Response to the Commission report

Investor Citizenship and Residence Schemes in the European Union

FUTURE CITIZEN® INSTITUTE

Executive Summary

1. The Commission report relies on the concept of the "genuine link" in criticizing the relation between investors and States offering RBI/CBI programmes. However, the "genuine link" doctrine has been disputed ever since it was defined by the International Court of Justice in the Nottebohm case. Moreover, international law is silent as to the requirements for States to grant naturalisation, and commentators have argued that the analysis of the motives that lead someone to naturalise should not be made by third parties.

2. Commentators have equally claimed that EU law is not (yet) allowed to interfere with the competence of the member states to determine who are or who are not their nationals. The principle of sincere cooperation, as invoked by the Commission, is therefore irrelevant in this matter. It is also recalled that the member states have gone to great lengths to guarantee that nationality remains a national competence and that EU Citizenship is merely a derivative status. This is reflected in Article 20(1) Treaty on the Functioning of the European Union, stating that "citizenship of the Union shall be additional to and not replace national citizenship".

3. The Commission notes that member states currently do not consult each other on applicants for investor citizenship. However, state practice shows that it is very questionable that countries inform each other of citizenship decisions generally.

4. The Commission also observes that under none of the investor citizenship schemes comprehensive information is available about the identity of people who successfully obtain citizenship on the basis of investment. State practice as regards naturalisation, however, shows that the grant of nationality is generally by a discretionary decision of the competent authorities. Countries that grant naturalisation by Act of Parliament, leading to the publication of the applicants' personal details in the Official Gazette, are the exception.

5 As regards the security concerns voiced by the Commission in its report, an important aspect is not mentioned, namely that all residency permit granted under RBI schemes currently proposed by EU member states have to follow EU law.

6 The Commission expresses concern about the external dimension of RBI/CBI programmes, for example in relation to Moldova and Montenegro. However, as most monitoring tools for countries benefitting from visa-free travels and benchmarks for accession countries already include the issues of security, money laundering, transparency and good governance, these concerns are ill-founded. A better communication between countries offering RBI/CBI schemes and the EU, leading to a better understanding of this specific field, will surely be enough.

7 Data show that RBI/CBI programmes, when implemented properly and with care, provide valuable stimulus to the economy. In the case of Malta, its CBI programme has provided an economic benefit to the real estate sector that was above projections. The programme also kicked started GDP growth and has helped to propel Malta to one of the best recoveries in Europe from the global recession of 2008-2009. Cyprus now sees FDI has 25% of GDP, which has partially benefited from its RBI/CBI programmes.

8 It can be argued that different investment options pose different risks and security concerns. For example, when one invests in a licensed fund or through a licensed financial intermediary, the checks are more stringent. Some states have therefore already introduced the option of investing in licensed funds, which entail several advantages including access to diversification through a single investment and the pooling of investors' funds as well as increased security and transparency for both investors and regulators.

9 The use of a licensed structure could be a better option than the current citizenship and residency by investment schemes, since the fund will be directly monitored by home member state regulators, leading to significant risk reduction. The investment scale is also expected to be much larger, and the investment impact can be more easily quantified.

PART I:
EU CITIZENSHIP AND MEMBER STATE CITIZENSHIP

Response to section 2: genuine link

The Commission relies heavily on the concept of the "genuine link". In our response to the 2018 report by the European Parliamentary Research Service on investment schemes in the EU we already demonstrated that this concept has been disputed ever since it was defined by the International Court of Justice in the Nottebohm case.[1] The list of academic publications on the case is long and includes both early critiques by H. Golsong, Joseph Kunz and Mervyn Jones, among others, and more recent commentaries by Oliver Dörr, Albrecht Randelzhofer, Audrey Macklin, and Jacob Dolinger. According to the latter, and important for the purposes of this response,

> the analysis of the motives that lead someone to naturalize should not be made by third parties, not by courts and /or authorities outside the jurisdiction where the naturalization took place, not even by national courts, and certainly not by international courts, because the process of naturalization is a matter of the exclusive interest of the State and the naturalized person.[2]

It is common knowledge that the nationality laws of the EU member states are based on *ius sanguinis* rather than *ius soli*, and that many member states have *ius sanguinis* regimes that allow nationality to be transmitted indefinitely to subsequent generations born outside the EU.[3] Others offer generous routes to long-distance naturalisation without requiring any previous physical presence on the territory.

Among the many EU member states that create "external EU citizens" who enter the territory of the EU on the basis of a nationality expressing no real link with a member state, the cases of Mediterranean as well as Central and Eastern Europe (CEE) are well-known. We described some of these cases in our response to the EPRS report. Still, it is worth stressing here that the citizenship granted by many CEE countries to cross-border co-ethnics living in non-EU countries, partly as a way of reviving claims to territories that were lost in the course of history, has led to more than two million persons taking up such an additional citizenship in the calculation of some commentators.[4] This may in fact be a cautious estimate for the CEE region, as Romania already granted citizenship to almost 1 million Moldovans over the last ten years.[5] In Moldova, as explained by Eleanor Knott, "a majority of residents can acquire (or reacquire) Romanian citizenship by virtue of being descended from former Romania citizens". [6]

The implications of the member states' *ius sanguinis* and long-distance or cross-border naturalisation regimes are, therefore, far-reaching for the EU as a whole. Although numerically the acquisition routes based on ancestry or cultural affinity are much more important than any cash or talent-for-citizenship exchanges, this is not addressed by the Commission in its report. Rather, it wrongly suggests that the existence of requirements such as knowledge of the national language and/or of the culture of the country are requirements for naturalisation, and that granting naturalisation based on a monetary payment alone

[1] Nottebohm, 6 april 1955, ICJ reports 4. The response to the EPRS report "Citizenship by Investment (CBI) and Residency by Investment (RBI) Schemes in Europe" that the Future Citizen Institute co-authored with Arton Capital can be freely downloaded from https://www.ifuturecitizen.com.

[2] Dolinger, p. 158.

[3] See http://globalcit.eu/databases/global-birthright-indicators/.

[4] Harpaz and Mateos, p. 10.

[5] See https://en.publika.md/around-1-million-moldovans-acquire-romanian-citizenship-in-past-years-_2647124.html.

[6] Knott.

departs from the traditional ways of granting nationality.[7] However, member states practice shows that this is not always the case. Moreover, the Commission ignores the fact that a monetary payment leading to broad societal benefits can in fact be regarded as representing a stronger genuine link than the bonds between EU member states and the millions of non-EU nationals who can access EU citizenship based on very tenuous ancestral or cultural links with one of the member states.

Another example where historical European and colonial migration patterns impact the acquisition of citizenship is the relation between nationality and sports. Scholars have concluded, based on data for the last few decades on athletes who switched nationality and therefore competed for two different countries in the summer Olympic Games, that only few athletes explicitly receive citizenship via what they call jus talenti. Rather than indicating the "marketization of citizenship", therefore, "the trajectories followed by Olympians who switched nationality show a stark resemblance to global migration patterns, which points towards path dependency […] Our data indicate that European and colonial migrations that have taken place during the first half of the 20th century still resonate in recent transfers of Olympic nationality".[8] Similar to the non-EU nationals who only have tenuous ancestral or cultural links with an EU member state, it is questionable to what extent these athletes can show a "genuine link" as defined by the Commission.

Response to section 2: principle sincere cooperation

In Section 2 of its report the Commission refers to the principle of sincere cooperation. In our response to the EPRS report we refuted the claim that the principle of sincere cooperation can limit member state autonomy in nationality matters, especially considering that countries have gone to great lengths to make sure that nationality remains a national competence. Despite the claim by the Court of Justice of the European Union that EU citizenship "is destined to be the fundamental status of the member state nationals", Article 20(1) Treaty on the Functioning of the European Union states that "citizenship of the Union shall be additional to and not replace national citizenship".

There is no rule of international law that suggests otherwise. According to Hans-Ulrich Jessurun d'Oliveira "international law is silent about the role of Union law in controlling the competence of member states in matters of nationality".[9] In respect of the EU principle of sincere cooperation he has argued that

> […] Union law is from my point of view not yet allowed to interfere with the competence of the member states to determine who are or who are not their nationals. There is no competence in the treaties to deal directly with the laws on nationality of the member states. […] Laws on nationality belong to the identity of the member states and their fundamental constitutional structures to be respected by the EU, according to Art.4 s.2 TEU. Although these have to be interpreted restrictively, they are still in place. [10]

[7] European Commission 2019, p. 5-6.

[8] Jansen et al., p. 530.

[9] Jessurun d'Oliveira, p. 6.

[10] Jessurun d'Oliveira, p. 7.

Response to section 4: non-consultation among member states

The Commission also writes that "Member States currently do not consult each other on applicants for investor citizenship". However, it is very questionable that countries inform each other of citizenship decisions generally. An additional protocol[11] to the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality[12] tried to remedy this by providing in Article 1 that "each Contracting Party undertakes to communicate to another Contracting Party any acquisition of its nationality by an adult or a minor who is a national of this State, which has taken place according to the conditions contained in Article 1 of the Convention". However, the low number of ratifications of this protocol seems to be an indication that most States are not particularly concerned about the need to share information in the field of nationality law. If one commentator therefore already concluded that "without this exchange of information, enforcement of the [1963] Convention has been haphazard at best",[13] any exchange of information in the more sensitive field of investment migration can probably count on even less support among the member states.

Response to section 4: lack of information about successful CBI/RBI applicants

The Commission observes that "[u]nder none of the three [Bulgarian, Cypriot and Maltese] 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".[14] However, as noted by René de Groot, the grant of nationality is often by a discretionary decision of the head of state, the government or a particular minister. He refers to Belgium and Denmark as exceptions in that these countries grant naturalisation by Act of Parliament. A GLOBALCIT analysis of Denmark indeed confirms that the Danish Parliament grants naturalisation by the adoption of a Bill on naturalisation, which is introduced in Parliament twice a year. Applicants are therein listed by name, municipality, and year of birth, birth place and present citizenship/statelessness.[15] A similar GLOBALCIT analysis for Belgium confirms that a naturalisation becomes effective when the Act of Parliament granting the naturalisation is published in the Belgian Official Gazette.[16]

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[11] Entry into force on 17 October 1983, European Treaties Series no. 096, available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/096/signatures.

[12] Entry into force on 28 March 1968, European Treaties Series no. 043, available at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/043.

[13] Hammar, p. 83.

[14] De Groot, p. 613.

[15] Ersboll, p. 5.

[16] Wautelet, p. 5.

PART II:
EU MIGRATION LAW AND BORDER SECURITY

Response to section 4: Security

One of the arguments used by the European Commission against CBI and RBI programmes is that they could undermine EU's efforts to secure its territory as RBI/CBI beneficiaries would not be subjected to the same type of control as other third country nationals crossing EU borders. The report mentions a list of instruments comprised under the Security Union,[17] but the Commission has not mentioned how these different instruments would directly relate to the RBI/CBI programmes. For example, EURODAC establishes an EU asylum fingerprint database and can also be used to monitor third country nationals apprehended when attempting to cross an external border irregularly. Needless to say, this is not an instrument that is targeted at potential RCBI beneficiaries.

The Schengen Information System (SIS)[18] is the most widely used and largest information sharing system for security and border management in Europe. SIS allows national authorities, such as the police and border guards, to see whether a third country national has previously been refused entry into the Schengen area. As mentioned in the report, only Cyprus is not connected to SIS. The Visa Information System (VIS)[19] is an instrument to exchange data for short-stay visa applications between the Schengen EU member states and the four Schengen Associate countries. Malta is part of the VIS. Moreover, national authorities and Europol may request access to data entered into the VIS in order to prevent, detect and investigate terrorist and criminal offences. According to the EU report, Malta and Cyprus are using Europol databases to undertake their due diligence checks. Additionally, the European Criminal Records Information Exchange System, created in 2012 to facilitate the exchange of information on criminal records throughout the EU, is already in place and can be used by all EU Member States.

In the report, the Commission mentions the lack of information related to the use of these mechanisms in RBI/CBI programmes. As a response, Malta specified on their official CBI website that their due diligence checks are already using EU's centralized information systems.[20] We are in favour of the sharing of information in this regard by other EU countries proposing RBI and CBI schemes in order to better inform the EU of the existing procedures in place to mitigate potential security risks.

Additionally, the development of new IT systems, mentioned in the report, would increase the mandatory checks on third country nationals entering and residing in the EU. For example, the European Travel Information and Authorisation System (ETIAS)[21] will strengthen the EU's capacity to assess and manage the potential migration and security risks represented by citizens benefiting from a Visa Exemption Agreement (visa-free travel). Visa Exemption Agreements allow citizens from a particular third country to enter the EU and to travel to different Schengen countries without a visa for a maximum period of three months during a six-month period. The Visa Exemption Agreements are directly linked to the Schengen Area.

[18] European Commission, November 2018.

[19] European Commission, May 2018.

[20] See https://iip.gov.mt/2019/01/23/reaction-to-the-report-from-the-commission-regarding-investor-citizenship-and-residence-schemes-in-the-eu/.

[21] See https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/fact-sheets/docs/20161116/factsheet_-_etias_en.pdf.

They are open to all the citizens of a third country benefiting of such an agreement, travelling to the EU for any reason except to work. There are currently 60 countries benefitting from such an agreement.[22] This instrument could help mitigate the potential security risks that CBI schemes proposed in Moldova and Montenegro could pose.

However, an important aspect has not been mentioned in the report. Before obtaining citizenship through a CBI programme, the third country national must be a resident of Malta and Bulgaria for a minimum of twelve months. In this case, EU rules are applied, including the sharing of biometric information.[23] As mentioned in the report itself, EU member states are obliged under EU Law to carry out security checks before issuing a residency permit including using the SIS system. This is true for Malta as a Schengen State but also for Bulgaria, which is participating in SIS even though it is not yet a Schengen country. This also means that all residency permit granted under RBI schemes proposed by EU member states have to follow EU Law.

Moreover, the Proposal for a Regulation on the Visa Information System[24] foresees to include data on residence permits. This could further secure RBI and CBI schemes. However, this proposal seems problematic as the Commission has not clearly explained the necessity and proportionality of this proposal. The EU is required under Articles 5 of the Treaty on European Union that "the use of Union competences is governed by the principles of subsidiarity and proportionality" which means that the actions taken have to be suitable to achieve a given goal but "should not exceed what is necessary".

When it comes to the background of the applicants for CBI programmes, it is important to note that several States have addressed these concerns by imposing additional requirements for the naturalisation of investors. Therefore, applicants for CBI programmes can be subjected to more stringent requirements than regular naturalisation applicants. This is for example the case for the applicants of the Maltese Individual Investor Programme. First of all, Article 5 of Legal Notice 47 of 2014 provides an overview of specific minimum eligibility requirements. The Article lists numerous grounds which would make an applicant ineligible, in particular charges brought against the applicant or one of his family members for serious criminal offences. Secondly, an applicant can be considered ineligible if he has provided false information in the application process, has a criminal record or is subject to a criminal investigation, is a potential security threat to Malta or could harm the reputation of Malta or if he has been denied a visa of any State to which Maltese nationals can travel without a visa.[25] Although applicants that fail to meet these requirements are in principle refused, their application can still be exceptionally accepted in case of "special circumstances to be demonstrated by the applicant". In order to further assess the background of the applicants and his family members, they are subjected to a due diligence process to check whether the applicants are "fit

[22] Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 Listing the Third Countries Whose Nationals must be in Possession of Visas when Crossing the External Borders and those whose Nationals are Exempt from that Requirement OJ L 149, 20.5.2014.

[23] Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, 13 June 2002.

[24] European Commission, 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, Brussels, 16 May 2018.

[25] Article 6 Legal Notice 47 of 2014.

and proper persons to hold Maltese citizenship".[26] The structure of this due diligence process has not been established by the Legal Notice, but has been published separately. The due diligence process consists of four stages, namely a know-your-customer procedure to establish the identity of the applicant, a clearance from the police authorities, a check and verification of the application documents and, lastly, an external due diligence report.[27]

The Cypriot programme was amended in 2018 in order to restrict its procedural requirements.[28] The most important amendment entailed that a register of intermediary agencies would be established (i.e. agencies that could file applications on behalf of their clients). These intermediary agencies would have to sign a code of conduct, which also imposes an obligation on these agencies to screen their potential clients. The agencies are obliged to assess the identity of their client, his professional activities and the origin of their funds and their legality.[29]

Although the European Commission rightly states that these enhanced security requirements cannot eliminate all potential risks, it fails to acknowledge the added value of these procedures and that citizenship by investment programmes usually impose more stringent security requirements on its applicants than other naturalisation routes.

[26] Article 4 par. 2 sub c Notice 47 of 2014.

[27] https://iip.gov.mt/due-diligence/.

[28] Decision of the Council of Ministers No. 706 of 21 May 2018.

[29] Article 6 Cyprus Investment Programme Code of Conduct, June 2018.

Response to section 5: the external dimension

Regulation 1289/2013[30] amending Regulation 539/2001 establishes a mechanism whose purpose is to guarantee that visa-free travel is not abused. In the case of a "threat to the public policy and internal security", visa requirements for citizens of non-EU countries can be temporary or permanently reinstalled. Technically, the mechanism can be triggered if, for a period of two months there was a substantial increase in irregular migration or a substantial increase in false asylum claims or a decrease on cooperation on readmission or, finally, increased risks to the security of member states. The mechanism follows several steps and member states, or the Commission, cannot easily decide to suspend a visa-free status. One can doubt that the threats of reinstituting a visa requirement with countries that have substantially worked to reach the accession benchmarks are going to materialise. These benchmarks include, for example, reinforced border controls, the introduction of biometric passports and the fight against corruption. The efforts made by third states, such as Moldova and Montenegro, in the accession process and in order to benefit from visa-free travel are already tackling all the potential risks raised by the Commission in Section 4 of the report. Moreover, a Commission report from December 2018[31] argues that Montenegro and Moldova fully fulfil the conditions for visa-free travels under the visa suspension mechanism. Even if the Commission's report on investor schemes mentions the need to adequately monitor CBI schemes in these countries no further mention is made of the main areas to address in order to continue to fulfil the conditions for visa-free travels. Accordingly, Florian Trauner argues that triggering the visa suspension mechanism would be difficult as it would lead to significant expenses for member states to re-establish consular infrastructure, mainly for a short period of nine months which is the duration of the first phase of the suspension mechanism. [32]

Finally, visa facilitation agreements are linked to readmission agreements. Moldova and Montenegro have concluded such agreements.[33] Readmission agreements set the measures for the return to the partner third country of irregular migrants. Increasing the effectiveness of returns is at the centre of the EU's migration policy as presented by EU Commission President Jean-Claude Juncker at the State of the Union of 2018.[34] It seems doubtful that the EU would jeopardise its return policy over RBI/CBI schemes. A better communication between countries offering RBI/CBI schemes and the EU, leading to a better understanding of this specific field will surely be enough. As most monitoring tools for countries already benefitting from visa-free travels and benchmarks for accession countries already include the issues of security, money laundering, transparency and good governance it seems that the arguments provided by the Commission in this last Section are redundant.

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[30] REGULATION (EU) No 1289/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

[31] European Commission, 19 December 2018.

[32] Trauner.

[33] Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas); Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas

[34] European Commission, 12 September 2018.

PART III:
ECONOMIC IMPACT - THE CASE OF MALTA AND CYPRUS

The Office of the Regulator of the Malta Individual Investor Programme publishes annually in November a report containing key data and information related to the Individual Investor Programme (IIP) for the period of July 1 to June 30 of that year. The publishing of this report offers valuable transparency regarding the IIP and quantifies the economic impact that the program provides for Malta. The economic impact can be felt in the real estate market, National Development and Social Fund (NDSF) and with a budget surplus.

Participants in the IIP are required to invest either €350,000 in residential immovable property or lease a residential property with at least an annual rent of €16,000. For the year July 1, 2017 to June 30, 2018; 266 properties were leased or purchased in part-satisfaction of the requirements of the IIP with 97% of those leased. Although the requirement was €16,000 per year for leased properties, the observed amount spent on leased properties was a considerable amount more at €19,139. This results in additional lease revenues of over €747,000 than what's required. [35]

A similar unexpected benefit came from the 25 properties that were purchased from July 1, 2017- June 30, 2018 to meet the investment requirement. The average purchase price was significantly above the minimum threshold of €350,000 at €1,184,00. This provided an additional €20,850,000 in economic benefits over what would be expected at this level of participation. [36]

These two results can be further validated when evaluating the investments over the life time of the IIP. The average annual lease price of all properties since the beginning of the program is €19,664 while the average purchase price of a property is €959,000. [37]

However, it has also been noted that the real estate sector can be adversely impacted as well by investment requirements. Between 2015 and 2016 the number of residential real estate transactions decreased by 6% but the sum of those transactions rose by 12%. The total value of sales in 2016 that can be attributed to the CBI program in Malta was 5.43% of the total value of all sales. However, the CBI related transactions made up only .43% of all transactions.[38] This data shows that the CBI program is playing an outsized role in the rise in cost of housing in the country and its impact is noticeable the most in Sliema and St. Julians where 40% and 32% of CBI related transactions take place respectively. [39]

One of the biggest economic impacts can be felt by the €650,000 per investor applicant contribution. The contribution is deposited into a suspense account and is released only after the oath of allegiance has been taken by the investor for uses according to the provisions of the IIP. During the time period of the 5th annual IIP report released this past November, contributions equalled 1.38% of GDP or

[35] Office of the Regulator, Fifth Annual Report (2018).
[36] Ibid.
[37] Ibid.
[38] European Parliamentary Research Service.
[39] Office of the Regulator, Fifth Annual Report (2018).

€162,000,000.[40] Over the time period of the report over €159,000,000, was deposited into the National Development and Social Fund after applicants successfully completed the oath of allegiance. Since the launch of the IIP, over €408,000,00 has been deposited to the fund.[41] To date over €130,000,000[42] has been invested by the NDSF in Maltese listed securities and Malta Government Bonds. The fund also funded the upgrade of two catherization units at the Mater Dei Hospital and has another €55 Million committed to other social and healthcare projects in Malta.[43] However, not all the funds received from the contribution go into the NDSF. To date only 63% of total contributions have been deposited into the NSDF with 26% going to the Consolidated Fund, 5% to Identity Malta/Individual Investor Programme Agency and 4% to a private firm. [44]

Currently over €126,000,000 has been invested in Maltese Government Stocks as part of the IIP requirements. That includes over €39,000,000 from July 2017 to June 2018.[45] A recent change to programme requirements now allows investors participating in the Malta Residency and Visa Programme (MRVP) the option to invest in any company listed on the Malta Stock Exchange instead of having no option but to purchase Government Stocks.

[40] Ibid.

[41] Ibid.

[42] "Malta Passport Fund Exceeds €430 Million in Revenue". 28 September 2018, www.maltatoday.com.mt/news/national/89765/malta_passport_fund_exceeds_430_million_in_revenue#.XEsTZFz7SUk.

[43] Ibid.

[44] Office of the Regulator, Fifth Annual Report (2018).

[45] Ibid.

The IIP has helped contribute to a budget surplus for Malta. In 2018, Malta experienced a fiscal surplus of 3.8%, helping to lower the debt to GDP ratio by 3.1%. This follows 2016, where Malta experienced a budget surplus due to the IIP.[46] The IIP has played a role in Malta's economic recovery since the Financial Crisis of 2008-2009. Since 2013 Malta has enjoyed GDP growth of over 3% per year and an astonishing 6.2% in 2015.[47] Since the inception of the IIP in 2013, Investments directly related to the IIP have been:

Time period (July 1-June 30)	Total IIP as % of GDP
2014-2015	1%[48]
2015-2016	2.38%[49]
2016-2017	3.72%[50]
2017-2018	2.09%[35]

Full Calendar Year	GDP Growth %[39]
2012	2.8
2013	4.5
2014	3.5
2015	6.2
2016	4.1
2017	3.4

As it can be seen, the IIP program has played a major role in Malta's rapid GDP growth over the past 5 years. The MRVP has similar requirements as the IIP, however, Malta does not release detailed information on the program as it does on the IIP. The publishing of such a report would increase transparency and help better assess the economic impacts of the program.

Unlike Malta, the Cyprus Ministry of the Interior does not release an annual report on its investment migration scheme. This reduces the transparency regarding economic impacts of the program. However, in late January 2019 the Minister of Commerce and Energy, Giorgos Lakkotrypis, reported that from 2014-2017 FDI accounted from over €9.2bn and that from 2013-2016 over €4.8Bn of FDI came as a direct result of the citizenship by investment scheme.[51] In late November 2018, The Interior minister of Cyprus

[46] "Malta Records 'largest surplus and highest decrease in debt in the EU'". 21 January 2019, http://www.independent.com.mt/articles/2019-01-21/local-news/Malta-records-largest-surplus-and-highest-decrease-in-debt-in-the-EU-6736202428.

[47] Bamber.

[48] Office of the Regulator, Second Annual Report (2015).

[49] Office of the Regulator, Third Annual Report (2016).

[50] Office of the Regulator, Fourth Annual Report (2017).

[51] Xuequan.

announced a proposal that would fund an affordable housing subsidy in Cyprus by adding an additional €50,000 in fees to each investor. At full participation,700 investors each year, this would bring €35mm in funds for the new subsidy. [52]

According to a December 2018 International Monetary Fund (IMF) report, Cyprus has seen GDP growth of over 4% over the past several years with foreign backed construction being a big contributor. The report also notes that this construction is being fuelled by participants in the citizenship by investment scheme.[53] As the purchase of residential property is a requirement to participate in the Cypriot scheme, foreign backed purchases of residential property have seen a substantial increase, 34.44% from 2015 to 2016. In 2016, 25.67% of residential property purchases were backed by foreign buyers.[54] The IMF has also reported that in 2017 net FDI reached close to 25% of GDP, up from 10% in 2016. The IMF also warns that large construction projects are often reliant on funds from the CBI program and such funds are volatilely and that any change in the influx of CBI funds could adversely affect the economy and particularly the construction sector. [55]

RCBI programmes when implemented properly and with care provide valuable stimulus to the economy. In the case of Malta, its CBI programme has provided an economic benefit to the real estate sector that was above projections. The programme also kicked started GDP growth and has helped to propel Malta to one of the best recoveries in Europe from the global recession of 2008-2009. Cyprus has also benefited from its RBCI programme and now sees FDI has 25% of GDP. However, these programmes still have room for improvement. A better supervisory structure in relation to the funding and allocation of the National development and Social Fund in Malta and the practice of directly investing funds with a property investor in Malta.

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[52] Hazou.

[53] International Monetary Fund European Department, Cyprus.

[54] European Parliamentary Research Service.

[55] International Monetary Fund European Department, Cyprus.

PART IV:
INVESTING IN LICENCED FUND FOR IMPROVED SECURITY AND TRANSPARENCY

The Commission mentions that investor residency and citizenship schemes offer investment options including capital investment, investment in immovable property, investment in Government bonds, donation or endowment of an activity contributing to the public good, and one-time contribution to the State budget.

The report also observes that "investor citizenship and residence schemes create a range of risks for Member States and for the Union as a whole: in particular, risks to security, including the possibility of infiltration of non-EU organized 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". Indeed, as the Commission further points out, 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.

It can be argued that different investment options pose different risk and security levels, as some options require a more detailed examination of the investor's origin of funds, the investor's background and investment transparency. For example, when one invests in a licensed fund or through a licensed financial intermediary, the added checks are very stringent with additional risk management and transparency requirements.

Some states have already introduced the option of investing in licensed funds. These include Ireland, Luxembourg, Malta,[56] Cyprus,[57] Italy, the Netherlands[58] and Portugal. Licensed funds are commonly used to manage incoming investment. There are several advantages of adopting this structure, including access to diversification through a single investment and the pooling of investors' funds as well as increased transparency for both investors and regulators.

Risk Management

Licensed fund managers must be authorised by their regulator before being able to set up, manage and market funds. In addition, most states require the funds themselves to be licensed and subject to supervision. The regulator must be satisfied that the fund manager possesses the necessary resources, skills and expertise to manage the fund before the licence is issued. The same applies to the funds themselves. Fund managers must satisfy a number of conditions including:

- AML standards;
- Existence of an information exchange agreement;
- Tax information exchange standards;[59]
- Risk management functions;
- Contingency plans; and
- Remunerations policies.

[56] Some jurisdictions (including Malta) accept other types of licenced funds. The fund does not need to be an AIF.

[57] One of the investment options.

[58] Invest in a fund that falls within the SEED regulation, a participation fund or contractual partnership that invests in a company in the Netherlands.

[59] O'Riordan and Eustace.

Many fund managers are licensed as Alternative Investment Fund Managers ("AIFMs").[60] Every AIFM must establish and maintain operational permanent risk management, compliance and internal audit functions. Each of these three functions must be independent and separate from the services or activities they monitor, in particular the permanent risk management function overseeing the portfolio management. The depositary of an AIFM must not be in charge of risk management functions, portfolio management or the liquidity management functions. Furthermore, the permanent compliance and internal audit functions must be established by the AIFM. The AIFM must appoint a valuer that must be legally or functionally independent, hence the valuer does not need to be external to the extent that it can be evidenced that he is functionally independent. However, should no external valuer be appointed, the competent authority of the EU member state may require the AIFM to have its valuation procedure and/or valuations verified by an external auditor.[61]

Transparency

Furthermore, adopting an AIFM structure can increase the transparency of the investment, which is beneficial for both investors and regulators. The Transparency Rules impose specific obligations on AIFMs:

- Annual report disclosure requirements;
- Disclosure to investors;
- Periodic reporting to competent authorities.

For each of the EU AIFs it manages and for each of the AIFs it markets in the EU, an AIFM must make available an annual report covering every single financial year. The report must be supplied to investors at their request and must be made available to the regulator. The rules stipulate that the annual report must at least contain the following:

- A balance sheet or statement of assets and liabilities;
- An income and expenditure account for the financial year;
- A report on the activities of the financial year;
- Any material changes in the information disclosed to investors;
- The total amount of remuneration the AIFM paid its staff during the financial year, the number of beneficiaries, and any carried interest by the AIF;
- The aggregate amount of remuneration broken down by senior management and staff members whose actions have a material impact on the risk profile of the AIF. [62]

Funds and fund managers that are not licensed as AIFMs are subject to similar requirements, to varying degrees, depending on the type of license they hold.

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[60] Other types of fund managers can also be permitted. In certain jurisdictions (such as Malta) one may also invest in a fund that is not an AIF. Most, but not all, of the considerations applying to AIFs and AIFMs apply to such funds. For example, de minims funds (such as Professional Investor Funds in Malta) and de minimis fund managers are not required to have a risk management function that is functionally separate and are also generally not required to have an independent valuer.

[61] Association of the Luxembourg Fund Industry.

[62] PriceWaterhouseCoopers.

Tax information exchange

When marketing to non-EU investors, the third country where the non-EU Manager is established has to sign an agreement with the Member State of Reference which fully complies with Tax information exchange standards, including any multilateral tax agreements. [63]

With such regulatory burden, the risks of money laundering and tax evasion can be greatly limited and the investment transparency is improved. In the wake of the recent financial crisis, the G20 committed to ensure that "all relevant actors … are subject to appropriate regulation and oversight", which reflected the global consensus for tighter regulation of investment funds. Various supranational, international and national initiatives have been launched to achieve this goal. Adopting an AIFM or other type of licensed structure could be a better option for citizenship and residency by investment schemes since the fund will be directly monitored by home member state regulators; thus, the risks aforementioned will be significantly decreased. Nevertheless, instead of individual investors making separate investments, AIFM makes collective investment that could be an investment of tens, or hundreds of millions; the investment scale is much larger, and the investment impact is easier to be quantified.

[63] Association of the Luxembourg Fund Industry. See Article 37.7 d) to g) of the Alternative Investment Fund Managers Directive.

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