this Staff Working Document.

² Judgment of the International Court of Justice of 6 April 1955, *Nottebohm*, I.C.J. Reports 1955, p. 4, available at <https://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>

³ The Schengen area, i.e. the area without internal border controls, currently includes 26 countries, of which 22 MS (AT, BE, CZ, DK, EE, FI, FR, DE, EL, HU, IT, LV, LT, LU, MT, NL, PL, PT, SK, SI and ES) and four associated countries (Switzerland, Norway, Iceland and Liechtenstein).

⁴ Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC, OJ L 157, 27.5.2014, p. 23.

Part II of this document sets out further detail of Member States' investor citizenship schemes, as well as explaining the operation of discretionary schemes on grounds of national interest. Part III sets out further detail of Member States' investor residence schemes.

II. INVESTOR CITIZENSHIP SCHEMES

II.1 INTRODUCTION: WHAT ARE INVESTOR CITIZENSHIP SCHEMES?

Investor citizenship schemes can be defined as a Member State legislative, policy or administrative initiative aiming systematically to attract investment by allowing investors to acquire citizenship of the Member State concerned. Bulgaria, Cyprus and Malta introduced such investor citizenship schemes in 2005, 2007 and 2013 respectively.

A few other Member States have in their legislation the possibility to confer citizenship on an individual basis as a result of an investment made in the country via either discretionary naturalisation or discretionary facilitated naturalisation schemes⁵. Discretionary naturalisation on grounds of national interest is where the naturalising authority waives all or almost all naturalisation conditions. Discretionary facilitated naturalisation on grounds of national interest is where the naturalising authority waives some but not all naturalisation conditions. Such discretionary naturalisation procedures are highly individualised, are generally used on a limited basis and do not provide for the systematic award of citizenship based on an investment in the same way that the investor citizenship schemes of Bulgaria, Cyprus and Malta do.

II.2 LEGAL BASIS OF THE SCHEMES

The Bulgarian Citizenship Act (BCA)⁶, together with the Foreign Nationals in the Republic of Bulgaria Act⁷, provides for two pathways through which foreign investors may obtain Bulgarian citizenship by waiving some of the ordinary naturalisation criteria⁸. The Investments Promotion Act⁹ and the secondary legislation on its implementation, are also relevant as they govern the procedures for certification of various types of investments, among other matters.

⁵ AT, BG, SK and SI all permit discretionary naturalisation on grounds of the “economic interest of the state”, See Study Overview, p.4, and Annex III of Study, *ibid*, note 1.

⁶ Bulgarian Citizenship Act, SG N. 136, 18 November 1998, as subsequently amended and supplemented.

⁷ Foreign Nationals in the Republic of Bulgaria Act (FNA).

⁸ The general criteria for the naturalisation of TCNs are: (i) having attained the age of 18 years; (ii) holding a permit for permanent residence or a permit for continuous residence in Bulgaria issued at least 5 years ago; (iii) not having been sentenced by a Bulgarian court for a wilful crime prosecuted ex officio by the state, and is not subject to pending criminal proceedings for such an offence, unless the person has been rehabilitated; (iv) possessing an income or occupation allowing a person to subsist in Bulgaria; (v) having a command of the Bulgarian language subject to verification according to a procedure established by an ordinance of the Minister of Education and Science (this requirement may be avoided in certain limited cases specified by the law), and (vi) release from previous citizenship or possibility to be released therefrom at the time of acquisition of Bulgarian citizenship (this requirement may be avoided in certain limited cases specified by the law).

⁹ Bulgarian Investments Promotion Act.

Table 1 summarises the differences between these two schemes.

Table 1 Overview of Bulgaria’s investor citizenship programmes¹⁰

<i>Requirements</i>	Ordinary Investors’ Scheme (Article 12a BCA)	Fast-Track Investors’ Scheme (Article 14a BCA)
<i>To hold a permanent residence permit and period for which it must have been held</i>	Yes, for 5 years	Yes, for 1 year
<i>Amount of investment required¹¹</i>	EUR 500,000	EUR 1 million
<i>Requirement for income or occupation allowing foreign national’s subsistence in Bulgaria</i>	Yes	No

In **Cyprus**, the Council of Ministers has the discretion to grant Cypriot citizenship to foreign investors for reasons of public interest (independently of their duration of stay), in exceptional circumstances where high level services were provided to Cyprus, under Article 111A of the Civil Registry Laws of 2002 to 2017¹². Implementing this discretionary power, the Council of Ministers created the ‘scheme for naturalisation of investors by exception on the basis of subsection (2) of Section 111A of the Civil Registry Laws’ (scheme for naturalisation of investors by exception or naturalisation by exception) in its Decision 81.292 of 13 September 2016¹³. The scheme was renamed the ‘Cyprus Investment Programme’¹⁴ in the course of legislative amendments made in July 2018¹⁵.

Malta’s scheme – the Individual Investor Programme (IIP) – is regulated by secondary legislation issued under the Maltese Citizenship Act¹⁶, namely, the Individual Investor Programme of the Republic of Malta Regulations, Legal Notice 47 of 2014 (LN 47/2014)¹⁷. This allows for the granting of citizenship by a certificate of naturalisation to foreign individuals and their families who contribute to the economic development of Malta. The Citizenship Regulations¹⁸ are also relevant to the regulation of the scheme.

¹⁰ In both schemes the applicants must be of legal age (above 18), have a clean criminal record, and their physical presence in Bulgaria is not necessary (only when submitting the application). The terms ‘ordinary’ and ‘fast-track’ are used due to the fact that, in the ordinary scheme the five-year permanent residence period required for naturalisation is maintained, while in the ‘fast-track scheme’ this requirement is lowered to one year.

¹¹ See section II.5 for details.

¹² Cyprus Civil Registry Law.

¹³ Council of Ministers’ Decision 81.292 and website of the Civil Registry and Migration, available at <http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/DABB1713307D8C4CC2257D2C0045433C?OpenDocument>

¹⁴ <http://www.moi.gov.cy/moi/moi.nsf/All/0A09FCB93BA3348BC22582C4001F50CF>

¹⁵ Decision 906/2018 of 21 May 2018 on the “Cyprus Investment Programme”. Due to the timing of these changes, it was not possible to take into account the most recent changes in Cypriot legislation and practice in the study.

¹⁶ Chapter 188 of the Maltese Citizenship Act. According to Article 22(1) of the Constitution of Malta, ‘[t]he acquisition, possession, renunciation and loss of Maltese citizenship shall be regulated by law.’

¹⁷ LN 47/2014. A correction was made due to differences in the Maltese and English versions of the law. These changes relate to the correction of typographical errors and have no impact on the substantive requirements, which have not been amended since the adoption of the law in 2014. Legal Notice 59 of 2014, Correction of Laws Order, 2014 (Legal Notice 47 of 2014).

¹⁸ LN 106/1989.

II.3 INSTITUTIONAL STRUCTURE OF THE SCHEMES

In **Bulgaria**, the competent authority is the same as that for naturalisation procedures: the Ministry of Justice is responsible for making a proposal to the President of the Republic of Bulgaria to issue a decree on the acquisition of Bulgarian citizenship. Specialised services within the Ministry will examine the relevant files to be sent to the Minister to propose a draft final decision. The Minister of Economy also plays a role in certifying that an investment has been made¹⁹. Ultimately, the President issues the corresponding decree granting or refusing citizenship.

The decision-making authority in **Cyprus** is the Ministry of Interior, although the competent authority deciding to waive the naturalisation conditions is the Council of Ministers. Applications are processed by the Director of the Civil Registry and Migration Department and the Director General of the Ministry of Interior.

In Malta the Identity Malta Agency (Identity Malta) carries out functions and duties in relation to passports, identity documents, work and residence permits for expatriates and individual investment programmes²⁰. On 29 March 2018, the Maltese government set up the Malta Individual Investor Programme Agency (MIIPA) to administer the IIP.²¹ Such work is carried out in cooperation with Identity Malta. The Minister responsible for identity management – currently the Parliamentary Secretary responsible for Reforms, Citizenship, and Simplification of Administrative Processes, within the Office of the Prime Minister – is responsible for Identity Malta and for the MIIPA.

Of particular interest for investor citizenship schemes are the **specific monitoring mechanisms or reporting obligations**. In Bulgaria there are none: citizenship is granted by Presidential Decree, but there is no subsequent monitoring, as Presidential Decrees enter into force at the moment of their issuance and are not subject to judicial review. In Cyprus, monitoring is possible, as the Council of Ministers must inform the House of Representatives before adopting a decision to grant citizenship²². However, there is no publicly available Parliamentary Report or question raised at the House of Representatives concerning the monitoring of the scheme²³. In March 2018 a new Supervisory and Control Committee was appointed, made up of officials from the Ministry of Interior, Ministry of Finance and the Cyprus Investment Promotion Agency (CIPA)²⁴. The Committee is responsible for registering agents (see section below on non-public bodies); it does not appear that it has any specific reporting obligations. However, legislative changes in June 2018 imposed a duty on the Cypriot Ministry of Finance to conduct studies, assessing the application of the Cyprus

¹⁹ ‘Invest Bulgaria Agency’, an executive agency to the Bulgarian Minister of Economy, is also involved in the procedures for granting permanent residence and citizenship. In particular, it supports the Bulgarian Minister of Economy in the application of the state policy in the field of encouragement of foreign investment. Website available at <http://www.investbg.government.bg/en>

²⁰ Chapter 497 of the Laws of Malta, Public Administration Act, 27 November 2009, Act I of 2009 as last amended by Legal Notice 243 of 2017, Act II of 2018 and Legal Notice 96 of 2018; See also subsidiary Legislation 497.07, Identity Malta Agency (Establishment) Order, 10 September 2103, Legal Notice 269 of 2013, as amended by Legal Notices 101 of 2016 and 95 of 2018.

²¹ LN 96/2018.

²² Article 111A(3) of the Civil Registry Law.

²³ Search at the website of the House of Representatives indicated no reference to the Scheme: <http://www.parliament.cy/easyconsole.cfm/page/search>

²⁴ Council of Ministers Decision No. 84.068 dated 9.1.2018 and the following Decision 906/2018 dated 21.5.2018. Further detail on the new Committee is available at <http://cipregistry.mof.gov.cy/en/>

Investment Programme and its effects on the economy, and to provide information to the Council of Ministers.²⁵ It is too early to assess the impact of this new duty.

Malta's **IIP Regulator (ORIIP)** reviews all aspects of the IIP and reports on its functions to the Minister annually. These reports are public and subject to parliamentary scrutiny²⁶. The Regulator must also investigate complaints about the IIP²⁷, but a legal instrument prescribing the procedure for complaints has not yet been adopted. A Monitoring Committee²⁸ consisting of the Prime Minister, the Minister (responsible for identity management) and the leader of the opposition monitors the IIP. This Committee must meet at least once a year and can ask the Regulator to attend and report at its meetings. It does not however monitor individual applications and relies on the regulator to do this.

II.4 INVOLVEMENT OF NON-PUBLIC BODIES

Non-public bodies play a role in the operation of investor citizenship schemes.

In Malta, the IIP applications must be submitted to the Malta Individual Investor Programme Agency ("the MIIPA") either through Approved Agents or the concessionaire²⁹. These non-public bodies have a significant role throughout the application process, acting on behalf of applicants and interacting directly with the competent authorities on their behalf. In addition, Maltese legislation provides for the design, promotion and operation of the IIP by the concessionaire³⁰. This role has changed over time and the concessionaire is now primarily concerned with promoting the IIP, organising events in Malta and advising the MIIPA on legal or technical aspects as needed. The concessionaire also presents applications on behalf of clients, similar to any other agent³¹.

In Bulgaria and Cyprus applicants may choose to employ consultants or lawyers to advise on the preparation of the necessary documents; they are however not formally part of the procedure. Their role is limited to explaining the procedure, facilitating or acting as representatives. In July 2018 a specific Registry for investor citizenship scheme service providers (e.g. accountants, law firms, estate agents) was set up in Cyprus. Service providers must meet certain admission criteria (for example, submission of a clean criminal record) to be entered on the register and must comply with a Code of Conduct³². Service providers cannot submit applications for naturalisation unless registered. The Code of Conduct includes guidelines for the promotion of the Cypriot investor citizenship scheme, including a ban on advertising the scheme in public places.

²⁵ Council of Ministers' Decision 906/2018.

²⁶ Article 25 of the Maltese Citizenship Act.

²⁷ The Regulator reverts back to the respective agent with his findings.

²⁸ Article 25B of the Maltese Citizenship Act.

²⁹ Regulation 4(3) of LN 47/2014.

³⁰ LN 47/2014.

³¹ Consultation (in writing) with national stakeholder (Identity Malta representatives, competent authority, 15 March 2018), Information gathered by research for the Study, *ibid*, note 1.

³² Both the applicant and the registered service provider have to submit a signed declaration confirming good practice in providing the service and that applicant is fully informed about the procedures of the scheme.

II.5 INVESTMENT REQUIRED: TYPE AND AMOUNT

All three Member States operating investor citizenship schemes require the applicant to make **different types and minimum levels of investment**. In Bulgaria, an overall investment of EUR 1 million is requested under its fast-track investor citizenship scheme. In Cyprus, a minimum investment of EUR 2 million is necessary, together with ownership of property in Cyprus. In Malta, a contribution of EUR 650,000 must be paid into a national investment fund, together with an investment of EUR 150,000 and a requirement to own or rent property in Malta. In Cyprus and Malta, additional investments for family members are required.

Various investment options can be observed among the three Member States operating investor citizenship schemes: capital investment³³; investment in immovable property³⁴; investment in government bonds³⁵; and one-off contributions to the State budget³⁶.

Table 2 below provides an overview of the investment requirements in Bulgaria, Cyprus and Malta.

Table 2 Comparative overview of the types of investment in investor citizenship schemes³⁷

MS	Investment		Period for which the investment must be maintained	
BG	Type of scheme		<ul style="list-style-type: none"> ■ No specific timeframe within which the investment must be maintained but foreign investors must submit annual declarations on the maintenance of the investment (any of the types) ■ Revoking naturalisation is a possibility but not for reasons concerning the maintenance of the investment 	
	Type of investment	Ordinary		Fast-track
	Shares, OR bonds and treasury bills, OR, ownership of company owned in more than 50% by State/municipality, OR shares owned by State/municipality, OR Bulgarian intellectual property OR rights under concession contracts	EUR 500,000		Increase to EUR 1 million OR invested no less than EUR 500,000 in the capital of a Bulgarian commercial company for a priority investment project
	Licensed credit institution under trustee agreement	EUR 500,000		
	In capital of Bulgarian trading company	EUR 3 million		N/A
Bulgarian commercial company awarded Class A, B or priority investment project	Depends on type of company	Have maintained, for at least one year since receipt of permanent residence permit on grounds of such investment, investments		

³³ Under the capital model, the requirement is to invest a definite sum either in (i) a company (BG, CY) or (ii) credit or financial institutions instruments such as investment funds or trust funds (BG, CY, MT).

³⁴ This model requires buying or renting a real estate property of a definite value (CY, MT).

³⁵ Bonds are purchased from the governments by the investors (BG, MT).

³⁶ Maltese legislation requires a “contribution” be paid to the Maltese government, which is deposited in the National Development and Social Fund.

³⁷ For the purposes of this Table, the term ‘investment’ covers any pecuniary disbursement required as part of the process for obtaining residence under the investors’ residence scheme.

MS		Investment		Period for which the investment must be maintained
			made and put into operation at above the minimum threshold for issuance of a Class A investment certificate under the Investments Promotion Act	
		Bulgarian commercial company owned in no less than 50% by investor	EUR 250,000	N/A
CY	Main applicant	Type of investment ³⁸	Financial threshold	<ul style="list-style-type: none"> ■ Real estate, CySec³⁹ licensed investment or combination of all investments: at least three years ■ Company: N/A ■ Privately-owned property: permanently
		Real estate	EUR 2 million	
		Company ⁴⁰ Alternative Investment Funds or financial assets of Cypriot companies or Cypriot organisations that are licensed by CySec	+ Permanent privately-owned residence min. EUR 500,000 (+VAT)	
	Family members	Permanent privately-owned residence min. EUR 500,000 (+VAT) (except minor children)		Privately-owned property: permanently
MT	Main applicant	Type of investment	Financial threshold	The investment and the immovable property must be kept for at least five years ⁴¹
		Residential immovable property AND	Minimum EUR 350,000 (owned) OR minimum EUR 16,000 per annum (rented)	
		Investments ⁴² AND	EUR 150,000	
		Contribution	EUR 650,000	
	Family members	Contribution: <ul style="list-style-type: none"> ■ Spouse EUR 25,000 ■ Unmarried children between 18 and 26 years of age EUR 50,000 ■ Minor children EUR 25,000 		

³⁸ A combination of the investments admitted under the Cypriot scheme is allowed, provided that the total investment amounts to at least EUR 2 million.

³⁹ Cyprus Securities and Exchange Commission (CySEC) is the independent public supervisory authority responsible for the supervision of the investment services market and transactions in transferable securities carried out in the Republic of Cyprus. <https://www.cysec.gov.cy/en-GB/cysec/vision-mission/>

⁴⁰ With proven physical presence in Cyprus, with significant activity and turnover and employing at least five Cypriots or citizens of EU Member States. The number of employees must increase if more than one applicant invests simultaneously or almost simultaneously in the same business or company. The employees of the companies need to have legally and continuously resided in Cyprus during the five years preceding the application submission.

⁴¹ Regulation 7(5) and (6) of LN 47/2014.

⁴² Among others, in stocks, bonds, securities, special purpose vehicles or other investment as provided from time to time by Identity Malta by means of a notice in the Gazette.

In addition to the investment requirement, applicants must also pay non-refundable **administrative fees** as part of the application process. Cyprus and Malta have significantly higher fees than Bulgaria and foresee specific fees for applications from family members.

II.6 RESIDENCE OR OTHER GENUINE LINK CRITERIA

In all three Member States, there is a formal requirement of prior residence in order for the foreign investor to qualify for the investor citizenship schemes, with the issuance of the corresponding residence permit. Merely holding a residence permit for the required timeframe is sufficient to qualify for the investor citizenship scheme. However, effective residence, meaning physical presence for a regular and extended period in the territory of the Member State concerned, is not required.

In Malta, the applicant must be physically present to provide biometric data for the e-Residence Card and to take the oath of allegiance⁴³. A personal interview with the applicant may also be required in Malta. In Bulgaria, the applicant's presence is required for the submission of the application for citizenship and in Cyprus for the collection of the residence permit.

In Malta, the e-Residence card must have been held for at least 12 months preceding the issuance of the certificate of naturalisation: the applicant is described as having “effective residence status” during this period. In Cyprus, the applicant must hold a residence permit for at least 6 months before the naturalisation certificate can be issued. In Bulgaria, the applicant must hold a permanent residence permit for five years (ordinary scheme) or one year (fast-track scheme) in order to be able to apply for Bulgarian citizenship. Foreign investors can apply directly for permanent residence (which grants an unlimited right of residence) under the investor residence scheme (see section III.5).

The study⁴⁴ looked for other factors, besides physical residence, which might be said to create a link between the applicant for citizenship and the country concerned. In Bulgaria the applicant must undergo an application interview, but is exempt from the conditions of being proficient in the Bulgarian language or from showing knowledge of public life in Bulgaria. The Cypriot authorities consider that the investment in Cyprus is itself a sufficient bond between the applicant and Cyprus: under the relevant Council of Ministers decision, the residence criterion required under its ordinary naturalisation procedure is replaced by an investment criterion. Applicants for Maltese citizenship in the final stage of the naturalisation process are asked about their links with Malta. Applicants are asked to have boarding passes showing travel to Malta, or if they have other evidence, for instance that they donated to charitable organisations, have membership of a local sports, cultural or social club or pay

⁴³ Information confirmed through consultation with national stakeholder (Identity Malta, competent authority, 8 March 2018), obtained for the purposes of the Study, *ibid*, note 1. The Maltese authorities also pointed out that, regarding the property investment requirement, there are spot checks on properties and a compliance form must be presented to the IIP on a yearly basis, signed by both the applicant and the responsible agent).

⁴⁴ *Ibid*, note 1.

income tax to the Maltese Inland Revenue Department⁴⁵. Applicants are also encouraged to set up a business in Malta.

II.7 CRIMINALITY AND SECURITY CHECKS

In all three Member States with investor citizenship schemes, checks are carried out to ensure that applicants and their dependants are not a potential threat to national security, public policy or public health. The way such checks are carried out is highly discretionary and guidelines, legislation or other information concerning the actual practices involved was scarce. The study could not therefore identify, for example, exactly how a person is identified as a threat to national security.

In **Malta**, the checks are made on the criminal background of the main applicants and their dependants over 12 years of age. The checks are carried out on the basis of police records from the Maltese police and/or from the competent authorities in the country of origin and in the country or countries of residence where the applicant has resided for more than six months during the last ten years. The requirement to prove a clean criminal record may be **waived** in exceptional circumstances, where the competent authority considers such a certificate impossible to obtain. For instance, if the competent authority in the country of origin would not issue certificates for short or intermittent stays. In those cases, a sworn affidavit from the applicant and any dependants, declaring a clean criminal record, will suffice.

The Maltese authorities consult INTERPOL and Europol databases as part of a four-tier due diligence process covering:⁴⁶ know-your-client due diligence checks by the agent and the MIIPA (see section on anti-money laundering checks below); clearance by the police authorities; a check for completeness and correctness of the application and verification of the documents submitted; and an outsourced due diligence check whereby the MIIPA commissions two reports from international companies on every IIP application⁴⁷. The study was not able to obtain information about any use made by the Maltese authorities of EU databases, including the Schengen Information System (SIS). Individuals, who are nationals or residents of Afghanistan, Iran and the Democratic People's Republic of Korea, or with significant ties to these countries, are excluded from the Maltese IIP. Also excluded are citizens from countries which are subject to a U.S. travel ban and persons who have been denied a visa by a country with whom Malta has a visa-free travel agreement, whereas applicants showing on any other sanctions or watch lists must be reported by agents to the Malta Individual Investor Programme Agency⁴⁸ ..

In Cyprus, applicants must submit a criminal record report from his/her country of origin and (if different) country of residence, which must be dated no more than 90 days prior to

⁴⁵ See Deliverable B.1 of the Study, *ibid*, Office of the Regulator Individual Investor Programme (ORIIP), Fourth Annual Report on the Individual Investor Programme of the Government of Malta (1st July 2016 – 30th June 2017), November 2017, p. 31:

<https://oriip.gov.mt/en/Documents/Reports/Annual%20Report%202017.pdf>

⁴⁶ Further details available at: <https://iip.gov.mt/due-diligence/>

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

⁴⁸ Maltese Individual Investor Programme Handbook 2018. Also excluded are persons who have been denied a visa by a country with whom Malta has a visa-free travel agreement.

submission. The **Cypriot police** also undertake a search in both Europol's and INTERPOL's databases⁴⁹. The investor's name and family members' names must not be included in the list of persons whose assets, within the boundaries of the European Union, have been frozen as the result of sanctions. In addition, according to the new rules introduced in July 2018⁵⁰, applicants, who submit their claims via a service provider, are required to submit a due diligence report issued through an internationally accepted database (for example World-Check⁵¹, Lexis Diligence⁵², Regulatory DataCorp Inc.⁵³, etc.). In cases where there are concerns regarding national security, the application is additionally evaluated by the Central Intelligence Agency of Cyprus. Cyprus is not connected to the Schengen Information System.

In **Bulgaria**, legislation requires the applicant to present a clean criminal record certificate and a document showing that no criminal proceedings are pending or ongoing against the applicant. The Council for Citizenship gives an opinion on citizenship requests, following a written statement by the Ministry of the Interior and the **State Agency for National Security (SANS)**. The latter carries out checks on all applicants for Bulgarian citizenship (including those applying through investor schemes) within the scope of its competence, such as police intelligence or police record databases. The competences of SANS include counter-terrorism, counter-intelligence, and combatting organised crime and corruption⁵⁴. There is no publicly available information about the exact information databases checked and the internal regulations of SANS – stipulating the specific databases to be checked – are classified⁵⁵. While Bulgaria is not yet part of the 'Schengen area', it has however full access to the SIS, since August 2018. No information was available concerning whether the authorities use SIS to check applicants for citizenship. No information was available on the Bulgarian policy concerning persons subject to EU restrictive measures.

II.8 ANTI-MONEY LAUNDERING MEASURES VIS-À-VIS THE INVESTMENT

Regarding **checks on the origin of funds**, all EU Member States⁵⁶ have notified transposition measures for the Anti-money Laundering Directive ("AMLD").⁵⁷ Under this legislation, the obliged entities (inter alia, credit and financial institutions, notaries and lawyers, and real

⁴⁹ Information provided by the Ministry of Interior Officer on 29 May 2018.

⁵⁰

[http://www.moi.gov.cy/moi/moi.nsf/all/07F0364738A716E4C22582C40023E6C0/\\$file/CYPRUS%20INVESTMENT%20PROGRAMME%2013.9.2016.pdf?openement](http://www.moi.gov.cy/moi/moi.nsf/all/07F0364738A716E4C22582C40023E6C0/$file/CYPRUS%20INVESTMENT%20PROGRAMME%2013.9.2016.pdf?openement)

⁵¹

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

⁵²

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

⁵³

<https://rdc.com/>

⁵⁴

Information gathered through consultation with national stakeholder (representative of the Migration Directorate, competent authority, 7 March 2018).

⁵⁵

Information gathered through consultation with national stakeholder (representative of the Migration Directorate, competent authority, 7 March 2018).

⁵⁶

Except for Romania. Source: Eur-lex, 'National transposition measures communicated by the Member States concerning Directive (EU) 2015/849' available at:

<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32015L0849>

⁵⁷

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), available at:

<https://eur-lex.europa.eu/legal-content/En/TXT/?uri=CELEX%3A32015L0849>.

estate agents)⁵⁸ must carry out customer due diligence measures⁵⁹, which include identifying the person with whom a business relationship⁶⁰ is established (e.g. opening a bank account, money transfers of a certain amount,⁶¹ legal advice provided in carrying out a business transaction such as buying immovable property, etc.), identifying the final beneficiary of the company or trust that carries out such transaction (‘beneficial owner’) and checking the origin of funds. The obliged entities are not required (or even encouraged) to communicate this information to the State’s competent authorities; however, they must do so when there is a suspicion that the funds involved in a business relationship/transaction are, or might be, the proceeds of criminal activity or related to terrorist financing (by filing the corresponding ‘Suspicious Transaction Report’ to the Financial Intelligence Units^{62,63}). Obligated entities must do this on their own initiative under the anti-money laundering legislation. Obligated entities must also provide the Financial Intelligence Unit at request with all necessary information. Furthermore, Member States must hold adequate, accurate and current information on the beneficial ownership of legal entities and trusts, including the details (nature and extent) of the beneficial interests held, in a central register (‘Beneficial Ownership Register’). This information must be provided, inter alia, to other Member States’ competent authorities⁶⁴. Formally, there is no obligation on the bodies involved in carrying out the checks on the origin of funds in investor schemes to communicate to the Member States’ competent authorities the results of these checks unless there is a suspicion. However, in practice some cooperation exists in relation to investor citizenship schemes.

Identity Malta⁶⁵, as part of the consultation carried out in the study, confirmed that to the extent possible the due diligence definitions and procedures of the AMLD are followed in the four-tier process of due diligence it uses. It is obliged by legislation to verify the source of all funds paid by applicants for citizenship⁶⁶. The main applicant must confirm that his/her ‘wealth has been obtained from completely legitimate sources, and is not, whether directly or indirectly, derived from the proceeds of criminal activities of any kind’. The main applicant must also submit administrative documentation, ‘Form SSFW – Statement of Source of Funds and Wealth’⁶⁷, accompanied by bank statements for the previous three months for the account from which funds for the IIP are being remitted⁶⁸. All information in relation to the source of wealth must be triangulated before a piece of information is considered verified – the MIIPA seeks verification from three independent sources: the applicant and two independent service providers⁶⁹.

⁵⁸ Article 2 of Directive (EU) 2015/849.

⁵⁹ Articles 10-24 of Directive (EU) 2015/849.

⁶⁰ ‘Business relationship’ is defined in Article 3(13) of Directive (EU) 2015/849 as ‘a business, professional or commercial relationship which is connected with the professional activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration’.

⁶¹ Article 11(b) and (c) of Directive (EU) 2015/849.

⁶² Article 32 of Directive (EU) 2015/849.

⁶³ Article 33 of Directive (EU) 2015/849.

⁶⁴ Article 30 of Directive (EU) 2015/849.

⁶⁵ The due diligence checks are currently made by the Malta Individual Investor Programme Agency; at the time the interviews for the Study were conducted, the body in charge was Identity Malta.

⁶⁶ Regulation 7(4) of LN 47/2014.

⁶⁷ Form SSFW: <https://iip.gov.mt/wp-content/uploads/2018/08/MIIP-Form-SSFW3.pdf>

⁶⁸ Identity Malta Agency, ‘Malta Individual Investor Programme Checklist and Guidelines’, Version 2.0 – 2015, pp. 14/15.

⁶⁹ Information gathered through consultation with national stakeholder (Identity Malta, competent authority, 8 March 2018).

The Cypriot legal framework on investor citizenship schemes makes direct cross-reference to the anti-money laundering legislation. This requires Cypriot Banks' compliance departments to implement due diligence measures to verify and validate the origin of the funds used in the investment. This is done based on the proof (bank transfer receipts) that must be submitted by all applicants (investor and family members) that the transactions were made through Cypriot banks from a foreign country to the Cypriot bank account of the seller/company/investment fund. The due diligence costs are borne by the applicant⁷⁰. In cases where information is located that the applicant might be implicated in financial crime, the application is sent for evaluation to the Cypriot Financial Intelligence Unit.

In Bulgaria, the checks on the origin of funds (in accordance with the Bulgarian Law on Measures against Money Laundering) is carried out by the Invest Bulgaria Agency⁷¹, in the procedure to obtain a permanent residence permit (which is a prerequisite for applying for citizenship under the investor scheme). In this procedure the applicant must provide a declaration of the origin of funds in compliance with the anti-money laundering law⁷². As part of the application for citizenship that then follows, the Citizenship Directorate and the Citizenship Commission verify whether or not the declaration and checks carried out by the Invest Bulgaria Agency are valid.

II.9 INFORMATION ABOUT WHO OBTAINS CITIZENSHIP UNDER THESE SCHEMES

Under none of the three investor citizenship schemes is information systematically available about the people who successfully obtain citizenship via this route, or about their origins. In neither Bulgaria nor Cyprus is there any legislative requirement to publish information about people granted citizenship as a result of their investor schemes⁷³. On the other hand, Malta's IIP law contains a disclosure obligation requiring yearly publication within the Government Gazette of the names of all persons who during the previous twelve calendar months were granted Maltese citizenship by registration or naturalisation including those persons who were granted Maltese citizenship under the IIP⁷⁴. The Maltese government first published the list of persons naturalised as Maltese citizens between July 2013 and December 2014 in the Government Gazette of 31 July 2015. It subsequently published lists in the Government Gazette of 22 December 2017 (figures for 2015-2016) and 21 December 2018 (figures for 2016-2017)⁷⁵. The published lists do not distinguish between citizenship obtained under the

⁷⁰ Council of Ministers' Decision 906/2018.

⁷¹ The Invest Bulgaria Agency is an executive agency of the Bulgarian Minister of Economy and supports the Minister in the application of the state policy in the field of encouragement of foreign investment.

⁷² Article 39, paragraph 6 of the Regulations for the Application of the Foreign Nationals in Bulgaria Act.

⁷³ The Regulator of the Maltese IIP publishes annual reports, which contain figures concerning the numbers of applications received, the regions of the world from which they come and the numbers of applications approved and turned down. See for example the Fifth Annual Report on the IIP, November 2018.

⁷⁴ Regulation 14(2) of LN 47/2014.

⁷⁵ The Malta Government Gazette, 31 July 2015, Government Notice 751 – Persons Naturalised/Registered as Citizens of Malta: <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Documents/2015/07/Government%20Gazette%20-%2031%20July.pdf>; The Malta Government Gazette, 22 December 2017, Government Notice 1434 – Persons Naturalised/registered as Citizens of Malta: <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Documents/2012/12/Government%20Gazette%20-%2022nd%20December.pdf>; The Malta Government Gazette, 21 December 2018

IIP and other routes to citizenship, such as marriage⁷⁶. In addition, the lists are sorted in alphabetical order by first name meaning that it is not evident where whole families have obtained citizenship or where it is individual applicants⁷⁷. There are no details published by Malta of the origins of the successful applicants. Eurostat figures published in 2018 on the acquisition of citizenship in the EU show however that, while the nationality of the applicants for citizenship by investment are not known, the largest group of persons naturalised by Bulgaria, Cyprus and Malta are Russian citizens⁷⁸. As regards the number of applications granted, Cyprus and Malta both have caps on the numbers of applicants who can benefit from their investor citizenship schemes. The Cypriot Government, as of 2018, decided to limit such citizenships to 700 per year⁷⁹. In Malta, the number of successful main applicants (thus excluding dependants) is capped at 1,800. However, the Maltese authorities are in the process of updating the law and, following a public consultation, increasing the cap for main applicants by another 1,800. Bulgaria imposes no cap on the number of foreign investors that can apply for citizenship.

III. INVESTOR RESIDENCE SCHEMES

III.1 INTRODUCTION: WHAT ARE RESIDENCE INVESTOR SCHEMES?

In a very similar fashion as that developed for citizenship investor schemes, residence investor schemes are any legislative, policy or administrative initiative aiming to enhance investment by third-country nationals by granting facilities to obtain residence in the Member State concerned. While some of the schemes were adopted in the early 2000s⁸⁰, others are more recent and can be seen as a reaction to the economic recession started in 2007⁸¹.

Schemes that fall inside the scope of this report are those for which the financial investment, in whatever form it materialises, is the main and primary condition for entry and residence, irrespective of the name of the scheme under national legislation⁸². This means that schemes where investing is possible but is not the main and primary condition of the entry of foreign individuals have been excluded from the analysis. This line is required to identify the sometimes very subtle difference between self-employed or entrepreneurs schemes and investor schemes. Some self-employed or entrepreneurs schemes require an investment but this comes as an additional admission condition to the main one which is the setting up of a business or the presentation of a business plan in this perspective.⁸³ Against this background,

<https://www.gov.mt/en/Government/DOI/Government%20Gazette/Documents/2018/12/Government%20Gazette%20-%202021st%20December.pdf>

⁷⁶ Identity Malta Agency, ‘Malta Individual Investor Programme Checklist and Guidelines’, Version 2.0 – 2015, p. 5.

⁷⁷ For further observations on this see Daphne Caruana Galizia’s Running Commentary, ‘Government publishes list of citizens naturalised last year’, 1 August 2015: <https://daphnecaruagalizia.com/2015/08/government-publishes-list-of-citizens-naturalised-last-year/>

⁷⁸ Eurostat news release 59/2018 of 9 April 2018.

⁷⁹ Council of Ministers’ Decision 906/2018.

⁸⁰ RO adopted a scheme in 2003, LT in 2004 and BG in 2005.

⁸¹ The UK adopted a scheme in 2008, EE in 2009; LV in 2010; HR in 2011; IE, SK and PT in 2012; HU, PL and NL in 2013; EL and ES in 2014; MT in 2015; FR and CY in 2016; IT, CZ and LU in 2017. The HU scheme was suspended in March 2017.

⁸² This is why, for instance, the Romanian scheme, which is according to the national legislation “for commercial purposes” is included.

⁸³ For more information on this type of legal migration channel, see the Volume II of the Study for an impact assessment on a proposal for a revision of Council Directive 2009/50/EC (“EU Blue Card Directive”) on

the following Member States are part of the scope of the Report: BG, CY, CZ, EE, EL, ES, FR, HR, HU⁸⁴, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SK and the UK.

III.2 INSTITUTIONAL STRUCTURE OF THE SCHEMES

In most Member States, the **competent authorities** running the schemes are the authorities in charge of migration issues, i.e. the Ministry of Interior (BG, CY, CZ, EL, HU, LV, PT and the UK), regardless of their specific denomination. For instance, in Bulgaria, the “Migration Directorate” is in charge of the scheme, in Hungary, the “Immigration and Asylum Office”, in Latvia the “Office of Citizenship and Migration Affairs” (OCMA) or in Portugal, the “Immigration and Borders Service” (SEF). In other instances, the police force inside the Ministry of Interior (EE, HR, IT, SK) or a regional (HU) representative of the Ministry of Interior, or of the central government (*Voivode* in PL, *Préfectures* in FR) is involved.

In a minority of Member States, the competent authorities for migration issues depend on another Ministry than the Ministry of Interior (ES: Ministry of Employment and Social Affairs; IE: Ministry of Justice and Equality; NL: Ministry of Security and Justice). Others have set up a dedicated agency (MT) or an agency part of a Ministry (EL: Enterprise Greece as part of the Ministry of Economy).

Member States may also differentiate between the decision-making authority and the implementing authorities as it is the case in the Netherlands where the decision making authority is the Ministry of Security and Justice and the Dutch Immigration and Naturalisation Service is the implementing authority.

Governing the scheme entails in most cases coordination with other public authorities, in particular for what concerns security checks and any economic assessment if required, which can lead to a double competency: in Luxemburg the Ministry of Economy is competent to assess and issue an opinion on investments in a company, while the Ministry of Finance is competent to assess and issue an opinion on investments in a management structure and on investments consisting in a deposit in a financial institution.

Specific monitoring mechanisms and reporting obligations exist in a very limited number of Member States. In Spain, the law includes an obligation to prepare an annual report on the implementation of the rules which is prepared by the Ministry of Employment and Social Affairs on a joint request of the Ministries of Foreign Affairs, Interior Affairs and Economy and is then submitted to the Council of Ministers. At present, only one report is publicly available: the first report drafted after the entry into force of Law 14/2013, which was issued in 2015⁸⁵. In Portugal, the General Inspection of Internal Affairs carries out, at least once a year, an audit of the procedure of the investment residence permit. The conclusions and

Admission of Entrepreneurs, accessible at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/legal_migration/volume_ii_-_admission_of_migrant_entrepreneurs_en.pdf

⁸⁴ As already said, the Hungarian scheme was suspended in March 2017.

⁸⁵ MESS, ‘Report on the implementation on the Section on International Mobility of Law 14/2013 of 27 September on the support to entrepreneurs and their internationalisation’ (*Informe sobre la aplicación de la Sección de Movilidad Internacional de la Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización*), April 2015, available at: http://extranjeros.empleo.gob.es/es/UnidadGrandesEmpresas/ley14_2013/documentacion/Informe_anual_de_la_Seccion_de_Movilidad_de_la_ley_14_2013.pdf

recommendations are notified to the First Commission of the Portuguese Parliament (Constitutional Affairs and Fundamental Rights, Freedoms and Guarantees) and are also made available on the Government's website. However, this website only contains one report, which dates back to 2014. It mentions several recommendations, issued due to some inefficiencies of the procedure, inter alia, the development of internal supervision mechanisms and of a procedures manual. Follow-up to this recommendation is unknown.

This means that, in most cases, **the oversight of the scheme is left to general monitoring mechanisms**, when they exist, such as Parliamentary scrutiny, administrative liability, general reporting of activities to the Government, or access to documents requests, and that no additional and specific diligence mechanism exists (BG, CY, FR, HU⁸⁶, IE⁸⁷, IT, LV⁸⁸, MT, NL, RO, UK).

III.3 INVOLVEMENT OF NON-PUBLIC BODIES AND INTERMEDIARIES

A very limited number of Member States has made the choice to involve **private companies** in the running of the scheme (CY, HU and MT), sometimes with a significant role (HU and MT). While in Cyprus, applicants are free to decide to present their application through an authorised representative whose role is limited to act as facilitators and providers of consultancy services, applications in Malta may be submitted to the competent authorities only by registered agents or accredited persons. These registered agents act on behalf of the applicant for all correspondences, applications, submissions, filings, notifications under the regulations. In Hungary, the Hungarian Parliament's Economy Committee would authorise a number of businesses whose role was to issue the residency bonds to be purchased by the applicants. Only one company could receive the authorisation to issue bonds in a given third country. The companies that received authorisation were located in the following countries: Grand Cayman (Hungary State Special Debt Fund), Malta (Discus Holdings Ltd.), Cyprus (Migrat Immigration Asia Ltd., Innozone Holdings Limited), Hungary (Arton Capital

⁸⁶ In Hungary, Transparency International Hungary, in collaboration with a Hungarian daily magazine, 'Magyar Nemzet' requested public interest information pertaining to the operations of the companies authorised to issue residency bonds and to establish the volume of residency bonds purchased from the Parliament's Committee for Economic Affairs and from the Government Debt Management Agency in 2016. Court litigation based on freedom of information against the Committee and against the State Debt Management Agency followed. The defence of both defendants was based on secrecy laws, which, in their interpretation, apply to the purchase of state residency bonds and prevent any information from becoming public. The litigation was suspended (Nagy Boldizsár: In Whose Interest? Shadows Over the Hungarian Residency Bond Program, Transparency International Hungary, 2016. page 71).

⁸⁷ In Ireland, the Irish Naturalisation and Immigration Service has provided information via Parliamentary questions on the following items: the number and value of applications per annum since 2012 under each investment option, the number and value of immigrant investor programme applications for social housing investment and nursing home investment in 2017, the criteria against which applications are evaluated, the number of applications approved under the investor scheme, the investment funds for which applications under the investor scheme have been approved to date, the four investment options available under the programme, the amount of money invested in the scheme, the members of the Evaluation Committee.

⁸⁸ In Latvia, as any State institution, the OCMA reports annually about its work to the Government. The Office prepares a general overview of its work and detailed overviews per subject matter. The most recent report on the investors' residence scheme for the period from 1 July 2016 to 30 June 2017 was presented to the Government in November 2017. See the OCMA 2017 Report on progress and results of implementing Article 23(1), points 3, 28, 29, 30 and 31 of the Immigration Law, available at <http://tap.mk.gov.lv/lv/mk/tap/?pid=40441522>

Hungary), Russia (VolDan Investments Limited), Liechtenstein (S & Z Program Limited), and Singapore (Euro-Asia Investment Management Pte Ltd.).

III.4 INVESTMENT REQUIRED

The analysis has led to conclude on the existence of a wide range of schemes, which is reflected in the investment requirement. While investment is also the core requirement of residence investors' scheme, the nature and amount of this investment vary much more in the context of residence than of citizenship schemes.

Five types of investment options have been analysed. These are not necessarily mutually exclusive, some Member States allowing for different types of investment and their combination⁸⁹:

- **Capital investment:** under this model, the requirement is to invest a definite sum either in a company⁹⁰ (BG, EE, ES, FR, HR, IE, IT, LT, LU, LV, NL, PL, PT, RO, SK, UK) or in credit or financial institutions instruments such as investment funds or trust funds (BG, CY, EE, ES, IE, LU, LV, NL, PT).
- **Investment in immovable property:** this model requires to buy, or to rent⁹¹, a real estate property of a definite value (CY, EL, ES, IE, LV, MT, PT).
- **Investment in Government bonds:** bonds of a definite value are purchased to the Government by the investors. These bonds imply a repayment on a maturity date, with a definite interest rate (BG, ES, HU, IT, LV, MT and UK).
- **Donation or endowment of an activity contributing to the public good:** capital is invested in a public project benefiting the arts, sports, health, culture or education philanthropic donations artistic and research activities (IE, IT, PT).
- **One-time contribution to the State budget:** this requires paying directly a certain amount of money to the State (MT, LV) and does not entail repayment contrary to bonds.

In addition to these, a **non-financial investment** such as the creation of jobs or the contribution to the economy may be required as an additional criterion to one of the afore-listed criteria (creation of a certain number of jobs in BG, CZ, ES, FR, HR, LU, LV, NL, PL, PT, RO, SK and contribution to the economy in BG, CZ, EL, ES). While the fulfilment of the

⁸⁹ BG, CY, EE, EL, ES, FR, IE, IT, LV, LU, MT, NL, PT, RO, UK.

⁹⁰ This is irrespective of the role that the investor has in the company or title under which the investor participates in the company – owner, shareholder, manager.

⁹¹ In Greece, renting is possible through 2 options:

- a) To make an agreement with a minimum term of ten years for the lease of hotel accommodation or furnished tourist residences in tourist accommodation complexes which are worth minimum EUR 250,000 or;
- b) To make a time sharing agreement (lease) based on the provisions of Law 1652-1986 for property, which is worth a minimum of EUR 250,000. According to Law 1652-1986, such an agreement is the commitment of the lessor to grant, each year, to the lessee, for the duration of the timeshare, the use of the tourist accommodation and to provide to them the relevant services for the determined period according to the contract, and the lessee must pay the agreed rent.

In Malta, renting means a property taken on lease for a rent of not less than EUR 12,000 per annum for a property situated in Malta or not less than EUR 10,000 per annum for a property situated in the south of Malta or in Gozo (Regulations 2 and 5(3) of LN 288/2015).

condition requiring the creation of a certain number of jobs is straightforward⁹², the condition of contribution to the economy leaves more discretion to the authorities. In addition, the criterion of “contribution to the economy” has different forms: it must be “specific to an economically disadvantaged region” in Bulgaria; the investment must be made “in the interests of the country or a region” in the Czech Republic; the Greek legislation provides for a “strategic investment” without defining the concept; Spain requires a business project of “general interest”.

The financial investment can therefore be “passive” when it is made on a stand-alone basis: this is the case for the bonds system, the immovable property and the capital investment model. It can be “active” when it is done in connection to a more tangible economic objective: this is the case for capital investment in companies, donations or endowment of an activity contributing to the public good.

Differences exist also concerning the **amount of the investment** required by law. Regarding the financial threshold of the investment, most Member States have different financial thresholds that apply depending on the nature of the investment (BG, CY, EL, ES, IE, IT, LV, MT, PT and RO) or the type of scheme when they have several (EE, HR, LT). In the remaining Member States (CZ, FR, HU, NL and UK) the financial threshold is the same, regardless of the nature of the investment.

Member States can be classified according to the investment threshold they apply. For Member States having different investment options, only the minimum and the maximum thresholds are taken into account⁹³:

- Member States **without a financial threshold**: EL⁹⁴ (“strategic investment”), PL (“sufficient means to generate income”).
- Member States which require a **very low investment (below EUR 100,000)**: EE, HR, LT, LV.
- Member States which require a **low investment (EUR 100,000 – less than 500,000)**: BG, EL, FR, HU⁹⁵, IE, LT, LV, MT, PT, RO.
- Member States which require a **medium investment (EUR 500.000 – less than 1 million)**: CY, ES, MT, LU.
- Member States which require a **high investment (EUR 1 million – less than 5 million)**: BG, CZ, EE, ES, IE, IT, NL, PT, RO, UK.
- Member States which require a **very high investment (over 5 million)**: SK (permanent residence), LU.

A further pecuniary disbursement is the payment of **administrative fees**, in the application procedure to obtain a residence permit. The amount of these fees range from EUR 30 to EUR 11,745.30. Member States may be classified according to the following levels:

- Member States with a fee **below EUR 100**: ES, HR, IT, LU, RO.

⁹² The issue may become more complex if there is a requirement to maintain the jobs for a certain time.

⁹³ This explains that Member States may be listed several times.

⁹⁴ In this case, foreign investors must obtain a decision by the Interministerial Committee of Strategic Investment which characterises the investment as strategic (not defined by law).

⁹⁵ As already said, Hungary suspended their scheme in April 2017.

- Most Member States request a fee of **between EUR 100 and EUR 250**: BG, CZ, EE, LT, PL, SK.
- Member States with a fee of **between EUR 250 and EUR 500**: CY, LV and FR.
- Member States with a fee of **between EUR 500 and EUR 1,000**: EL.
- Member States with a fee **above EUR 1,000** (in ascending order): IE (EUR 1,800), HU⁹⁶ (EUR 45,200 – 58,100), NL (EUR 2,137), PT (EUR 5,654), UK (GBP 1,623 for an online or post application and GBP 10,500 for a “super premium service”⁹⁷), MT (EUR 5,500).

III.5 RESIDENCE

Physical residence of the foreign investor in the country granting residence rights is not envisaged uniformly by Member States. While it can be reckoned that investors have particular needs in terms of mobility, the regime in place in some Member States can lead to question the mere rationale of requesting residence in the said Member State.

In a number of Member States, **physical residence of the investor is not expressly required** once the individual has obtained the residence permit (CZ, HU, LV, MT, RO, SK, UK). Other Member States have requirements for obtaining the permit which entail that **the investor be physically present**. This is ensured in a more or less stringent way since such provisions vary from subjecting withdrawal of the permit in case of prolonged absence (CY⁹⁸, ES⁹⁹, HR¹⁰⁰, IT¹⁰¹, LU¹⁰², NL¹⁰³, RO (permanent residence)¹⁰⁴, SK¹⁰⁵) or register in the corresponding

⁹⁶ The applicant had to pay a so-called ‘intermediary commission’ to the companies authorised to issue the bonds, and not to the State. The commission varied according to the company used by the applicant to purchase the bond.

⁹⁷ Under this service, a courier collects the application forms and documents, staff visits the applicant to obtain biometric data and the decision on the application is usually given within 24 hours. See <https://www.gov.uk/government/publications/visa-regulations-revised-table/home-office-immigration-and-nationality-fees-2018>

⁹⁸ The foreigner cannot be absent from the territory for more than 2 years.

⁹⁹ In Spain, it is a requirement that the foreign investor not be absent from the Spanish territory for more than 6 months a year.

¹⁰⁰ In Croatia, one of the reasons for withdrawing the permit is that the foreigner has been abroad for more than 30 days. Exceptionally, a foreigner who, for a justified reason, leaves Croatia for up to 90 days, will not have his/her temporary stay suspended if he/she has previously notified the competent police authority or police station of her/his departure. If, after leaving Croatia, extraordinary circumstances arise, a foreigner must notify Croatia’s diplomatic mission or consular office within 30 days of the occurrence of these circumstances.

¹⁰¹ The applicant cannot abandon the Italian territory for a period longer than half of the period of validity of the residence permit.

¹⁰² Requirement to be physically present in the territory of Luxembourg at least 6 months per year.

¹⁰³ For at least 4 months in every 12-month period.

¹⁰⁴ In Romania, the investor must not have been absent for more than 6 months at a time or 10 months in total. Once permanent residence is granted: the investor should not be granted permanent residence in another country, must not be absent from the Romanian territory for more than 12 consecutive months, unless during this time he/she was a temporary resident in another EU Member State and must not be absent from Romania for more than six consecutive years, regardless of whether or not, during this time, he/she may have been a temporary resident in another EU Member State.

¹⁰⁵ As of 1 May 2018, foreigners holding a temporary residence permit have the obligation to stay in the territory of the Slovak Republic for more than half of the time period granted for a temporary stay in one calendar year. Failure to do so may result in a withdrawal of the residence permit. For permanent residence, the holder has the obligation to notify competent authority in writing in those cases where he/she will stay

municipal register (EE, NL) to a requirement to provide accommodation (EE, ES, FR, IT, SK).

Some Member States explicitly require the presence of the investor for a very limited period of time, such as seven days in a year (PT), one day (IE), or simply the day the application is filed (BG, EL, MT¹⁰⁶). Others Member States on the contrary focus on attracting only those investors who are willing to actively reside in their country. This is the case when the system in place display a clear policy preference for those who are actively engaged in the business they invest in or where the suspicion that the individual will not reside in the country is a ground for not granting the permit (LT).

III.6 DURATION OF STAY AND RENEWAL OF THE PERMIT

While in most Member States, foreign investors are granted **temporary residence permits** which enable the individual to reside in the Member State for a limited period of time¹⁰⁷, a limited number of Member States grant an unlimited right of residence on the first application of an investor residence permit.

The **period of validity of temporary residence permits** ranges from six months to ten years. Six Member States have different validity periods for residence permits, depending on the type of investment (BG¹⁰⁸, EL, ES, LT, LV and RO):

- **Six months:** BG, ES (when the investment is made in real estate but the purchase is not formalised, i.e. when there is only a pre-contract with a guarantee that the purchase will take place);
- **One year:** HR, BG, PT, HR, RO;
- **Two years:** CZ (up to 2 years) ES, IE, IT, LT (small investors);
- **Three years:** LT (medium investors), LU, NL, PL RO (if investment exceeds EUR 500,000 or creates more than 50 new jobs) PL, SK and UK (leave to enter);
- **Four years:** FR;
- **Five years:** EE¹⁰⁹, EL¹¹⁰ (investment in real estate or positive impact in national growth and economy), HU, LV, and MT;
- **Ten years:** EL (strategic investment).

In most Member States, **permanent residence** is granted after 5 years (ES, HR, IE, LV, UK). While a **longer period** may be required such as in Portugal where permanent residence may

away from the territory of the Slovak Republic continuously for more than 180 days. If the foreigner fails to inform the competent authority, a fine of up to EUR 300 may be imposed.

¹⁰⁶ To register biometric data.

¹⁰⁷ In France (stays of 12 months or less), Ireland and the UK, the entry visa is the authorisation under which the foreign investor can also reside in the territory of the Member State, thus no residence permit is required.

¹⁰⁸ In Bulgaria, the duration of the permit depends on the term of the lease, insurance, or other conditions that ensure that applicants meet the requirements for their stay in the country.

¹⁰⁹ The Estonian permit may be granted for 5 years and extended for up to 10 years; however, the permit may be issued for shorter periods taking into account evidence on the circumstances in which the issuance or extension of a residence permit is based or other relevant circumstances and whether there are any changes in any such circumstances.

¹¹⁰ The right to reside granted under the residence permit is unlimited but the permit has to be renewed every 5 years if the investment is in real estate property and positive impact on national growth and economy.

be requested after three renewals of the initial temporary permit (i.e. after a total of seven years of residence¹¹¹, some Member States allow for a **shorter period of residence**. In the United Kingdom, the five-year prior residence period is reduced to two years if the individual invests GBP 10 million, or three years if the amount invested is GBP 5 million.

Some Member States allow to **apply directly for permanent residence** (BG, CY, HU, MT, RO and SK). This means that investors' residence schemes may be in certain Member States a fast track to permanent residence, and to citizenship acquisition. It is worth noting that although the right to residence is unlimited in MT, RO and SK, the permanent residence permit must be renewed every 5 years.

Permits granted for a definite period may be **renewed**. Most Member States require that the initial conditions for the first permit are still fulfilled (i.e. the first investment) for the permit to be renewed and that the duration of the renewed permit is similar to the duration of the first permit. The renewed permit allows for a longer period of residence in ES, HR, IE, IT, NL, PT. In Luxembourg, the foreign investor must again obtain the positive opinion of the corresponding Ministry when applying for the renewal of the permit. Therefore, even if the individual maintains the level of investment (and also work positions where required), where the competent Ministry does not grant a positive assessment of the investment, the renewal will be denied.

Some Member States have however chosen to set **stricter requirements**. In Romania, the investment requirement is increased upon renewal according to the role of the investor: associates (LLC) must make an investment of EUR 50,000 and create 10 jobs and shareholders (joint-stock company) must make an investment of EUR 70,000 and create 15 jobs. In Latvia, investors in real estate property, business and credit liabilities have to make a one-time payment of EUR 5,000 and submit new evidence. Investors investing at least EUR 50,000 must prove that the capital company has paid at least EUR 40,000 in taxes for the previous financial year or at least EUR 3,000 a month for the first incomplete financial year. Investors investing at least EUR 100,000 must prove that the capital company has paid at least EUR 100,000 in taxes for the previous financial year, or at least EUR 8,300 a month for the first incomplete financial year.

Other Member States have chosen to **waive** some of the initial conditions. In Estonia, under the general investor scheme, the requirement to maintain the EUR 65,000 investment can be waived if at least one of the following conditions is met: the sales revenue of a company is at least EUR 200,000 per year, or the monthly social tax paid in Estonia for those persons employed by the company is at least equal to the monthly social tax paid in Estonia for remuneration, equalling fivefold Estonian annual average gross wages.

Once resident status has been obtained, all Member States – except Cyprus and Hungary – require that the investment be maintained for the whole duration of the validity of the permit. Failure to comply with this requirement will result in the permit being withdrawn and, thus, the right of residence of the foreign investor will be revoked. The Study found however that checks on the maintenance of the investment are not widespread. In Latvia, the national legislation provides for an 'annual registration' (check) to be carried out to ensure that the initial conditions under which the residence permit was first issued continue to be fulfilled,

¹¹¹ One year of initial residence and three renewal periods of 2 years.

specifying the number of days of residence in Latvia. In Spain, the competent authority may carry out any checks that are considered relevant and necessary to verify that the requirements that justified the issuance of the corresponding permit continue to be fulfilled during the period of validity of the permit. However, the frequency of these checks is not established by law but occur at the discretion of the competent authority. If in light of the findings of such checks the competent authority concludes that the conditions are no longer met, the residence permit will be withdrawn¹¹².

III.7 CRIMINALITY AND SECURITY CHECKS

In all Member States, posing a threat to public order or State security is a ground for rejection of the permit application. This legal requirement is a general requirement under migration law.

For what relates more precisely to the specific case of investor residence permits, security checks relate generally to the background of the applicants and to the origin of the funds. Ex-post checks may exist to verify the conditions under which the scheme was granted still exist during the validity of the permit. Overall, the Study reported that retrieving information on how the checks are carried out proved challenging and thus, no information in this regard was obtained in some Member States (BG, IT, LT, LV, SI, SK) or was not clear from the legislation (EL and PT).

Regarding the **timing of the checks**, in cases where an entry visa is required, checks can take place either only when applying for the entry visa (IT) or both when applying for the visa and then for the residence permit (ES)¹¹³. All Member States (except BG, CY, IE, RO, HR, UK¹¹⁴) are under an obligation to consult the **Schengen Information System (SIS)**.

Authorities in charge of the management of the schemes rely in this context on police forces and intelligence services to check the **background of the applicants** (BG, CY, EE, ES, HR, HU, PT, SK), authorities in charge of health and employment policies (to check that the applicant complies with health and, where applicable, employment requirements), as well as those competent to report on the civil status of the applicant. These checks relate to the criminal record of the applicants and the veracity of the document provided by the applicants.

¹¹² Seventh Additional Provision of Law 14/2013.

¹¹³ In Spain, the consulate or diplomatic mission responsible for issuing the investors' residence visa carries out security checks on the applicant's background in cooperation with the Spanish police, while checks on the origin of funds are carried out by the consulate or diplomatic mission's Economic and Commercial Office (Oficina Económica y Comercial). Such checks are again carried out by the UGE-CE when processing the application for an investors' residence authorisation. Although the UGE-CE may draw on the conclusions reached by the consulate, it still carries out its own comprehensive checks in cooperation with the authorities competent for security and for anti-money laundering.

¹¹⁴ The SIS is currently in operation in 26 EU Member States (only Ireland and Cyprus are not yet connected to SIS), though with different access rights, and four Schengen Associated Countries (Switzerland, Norway, Liechtenstein and Iceland). While Bulgaria and Romania are not yet part of the area without internal border checks (the 'Schengen area'), they have had full access to the SIS since August 2018. Croatia, which is also not part of the Schengen area, has still some restrictions regarding its use of Schengen-wide SIS alerts for the purposes of refusing entry into or stay in the Schengen area. The UK operates the SIS but, as it has chosen not to join the Schengen area, it cannot issue or access Schengen-wide alerts for refusing entry or stay into the Schengen area. Ireland is carrying out preparatory activities to connect to the SIS, but, as is the case for the UK, it is not part of the Schengen area and it will not be able to issue or access Schengen-wide alerts for refusing entry or stay. Cyprus is not yet connected to the SIS.

Regarding the **checks on the origin of funds**, they are usually carried out by entities involved in financial transactions (e.g. banks, credit institutions, legal professionals such as lawyers and notaries, brokers and real estate agents). These entities can be private or public and include independent professionals. They have to comply with the requirements of the anti-money laundering legislation which compels the obliged entities to carry out on the source of funds. The nature of these checks differ as they can consist in validating the documents relating to the monies used to make the investment, such as bank transfer receipts, financial statements tax return report, purchase or lease contract from the land or property registries, when the investment is made up immovable property, or they can consist in a limited declaration of the competent authority¹¹⁵.

Ex-post checks exist in a very limited number of Member States (EE, ES, FR, LT, LV, HR). They consist in ad-hoc checks by the competent authorities in order to verify that the holder of the permit still fulfils the conditions of the stay during the validity of the permit. The frequency of such checks is not established by law but, rather, take place at the discretion of the competent authority. In Estonia, these ad-hoc checks are performed by the Police and Border Guard Board, in France by the Préfecture, in Spain by the General Directorate on Migrations. Latvia carries out annual checks on the annual obligation to register the permit to the Office of Citizenship and Migration Affairs. In Poland, investors can be called to the Office of foreigners to present documents confirming the purpose and conditions of stay. If in light of the findings of such checks the competent authority concludes that the conditions are no longer met, the residence permit may be withdrawn.

III.8 ANTI-MONEY LAUNDERING

The Study showed variable practices among Member States operating residence schemes to guard against money laundering. While some countries require all payments to be made through their national banks, which as “obliged entities” under the 4th Anti-Money Laundering Directive, must apply the necessary customer due diligence checks (CY), it also showed that some legislations do not provide for particular checks (HR, PT). In Hungary, there was no obligation to actually transfer the money to the territory, which had as a consequence to exclude the funds from any checks in Hungary. In Ireland, funds are double-checked, first through evidence submitted by the country of origin of the fund, and then by the competent services in the Member State. Applicants must submit documentation from their home country that attests that all anti-money laundering checks have been made and all requirements have been complied with. They must provide an explanation of all of their activities for the previous 12 months, including their income, investments and loans, evidence of the funds that are to be used for the proposed investment, evidence of the provenance of those funds and evidence that the funds are transferrable to Ireland and are convertible to euros. Evidence of anti-money laundering checks is double-checked and verified by the Evaluation Committee set up for the scheme together with the application form. The Migration Service have a list of specific information they require in relation to the following four sources of funds: business and investment activities, deeds of sale, inheritance, and

¹¹⁵ In Portugal, the law only requires the applicant to submit an up-to-date declaration issued within the previous 45 days by the Portuguese tax and social security authorities confirming the absence of any debts to those authorities, and where that is not applicable, declaration confirming that the applicant is not registered with those authorities.

divorce settlements. If the funding has been received from an alternative source the individual must provide original documentation and independent supporting documentation as evidence.

The competent authorities in charge of those particular checks vary: it can be the national Investment Agency (BG) or a Commission dedicated to anti-money laundering (ES).

III.9 INFORMATION ABOUT INDIVIDUALS OBTAINING RESIDENCE UNDER THESE SCHEMES

The information and statistics available regarding individuals obtaining residence under an investor scheme implemented by Member States are generally very scarce. This is one major element accounting for the lack of transparency in the running of these schemes: while the practice of Member States varies a lot in this regard, the overall situation may be depicted as lacking transparency.

No legal obligation to publicly disclose information on successful applicants has been retrieved in any Member State.

Public statistics are not always available, and sometimes for a limited number of years on the competent authorities websites (CY¹¹⁶, EL¹¹⁷).

Most of the times, when statistics are public, the lack of disaggregation does not allow to identify the ground underlying the permit acquisition (EL, EE, HU, FR), which makes it impossible to identify investor permits. The novelty of the scheme is an element sometimes put forward to account for this absence of clear statistics (IT, SK, CZ).

Regarding available public statistics targeting investor residence schemes, Spain published statistics in the 2015 Report of the MESS on the implementation of the Law 14/2013¹¹⁸, covering the period 30 September 2013 to 31 December 2014.

In some cases, parliamentary questions and freedom of information requests may enable to get more information and to make up for this structural lack of transparency. For instance, in the case of Ireland, the Irish Naturalisation and Immigration Service has provided information via Parliamentary questions on the following items: the number and value of applications per annum since 2012 under each investment option, the number and value of immigrant investor programme applications for social housing investment and nursing home investment in 2017, the criteria against which applications are evaluated, the number of applications approved under the scheme, the investment funds for which applications under the scheme have been approved to date and the amount of money invested in the scheme.

¹¹⁶ General statistics can be found on the Ministry of Interior website for 2015 and 2016. See http://www.moi.gov.cy/moi/crmd/crmd.nsf/page13_gr/page13_gr?OpenDocument

¹¹⁷ On the website of the Greek Ministry of Migration monthly migration statistics can be found, however, this go only as back as one year (<http://immigration.gov.gr/web/guest/miniaia-statistika-stoixeia>

¹¹⁸ Law 14/2013, of 27 September, on the support to entrepreneurs and their internationalisation (Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización), Official State Gazette 233 of 29 September 2013, BOE-A-2013-10074, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2013-10074> (Law 14/2013). Report available at http://extranjeros.mitramiss.gob.es/es/UnidadGrandesEmpresas/ley14_2013/documentacion/Informe_anual_de_la_Seccion_de_Movilidad_de_la_ley_14_2013.pdf

In Bulgaria, information regarding number of successful applicants can be obtained through an official request for information under the Access to Public Information Act. In Croatia, the Ministry of the Interior enables the access to data collected through the request for the access to information, available on its Website. In Lithuania, the Migration department collects statistical information that is published in its annual Migration yearbooks. However, data is not disaggregated.

The following figures on the permits granted per Member States have been retrieved both through the stakeholders consultation carried out in the context of the Study and through public websites.

	2012	2013	2014	2015	2016	2017
BG¹¹⁹	103	98	107	117	143	164
CY	Not available	Not available	Not available	Not available	Not available	Not available
CZ	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not available
EE¹²⁰	61	54	35	28	18	68
EL	Not applicable	Not available	Not available	Not available	Not available	Not available
ES¹²¹ <i>(figures cover only the period 30 September 2013 to 31 December 2014)</i>	531					

¹¹⁹ Information obtained through consultation of national authorities for the purposes of the Study.

¹²⁰ Information obtained through consultation of national authorities for the purposes of the Study.

¹²¹ ‘Report on the implementation on the Section on International Mobility of Law 14/2013 of 27 September on the support to entrepreneurs and their internationalisation’ (Informe sobre la aplicación de la Sección de Movilidad Internacional de la Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización), April 2015, available at http://extranjeros.empleo.gob.es/es/UnidadGrandesEmpresas/ley14_2013/documentacion/Informe_anual_de_la_Seccion_de_Movilidad_de_la_ley_14_2013.pdf (2015 MESS Report).

FR ¹²²	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	29
HR	Not available	Not available	Not available	Not available	Not available	Not available
HU ¹²³	Not available	8413				
IE ¹²⁴	Not available	Not available	Not available	67	317	334
IT	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not available
LT	Not available	Not available	Not available	Not available	Not available	Not available
LU	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not available
LV ¹²⁵	2890	4438	5822	1101	692	161
MT ¹²⁶	Not applicable	Not applicable	Not applicable	0	29	83 (263 still under consideration)
PL ¹²⁷	Not available	Not available	Not available	Not available	770	1600

¹²² Information obtained through consultation of national authorities for the purposes of the Study.

¹²³ Information made public by the Ministry of the Interior, upon request of a member of the Hungarian Parliament. Response of the Minister of Interior to the information request of Mária Demeter, independent member of the Hungarian Parliament, 31 May 2017, available at: <http://www.parlament.hu/irom40/15714/15714-0001.pdf>

¹²⁴ Figures for Ireland relate to the number of applications received. Source: Parliamentary Question 262: 23 January 2018², Department of Justice and Equality.

¹²⁵ Information obtained through consultation of national authorities for the purposes of the Study.

¹²⁶ Information obtained through consultation of national authorities for the purposes of the Study.

¹²⁷ Information obtained through consultation of national stakeholder (Ministry of Interior Affairs and Administration, Statement of 6 June 2018 no DAiPM-WSNPA-052-34/2018).

PT ¹²⁸	2	494	1526	766	1414	1351
RO	Not available	Not available	Not available	Not available	Not available	Not available
SK ¹²⁹	22	21	27	17	38	73
UK ¹³⁰	773	960	1773	681	813	274

This general lack of information and transparency appears at odds with the policy objective of the scheme and the possibility to assess its efficiency.

¹²⁸ Source: https://www.sef.pt/en/Documents/Mapa_ARI_EN_december18.pdf

¹²⁹ Information obtained through consultation of national authorities for the purposes of the Study. Figures cover only permanent residence – Figures on temporary residence are not available.

¹³⁰ Government immigration statistics, available at <https://www.gov.uk/government/statistics/immigration-statistics-july-to-september-2017-data-tables>. Figures cover both leave to enter and leave to remain. Leave to enter is the authorisation to enter and stay in the UK for 3 years and 4 months. After this, Leave to remain can be granted, which is an extension of 2 years.