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# Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU

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State of play,  
issues and impacts

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STUDY

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Ex-Post Evaluation Unit and European Added Value Unit

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# Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU

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## State of play, issues and impacts

All EU Member States have incentives in place to attract foreign investment from non-EU nationals. Most have Citizenship by investment (CBI) or Residency by investment (RBI) schemes (known as 'golden passports' and 'golden visas'), providing access to residency or citizenship in exchange for investment and via a clear process. However, obtaining a residence permit and/or citizenship through these schemes can give access to very favourable tax regimes, and raises both questions of fairness and concerns regarding the risks. In response to a request from the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) for a study on CBI and RBI schemes in the EU, the Ex-Post Evaluation Unit (EVAL) and the European Added Value Unit (EAVA) of the European Parliamentary Research Service (EPRS) have analysed the state of play and issues surrounding these schemes and developed an innovative methodology to identify questions that raise particular challenges, taking into account the TAX3 Committee's specific concerns. This study examines the risks these schemes carry regarding corruption, money laundering and tax evasion. The study also looks at the economic, social and political impacts of such schemes and explores the potential for EU action in this field.

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## Executive summary

All of the EU Member States have various incentives in place to attract foreign investment from non-EU nationals. Most of them have citizenship by investment (CBI) or residency by investment (RBI) schemes (so-called 'golden passports' and 'golden visas'), characterised by the provision of access to residency or citizenship in exchange for specified investments and via a clear delineated process. A handful of Member States operate CBI schemes in addition to RBI schemes.

Despite having common features, these national CBI/RBI schemes vary greatly in terms of the requirements incumbent on the applicants and the rights granted in exchange. For the purpose of this study, a specific methodology has been designed to address the concerns of the European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) Committee (section 1). The methodology developed identifies the schemes that minimise the constraints incumbent on the investors while maximising the rights stemming from the acquisition of a residency status in or citizenship of an EU Member State, and that at the same time grant a right of entry to privileged tax regimes. According to these criteria, schemes offering easy access to a wide range of advantages are operated in Bulgaria, Cyprus, Estonia, Ireland, Italy, Latvia, Malta and Portugal. The schemes under scrutiny require none to very low physical presence on the territory to obtain residency or citizenship status. The necessary investments can be very low and of a purely passive nature (i.e., not requiring a business plan or job creation). Furthermore, obtaining a residence permit and/or citizenship through these schemes gives access to very favourable tax regimes (e.g., low level of tax on personal income or tax provisions that exempt taxation on foreign income). While all of the schemes under scrutiny grant residency status, three of them offer de facto EU citizenship (Bulgaria, Cyprus and Malta). Of course, other similar schemes operated across the EU may also raise challenges or concerns.

National RBI and CBI schemes in particular have triggered debate and controversy in the last few years, notably in relation to the general question of fairness; the EU principle of sincere cooperation; and the genuine link criteria (section 2). Such schemes have been widely perceived as opening a distinct and privileged path for the richest third country nationals (TCNs), at the same time as the general tendency in the EU moves towards tighter immigration laws. For CBI schemes, it has moreover been stressed that, even though the acquisition of national citizenship is not governed by EU law, naturalisation decisions adopted by one Member State are 'not neutral' with regard to the EU as a whole. Indeed, granting citizenship in one Member State gives access to rights stemming from EU citizenship. Related to this, controversy has greatly evolved around the criteria of 'genuine link', i.e. the relationship between a person and the country granting citizenship. However, these legitimate concerns should not supersede other concerns related to the risks these schemes could have on the integrity of the internal market.

Indeed, CBI/RBI schemes undoubtedly carry several risks (section 3). For CBI schemes, this includes a devaluation of EU citizenship. Such schemes not only put a price tag on EU citizenship: it has been argued that they also undermine its fundamental values. The increasing trend towards forms of marketisation of both CBI and RBI schemes is confirmed by a growing business specialised in 'residence and citizenship planning' for wealthy investors, advertising the benefits of a second passport or alternative residence worldwide. Other significant and related risks include the potential for corruption, money laundering and tax evasion. In recent years, and even more so in recent months, news reports and/or new criminal investigations have shed light on dubious practices and scandals surrounding CBI/RBI schemes. These have pointed to the vulnerabilities of these schemes. While in principle, checks on criminal records are included in the legal framework governing these schemes, their accuracy is questionable. The adequacy of the checks performed on the applicants and the origin of the funds invested is also questionable. In addition, tax-related incentives provided

by CBI/RBI schemes constitute an important factor driving demand. In that regard, the schemes offering access to special tax regimes have been deemed particularly risky. From a tax transparency perspective, even though the schemes do not themselves offer a solution to escaping reporting standards (and notably the common reporting standards – CRS), they enable false statements to be made on residency and can thereby undermine due diligence procedures.

The study then looks at the impacts of CBI/RBI schemes on the EU, the Member States, and EU citizens (section 4). At the economic level, in the short term these schemes can provide a positive contribution to the states that receive the specified investments. However, spill over effects attributed to them, including their impact on tax revenues and job creation, are uncertain. Large investment inflows related to CBI/RBI schemes can also adversely impact financial stability in small states and make them particularly vulnerable to a decrease in demand for these schemes, exacerbating macroeconomic vulnerabilities. In addition, CBI/RBI schemes have a significant impact on the real-estate sector in Member States operating schemes that rely heavily or totally on that sector, which can face high demand pressures leading to an increase in property prices.

At social level, increased property prices can make access to housing more difficult for low-level income sections of the population. Another social impact is an erosion of security and justice for EU citizens. As recently recalled by the EU Commissioner for Justice, Věra Jourová, if one Member State does not apply the necessary security and criminality checks, this can affect all Member States. These social impacts are supplemented by possible hindrance to the mobility of EU citizens. As policies related to visa-waivers and visa-free travel agreements between countries mainly rely on the assumption that their citizens are safe to admit, poorly conceived CBI/RBI schemes in terms of security checks and deemed as 'risky' could jeopardise these agreements. Besides, allowing the richest TCNs to obtain fast-track citizenship or residency can rightly be perceived as discriminatory in nature.

At the political level, the allegations related to the integrity of the CBI/RBI schemes can harm confidence in institutions, and a possible additional erosion of mutual trust between Member States. As citizenship becomes a commodity, the perception of citizenship itself could also be affected. Finally, from a policy perspective, the lack of available data on the costs and benefits of these schemes at Member State level and the uncertainties that they carry over the long term for the economy and society, constitute an important obstacle for the design and the conduct of long term sustainable policies.

In light of these findings, the study concludes with an exploration of the potential for EU action (section 5), which could bring benefits to the EU as a whole. To mitigate the macro-economic vulnerabilities, specific recommendations on prudential regulation related to the pace of inflows (i.e., fiscal buffers) could be integrated into the European Semester exercise. To ensure the integrity of the EU single market, the proper implementation and application of due diligence standards enshrined in EU law must furthermore be monitored rigorously and continuously. Finally, consistent collection of data as regards CBI/RBI schemes should be encouraged at EU level. This is not only critical to forecasting vulnerabilities induced by CBI/RBI schemes, it would also strengthen their reputation and sustainability over the long term. Should CBI/RBI schemes be maintained, their accompanying policy design should assesses their economic benefits carefully, balancing them against the risks they present and their impact on public opinion. Striking the right balance here is key to preventing distrust and maintaining social justice.

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## List of acronyms

<b>AML</b>	Anti-money laundering
<b>CBI</b>	Citizenship by investment
<b>CJEU</b>	Court of Justice of the European Union
<b>CRS</b>	Common reporting standard
<b>DAC Directive</b>	EU Directive on automatic exchange of information
<b>EAVA</b>	EPRS' European Added Value Unit
<b>EBA</b>	European Banking Authority
<b>EPRS</b>	European Parliamentary Research Service
<b>EVAL</b>	EPRS Ex-Post Evaluation Unit
<b>FIAU</b>	Malta Financial Intelligence Analysis Unit
<b>FPI</b>	Foreign Portfolio Investment
<b>GDP</b>	Gross Domestic Product
<b>HNWI</b>	High net worth individual
<b>IIP</b>	Maltese individual investor programme
<b>IMC</b>	Investment Migration Council
<b>IMF</b>	International Monetary Fund
<b>MCAA</b>	Multilateral Competent Authority Agreement
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PEP</b>	Politically exposed person
<b>PIT</b>	Personal income tax
<b>QNI</b>	Quality of nationality index
<b>RBI</b>	Residency by investment
<b>TAX3</b>	European Parliament's Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance
<b>TCN</b>	Third country national
<b>TIN</b>	Taxpayer identification number
<b>TJN</b>	Tax Justice Network
<b>VAT</b>	Value-added tax

# 1. 'Golden visas': definition and methodology

## 1.1. What are 'golden visas'?

'Golden visas' or 'golden passports' usually refer to specific 'policies developed by countries seeking to attract wealthy people to become residents or citizens'.<sup>1</sup> Different official terminologies exist to designate these types of policies: economic citizenship programmes (ECPs),<sup>2</sup> immigrant investor programmes (IIPs),<sup>3</sup> citizenship by investment (CBI) and residency by investment (RBI) schemes. For the purpose of this analysis, the two latter terms (CBI/RBI) are used throughout this analysis.

National schemes designed to attract foreign investment are found across the globe and in almost every country. Some of these schemes offer residency or citizenship rights, in exchange for sizeable investments.

CBI/RBI schemes have increased dramatically in the past decade. While countries like Australia, the United States (USA) or the United Kingdom (UK) have offered residence rights in exchange for investment since the 1980s and the 1990s, the Caribbean islands of Saint Kitts and Nevis were the first to offer citizenship rights in exchange for investment.<sup>4</sup>

In the aftermath of the global 2007-2009 financial crisis, many countries, including in the EU, developed these schemes to boost their weakened economies.<sup>5</sup> This was accompanied by a boom in businesses offering advice on the best destinations for investors. This latter aspect is developed in section 3.2.

The opportunities offered by CBI schemes to wealthy individuals in particular have led to attempts to rank nationalities as regards their 'qualities'. The Henley & Partners/Kochenov quality of nationality index (QNI)<sup>6</sup> has become a point of reference that explores the various factors that make one nationality better than another in terms of legal status, economic strength, human development, peace and stability, as well as visa-free travel and the ability to settle and work abroad without undertaking cumbersome formalities.<sup>7</sup> In the latest QNI released in 2018, all the EU Member States are ranked in the top 30 most desirable citizenships around the world.<sup>8</sup> The reasons why EU Member States are ranked so high include, in addition to economic prosperity and stability, the fact that EU nationalities come with the right to be welcomed by other countries and societies, i.e., they come with extra-territorial rights. The EU Member States are therefore particularly well placed in this

<sup>1</sup> Džankić J., 'Immigrant investor programmes in the EU', *Journal of contemporary European studies*, 26-1, 2018.

<sup>2</sup> Xu X., El-Ashram A. and Gold J., [Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs](#), IMF Working Paper, 2015.

<sup>3</sup> Džankić J., Immigrant investor programmes in the EU, *Journal of contemporary European studies*, 26-1, 2018

<sup>4</sup> For a concise history of these programs, see Shachar, A., *Citizenship for Sale?*, *The Oxford Handbook of Citizenship*, Oxford: Oxford University Press, 2017, pp. 794-796.

<sup>5</sup> Džankić J., Immigrant investor programmes in the EU, *Journal of contemporary European studies*, 26-1, 2018, p. 65.

<sup>6</sup> The QNI is the result of a cooperation between Henley & Partners and Professor Dr Dimitry Kochenov, a constitutional law professor based at Groningen University (The Netherlands). Kochenov is also the [Chairman](#) of the Investment Migration Council. See: Kochenov D., 'Empirical assessment of the quality of nationalities', *European Journal of Comparative Law and Governance*, Vol 4, 2017.

<sup>7</sup> See the [Nationality Index](#). For its [third edition published in 2018](#), France was ranked first, followed by Germany, Iceland, Denmark and the Netherlands.

<sup>8</sup> 22 out of the 28 EU Member States are ranked as 'extremely high quality' in terms of rights and opportunities associated to their nationalities, whereas 6 (Malta, Latvia, Cyprus, Romania, Bulgaria and Croatia) are ranked as 'very high quality'.

ranking, as the nationality of an EU Member State gives its bearers full access to all EU Member States as well as all the countries of the European Economic Area.<sup>9</sup>

At EU level CBI/RBI schemes typically have the following features:

- They are targeted at non-EU nationals;
- They are provided by a clear, delineated process for investors to make an investment in return for residence or citizenship rights;
- These investments can be active (for instance, they require the setting up of a business on the territory that comes with the creation of jobs), or passive (financial capital is infused into a private company with no requirement to manage the business on a day-to-day basis or it can require a minimum lump sum transferred to government bonds or the property sector);
- They do not necessarily require applicants to spend time on the territory in which the investment is made.

Despite these common features, CBI/RBI schemes found at EU level have many specificities and vary greatly in terms of the rights granted and the requirements incumbent on the applicants. These specificities are often neglected in news reports, academic research or business firms advertising these schemes.

Since almost all Member States have provisions in place that facilitate foreign investment and can be accompanied by facilitated residency access to the territory, to delimitate and classify CBI/RBI schemes requires a systematic and cautious approach. For the purpose of the analysis, we have developed a dedicated methodology to assess these schemes, taking the priorities of the TAX3 Committee into account. This effort to clarify the matter is made all the more necessary, as these schemes, as detailed in sections 2 and 3, have attracted considerable attention at EU level and have spurred intensive debate, including in the European Parliament. In particular, the 'commodification' and 'marketisation' of EU residency and citizenship have engendered thorny normative debates. Furthermore these schemes, if not handled with caution by the authorities that offer them, have been proved vulnerable to a number of risks, as developed in section 3.

## 1.2. Methodology

As mentioned above, the vast majority of Member States offer CBI/RBI schemes to non-EU citizens. These schemes are characterised by an exchange of residency or citizenship rights for financial investment and/or capital. However, their specificities vary greatly across the Member States.<sup>10</sup>

For the purposes of this study, the authors looked at the existing legal provisions in the 28 Member States, and focused on the provisions that explicitly define a minimum level of investment required (i.e., a price tag). As a result, discretionary naturalisations on grounds of special achievements (including economic ones) were excluded from the analysis. As pointed out by Džankić and in reference to the findings of the GLOBALCIT Observatory data,<sup>11</sup> out of the 28 EU Member States, 22 allow discretionary naturalisation on grounds of special achievements. These typically include

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<sup>9</sup> See the [QNI methodology](#).

<sup>10</sup> These schemes must be distinguished from the processes of naturalisation that recognise the sporting, artistic or economic achievements of a non-national, which are found in most of the EU Member States. See: [global database on modes of acquisition of citizenship](#), GLOBALCIT.

<sup>11</sup> See [Globalcit website](#).

economic, but also cultural, sporting or scientific achievements.<sup>12</sup> In accordance with Džankić, in the authors' view, these provisions, while raising challenges in terms of transparency,<sup>13</sup> do not qualify as typical CBI schemes, since the conferral of citizenship in such cases is fully discretionary and no investment amounts are specified.<sup>14</sup> Member States with legal provisions to attract foreign investors, but where a minimum amount is not determined were also excluded from this study. As a result, with the exception of 10 Member States (Austria, Belgium, Denmark, Finland, Germany, Hungary, Poland, Slovakia, Slovenia and Sweden) that do not offer residency in exchange for a specified investment, every other Member State currently has some form of RBI scheme in place, including 4 that operate CBI schemes in addition to RBI schemes (Bulgaria, Cyprus, Malta, Romania).

When focusing on these schemes, this study takes care to distinguish those targeted at foreign entrepreneurs from those targeted at wealthy foreign investors. Entrepreneurial residence permits (which include for instance 'start-up visas') typically require submission of a detailed business plan and active participation in the business on a daily basis (i.e., an active investment), and are therefore very different to the schemes targeted primarily at investors, from whom passive investments (i.e., the infusion of capital into an existing company, or a lump sum transferred in government bonds or in real estate) are most often required. Similar caution was applied in distinguishing, for RBI schemes, those that grant temporary residence permits from those granting long-term permits.

To grasp these nuances, the authors of this study reflected on the balance between the obligations incumbent on the applicant in these schemes and the rights granted in exchange. This approach draws upon various pieces of research, including those led by Džankić, who recently designed a typology of these schemes.<sup>15</sup> Taking stock of these findings, the authors updated and adapted them on the basis of our own data collection and tailored them further to fit the TAX3 Committee request, taking the particular concerns raised by an increasing access to tax preferential regimes into account as well as the multiple reporting of a lack of due diligence surrounding CBI/RBI schemes.

The aim of this approach was to **identify the schemes that minimise the constraints incumbent on the applicants and maximise the rights obtained in terms of mobility and tax advantages.** Several criteria were adopted, which are explained in detail in annex 1.

To assess the access conditions of these schemes, this study considers:

- Investment obligations, i.e., the levels of wealth and engagement with the Member State the scheme requires. One point was assigned to schemes that offer CBI/RBI in exchange of an active financial investment; two points to schemes that require either an active or a passive investment; three points to schemes that only require a passive

<sup>12</sup> The citizenship laws of Denmark, Finland, Poland, Spain, Sweden and the United Kingdom contain no provisions on naturalisation on grounds of special achievements, see: [Globalcit](#) – information under 'Mode A24, Special Achievements'.

<sup>13</sup> As reported by [Globalcit](#) over summer 2018, the Austrian Minister of the Interior of the newly-elected government made clear that he intended to no longer publish the names of applicants who could benefit from this provision. In 2012, a Freedom Party politician was found guilty of offering citizenship in exchange for a major investment and payment to party funds. In May 2018, names of applicants were made public. The Minister's declaration points to the end of this effort towards transparency. For further information on this corruption case, see: Global Anti-Corruption Consortium, [Visa Scandals Slammed Austria's Door Shut — or did they?](#), March 2018.

<sup>14</sup> Džankić J., 'Immigrant investor programmes in the EU', *Journal of contemporary European studies*, 26-1, 2018, p.68.

<sup>15</sup> Parker O., 'Commercializing Citizenship in Crisis EU: The Case of Immigrant Investor Programmes', *Journal of Common Market Studies*, 55, 2, p.332–348, 2017; Džankić J., 'Immigrant investor programmes in the European Union (EU)', *Journal of Contemporary European Studies*, 26, 1, 2018, p.64-80. The underlying logic of the scale developed by Džankić is that under the lowest status obligation (1), the investor obtains citizenship almost directly; under the highest (5), the investor is bound by compulsory ordinary residence, which after multiple years might result in citizenship.

high level investment (>€500 000); and four points for a passive low level investment (<€500.000);

- Required physical presence on the territory, i.e., the expectation that successful applicants spend some time on the territory to maintain residence status. A lengthy residence requirement (over six months) to maintain the status was scored as one point; a one to six month physical presence required was scored as two points; a light physical presence requirement (one day to one month) scored three points; and no physical presence requirement was given four points.

To assess the advantages offered by the status granted (i.e. residency or citizenship), the study considers:

- Access to mobility, i.e., what facilitated access to the EU does the status grant? Here we gave four points for the schemes granting citizenship; three for those granting long-term residence permit in a Schengen Member State (>five years); two for those granting a temporary residence permit (<five years) in a Schengen Member State; and one point for a residence permit granting access to only one Member State (non-Schengen Member State).
- Access to a favourable tax regime, i.e., what are the tax-related incentives provided under the status? We assigned four points for Member States offering access to preferential tax regimes that totally or partly exempt taxation on foreign incomes (including what are known as non-domiciled or 'non-dom' tax regimes);<sup>16</sup> three points to low level personal income tax (PIT) (10-19 %), two points to medium level PIT (20-40 %) and one to high level PIT (above 40 %).<sup>17</sup>

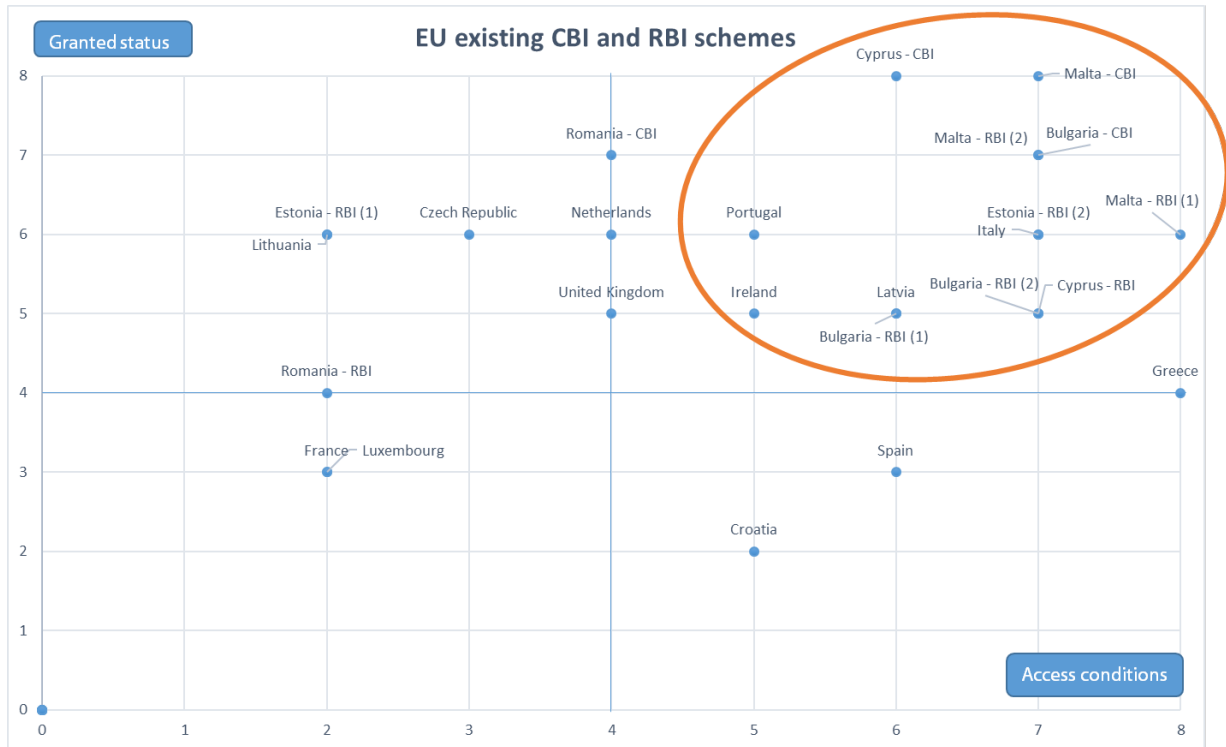
This methodology enabled us to generate a four point scale schematic scatter chart, in which all the criteria are combined. The result is visualised in the following chart, where the access conditions are represented in the abscissa (x coordinate) and the granted rights on the ordinate (y coordinate). The datasets used to produce this chart are available in annex 1.

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<sup>16</sup> In countries offering a 'non-domiciled status', a person living in these countries can be considered as resident for tax purposes but still be domiciled (i.e. with their permanent home) in another country. Such status enables an individual to pay no tax on their foreign income and capital gains unless the money is brought into the country of residence.

<sup>17</sup> Mainly based on Knobel A., Heitmüller F., [Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information](#), March 2018.

Figure 1 – CBI/RBI chart representing eligibility conditions in function of granted rights



Source: EPRS, authors' elaboration

The graph represents, in the upper right corner (circled), the CBI/RBI schemes that are the most accessible and that at the same time grant the most rights. These are currently those operated in **Bulgaria, Cyprus, Estonia, Ireland, Italy, Latvia, Malta and Portugal.**

These findings confirm previous assessments, in which at least six of these eight Member States are consistently mentioned, namely: Bulgaria, Cyprus, Ireland, Latvia, Malta and Portugal.<sup>18</sup> Estonia and Italy less often mentioned, probably because of the recent modifications within their legal systems. On the other hand, previous research regularly pointed to schemes operated in Austria, Belgium, Croatia, Greece, France, Hungary, Lithuania, the Netherlands, Romania, Spain and the UK. Following the rationale of the methodology explained above, the reasons that these Member States do not appear in the right hand corner of the graph (and thus scored lower than others) are as follows:

**Austria:** as explained above, Austria was excluded from this analysis as the conferral of citizenship in Austria is fully discretionary and the investment amounts are not specified.<sup>19</sup>

**Belgium:** according to our findings, there is no evidence that Belgium runs any CBI/RBI scheme.

Concerning **Croatia, France, Lithuania, the Netherlands, Romania** and the **UK**, a detailed analysis of their legal provisions showed that the schemes they operate include strong requirements for the applicants. The provisions found in Croatia, France and the Netherlands require a rather active investment compared to other countries. In Lithuania, Romania and in the UK, there is a strong

<sup>18</sup> See for example in [Transparency International reports](#).

<sup>19</sup> This is also supported by Džankić J., 'Immigrant investor programmes in the EU', Journal of contemporary European studies, 26-1, 2018, p.68.

physical presence requirement (at least six months per year). In Romania, citizenship can be obtained in return for investment (€1.000 000), but only after eight years of permanent residency.

While often portrayed as a typical 'golden visa' country, the **Spanish RBI scheme** only grants a relatively short-stay permit compared to other countries (less than five years). In addition, this permit does not necessarily grant access to a preferential tax regime. While Spain introduced an attractive tax regime in 2005<sup>20</sup> to attract highly-qualified professionals (that exempts taxes on foreign income), this initiative was not targeted at investors. Termed the 'Beckham Law', the changes were introduced in 2015 after the scheme was abused by footballers, including David Beckham. The rules require anyone – except football players – wishing to opt for this favourable tax regime to have an employment contract. Opting for this preferential tax regime is thus only possible for foreigners who come to work for a company located in Spain. As such, the requirements to obtain this tax status are more targeted at migrant workers and are in any case more constraining than those found in Portugal or Cyprus, for instance (see annex 2).

**Greece** similarly does not offer its RBI holder's access to a preferential tax regime that would exempt them from taxes on their foreign income, and applies a rather high level of tax on personal income. However, it should be noted that Greece currently operates one of the 'cheapest' RBI schemes (requiring a property investment of minimum €250 000). In May 2018, the Greek Minister of Economy and Development announced the preparation of a new piece of legislation that would include, in addition to the option of investment in property, the option of a bank deposit or an investment in Greek bonds or shares of at least €400 000.<sup>21</sup>

**Hungary** offered permanent residence to investors from 2013 to 2017 that would have qualified as an RBI scheme. The scheme was however suspended in 2017 due to controversies over its transparency and lack of due diligence. In particular, allegations were made related to the controversial backgrounds of some of the successful applicants.<sup>22</sup>

Of course, this is not to say that the schemes operated in the above-mentioned countries do not raise any challenges. However, for the purpose of this analysis, we focused on the schemes that combine provisions offering a large set of rights with lower requirements for the applicants – and as such have a cumulative impact.

### 1.3. Main features of key CBI/RBI schemes operated at EU level

Typically, RBI/CBI schemes target investors – known as high net worth individuals<sup>23</sup> – from emerging economies or from countries experiencing ongoing political or economic instability.<sup>24</sup> Foreign

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<sup>20</sup> The Spanish tax regime applicable is here regulated by Article 93 of Law 35/2006.

<sup>21</sup> See: Investment Migration Insider, [Changes Coming to Greek Golden Visa Investment Options – No Longer Just Real Estate](#), May 2018

<sup>22</sup> For further details, see: Martini M., [Hungary's controversial Golden Visa scheme: ins and outs](#), Transparency International, March 2018.

<sup>23</sup> High net worth individual (HNWI) is a financial services industry term used to denote an individual or a family who holds a certain amount of liquid assets. Although the definition of how wealthy a person must be is not specified, high net worth is often quoted in terms of having liquid assets of above a particular number, with the precise figure differing between financial institutions and regions. Source: [High Net Worth Individual – HNWI Definition, Investopedia](#).

<sup>24</sup> Sumption M., Hooper K., *Selling visas and citizenship: policy questions from the global boom in investor immigration*, Migration Policy Institute, October 2014, p.4.



investors' motivations to apply for these schemes can vary and are not necessarily mutually exclusive. They can be outlined as follows:<sup>25</sup>

- Securing residence rights abroad or a second passport in a fast-track manner allow freedom of movement in popular destinations with a good quality of life and high level of education;
- In cases of instability in the country of origin, these rights can become a type of 'insurance policy';
- Some of the countries offering these opportunities for foreign investors enjoy visa-free travel worldwide. Obtaining citizenship in these countries can therefore expand and facilitate travel options, a key aspect for frequent travellers;
- Incentives can also include access to a more preferential tax regime, to manage tax expenditure.

As explained in our methodological section above, in **Bulgaria, Cyprus, Estonia, Ireland, Italy, Latvia, Malta and Portugal**, RBI and CBI schemes (the latter are only operated in Bulgaria, Cyprus and Malta) combine specific provisions that are particularly attractive to non-EU investors, whatever their motivations. The details of each of these schemes can be found in annex 2. Here are their main features and commonalities:

- All these Member States operate RBI schemes that require **none to very low physical presence requirements** on the territory to become resident (and in any case, less than that required of TCN long-term residents in Directive 2003/109/EC).<sup>26</sup>
- Residence permits granted vary from temporary permits (renewable for up to five years in total, as it is the case in Estonia, Ireland, Italy, Latvia, Malta RBI schemes 1 and 2, and Portugal), to permanent permits (Bulgaria, Cyprus).
- In Cyprus, Italy, Latvia and Malta, the **investments required are all of a passive nature** and can be lower than €250 000 (Latvia). Ireland and Portugal combine passive and active investments.
- Three schemes offer **citizenship** (that grants de facto EU citizenship) with a price tag of €400 000 (in Bulgaria), €1 150 000 (in Malta), and €2 million (in Cyprus). For Bulgaria and Malta, residence for a certain period of time preceding the issuing of a certificate of naturalisation is required.
- Concerning **taxes**, obtaining a residence permit or a citizenship in Bulgaria, Estonia or Latvia gives access to a low level tax regime on personal income, while Cyprus, Ireland, Malta, and Portugal offer the possibility for their resident to benefit from a non-domiciled tax regime.<sup>27</sup> In Italy, newly resident high net worth individuals may apply to pay a lump-sum 'substitute tax' of €100 000 on their foreign source income.<sup>28</sup>

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<sup>25</sup> Sumption M., Hooper K., Selling visas and citizenship: policy questions from the global boom in investor immigration, Migration Policy Institute, October 2014, p.4-5.

<sup>26</sup> In accordance with Article 4 of [Directive 2003/109/EC](#), Member States shall grant long-term resident status to TCNs who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. Absences of less than six consecutive months and no more than ten months over the whole period are permitted when calculating the five years.

<sup>27</sup> With this regime, an individual can be deemed as 'domiciled' in a country that differs from her/his country of residence. These regimes operate on a remittance basis, whereby tax is only due when income is remitted to the country in which the taxpayer is resident: it is not taxable when it actually arises. In Portugal, income from blacklisted tax countries is not subject to exemption: see [Portugal list of tax havens](#) monitored by PwC.

<sup>28</sup> To qualify for the option, an individual must have been a tax resident of countries other than Italy for at least nine of the ten years preceding the year during which he or she becomes an Italian tax resident. If this condition is met, the option is available regardless of the taxpayer's nationality, i.e. it is available for both non-Italian and Italian nationals.

To gauge the extent to which these schemes are applied in these Member States, the authors gathered data on the total number of citizenship and residence permits granted and tried to identify those obtained through CBI/RBI schemes. There is very little transparency over the number and origin of applicants, the number of citizenship or residency granted by CBI/RBI schemes and the amount invested through those schemes. Sometimes, only aggregated data are available.<sup>29</sup> On other occasions, publicly available data are not consistent.<sup>30</sup> Finally, where both CBI and RBI exist, the available data usually concern only one of the schemes: this is the case for Bulgaria, Cyprus and Malta. Despite these methodological difficulties and based on the data available, the use of these schemes is nevertheless estimated to some extent.

For schemes granting citizenship, the only disaggregated data available, allowing for comparison with the total number of granted citizenships, is from Malta. From 2014 to 2016, 947 citizenships were granted through the CBI scheme, and 1 508 through other means. Our findings show that during that period, **more than 38 % of all naturalisations in Malta were obtained via their CBI scheme**. In Cyprus, 25 810 naturalisations were processed between 2008 and 2016. However, the only data available for CBI is aggregated between 2008 and 2017: according to these data, 3 336 naturalisations were processed through the CBI scheme in this period. As the reference periods are different, it is not possible to draw a definite conclusion, but **it can be assumed that more than 10 % of new Cyprus citizens acquired their nationality through a CBI scheme**. Concerning Bulgaria, only 16 naturalisations have been obtained through the CBI scheme during a ten year period.

For schemes granting residence permits, data are also often lacking, but reveal at least that **Latvia** and **Portugal** grant a significant percentage of their residency permits through their respective RBI schemes (40 % and 9 % respectively).

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<sup>29</sup> This is the case for Bulgaria and Cyprus. For Cyprus, data were released in February 2017 after Giorgos Perdakis, a Green Party MP, [asked for access in a parliamentary debate](#).

<sup>30</sup> For instance, in the second official [annual report](#) on the Malta IIP programme released in 2015, the numbers are unclear: a total of 245 applications is mentioned on p.6, while 75 letters of approval are mentioned on p.7, and this despite the fact that according to the document, only 11 applications have been rejected.

Table 1 – Percentage of RBI granted, compared to the total of granted first time residence permits

Member State	Total number of first time residence permits granted <sup>31</sup>	Residence permits obtained through RBI scheme	%
Bulgaria (2009-2017)	35 141	490 <sup>32</sup>	1 %
Cyprus		No data available	-
Estonia (2017)	4 380	No data available	-
Ireland (2012-2016)	176 038	380 <sup>33</sup>	0.2 %
Italy		No data available	-
Latvia (2012-2016)	35 486	14 047 <sup>34</sup>	40 %
Malta		No data available	-
Portugal (2013-2018)	116 371	17 687 <sup>35</sup>	9 %

Source: EPRS, Authors' elaboration.

Our analysis therefore shows that overall the volume of granted status can be significant and deserves full attention.<sup>36</sup> The lack of transparency also makes it hard to determine the origins of the applicants. However, anecdotal evidence from various reports show that CBI/RBI schemes mostly attract wealthy citizens from Russia, China, Turkey, the Middle East and Central Asian countries. In Latvia, the RBI scheme mostly attracts middle-class Russians, not necessarily high net worth individuals' (HNWIs).<sup>37</sup>

<sup>31</sup> Source: [Eurostat](#).

<sup>32</sup> Website of the [Ministry of the Interior](#) of Bulgaria.

<sup>33</sup> [Answer](#) to a Parliamentary question by the Minister for Justice and Equality (Deputy Charles Flanagan), 2018.

<sup>34</sup> Website of the [Ministry of the Interior](#) of the Republic of Latvia.

<sup>35</sup> Website of the Government of Portugal, [Service for foreigners and frontiers](#).

<sup>36</sup> Responding to EU Commissioner for Justice Věra Jourová's statement on golden visas, the Investment Migration Council (IMC) (see section 3 for more details on the IMC) issued [a statement](#), underlining that 'Citizenship-by-Investment applicants account for about 0.1 % of the total of new EU citizenships granted each year'. If this figure is not incorrect, it minimises the issue in relation to the risks these schemes bear, as developed in section 3.

<sup>37</sup> Transparency International, [Passport dealers of Europe: Navigating the golden visa market](#), March 2018.

## 2. Debates and controversies

At EU level, concerns over RBI and CBI schemes emerged in 2013, when the 'Maltese citizenship for sale affair' broke.<sup>38</sup>

### **Citizenship for sale? Chronology of the 'Maltese affair'**

In 2013, the Maltese government announced a new legislative initiative: the Individual Investor Programme (IIP), amending the Maltese Citizenship Act. The programme offered citizenship to TCNs in exchange for €650 000. This initiative triggered numerous controversies in the Maltese Parliament and heated debate in the Maltese society. The government presented an amended version of the initiative, which increased the total investment required from applicants to €1.15 million. A cap of 1 800 applications was also applied.

In January 2014, the European Parliament debated the 'citizenship for sale' issue. In her address to Parliament, Viviane Reding, then Vice-President of the European Commission, emphasised that 'Citizenship must not be up for sale'. Following this debate, the European Parliament adopted a resolution condemning Member States' citizenship for sale programmes, with specific reference to the Maltese IIP.

The EP resolution was followed by a meeting between the Maltese authorities and representatives of the European Commission Directorate General for Justice, where the IIP and its compatibility with EU law were discussed in detail.

Malta Prime Minister Joseph Muscat announced at a press conference held at the end of January 2014, that the European Commission had endorsed the IIP after the government accepted the introduction of a residency requirement, i.e., no naturalisation certificate would be issued unless the applicant could show evidence of having resided in Malta for a period of at least 12 months immediately prior to the date of issuance. Muscat however insisted before the press that the residency criterion would not mean that an applicant would be required to spend 365 days in the country before obtaining Maltese nationality.

The Maltese CBI and similar schemes applied in other Member States have attracted strong criticism<sup>39</sup>, in particular in relation to the general principle of fairness and discrimination (2.1), the EU principle of sincere cooperation (2.2) and the lawfulness of these schemes as regards the criteria of a 'genuine link' (2.3).

### 2.1. The principles of fairness and discrimination

CBI/RBI schemes raise important questions in relation to their fairness. Under a clear and delineated process, they provide a distinct access to citizenship and/or residency, with mainly financial requirements and via a procedure which is simpler than traditional immigration routes. In essence, CBI/RBI schemes offer privileged access to the rich, while the general tendency in the EU and worldwide is to tighten immigration laws and regulate mobility for TCNs more strongly.

<sup>38</sup> Carrera S., [How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?](#), CEPS Paper, No. 64, April 2014.

<sup>39</sup> Resolution of 14 January 2014 on [EU citizenship for sale](#) (2013/2995(RSP)), European Parliament.

While the vast majority of TCNs who want to reside in any EU Member State will face labour market restrictions and burdensome requirements, a minority of wealthy TCN are offered the right to reside in the EU in exchange for investment.<sup>40</sup> Moreover, CBI/RBI schemes all contain provisions that also facilitate the residence of family members.<sup>41</sup>

CBI/RBI schemes are primarily meant for 'long-distance' citizens or migrants;<sup>42</sup> they are not necessarily meant to attract migrants who will actively take part in society. As such, some have pointed out that CBI/RBI schemes depart from the 'egalitarian thrust that underlines rules of birth right citizenship as well as residence-based naturalization', long-term residence being 'what makes immigrants' relation to the political community equal to that of native citizens' – therefore not an arbitrary criterion for access to citizenship.<sup>43</sup>

In the current context of EU tensions over the refugee crisis, CBI/RBI schemes have been particularly condemned. It has been pointed out that some EU Member States that demonstrate considerable interest in integrating immigrant investors into their territory are not similarly open to refugees. While some Member States have applied a cap of successful applications per annum for foreign investors, these contrast sharply with the quotas allotted in the EU plan on relocation mechanism.<sup>44</sup>

The European Parliament has played a key role in raising these issues: in its resolution of 16 January 2014,<sup>45</sup> it clearly expressed its concerns 'as regards possible discrimination because these practices by Member States only allow the richest third-country nationals to obtain EU citizenship, without any other criteria being considered'. Parliament called upon the European Commission to provide an analysis of the legality of such schemes, guidelines on granting EU citizenship via national schemes, and recommendations to prevent such schemes undermining EU values. In response to this resolution, the Commission is currently preparing a report, due in November 2018.

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<sup>40</sup> In that sense, CBI/RBI schemes are not only distinct from traditional immigration routes: they also differ from the specific provisions offered by EU law that facilitate access to the labour market for high-skilled migrants, such as those contained in the 2016 [Students and Researchers Directive](#) or in the [Blue Card Directive](#).

<sup>41</sup> It should be noted that in contrast, the [Directive on the Right to Family Reunification \(2003\)](#) enables family members of non-EU nationals residing lawfully on the territory of the EU to join them in the EU country in which they are residing. Non-EU nationals who hold a residence permit valid for at least one year in one of the EU countries and who have the genuine option of long-term residence can apply for family reunification.

<sup>42</sup> Džankić J., Immigrant investor programmes in the EU, *Journal of contemporary European studies*, 26-1, 2018.

<sup>43</sup> Baubock R., What is wrong with selling citizenship? It corrupts democracy!, in Shachar A., Bauboc R. (ed.), *Should citizenship be for sale?*, EUI working paper, 2014, p.19-21.

<sup>44</sup> In Malta for instance, in principle a cap of 1 800 applicants to the CBI scheme is applied, while Malta welcomed 131 refugees over a period of 2 years. It should be noted, however, that Malta is the only EU Member State that has fulfilled its asylum relocation quota. In general, the procedures for obtaining the right to live in EU Member States are also much longer for asylum seekers than for foreign investors: on average, the period for processing a CBI/RBI scheme application and issuing an investor residence permit does not exceed three months, while the period for obtaining an asylum status almost always fails to comply with the six-month deadline envisioned in the EU Asylum Directive. See: Papademetriou T., [Refugee Law and Policy: European Union](#), Library of Congress, 21 June 2016.

<sup>45</sup> Resolution of 14 January 2014 on [EU citizenship for sale](#) (2013/2995(RSP)), European Parliament.

## 2.2. The EU principle of sincere cooperation

As the acquisition of national citizenship is not governed by EU law and remains a state prerogative, the EU's competence in the matter remains very much contested.<sup>46</sup>

### ECJ Rulings and opinions on nationality matters

The Court of Justice of the European Union (CJEU) has gradually broadened the scope of EU citizenship in relation to national citizenship by imposing certain limits to the power of Member States to regulate national citizenship. In the *Zhu and Chen case*, the CJEU underlined circumstances in which the basic rights of EU citizenship need to be asserted against, or independently to, the status of national citizenship. In this case, the CJEU granted a non-EU citizen the right to stay on the territory of a Member State in order to provide care for a minor EU citizen.

In the *Rottman case*, the CJEU maintained that EU Member States should exercise their right to regulate their national citizenship 'having due regard to Community law'. The Court stated that the loss of EU citizenship falls 'by reason of its nature and its consequences, within the ambit of European Union law' and thus invited national courts to apply a proportionality test to establish whether that loss of citizenship was justified. In its *opinion* on the *Rottman case*, Advocate General Maduro argued that national citizenship rules can, in certain circumstances, breach the Member States' duty of loyal and sincere cooperation.

The duty of sincere and loyal cooperation was duly raised during the debates spurred by the Maltese affair (see section 2.1.). During the European Parliament's plenary session of 15 January 2014, Viviane Reding emphasised that naturalisation decisions adopted by one Member State were 'not neutral' with regard to the EU as a whole and that the principle of sincere cooperation (inscribed in Article 4.3 of the Treaty on the European Union) should be taken into consideration by Member States.

The principle of sincere cooperation means that the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks that flow from the Treaties. Furthermore, it requires Member States to facilitate the achievement of the Union's tasks and to refrain from any measure that could jeopardise the attainment of the Union's objectives. Indeed, Union citizens enjoy the right to move and reside freely in other Member States, to vote and to stand as candidates in municipal and European elections, to petition the European Parliament, to start a Citizens' Initiative, to address the European Ombudsman, and to enjoy the protection of the diplomatic and consular authorities of any other Member State when in a third country.<sup>47</sup> Access to these rights has therefore a cross-border dimension, affecting all Member States. As noted by Džankić, 'EU citizenship enhances the value of national citizenship by virtue of additional rights enforceable beyond the specific Member State's borders. In such a manner, the EU citizenship amplifies the opportunities for Member States to attract investors to naturalise as their national membership offers an access point to the benefits of EU citizenship'.<sup>48</sup>

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<sup>46</sup> Mentzelopoulou M., Dumbrava C., [Acquisition and loss of citizenship in EU Member States](#), EPRS, European Parliament, July 2018.

<sup>47</sup> Tilindyte L., [EU citizenship rights](#), EPRS, European Parliament, March 2017.

<sup>48</sup> Džankić J., Investment-based citizenship and residence programmes in the EU, EUI working paper RSCAS 2015/08.

Member States that operate these schemes can be seen as 'free-riders' that benefit from the attractiveness of life elsewhere in the Union and the substance of citizenship of the Union.<sup>49</sup> They alone benefit from the foreigners' will to become European.<sup>50</sup> In the same logic, free-riding is intrinsically interlinked with the principle of sincere cooperation. It could indeed be argued that CBI/RBI schemes weaken the coherence and the integrity of the EU internal market.<sup>51</sup> This aspect is particularly relevant in relation to money laundering and tax transparency issues, as developed in section 3 below.

Despite all of these arguments favouring an EU approach in the field of CBI/RBI schemes, the debate on EU competence remains lively. Some argue that CBI schemes raise no issues as regard EU law: Kochenov, for instance, points out that the cases raised by the CJEU differ greatly from cases related to CBI schemes, because the effects of such schemes are marginal and thus have little impact on other Member States.<sup>52</sup> Others have pointed out that the debate is more complex. Peers, for instance, argues that the CJEU stated that EU law establishes a rule of pure mutual recognition of Member States' nationalities. In Peers' view, because Member States are obliged to recognise each other's nationalities, they have a legitimate interest in other Member States' rules on nationality. While the *Rottmann* case has not 'set very tight constraints on Member States' nationality laws', the 'outright sale of citizenship arguably bursts through even this loose corset'. He then concludes that: 'while the Court of Justice might be willing to accept extensive variants of the *jus soli* and *jus sanguinis* principles for acquiring the nationality of a Member State, would it be willing to accept the principle of *jus argentum*? We cannot be certain until the Court of Justice is seized of the question; but we can hardly be sure that it would'.<sup>53</sup>

The principle of sincere cooperation has again been stressed in the Commission's EU citizenship report, which states that Member States have a specific responsibility 'to bear in mind that, when granting or removing nationality, they also grant or remove EU citizenship and should therefore respect the principle of sincere cooperation and the limits set out by the Court of Justice'.<sup>54</sup>

### 2.3. The 'genuine link' criteria

While the issue of sincere cooperation has spanned the debates related to CBI schemes at EU level, both the Parliament and the Commission place a strong emphasis on whether these schemes are in accordance with the 'genuine link' criteria provided by international law.

The genuine link criteria was established by the International Court of Justice in the 1955 *Nottebohm* decision, whereby the Court upheld the principle that in order to be recognised as a citizen of a

<sup>49</sup> Carrera, [How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?](#), CEPS Paper, No. 64, April 2014, p.30.

<sup>50</sup> Magni Berton R., Citizenship for those who invest into the future of the state is not wrong, the price is the problem, EUI working paper, 2014, p.11.

<sup>51</sup> In accordance with Article 3(3) TEU, which states that: 'The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced'.

<sup>52</sup> Kochenov D., Citizenship for real: its hypocrisy, its randomness, its price, EUI working paper, 2014, p.11.

<sup>53</sup> Peers S., [Want to be an EU citizen? Show me the money!](#), EU Law analysis blogspot, 28 January 2014.

<sup>54</sup> [EU citizenship report](#) 2017, European Commission, January 2017, p.12.

state, a meaningful connection to the state had to be established. Reding, in her above-mentioned address to the European Parliament, underlined that Member States should use their prerogatives to award citizenship in accordance with this principle.<sup>55</sup> The 'genuine link' argument was also key in the Parliament's resolution of January 2014.

The residence criteria could arguably constitute one of the more objectively verifiable factors of the relationship between a person and the country granting citizenship.<sup>56</sup> Previous residence in the country, along with language and cultural tests are now common requirements across the EU for TCNs who want to obtain citizenship. While the three CBI schemes described above (operated in Bulgaria, Cyprus and Malta) require some sort of residence prior to the issuing of a certificate of naturalisation, the residency periods are much shorter than those applied for ordinary naturalisation in the same state. They also fall below the standards applied in the other EU Member States (the minimum period of residence required for naturalisation in EU Member States ranges from three to ten years).<sup>57</sup> It is precisely because of the lack of a 'genuine link' that the Maltese Citizenship Act was revised to include an 'effective residence' status in Malta prior to naturalisation.<sup>58</sup>

However, while the EU's intervention in the Maltese 'citizenship for sale' affair has been presented by some as a legal precedent for assessing the lawfulness of CBI schemes in the EU, the distinctions between 'habitual', 'effective' or 'functional' residence for the purposes of citizenship law are yet to be clarified and the exact meaning and scope of residence remains grey or contested.<sup>59</sup> Some still argue for instance that residence in an EU Member State is a legal status and therefore does not carry the same meaning as physical presence.<sup>60</sup> This interpretation differs significantly from that expressed by the EU Long-term Residence Directive. According to Carrera, 'by attaching a higher value to the applicants' wallet, investor residency schemes may even undermine one of the main goals of the EU Long-term Residence Directive, which frames the five years of residence on the territory of a Member State as the most relevant criterion for acquiring the status of long-term resident.' This five year residence requirement is intended to require a substantial physical presence: in the Directive, 'continuous residence' is calculated over the whole period of five years – allowing only for absences from the territory of less than six consecutive months and no more than ten months over the whole period. This provision of the Directive was explicitly laid down to ensure 'the person has put down roots in the country' (Recital 6). In addition, as Shachar notes, while 'real connections' are treated as mandatory preconditions for naturalisation and take the form of civic tests and cultural integration for the vast majority of people, those who are in a position to pay for membership are exempt for such requirements.<sup>61</sup>

Carrera has nevertheless raised some concerns as regards a rigid interpretation of the 'genuine link' principle. In his view, the fact that the European Parliament and the Commission insist on the need for Member States to ensure and strengthen the genuine connection could 'paradoxically lead to

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<sup>55</sup> Reding V., '[Citizenship must not be up for sale](#)', European Commission, Speech/14/18, 15 January 2014.

<sup>56</sup> Carrera, [How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?](#), CEPS Paper, No. 64, April 2014.

<sup>57</sup> Mentzelopoulou M., Dumbrava C., [Acquisition and loss of citizenship in EU Member States](#), EPRS, European Parliament, July 2018. In Malta, Bulgaria and Cyprus, the minimum period of residence required for naturalisation is five years.

<sup>58</sup> [Malta's Individual Investor Programme \(IIP\)](#), joint press statement by the European Commission and the Maltese Authorities, 29 January 2014.

<sup>59</sup> [How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?](#), CEPS Paper, No. 64, April 2014.

<sup>60</sup> '[IIP regulator confirms 'physical presence' not required for golden passport](#)', *Malta Today*, 28 October 2015.

<sup>61</sup> Shachar, A., 'Citizenship for Sale?', *The Oxford Handbook of Citizenship*, Oxford: Oxford University Press, 2017, p. 797.



the reinforcement of nationalism in determining who is or is not an EU citizen and the possible exclusion of certain groups of people from EU citizenship in a manner that is inherently in tension with non-discrimination'. In short, by supporting the 'real connections' as the most relevant standard, the European institutions may paradoxically fuel nationalistic misuses by Member States of the 'genuine link' as a way to justify restrictive integration policies on the acquisition of nationality.

### 3. Risk assessment of CBI/RBI schemes

The above-mentioned controversies over the nature of CBI/RBI schemes are gaining momentum in a context where dubious practices and scandals surrounding these schemes are increasingly unveiled. It becomes clear that these schemes carry certain risks, including a risk of commodification and marketisation of residency rights and citizenship (section 3.1). Evidence furthermore suggests that the schemes are vulnerable to criminal exploitation (section 3.2). They also create potential to undermine tax transparency (section 3.3).

#### 3.1. Commodification and marketisation

##### 3.1.1. Citizenship as commodity

Many commenters have equated CBI/RBI schemes with a form of commodification of citizenship. Some have underlined that they represent a particularly stark manifestation of the 'commercialisation of sovereignty', which has intensified since the onset of the economic crisis in the late 2000s.<sup>62</sup> Others have pointed to an inherent process induced by globalisation, which deeply undermines national citizenship as a bond between individuals and states.<sup>63</sup>

While some authors defend the sale of citizenship by pointing out that it is less arbitrary and more transparent than other ways of acquiring citizenship (such as those implied by the principles of *jus soli* and *jus sanguinis*, or discretionary naturalisation),<sup>64</sup> others have stressed that placing a price tag on citizenship, no matter the amount written on it, has 'a corrosive effect on non-market relations, eroding the ties that bind and altering our view of what it means to belong to a political community'.<sup>65</sup> It has furthermore been argued that these schemes, by linking wealth and privileged access to political membership threaten not only the implementation of the ideal of citizenship, 'but the ideal itself'.<sup>66</sup>

Such devaluation of citizenship is seen as particularly salient in the EU context. As underlined by Džankić, 'an individual may now obtain EU citizenship for roughly the price of a Porsche 918 Spyder', including all the associated rights. In Džankić's view, this challenges 'the values of European citizenship, which has not been intended as an instrument for selectively amplifying the national membership, but rather as a set of rights reflecting sincere cooperation and mutual trust among the Member States'. Echoing Johnston,<sup>67</sup> Džankić notes that the act of exchanging a higher-value good (citizenship) for a lower value good (money) not only destroys the value of citizenship, it also 'corrodes public trust in that institution in a way that naturalisation on other bases does not'.<sup>68</sup>

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<sup>62</sup> Parker O., Commercializing citizenship in crisis EU: the case of immigrant investor programmes, *Journal of Common Market Studies*, Vol. 55, 2, 2017.

<sup>63</sup> Spiro P., Cash-for-passports and the end of citizenship, in Shachar A., Bauboc R. (ed.), *Should citizenship be for sale?*, EUI working paper, 2014, p.9-11.

<sup>64</sup> Kochenov D., Citizenship for real: its hypocrisy, its randomness, its price, in Shachar A., Bauboc R. (ed.), *Should citizenship be for sale?*, EUI working paper, 2014, p.27-30.

<sup>65</sup> Shachar A., *Dangerous Liaisons: Money and Citizenship*, in Shachar A., Bauboc R. (ed.), *Should citizenship be for sale?*, EUI working paper, 2014, p.3-8.

<sup>66</sup> Shachar A. and Hirschl R., *On Citizenship, States, and Markets*, *Journal of Political Philosophy*, 22, 2014.

<sup>67</sup> Johnston L., [A Passport at Any Price? Citizenship by Investment through the Prism of Institutional Corruption](#), E. J. Safra Working Papers 22, 2013.

<sup>68</sup> Džankić J., *Investment-based citizenship and residence programmes in the EU*, EUI working paper RSCAS 2015/08.

Mavelli has argued that CBI/RBI schemes exceed mere processes of commodification and have to be seen as part of a neoliberal political economy of belonging. According to this paradigm, the traditional rights of protection and mobility associated with citizenship are no longer associated with birth, residency, and family ties, but with the individual's or group's endowment of different forms of capital. The growing opportunities for wealthy and talented migrants to move across borders, and the hardening of borders for refugees and undocumented migrants, all stem from the same neoliberal rationality of government, which undermines political notions of citizenship grounded in reciprocity, equality, and solidarity. This is done not by replacing these principles with economic ones, but by rewriting these principles in economic terms.<sup>69</sup>

Interestingly, in the discussions around commodification, the role played by the private sector in these CBI/RBI schemes is less commented upon.

### 3.1.2. CBI/RBI scheme business

Several leading private firms are specialised in 'residence and citizenship planning' for wealthy entrepreneurs and investors, advertising the benefits of a second passport or alternative residence worldwide, as a means to 'claim the power and flexibility of true global citizenship'.<sup>70</sup>

Some of these firms have furthermore been entrusted by public authorities with the implementation of these schemes. In Malta for instance, Henley & Partners has been awarded a public services concession and has signed a contract with the Government of Malta with regard to the design, implementation and international promotion of the Malta Individual Investor Programme (MIIP – Malta's CBI scheme),<sup>71</sup> while the Malta Residence and Visa Agency (MRVA) has been entrusted with the regulation and running of the Malta Residence and Visa Programme (MRVP – one of Malta's RBI schemes).<sup>72</sup> These 'concessionaires'<sup>73</sup> furthermore work with accredited agents that administer the applications. Henley & Partners has additionally developed its own property branch,<sup>74</sup> proposing a list of pre-selected properties that qualify for the Maltese CBI scheme to their clients. The activities of these firms that simultaneously provide advice for governments and offer strategic consulting services in the set-up and operation of some residence and citizenship programmes have spurred much criticism and concern.<sup>75</sup> In particular, they raise the question of the oversight of background checks carried out on the individuals and their families applying for these schemes (see section 3.2).

Private stakeholders in CBI/RBI schemes are represented by the Investment Migration Council (IMC).<sup>76</sup> As depicted by Henley & Partners, the Council 'acts as a counterbalance to retrograde notions of nationality'.<sup>77</sup> The IMC registered with the EU transparency register in May 2018.<sup>78</sup>

<sup>69</sup> Mavelli L., Citizenship for sale and the neoliberal political economy of belonging, *International Studies Quarterly*, 2018.

<sup>70</sup> Henley & Partners, [A guide to investment migration for governments and global citizens](#).

<sup>71</sup> See [Henley & Partners](#) website.

<sup>72</sup> See [Identity Malta](#) website.

<sup>73</sup> 'Concessionaire' means the entity awarded with the public service concession contract to design, implement, administer, operate and promote the programme. See [Maltese Citizenship Act Chapter 188](#).

<sup>74</sup> See [Henley & Partners](#) website.

<sup>75</sup> The intertwined connections of private firms and government authorities were at the heart of the investigations led by Daphne Caruana Galizia, who was assassinated in October 2017. See Organized Crime and Corruption Reporting Project (OCCRP), [The Daphne Project](#), April 2018.

<sup>76</sup> See [Investment Migration Council](#) Website.

<sup>77</sup> Henley & Partners, [A guide to investment migration for governments and global citizens](#).

<sup>78</sup> Joint Transparency Register, European Commission, (Secretariat ID: .337639131420-09).

## 3.2. Integrity of the applicants, background checks and due diligence

In principle, checks on criminal records are included in the legal framework governing the CBI/RBI schemes in the EU. Some also require an affidavit proving good character. In addition, the Member States running these schemes more or less explicitly require the applicants to demonstrate the origin of the funds invested. Despite these legal provisions, the accuracy of the performed checks is questionable. Various scandals have been unveiled in the last few years, shedding light on the risks these schemes bear in relation to the integrity of the applicants, money laundering and corruption.

### 3.2.1. CBI/RBI schemes: an oxidised gold mine

Investigative reporting platforms and numerous media actors have played a key role in documenting the risks of these schemes.<sup>79</sup> Investigations linked to some CBI/RBI schemes include:

- In Bulgaria, a number of highly suspicious approvals for the granting of citizenship were found in the course of parliamentary investigations, most of them involving Russian applicants.<sup>80</sup>
- In Cyprus, it has been alleged that Ukrainian elites accused of corruption have been among the beneficiaries of the CBI scheme.<sup>81</sup>
- In Ireland, a previous CBI programme attracted wide criticism and was halted in the 1990s, including on the grounds of inadequate checks on the applicants. Criteria for the granting of Irish nationality by investment were not always met by the applicants, fuelling allegations of corruption and favouritism by the government.<sup>82</sup>
- In Latvia, tighter background checks were introduced in 2014 following a flood of applications for its RBI scheme that unveiled information leading to an increase in refusals – and even revocation of some permits already granted. The reasons given were the risk of spying and risk to economic security (as many of the applicants could not prove the origin and the legality of their money).<sup>83</sup>
- The Maltese CBI scheme has been pointed to as regards the controversial backgrounds of some of its successful applicants.<sup>84</sup> Allegations and ongoing investigations surrounding Malta's CBI scheme are particularly well-documented, as presented in the box below.

<sup>79</sup> See in particular the Organized Crime and Corruption Reporting Project (OCCRP), '[Gold for Visas' Project](#).

<sup>80</sup> See Bivol, [The Cheap European Passport](#), April 2018. Moreover, but not related to the CBI scheme, allegations of corruption surrounding the naturalisation process in general in Bulgaria and links with money laundering networks have also been made, prompting worrying comments by the Bulgarian Chief of Intelligence Services. See: [Comment la Bulgarie fabrique de faux \(et dangereux\) citoyens européens](#), *Le Nouvel Obs*, March 2018.

<sup>81</sup> [Cyprus to step up security checks in cash-for-citizenship scheme](#), *The Guardian*, 23 May 2018; [Russian Billionaire linked to Trump. Manafort Has New Cyprus Passport](#), OCCRP, March 2018.

<sup>82</sup> See: [How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?](#), CEPS Paper, No. 64, April 2014. As noted by Carrera, a case involving a Palestinian family was subject to an internal government inquiry in 1994.

<sup>83</sup> [Latvia's once golden visas lose their shine but why](#), OCCRP, March 2018.

<sup>84</sup> Transparency International Russia, [How Wealthy Russians buy Maltese Citizenship](#), December 2017. More recently, a case involving a Russian national with a Maltese passport, reportedly part of a €10 million international laundering racket in south-west Finland, was unveiled. See: EU Observer, [Russian with Malta passport in money-laundering probe](#), 25 September 2018.

- In Portugal, allegations over the controversial background of the applicants have also been made.<sup>85</sup> The Portuguese RBI scheme has also made the headlines in a major case of corruption in 2015, which revealed that several Portuguese officials were suspected of taking bribes in exchange for granting residency to non-EU citizens (and especially to Chinese citizens). Investigations are ongoing and the judgment is expected by the end of 2018.<sup>86</sup>
- Concerns have also been raised regarding the scheme run in the UK. Although this scheme is not among those selected for this in-depth analysis (see section 1), a lack of due diligence has nevertheless been highlighted.<sup>87</sup>

### Malta and the allegations surrounding its CBI scheme

The Maltese CBI scheme is of particular interest in relation to its associated vulnerabilities. The case is also being addressed at EU level, with the personal involvement of the EU Justice Commissioner, Věra Jourová, and the mobilisation of the European Parliament.

#### The Pilatus case

Ali Sadr Hasheminejad (Chairman of the Pilatus Bank, licensed in Malta) was arrested in March 2018 in the United States (USA) and charged with breaching sanctions against Iran, bank fraud, and money laundering. In parallel to the case handled in the USA, the adequacy of the supervision of Pilatus Bank ensured by the Malta Financial Intelligence Analysis Unit (FIAU) is currently under investigation. Leaked FIAU reports show serious shortcomings in the bank's compliance with anti-money laundering laws and raised suspicions regarding the use of Pilatus Bank to launder the proceeds from illegal kickbacks related to the sale of Maltese passports.

#### Investigations into breaches of EU law

During a fact-finding mission conducted in Malta in June 2018, EU Justice Commissioner Věra Jourová expressed the view that the question remains whether the Pilatus Bank case is just an isolated case or whether it revealed a systemic problem. In July 2018, the European Banking Authority (EBA) conducted a full investigation, which [concluded](#) that the FIAU had indeed breached Union law by failing to exercise effective supervision of Pilatus Bank. This was followed by a number of recommendations to the FIAU. The EBA is planning to visit the FIAU next year to ensure that the recommendations have been implemented properly. In the meantime, it is also investigating a possible breach of Union law by the Maltese Financial Services Authority. This investigation is ongoing at the time of writing.

The European Parliament also tackled the issue of rule of law in Malta and conducted [a fact-finding mission](#) to Malta. In a November 2017 [resolution](#), the European Parliament demanded that the rule of law in Malta be monitored closely, to ensure proper law enforcement and compliance with EU rules on money laundering and banking activities. Parliament called on Malta to 'make it clear who has purchased a Maltese passport and all the rights that come with it, and what safeguards are in place to ensure that all these new citizens have actually spent a year in Malta prior to the purchase'.

<sup>85</sup> [Portugal golden visas corrupt Brazilian tycoon among applicants](#), *The Guardian*, September 2017.

<sup>86</sup> OCCRP, [A Portuguese crusader seeks to tap the brakes on golden visas](#), March 2018; [Portugal Interior Minister Macedo quits over corruption probe](#), *BBC*, November 2014; van der Baaren L., Li H., [Wealth Influx, Wealth Exodus: Investment Migration from China to Portugal](#), *Investment Migration Working Papers*, IMC-RP2018/1.

<sup>87</sup> The Guardian revealed for instance that the scheme has been used as a means to launder the proceeds of corruption with no Home Office checks: see [The 'golden visa' deal: 'We have in effect been selling off British citizenship to the rich'](#), *The Guardian*, July 2017; 'The Home Office assumed that the banks were doing the checks on the individuals, and the banks themselves were assuming that, because this individual was applying for a visa via the Home Office, the checks would be done further down the line'. Furthermore, Transparency International published a report in 2017, which, relying only on public sources of information, identified 160 properties in the UK, together worth GB£4.4 billion, that had been bought by what it called 'high-corruption-risk individuals'. See: [How Britain let Russia hide its dirty money](#), *The Guardian*, May 2018; House of Commons, [Moscow's Gold: Russian Corruption in the UK](#), May 2018.

### 3.2.2. Steps taken to improve background checks

In the context of the allegations and ongoing investigations highlighted above, some Member States have tightened their background checks.

In May 2018, **Cyprus** announced tighter vetting procedures and capped the number of passports it will grant to wealthy foreigners each year at 700.<sup>88</sup> Under the new rules, applicants will be subjected to a process of enhanced due diligence. International agencies specialised in money laundering will also be deployed to examine requests under a procedure expected to take much longer than the initial three months. The Cyprus government also plans to impose restrictions on estate agents who act as intermediaries in the scheme.<sup>89</sup>

In **Italy**, which introduced its residency scheme very recently, a '*Nulla osta* procedure' has been put in place.<sup>90</sup> In principle, application assessments are carried out by an inter-ministerial committee that includes representatives of the national FIU.<sup>91</sup> Applicants need to demonstrate the origin of the financial resources destined for the investment/donation and the absence of criminal convictions and pending charges.<sup>92</sup>

In **Ireland**, potential applicants must demonstrate that they own the funds they plan to invest and that these were legally acquired.<sup>93</sup>

In **Latvia**, as mentioned above, more rigorous checks are applied since 2014. Applicants are screened by the competent authorities.<sup>94</sup> More serious concerns about an individual's background are handled by the security police.

In response to the various allegations surrounding its CBI scheme, **Malta** has claimed to apply rigorous checks on the applicants, via 4 Tier due diligence checks.<sup>95</sup> Firstly, a standard Know-Your-Customer (KYC) due diligence is carried out by both the Maltese authorities and the Agent through databases such as World-Check. Secondly, a certificate is requested from the police authorities, who check a number of databases (including the Interpol and Europol databases). Thirdly, the authorities check the completeness and correctness of the application and in addition, carry out an online due diligence check and verification of the documents submitted. Fourth, additional checks are carried out in international databases for sanctioned individuals and companies. Searches are conducted on all the members of the family applying for citizenship, their corporate affiliations, any significant

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<sup>88</sup> [Cyprus to cap its 'golden visa' programme](#), Euractiv, May 2018; [Cyprus to step up security checks in cash-for-citizenship scheme](#), *The Guardian*, May 2018.

<sup>89</sup> Global property guide, [Golden visa scheme to impose restrictions on real estate agents](#).

<sup>90</sup> See the [official guidelines](#) issued by the Italian Ministry of economic development.

<sup>91</sup> See the [official guidance](#) of the Italian Ministry of economic development. If there are no impediments, the Guardia di Finanza and the Financial Intelligence Unit for Italy communicate any results in the records concerning the people involved. The Financial Intelligence Unit also communicates if the country of origin of the applicant's financial resources is on the list of 'High risk third countries with strategic deficiencies', as identified by the European Commission in exercising the powers under Articles 9 and 64 of Directive 2015/849 of the European Parliament and Council of 20 May 2015 relating to prevention of use of the financial system for money laundering and terrorism.

<sup>92</sup> See p.11 of the [official guidance document](#).

<sup>93</sup> See the [official guidance document](#) produced by the Irish Naturalisation and Immigration Service, Department of Justice.

<sup>94</sup> See Republic of Latvia, [Regulation Regarding States for the Citizens of which in issuing a Visa or a Residence Permit an Additional Assessment shall be performed](#).

<sup>95</sup> Maltese authorities, [IIP due diligence checks](#).

one-time transactions, donations, or inheritance, and any significant business partners or very close associates.

In **Portugal**, after the allegations of corruption mentioned above, the Inspector-General for Internal Administration (IGAI) delivered an audit report on the investment programme, which mainly criticized the application procedure.<sup>96</sup> The scheme was amended to specifically list the documents to be accepted as proof for the execution of the investment. It was also required that the IGAI carry out a yearly audit, the conclusions and recommendations of which are to be presented to a parliamentary commission. Finally, the IGAI required production of a procedural manual for use by the Serviço de Estrangeiros e Fronteiras (SEF) staff.<sup>97</sup>

In the **UK**, changes were introduced in 2014 following consultation and review by the UK's Migration Advisory Committee.<sup>98</sup> These changes included increasing the minimum investment threshold and giving the staff responsible for assessing the source of the investment funding more powers to check compliance and reject applications.<sup>99</sup> In addition, applicants are now required to open a UK-regulated bank account for the funds to ensure they are 'subject to UK due diligence and anti-money laundering checks' before receiving a visa.<sup>100</sup>

At the time of writing, over half EU Member States are under Commission scrutiny for failing to properly implement EU safeguards against money laundering.<sup>101</sup> The latest gaps in money laundering supervision at EU level were unveiled in Estonia, with a scandal related to the Estonian branch of Danske Bank.<sup>102</sup>

### 3.2.3. Oversight of obliged entities and intermediaries

Despite the steps undertaken to improve background checks on applicants, the question of control and oversight of due diligence procedures remains challenging. In EU Member States, due diligence checks in the context of CBI/RBI schemes are usually carried out by government agencies. However, some Member States may rely on the private sector – sometimes operating overseas – to perform these checks. The issue of control and oversight is then particularly acute, as illustrated hereafter.

If the funds invested in the context of a CBI/RBI scheme are not held in a financial institution regulated by the authorities of the receiving country, then the RBI/CBI applications are often checked on the basis of letters provided by the official regulatory body for the country in which the financial institution operates and the funds are located. However, the extent to which the receiving

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<sup>96</sup> IGAI, Relatório IGAI Vistos Gold SEF, 2015.

<sup>97</sup> See van der Baaren L., Li H., [Wealth Influx, Wealth Exodus: Investment Migration from China to Portugal, Investment Migration](#) Working Papers, IMC-RP2018/1.

<sup>98</sup> UK Migration Advisory Committee, [Tier 1 \(Investor\) route. Investment thresholds and economic benefits](#), February 2014.

<sup>99</sup> See Tryfonidou A., [Investment residence in the UK: past and future](#), 2017; EY, [UK announces changes to the Tier 1 investor visa and entrepreneur visa routes](#), November 2014.

<sup>100</sup> The changes introduced in the UK have led to allegations that Russian tycoon Roman Abramovich's application to extend his investor visa had recently been denied. See: [Roman Abramovich, Chelsea owner, 'withdraws' UK visa application](#), BBC, June 2018.

<sup>101</sup> In July 2018, the European Commission [referred](#) Greece, Ireland and Romania to the Court of Justice for not implementing anti-money laundering rules. A further 14 EU countries are furthermore under Commission scrutiny. See: [Commission points finger at EU governments for dirty-money failures](#), *Politico*, 2 October 2018.

<sup>102</sup> In September 2018, the investigations led by the Danske Bank's board of directors confirmed a series of major deficiencies in the bank's governance and control systems that made it possible to use Danske Bank's branch in Estonia for suspicious transactions. See [Investigations into Danske Bank's Estonian branch](#), press release, Danske Bank, 19 September 2018.

authorities check this information is not clear.<sup>103</sup> In the **UK**, the new provision mentioned above requires the applicants to open a UK-regulated bank account for the funds invested, to ensure they are subject to UK due diligence and anti-money laundering checks before a visa is issued. This is one way to mitigate the risks associated with a lack of scrutiny over funds held in financial institutions overseas. In principle, the UK-regulated banks follow the due diligence process imposed on obliged entities by the EU law.<sup>104</sup> However, this provision does not necessarily improve the oversight and scrutiny regarding how these checks are performed – since it is also not clear how the authorities scrutinise the information received by the financial institutions – whether or not they operate in the country.

When due diligence checks are outsourced to private agencies, the level of scrutiny is similarly unclear. This type of management of CBI/RBI schemes deserves particular scrutiny, since they are vulnerable to lack of oversight and conflicts of interest. Indeed, some private firms simultaneously market the CBI/RBI schemes, pre-screen the applicants, and provide advice to the government, thus raising legitimate concerns (see section 3.1). The Hungarian experience here offers an interesting precedent. As mentioned above, Hungary ran a controversial RBI scheme between 2013 and 2017, with the use of intermediaries licensed by the authorities. In the Hungarian case, it was the Economic Committee of the Hungarian Parliament who was in charge of the oversight of this scheme – not the Hungarian Central Bank, normally responsible for overseeing and licensing financial institutions, including those that buy and sell stocks and bonds.<sup>105</sup>

### 3.3. Risks for tax transparency

According to the 2018 Knight Frank 'wealth report',<sup>106</sup> 34 % of high net worth individuals (HNWIs) already hold a second citizenship and passport. Nearly half of all HNWI's without a second passport are planning to invest to obtain one. While it is difficult to quantify the numbers of individuals applying for CBI/RBI schemes for tax purposes,<sup>107</sup> the wealth report stressed that tax-related incentives provided by CBI/RBI schemes is an important factor driving demand.

The schemes offering access to special tax regimes have been pointed as particularly risky from a tax transparency perspective and vulnerable to tax evasion. In particular, they offer potentials to circumvent reporting under the common reporting standard (CRS).

The CRS, developed in response to a G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.<sup>108</sup>

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<sup>103</sup> See, for instance, how the Irish authorities describes this process on p.13-14 of the [official guidance document](#).

<sup>104</sup> See [Directive 2018/843](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

<sup>105</sup> Reports have alleged that the committee's work was hindered by a non-transparent and unaccountable process. See IMC/Transparency International, [In Whose Interest? Shadows over the Hungarian Residency Bond Program](#), 2017.

<sup>106</sup> See: [Knight Frank Wealth Report](#), 2018.

<sup>107</sup> In its contribution to the OECD consultation on preventing abuse of residence by investment schemes to circumvent the CRS, Henley & Partners indicates that according to an internal review of applicants, only 3 % chose to apply for tax purposes, while around 20 % did so seeking a better lifestyle, professional opportunities, free access to more countries and security. See [OECD Compilation of comments](#) of the consultation, p.54.

<sup>108</sup> See [OECD](#) website.



The ways in which CBI/RBI schemes can be exploited to circumvent CRS, have been raised recently by the OECD, which launched a dedicated consultation in February 2018.<sup>109</sup> As the OECD pointed out, CBI/RBI schemes do not in themselves offer a way to escape reporting under the CRS, which requires tax payers to self-certify in all their jurisdictions of residence for tax purposes. Residence status granted by these schemes indeed does not necessarily grant tax residence status. The OECD however provides illustrations of how CRS could be circumvented in this context – the following box simplifies one example.

#### **Use of an RBI scheme to circumvent the CRS**

John, an individual resident in Russia has an account with Bank X in Portugal. Under the CRS, Bank X should have started reporting John's account information to the Portuguese tax authorities in June 2018, who will in turn exchange the CRS information with the Russian tax authorities.

To circumvent reporting under the CRS, John applied for residence in Portugal under its RBI scheme in 2016. To obtain this status, John purchased a house in Portugal worth €500 000.

John has provided his Portuguese temporary residence permit and utility bills relating to the house in Portugal. As a consequence, and in line with the residence address test for pre-existing individual accounts, the due diligence procedures applied by Bank X lead to the conclusion that John is resident in Portugal. As such, no CRS information about the account held by John will be reported to Russia.

In addition, the tax status of a dual national is ultimately determined by mutual agreement between the two states, thereby preserving the possibility that the individual may be assigned residency in their preferred state – and facilitating tax avoidance.<sup>110</sup>

OECD's initial assessment is that the risk of abuse of CBI/RBI schemes is particularly high when the schemes have one or more of the following characteristics:

- The scheme imposes no or limited requirements to be physically present in the jurisdiction in question, or no checks are carried out to determine physical presence in the jurisdiction;
- The scheme is offered by either: low/no tax jurisdictions; jurisdictions exempting foreign source income; jurisdictions with a special tax regime for foreign individuals that have obtained residence through such schemes; and/or jurisdictions not receiving CRS information (either because they are not participating in the CRS, not exchanging information with a particular (set of) jurisdictions, or not exchanging on a reciprocal basis); and
- The absence of other mitigating factors. Such measures could, for instance, include: the spontaneous exchange of information about individuals that have obtained residence/citizenship through a CBI/RBI scheme with their original jurisdiction(s) of tax

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<sup>109</sup> See: [Preventing abuse of residence by investment schemes to circumvent the CRS](#), OECD, 19 February 2018–19 March 2018.

<sup>110</sup> Article 4 of the OECD model tax convention provides that when an individual is considered a resident under the domestic laws of each state, residence will be assigned based on a cascading set of tie-breaker rules, beginning with the location of the individuals' permanent home and economic connections and, when all the other factors are non-determinative, ending with nationality, OECD Model Tax Convention on Income and on Capital Article 4, 2014. For a person that is a national of only one of the two states party to the convention, tax residence status thus ultimately follows that nationality. However, the status of a dual national is ultimately determined by mutual agreement between the two states, thus preserving the possibility that the individual may be assigned residency in their preferred state.

residence; or an indication on certificates of tax residence issued that the residence was obtained through a CBI/RBI scheme.

These characteristics were important criteria in the methodology used to identify CBI/RBI schemes in this study. As underlined in section 1, obtaining a residence permit or citizenship in Bulgaria, Estonia or Latvia gives access to a low level tax regime for personal income, while Cyprus, Malta, Portugal and Ireland give the possibility for their residents to benefit from a non-domiciled tax regime that exempts foreign source income. In Italy, new residents may apply to pay a lump-sum 'substitute tax' of €100 000 on their foreign source income.

In accordance with this OECD assessment, the Tax Justice Network<sup>111</sup> argues that the only factor that actually reduces these types of risks relates to countries with a comprehensive personal income tax (PIT) regime. This comprehensive tax regime is defined as follows:<sup>112</sup>

- A regime that applies the same tax base rules and a rate above zero percent equally to all natural persons considered tax residents.
- Any opt out from the general tax regime in a certain jurisdiction, e.g. through lump sum tax regimes for new residents, or residents considered to be non-domiciled for tax purposes would imply that the jurisdiction does not have a single uniform PIT.
- Furthermore, the single uniform PIT's tax base would need to include all income to which a tax resident is entitled, or paid, anywhere in the world (worldwide income criterion).
- If (some or all) overseas income can remain untaxed, either because the jurisdiction only applies a territorial tax base or taxes on a remittance and/or accrual basis only, the PIT would not be considered comprehensive.

As noted in the Tax Justice Network report, if a country levies no income tax, or has a very low income tax rate, or has no comprehensive personal income tax, falsifying residence may be tempting, for example by acquiring residency or a citizenship. By levying no income tax or having no comprehensive personal income tax regime, a country's CBI/RBI schemes therefore become riskier.

According to the report's findings, among the schemes captured in the upper right corner of the graph in section 1, Cyprus presents the highest risk, followed by Ireland, and Malta, while Bulgaria, Estonia, Italy and Portugal present moderate risks. This assessment is supported by:

- **Cyprus** is deemed at higher risk because the country chose to apply 'voluntary secrecy' in the framework of the OECD Multilateral Convention on Administrative Assistance in Tax Matters (the Multilateral Tax Convention) and the Multilateral Competent Authority Agreement (MCAA). As explained by the Tax Justice authors, countries implementing the CRS need to have a legal framework enabling automatic exchanges. While it is possible to do this bilaterally (e.g. signing double tax agreements or tax information exchange agreements that allow automatic exchanges pursuant to the CRS), most countries choose the multilateral route: they are parties to the Multilateral Tax Convention and have signed the MCAA. The MCAA however allows countries to choose 'voluntary secrecy' by being listed under Annex A of the Agreement. This means that these countries agree to send banking information to other countries, but refuse to

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<sup>111</sup> See: Knobel A., Heitmüller F., [Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information](#), March 2018.

<sup>112</sup> Based on the [Financial Secrecy Index](#) established by the Tax Justice Network, which ranks jurisdictions according to their secrecy and the scale of their offshore financial activities. See Tax Justice Network, [Key Financial Secrecy Indicator 12: Consistent Personal Income Tax](#), 2018.

receive it. The OECD does not publicise the countries that chose voluntary secrecy. Instead, anyone interested in finding out who chose not to receive information has to look into the specific list of 'activated exchange of information relationships', of each of the +100 countries that committed to the CRS.<sup>113</sup> As Cyprus exempts taxes on foreign income, anybody obtaining a passport through Cyprus' citizenship by investment scheme could evade taxes on their offshore wealth in their original home jurisdictions (and in Cyprus) by opening a bank account outside the European Union, and registering as (tax) resident in Cyprus.<sup>114</sup>

- **Malta and Ireland** are considered as presenting less risks than Cyprus. They do grant a non-domiciled status to their new residents, but they do not chose the 'voluntary secrecy' described above and are engaged in reciprocal information exchange under the MCAA.
- **Bulgaria, Italy and Portugal** are considered as presenting moderate risks. If none of them apply a totally comprehensive PIT, they do exchange information under the MCAA.
- **Latvia** is considered at lower risk since it applies a comprehensive PIT regime and exchanges information under the MCAA. While **Estonia** was not covered in the report, it would also be considered at lower risk for the same reasons.

To some extent, the risks of undermining tax transparency within the EU are mitigated by the framework on automatic exchange of information on financial account data, envisaged in the EU Directive on automatic exchange of financial account information (the DAC Directive).<sup>115</sup> However, RBI schemes do create opportunities to circumvent the automatic exchange of information regime. Furthermore, other loopholes in the CRS can be exploited. While not explicitly referring to how HNWI could escape the CRS net through CBI/RBI schemes, the above-mentioned Knight Frank wealth report, for instance, notes that currently no requirement exists under the CRS to report on property assets unless they are mortgaged. It thus underlines that, in its current guise, the CRS may encourage investment in property – as provided in most RBI/CBI schemes – at least in the short term. The report also underlines the reputational risks of these schemes, underlining that governments currently running these schemes should adopt strong regulation and stringent criteria, to guard against such schemes being exploited for improper purposes.<sup>116</sup>

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<sup>113</sup> Tax Justice Network, [Banking Secrecy in China, its related territories and Taiwan](#), March 2017.

<sup>114</sup> See: Janský P., Knobel A., Meinzer M., Palanský M., [Financial Secrecy affecting the European Union: Patterns across Member States, and what to do about it](#), Tax Justice Network, September 2018, p.23.

<sup>115</sup> [EU Directive on automatic exchange of financial account information](#). See: Janský P., Knobel A., Meinzer M., Palanský M., [Financial Secrecy affecting the European Union: Patterns across Member States, and what to do about it](#), Tax Justice Network, September 2018, p.23.

<sup>116</sup> See: [Knight Frank wealth report](#), 2018, p.24-25.

## 4. Impacts

CBI/RBI schemes have impacts on the EU, the Member States, and EU citizens. The following categories of impacts are the most prevalent:

- At the economic level: a positive contribution to Foreign Direct Investment (FDI) while creating macro-economic imbalances and pressuring the real estate sector;
- At the social level: a lack of access to housing, an erosion of security and integrity of the EU internal market, supplemented by impact on mobility and increased discrimination;
- At the political level, a deterioration of trust in the institutions, a devaluation of EU citizenship values and a factor affecting the quality of evidence-based policy.

### 4.1. Economic impacts

In theory, the benefits of CBI/RBI schemes for both newcomers and destination Member States are straightforward. For potential investors, these schemes are attractive because they offer a faster or easier route to change residency, they provide insurance against political or economic disturbance at home, or they give access to visa-free travel (see section 1). In exchange, destination Member States enjoy the benefits of new investments, including revenues and job creation.<sup>117</sup> At aggregate level, however, the economic impacts of CBI/RBI schemes are often modest and elusive.<sup>118</sup>

Table 2 – Costs and benefits of the economic impacts

Indicator	Quantitative impact at EU level	Qualitative impact
Macroeconomic	€9.2 billion of direct inflow	Increase in external vulnerabilities Risks of financial instability Amplified volatility
Tax revenues	Slight increase but uncertain spillover effects	
Housing prices	Rise in housing prices	Speculative effects

Source: EPRS

#### 4.1.1. Increase of foreign investment

CBI/RBI schemes increase foreign investment in the Member States that offer them. In the CBI/RBI schemes identified for the purpose of this study, the inflows of investments can be qualified as foreign portfolio investment (FPI) and property investments. Indeed, the investments under those CBI/RBI schemes are of a passive nature, consisting mostly of foreign portfolio investments in securities and other foreign financial assets that are passively held by the foreign investor.<sup>119</sup>

<sup>117</sup> Knobel A., Heitmüller F., [Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information](#), March 2018.

<sup>118</sup> See Sumption M., Hooper K., Selling visas and citizenship: policy questions from the global boom in investor immigration, Migration Policy Institute, October 2014. As a Brookings-Rockefeller research initiative reported, 'knowledge of the program's true economic impact is elusive at best', See: Elkind P., Jones M., 'The dark, disturbing world of the visa-for-sale program', *Fortune*, 2014.

<sup>119</sup> O'Sullivan A., Steven M., *Economics: Principles in Action*, Upper Saddle River, New Jersey, Pearson Prentice Hall, 2003, p. 551.

According to the literature on the impact of FPI on EU Member State economies, FPI generally exert an influence on long-term economic growth.

To provide an overall idea of the amount of investment made through the CBI/RBI schemes selected for this study, various data sources were used and are summarised in the table below:

Table 3 – Total amount (non-exhaustive) of investment through CBI/RBI schemes in selected Member States

Member States	Years	Total amount invested in the schemes (in €)
Bulgaria		No data available
Cyprus – RBI		No data available
Cyprus – CBI <sup>120</sup>	2008-2017	4 800 000 000
Estonia		No data available
Ireland <sup>121</sup>	2012-2016	209 650 000
Italy		No data available
Latvia	2010-2017	No data available
Malta – RBI		No data available
Malta – CBI <sup>122</sup>	2013-2018	203 673 427
Portugal <sup>123</sup>	2013-2018	4 004 151 395
<b>Total (low estimation)</b>	<b>2008-2018</b>	<b>9 217 474 822</b>

Source: EPRS, Authors' summary.

The impact of CBI/RBI schemes on direct inflows of foreign investment should not however be overestimated, as it is not possible to ascertain whether these inflows would not have occurred without the CBI/RBI schemes.<sup>124</sup>

#### 4.1.2. Uncertain spillover effects

If direct inflows from CBI/RBI schemes to the Member States' economy can be estimated when sufficient data is available, spillover effects, including the impact on tax revenues and job creation, are harder to predict.<sup>125</sup> This difficulty is increased since there is no obligation for CBI/RBI holders to become tax resident in the Member State in which they become citizen or resident. The spillover effects induced by tax residency are then even harder to anticipate.

#### Spillover effects on tax revenues

Research related to the effectiveness of tax incentives to achieve spillover effects are rather mixed, and in any case not conclusive.<sup>126</sup> This uncertainty is even more acute concerning CBI/RBI schemes

<sup>120</sup> [Cyprus passport sales revealed](#), *Cyprus Property News*, February 2018.

<sup>121</sup> Irish Government Economic & Evaluation Service, [Interim evaluation of the IIP](#), 2017.

<sup>122</sup> See [annual reports](#) provided by the Maltese authorities.

<sup>123</sup> See the [statistics](#) presented by the Portuguese authorities.

<sup>124</sup> UK Migration Advisory Committee, Tier 1 (Investor) route. Investment thresholds and economic benefits, February 2014.

<sup>125</sup> Christians A., *Buying in residence and citizenship by investment*, Saint Louis University School of Law, 2017. This is also supported by [research](#) conducted by the Migration Observatory.

<sup>126</sup> See, for example, International Monetary Fund (IMF), [Options For Low Income Countries' Effective And Efficient Use Of Tax Incentives For Investment](#), October 2015: 'Countries often face pressures to attract investment by offering tax

that require no or very limited physical presence and/or have special tax regimes, including privileges for CBI/RBI beneficiaries.

Since CBI/RBI beneficiaries are not obliged to spend time in the Member States, holders of residence permits or citizenship obtained through CBI/RBI schemes do not necessarily make any additional contribution to the Member State's economy, for instance through VAT or other spending related taxes.

This is also true for taxes related to personal income in Member States that offer preferential tax regimes in combination with CBI/RBI schemes. When no or very limited taxation is offered to the CBI/RBI scheme beneficiaries for a substantial amount of time, it means that no additional tax revenue will be perceived by the receiving Member State. In addition, it is difficult to measure the effect of the inclusion of HNWIs in the tax base if the tax incentive expires.

A recent International Monetary Fund (IMF) report underlined that, while the Maltese CBI scheme has generated significant contributions to the Maltese Treasury since its inception, the scheme involves potential challenges and risks, including pressure on financial stability and amplified volatility (as explained below). The report also underlines the reputational risks associated with the scheme if the due diligence procedure is not sufficiently rigorous.<sup>127</sup>

### Spillover effects on job creation

The spillover effects of CBI/RBI schemes on job creation are similarly uncertain. On the supply side, it could be argued that companies might have better access to financing and that an increase in the construction sector might be created. On the demand side, an increase in public spending (government bonds), or increase in private consumption, may be observed. However, the number of jobs generated by the schemes or the investors and their families' economic activity cannot be reasonably quantified. This is particularly true for the CBI/RBI schemes considered in this study, since they mainly concern passive investments.

It could also be argued that property acquisition encourages local consumption when permit/citizenship holders visit the country and spend some time in the territory. But since residence requirements accompanying CBI/RBI schemes are often minimal and a potentially large share of investors only apply to these schemes to access visa-free travel to other countries and not to reside in the Member States that offer them,<sup>128</sup> the extent of the impact on local spending is also uncertain.

The Irish authorities have attempted to assess the impacts of its RBI scheme and underlined the difficulty in estimating the exact number of jobs potentially supported by the programme. This is also explained by the fact that 'significant issues like the nature of the labour market and the amount of investment that would have occurred without the programme are likely to significantly reduce the number of jobs supported and created by the programme'.<sup>129</sup> Answering a parliamentary question, the Irish Minister for Justice and Equality, noted that 'it is not possible to identify with any degree of certainty the number of jobs created'.<sup>130</sup>

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incentives, which then erode the countries' tax bases with little demonstrable benefit in terms of increased investment'.

<sup>127</sup> [Country Report No. \[18/19\]](#), International Monetary Fund, January 2018.

<sup>128</sup> Sumption M., Hooper K., *Selling visas and citizenship: policy questions from the global boom in investor immigration*, Migration Policy Institute, October 2014.

<sup>129</sup> Irish Government Economic & Evaluation Service, *Interim evaluation of the IIP*, 2017.

<sup>130</sup> See: [Immigrant Investor Programme Data](#), Debate, Dáil Éireann, February 2017.

This has also been highlighted in a recent report on the economic and labour market impacts of the British RBI scheme.<sup>131</sup> The report states that 'it is clear that the direct investment itself is not of great benefit to the UK. Rather, the benefits of the route appear to lie in the indirect consumption by the investor, and associated taxation, predominantly value added tax'. The report also points out that there 'may also be some benefit with respect to productive efficiency or dynamic effects, though this is difficult to quantify. However, it is important to note that the Tier 1 (Investor) route is neither designed to incentivise such activity, nor the best way of doing so'.<sup>132</sup>

### 4.1.3. Increase in macroeconomic imbalances

#### Pressure on financial stability and amplified volatility

As underlined by the IMF,<sup>133</sup> large investment inflows related to CBI/RBI schemes can also adversely impact financial stability in small states, by **increasing dependency for state resources**. Such inflows can generate an expansion of monetary aggregates, especially when the state accumulates savings from the CBI/RBI schemes in the form of deposits with the national banking system. While some increase in liquidity may be welcome, large inflows generated by CBI/RBI deposits in small economies may thus present new financial risks, reflecting limited and undiversified banking system options for credit expansion. Risks to financial stability may increase under a higher-than-optimal expansion in the construction and property sectors that raises concerns about long term sustainability (as developed below). In such cases, a sudden shutdown of CBI/RBI inflows could lead to sudden changes in property values, affecting the quality of a state's bank balance sheet, particularly if prudential regulations to monitor bank lending, collateral quality and system exposures are lacking during the boom phase.<sup>134</sup>

The pressure on financial stability could be increased when the CBI/RBI inflows represent a large percentage of the GDP. However, the lack of available data for all the Member States included in this study makes it difficult to estimate the impact of the CBI/RBI schemes on GDP for all of them. According to the European Commission, the proceeds related to the Maltese CBI scheme are estimated to have reached 4.3 % of GDP cumulatively in 2014-2017.<sup>135</sup> In an attempt to quantify the volume of CBI/RBI investment, the following table provides the net inflow of CBI/RBI investment in GDP percentage.

<sup>131</sup> National Institute of Economic and Social Research (NIESR) and the Migration Observatory, [The Economic and Labour Market Impacts of Tier 1 entrepreneur and investor migrants](#), 2013.

<sup>132</sup> UK Migration Advisory Committee, Tier 1 (Investor) route. Investment thresholds and economic benefits, February 2014. Similar concerns were identified in the United States and Canada, see Shachar, A., 'Citizenship for Sale?', *The Oxford Handbook of Citizenship*, Oxford: Oxford University Press, 2017, pp. 801-802. In the USA, concerns regarding investment integrity have cast doubt upon the EB-5 programme. In recent [reports](#), the Government Accountability Office (GAO) said that the programme was subject to fraud and the economic benefits questionable.

<sup>133</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>134</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>135</sup> European Commission, [2018 European Semester country report on Malta](#), p.16.

Table 4 – CBI/RBI net inflows in GDP percentage per selected Member State

Member State	2017 GDP (Current prices, million €) <sup>136</sup>	2017 investments through CBI/RBI schemes (estimation) (in million €)	CBI/RBI investment, net inflow (% of GDP)
Bulgaria	50 430 1	No data available	-
Cyprus – RBI	19 213 8	No data available	-
Cyprus – CBI	19 213 8	480 <sup>137</sup>	2.5 %
Estonia	23 002 3	No data available	-
Ireland	294 110 1	52 41 <sup>138</sup>	0.02 %
Italy	1 716 934 7	No data available	-
Latvia	26 856 6	No data available	1 %
Malta – RBI	11 126	No data available	-
Malta – CBI	11 126	64 73	0.58 %
Portugal	193 072	640 41	0.33 %

Source: EPRS, Authors' compilation.

While the net inflows of CBI/CBI investments in percentage of GDP could sometimes appear rather small, when put into perspective against other sectors of the economy, the sustainability of the overall economy is uncertain. In Cyprus for example, the CBI/RBI inflows are equivalent to about 2.5 % of GDP, while agriculture is only 2.3 %.<sup>139</sup> In that regard, the Cypriot Fiscal Council recently warned that continued reliance on CBI/RBI schemes, especially on the CBI scheme, will undoubtedly cause some of the effects of what is known as 'Dutch disease',<sup>140</sup> i.e. the transfer of resources away from productive sectors of the economy, thus increasing their operating/investment costs and negatively affecting their competitiveness.<sup>141</sup>

The IMF also underlines that inflows resulting from these schemes are potentially volatile and particularly **vulnerable to sudden-stop risks**, exacerbating macroeconomic vulnerabilities in small states.<sup>142</sup> A significant drop in applicants could therefore have a strong impact on these states. Such a drop in demand could be triggered, for instance, by a change of visa policy at EU level affecting the visa free access/residency rights granted to foreign investors. It could also be set off by a decline in demand from source countries and/or increased competition between programmes offered in different countries. As some states clearly market their schemes as offering tax advantages, CBI/RBI

<sup>136</sup> Eurostat, [Gross domestic product at market prices](#).

<sup>137</sup> Estimation based on aggregated data.

<sup>138</sup> Estimation based on previous years.

<sup>139</sup> CIA, [The world fact book](#).

<sup>140</sup> The term was first used in 1977 by The Economist to describe the decline of the manufacturing sector in the Netherlands after the discovery of the large Groningen natural gas field in 1959. See: 'The Dutch Disease', *The Economist*, 1977, pp. 82–83.

<sup>141</sup> Cyprus Fiscal Council, [Spring Report](#), 2018.

<sup>142</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.



schemes can become the instrument of tax competition that can be harmful,<sup>143</sup> in addition to having repercussions on other states (as explained below).<sup>144</sup>

Another key concern is fiscal reliance on volatile and difficult-to-forecast CBI/RBI scheme revenues, generating **pro-cyclical risks**. Investment inflows can easily increase current and capital spending, lead to relaxed fiscal discipline, and create further incentives while loosening efforts to improve tax administration. As a result, this could create an unfavourable dependency and higher risks of overheating.

The potential volatility of inflows can thus generate real fiscal, external and financial sector vulnerabilities. In Portugal, for example, RBI inflows may account for as much as 13 % of estimated gross foreign direct investment inflows for 2014. In Malta, the total expected contributions to the general government (including the National Development and Social Fund) from all potential applicants – which are capped at 1 800 – could reach the equivalent of 40 % of 2014 tax revenues when all allocated passports are issued.<sup>145</sup> Such disproportionate inflows could have far-reaching macroeconomic consequences.

### Potentially harmful tax competition

Undeniably, fiscal policies are part of Member States' sovereignty. However, harmful tax competition could arguably erode tax revenues<sup>146</sup> and limit the potential of the single market.<sup>147</sup> In 2015, the European Parliament stressed the negative effects of harmful tax competition. It underlined some of its 'undesirable effects', such as 'lack of transparency, arbitrary discrimination, distortions of competition and an uneven playing field within and outside the internal market, an impact on the integrity of the single market, and on the fairness, stability and legitimacy of the tax system, more taxation on less mobile economic factors, increased economic inequalities, unfair competition between states, tax base erosion, social dissatisfaction, mistrust and a democratic deficit'.<sup>148</sup>

The OECD outlined key factors that lead to harmful preferential tax regimes. These factors include: regimes that impose a low or zero effective tax rate on the relevant income; non-transparent regimes; and regimes with no effective exchange of information between their jurisdictions.<sup>149</sup>

In relation to these key factors, some CBI/RBI schemes could lead to harmful tax competition,<sup>150</sup> especially when they offer a wide range of fiscal advantages for attracting mobile capital without paying attention to their licit, or illicit, nature and/or facilitating the avoidance of exchange of information with other jurisdictions – as seen in section 3.3 above.

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<sup>143</sup> Adim L., [Between Benefit and Abuse: Immigrant Investment Programs](#), 62 St. Louis University, L.J. 121, 2017.

<sup>144</sup> Reuven S. Avi-Yonah, Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State, 113 HARV. L. Rev. 1573, 1575-76, 2000.

<sup>145</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>146</sup> European Parliament [report](#) of 5 June 1998, on the communication from the Commission on 'A package to tackle harmful tax competition in the European Union', PE 226.721.

<sup>147</sup> European Parliament [resolution](#) of 25 November 2015 on tax rulings and other measures similar in nature or effect (2015/2066(INI)), point J.

<sup>148</sup> European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect (2015/2066(INI)), point AA.

<sup>149</sup> OECD, [Harmful Tax Competition](#), 1998.

<sup>150</sup> Lampreave P., Fiscal Competitiveness Versus Harmful Tax Competition in the European Union, Bulletin for International Taxation, Volume 65, No. 6, 2011.

#### 4.1.4. Property sector impact: rise in property prices

The majority of the schemes under scrutiny in this study rely partly or totally on investments in the property sector. In Cyprus (RBI scheme), Latvia and Malta (together with other forms of investment) the investment is made through property. In Bulgaria, Cyprus (CBI scheme) and Portugal, the investment can either be in property or in a more active investment. The impact of CBI/RBI schemes in this sector thus deserves particular attention.

It could be argued that investment in property can stimulate construction activity and thus create jobs. However evidence of these impacts in practice is scarce. In addition, a large and sudden influx of private investment can also impact the quality of new construction, as a result of demand pressures and if regulation of construction projects does not keep pace.<sup>151</sup>

CBI/RBI investors may be willing to invest in the property sector at a less favourable rate of return, or may acquire assets for more than their intrinsic value as the result of the inclusion of the acquisition of a passport/residency permit in their investment decision, leading to an **artificial increase in market prices**. This contrasts with regular FDI, where investment decisions are strictly based on competitive rates of return, and contribute to economic efficiency.<sup>152</sup>

To identify the impacts of CBI/RBI schemes on the property market, this study examined, when data were available, the variation in the number of property transactions and in the volume of the global market.

Table 5 – Number of property transactions

Member State	Variation in the number of property transactions, 2015-2016
Bulgaria	No data available
Cyprus	+43 %
Estonia	Not relevant, as the RBI scheme does not offer the possibility of investment in property
Ireland	Not relevant, as the RBI scheme does not offer the possibility of investment in property
Italy	Not relevant, as the RBI scheme was established in 2017
Latvia	No data available
Malta	-6 %
Portugal	+18 %

Source: EPRS, Authors' calculation.

#### Cyprus

In Cyprus, the number of deeds of sale transactions increased by 43 % in 2016 compared to 2015. Of the total deeds of sale submitted to the land registry for 2016, it is noteworthy that 25.67 % relate to sales to foreign buyers. This is a 34.44 % increase compared to the previous year and can be attributed to the fact that Cyprus has attracted foreign investors via its CBI/RBI schemes.<sup>153</sup>

<sup>151</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015; Citylab, [Golden Visas and a Changing Lisbon](#), July 2017.

<sup>152</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015, p. 14.

<sup>153</sup> KPMG, [Cyprus Real Estate Market Report](#), March 2017.

## Latvia

According to existing research, the impact of the Latvian RBI scheme 'on the real property market of Latvia until 2014 was significant. [...] In some regions of Latvia, the share of real property transactions in which foreigners were involved reached more than 50%'.<sup>154</sup>

## Malta

Even if the number of deeds decreased by 6 % between 2015 and 2016 in Malta, the aggregate volume amount of transactions on the property market rose by 12 % during the same period, meaning that there are fewer but bigger transactions. According to the available data, in 2016, the Maltese CBI scheme represented 0.43 % of the total number of sales in Malta, but 5.43 % of the total sale prices. These data clearly suggest that the Maltese property market is impacted by the CBI scheme, with a potential effect of a rise in house prices.

## Portugal

In Portugal, from 2012 to 2018, €3.5 billion was invested in property through its RBI scheme. Within the same period of time, the number of property transactions rose by more than 100 %. The rapid increase in RBI applications has reportedly boosted the performance of the property market, leading to a steep rise in prices, especially for luxury property.<sup>155</sup>

## 4.2. Social impacts

### 4.2.1. Access to housing

As demonstrated above (section 4.1.4.), house prices could rise due to CBI/RBI schemes. As housing costs represent an important share of a household's income, this could lead to vulnerable groups experiencing increasing difficulties to access housing, in addition to an greater burden on household incomes – potentially leading to indebtedness, increasing vulnerability to repossession, foreclosure and eviction and ultimately, homelessness.

Even if these impacts are hard to predict and this worse-case scenario unlikely to happen, the perceived impact in a society is real. A growing number of news reports stress the effect of CBI/RBI schemes on the rise in household prices, thus increasing anxieties.<sup>156</sup>

For example, research shows that the commodification of Lisbon's historic centre is partly due to the Portuguese RBI scheme.<sup>157</sup> The gap between actual and potential property rent in Lisbon's historic centre owes much to the gap between domestic and external market purchasing powers. Because of the Portuguese RBI – although not exclusively<sup>158</sup> – 'real estate prices are pushed above the financial capacity of most local households, and an enclave-type exploitation of the housing

<sup>154</sup> Viesturs J., Pukite I., Vanags J., Nikuradze I., Limiting the program of temporary residence permits for foreigners based on real property investment in Latvia, *Baltic Journal of Real Estate Economics and Construction Management*, 5, 2017.

<sup>155</sup> New York Times, [Real Estate in Lisbon](#), February 2017; Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>156</sup> Destination Portugal, nouveau paradis immobilier, *Le Soir*, July 2018; La 'doce vida' portugaise n'attire pas que les pensionnés, *Le Soir*, July 2018. [Madrid : les riches exilés Vénézuéliens font grimper les prix de l'immobilier](#), *Les Echos*, August 2018; [Les fortunes du Venezuela affolent les prix de l'immobilier espagnol](#), *Le Figaro Immobilier*, August 2018; [Spain's Smartest Streets, a Property Boom Made in Venezuela](#), *The New York Times*, July 2018.

<sup>157</sup> Lestegas I., Lois-Gonzalez R. and Seixas J., The global rent gap of Lisbon's historic centre, 2018.

<sup>158</sup> Other factors include the financial crisis, austerity, dependency on mass tourism and the non-regular resident tax regime.

stock emerges in Lisbon's historic centre that jeopardizes the former's access to housing in that territory and in its immediate surroundings.'

#### 4.2.2. Threat to security and justice

As presented in section 3.3., the background of CBI/RBI scheme applicants can be quite controversial. The admission to the EU, whether by citizenship or residency rights, of people with a criminal background certainly raises questions in terms of security and justice.

While this challenge applies to any kind of immigration, CBI/RBI schemes are particularly prone to concerns regarding applicants' backgrounds, since this type of immigration is based on a financial transaction. It can indeed be argued that the higher the investment, the more pressure will be placed on immigration officials to be more lenient on the applicant, thereby contributing to greater impunity for crime and/or favouring provision of safe havens to conduct criminal activities. Furthermore, acquiring a new citizenship can be used to evade law enforcement and prosecution in a home country: if a CBI applicant is granted citizenship in a country that does not have an extradition convention with their home country, they could escape prosecution thanks to their newly acquired citizenship.

The threat to security and justice associated with CBI/RBI schemes has been acknowledged by many, including by the EU Commissioner for Justice, Věra Jourová, who recently stated that these schemes 'pose a serious security problem because they allow the beneficiaries to move freely across the EU'.<sup>159</sup>

The Latvian case here is enlightening. As previously underlined in section 3.2., when the minimal amount of investment was increased to €250 000 and checks on applications reinforced over concerns on threat to national security, this resulted in an increase of permit rejections or annulments of existing ones.<sup>160</sup>

In the EU context, security threats associated with such schemes are multiplied, since a threat to one Member State affects all EU Member States. As stressed by the European Commission, 'if one Member State does not apply the necessary security and criminality checks, then this can affect all of us'.<sup>161</sup>

#### 4.2.3. Citizens' freedom of movement

Poorly conceived CBI/RBI schemes in terms of security checks could also have a negative impact on citizens' freedom of movement in general. Policies related to visa waivers and visa-free travel agreements between countries mainly rely on the assumption that their citizens are safe to admit. Therefore, a scheme deemed as 'risky' could jeopardise these agreements. This scenario occurred in 2001, when the Canadian authorities made the decision to suspend visa-free travel for citizens of Grenada in 2001 precisely due to concerns about the background of the beneficiaries of the Grenada CBI scheme.<sup>162</sup>

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<sup>159</sup> [EU sieht Entwicklung bei 'Goldenen Reisepässen' mit Sorge](#), *Die Welt*, August 2018.

<sup>160</sup> Viesturs J., Pukite I., Vanags J., Nikuradze I., Limiting the program of temporary residence permits for foreigners based on real property investment in Latvia, *Baltic Journal of Real Estate Economics and Construction Management*, 5, 2017.

<sup>161</sup> Bulc V., EU values and the proliferation of corruption and crime through Golden Visas, 30 May 2018.

<sup>162</sup> Sumption M., Hooper K., Selling visas and citizenship: policy questions from the global boom in investor immigration, Migration Policy Institute, October 2014, p.17.

#### 4.2.4. Increased discrimination

A critical social impact of the CBI/RBI schemes relates to the issue of fairness explained in section 2.1. As simply put in some academic research, 'rich people have access to rich countries' membership, and poor people remain on the wrong side'.<sup>163</sup> Allowing the richest TCNs to obtain fast-track citizenship or residency is arguably discriminatory in nature. As previously mentioned, CBI/RBI schemes largely contradict the recent Member States' efforts to resubstantiate citizenship through tests and integration requirements.<sup>164</sup> Why civic knowledge and other integration requirements – which are found in an increasing number of Member State requirements to access citizenship – are deemed necessary for some and not for others raises important questions.

### 4.3. Political impacts

As underlined by the IMF, poor or lacking transparency in the administration of the CBI/RBI schemes and their associated inflows could lead to the emergence of strong public and political distrust.<sup>165</sup>

#### 4.3.1. Erosion of trust in the institutions

The vulnerabilities associated with CBI/RBI schemes described throughout this study can negatively affect the population's trust in the institutions. This trust may be particularly eroded when scandals and allegations associated with these schemes arise. In Malta, a Eurobarometer survey recently showed that the Maltese citizens trust the justice system and police less than the EU average: trust in the Maltese justice and legal system stands at 35 %, which is less than the EU average of 50 %. The police are trusted at a level of 53 %, also below the 72 % EU average.<sup>166</sup> The survey took place in early November 2017, in the aftermath of the murder of journalist Daphne Caruana Galizia. While it is difficult to determine a direct causal link, arguably the multiplication of allegations and ongoing investigations in Malta probably have an impact on its population.

In addition, surveys show that a majority of citizens are against the sale of citizenship. According to available data, there was widespread opposition to the new citizenship scheme among all sectors of society in Malta. A survey showed that an absolute majority of Maltese citizens are in principle against the sale of Maltese citizenship to foreigners, and only 26 % of respondents said they were in favour of the bill.<sup>167</sup> In the UK, only 37 % of respondents believe that granting citizenship to HNWLs benefits the economy and society.<sup>168</sup>

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<sup>163</sup> Magni Berton R., Citizenship for those who invest into the future of the state is not wrong, the price is the problem, EUI working paper, 2014.

<sup>164</sup> Global mobility corridors for the ultra-rich. The neoliberal transformation of citizenship, in Shachar A., Bauboc R. (ed.), Should citizenship be for sale?, EUI working paper, 2014.

<sup>165</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>166</sup> [Standard Eurobarometer 88, Autumn 2017; Low trust in justice system, political parties; crime main concern of Maltese](#), *Malta Today*, February 2018.

<sup>167</sup> [Contentious citizenship scheme approved](#), *Malta Today*, November 2013.

<sup>168</sup> According to recent [research](#) carried out by the Investment Migration Council, which surveyed 1 000 UK consumers.

### 4.3.2. Erosion of trust between Member States

Mutual trust between Member States is also affected by a lack of transparency in the administration of the CBI/RBI schemes, which is why the EU Council invited all Member States to act in accordance with the principle of sincere cooperation.<sup>169</sup>

In a European Parliament resolution of 2014, 89 % of Members voted in favour of a strongly-worded text that condemns Member States' citizenship for sale programmes,<sup>170</sup> demonstrating overwhelming support for action to counter the risks entailed by CBI/RBI schemes. This cross-party consensus was reaffirmed in the May 2018 plenary session, during a debate on EU values and the proliferation of corruption and crime resulting from the issuance of 'golden visas'.<sup>171</sup>

### 4.3.3. Perception of citizenship

The nature of CBI schemes certainly has an impact on the perception of citizenship. As described in section 3.1, the economic logic of the market is replacing the political foundation of citizenship by turning citizenship into a commodity. This has been analysed as 'a political inclusion that, deprived of cultural belonging, is emptying citizenship from within'.<sup>172</sup> A global market for citizenship status is seen as corrupting democracy by breaking down the barrier that separates the spheres of money and power.<sup>173</sup>

### 4.3.4. Quality of evidence-based policy

The lack of available data, as underlined in section 1.1, is an obstacle to designing and conducting long-term sustainable policies.

As Member States do not release data on their CBI/RBI schemes systematically, possible costs and benefits of the programmes are difficult to assess, triggering difficult ex-post analysis of the existing schemes, and preventing the development of evidence-based policies. Reliable and robust data are not only critical to forecasting the vulnerabilities triggered by CBI/RBI schemes, they would also strengthen the reputation and sustainability of these policies over the long-term.

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<sup>169</sup> Council [conclusions on the](#) EU Citizenship Report 2017 (adoption 11 May 2017).

<sup>170</sup> Resolution of 14 January 2014 on [EU citizenship for sale](#) (2013/2995(RSP)), European Parliament..

<sup>171</sup> [EU values and the proliferation of corruption and crime through golden visas](#) (topical debate), 30 May 2018.

<sup>172</sup> Mavelli L., Citizenship for sale and the neoliberal political economy of belonging, *International Studies Quarterly*, 2018.

<sup>173</sup> Shachar A., Baubock R. (ed.), Should Citizenship be for sale, EUI Working paper 2014/01, 2014.

## 5. Conclusion: Potential for EU action

As previously underlined, the European Parliament strongly supports the idea of EU action regarding CBI/RBI schemes, and even more so on CBI schemes that grant de facto EU citizenship. The Parliament has called 'on the Commission to assess the various citizenship schemes in light of European values and the letter and spirit of EU legislation and practice and to issue recommendations in order to prevent such schemes from undermining the values that the EU has been built upon, as well as guidelines for access to EU citizenship via national schemes'.<sup>174</sup>

The Parliament's TAX3 temporary committee invited the EU Commissioner for Justice, Věra Jourová, to its meeting of 25 June 2018, who reaffirmed, echoing the Members, concerns about the development of CBI schemes in the EU. In addition to a fact-finding mission conducted in June in Malta (see section 3.2), the Commissioner had recently visited Cyprus and held a meeting with Justice Minister Ionas Nicolaou in Nicosia.<sup>175</sup> The Commission is expected to publish a report in late November 2018, which will include guidelines for Member States regarding their CBI and RBI schemes.

In light of the significant impacts affecting Member States and the EU as a whole, there is a potential for the EU to take action, which could bring potential benefits to the EU. Such action would not necessarily exceed EU competence on the matter, and in any case should be assessed against the principles of subsidiarity, proportionality and EU added value.

Table 6 – Potential benefits of EU action

Action	Potential benefits
Fiscal buffers	Macro-economic resilience
Improved due diligence procedures	Integrity of the single market
Increased transparency	Decrease in corruption, money laundering and tax evasion
Clear governance and accountability framework	Evidence-based policies

Source: EPRS, Authors' elaboration

### 5.1. Introducing fiscal buffers

The majority of Member States offering the CBI/RBI schemes examined here are euro area participants (except Bulgaria), which restricts the use of monetary policy as macroeconomic policy leverage. As underlined by the IMF,<sup>176</sup> macroeconomic management therefore largely relies on fiscal policy.

To help mitigate the negative macroeconomic impacts and decrease the external vulnerabilities of the schemes outlined above (section 4), the Commission could, **as part of its European Semester, integrate specific recommendations on prudential regulation** related to the pace of inflows to the private sector. The IMF has developed guidelines for building and implementing CBI/RBI

<sup>174</sup> Resolution of 14 January 2014 on [EU citizenship for sale](#) (2013/2995(RSP)), European Parliament, paragraph 11.

<sup>175</sup> [EU Commission to publish guidelines for passport schemes](#), *In-Cyprus*, September 2018.

<sup>176</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

schemes fiscal buffers in this respect,<sup>177</sup> including measures on budgetary support and saving accumulation, savings drawdown for stabilisation, for exceptional spending or for large public investment/infrastructure projects.

## 5.2. Improving background checks and due diligence procedures

To ensure the integrity of the EU single market and safeguard EU objectives of sincere cooperation, security and justice, the due-diligence standards enshrined in EU law must be applied rigorously in the EU Member States that offer CBI/RBI schemes, and more consistently across the EU.

The successive Anti-Money Laundering (AML) Directives have significantly increased the exchange of information and transparency that makes it harder to launder money. The EU AML framework has expanded the number of 'obliged entities' required to comply with EU standards of due diligence and inform their respective FIUs if they suspect that money laundering is being or has been committed or attempted. These include in particular credit and financial institutions, tax advisors, and estate agents. The fifth AML Directive<sup>178</sup> adopted in May 2018 additionally requires obliged entities to apply enhanced customer due-diligence measures when business relationships or transactions involve high-risk third countries (i.e., that show significant weaknesses in their AML regime). Annex III of the Directive also makes explicit reference to CBI/RBI schemes. It now includes third country nationals who apply for residence rights or citizenship in an EU Member State in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in the list of factors of potentially higher risk to be taken into account by obliged entities.

The EU AML framework has also tackled the issue of politically exposed persons (PEPs), on whom enhanced due-diligence should be applied. The latter is relevant in the context of RBI/CBI schemes, since high-ranking officials from third countries have appeared among the successful applicants (see section 3.2.1).

Moreover, steps towards greater transparency about who really owns companies and trusts to prevent money laundering via opaque structures have been taken with the introduction of national registers on beneficial ownership information. In accordance with the fifth AML Directive, these national registers will be directly interconnected, to facilitate cooperation and exchange of information between Member States. Member States have to transpose the fifth Directive's provisions by 10 January 2020.

As underlined in section 3.2., several investigations are ongoing as regards the proper application of EU anti-money laundering (AML) standards, in particular in Malta. The EBA already concluded in July 2018, that the Malta Financial Intelligence Unit (FIAU) had indeed breached Union law by failing to exercise effective supervision of Pilatus Bank.<sup>179</sup> EBA's findings pointed to general and systematic shortcomings in the FIAU's application of the third EU Anti-money Laundering Directive, in force since 2005. The Commission has recently pointed to non-application of EU laws in Romania and

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<sup>177</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015, p.19.

<sup>178</sup> [Directive \(EU\) 2018/843](#) of the European Parliament and of the Council of 30 May 2018.

<sup>179</sup> EBA, [Recommendation to the Maltese Financial Intelligence Analysis Unit \(FIAU\) on action necessary to comply with the Anti-Money Laundering and Countering Terrorism Financing Directive](#), 11 July 2018. For an overview of recent cases tackled by EBA in the field of money laundering, see: Deslandes J. and Magnus M., [Money laundering – Recent cases from an EU banking supervisory perspective](#), Directorate-General for Internal Policies, European Parliament, April 2018.



Greece, while a further 14 Member States are under European Commission scrutiny for failing to properly implement EU safeguards.<sup>180</sup>

Ensuring the proper application of the EU AML arsenal is key to ensuring that the actors operating in the CBI/RBI schemes' environment conduct adequate checks on their clients and on the origin of the funds they invest.

In **parallel to monitoring Member States' proper implementation of EU AML provisions**, the European Commission could **evaluate the efficiency and effectiveness of the Member States' due-diligence procedures for prospective applicants** in the context of their CBI/RBI schemes – in a similar vein to the EBA's investigations in Malta. In that regard, recent discussions on strengthening EU resources in this field could be encouraged.<sup>181</sup> Due-diligence in the context of CBI/RBI schemes should aim to 'establish the suitability of applicants, ensure the sources of the wealth which will be invested in the scheme originate from legitimate means, and uncover any risk factors which may negatively impact the programme's integrity'.<sup>182</sup>

Concerning the risks of tax avoidance/evasion in particular (see section 3.3), in addition to monitoring the proper implementation of EU cooperation in the field of taxation,<sup>183</sup> the Commission could recommend best practices, in line with the OECD's call to correctly apply existing common reporting standards (CRS) procedures. As the OECD highlights, 'to a large extent, the circumvention of the CRS through the abuse of CBI/RBI schemes can be prevented by the correct application of the existing CRS due-diligence procedures. Important in this regard are:

- The requirement to have a real, permanent physical residence address (and not just a PO box or in-care-of address) for the application of the residence address rule and the necessity to confirm the presence of a real, permanent physical residence through appropriate Documentary Evidence;
- The requirement to instruct Account Holders to include all jurisdictions of tax residence in their self-certification.
- The rule that Financial Institutions cannot rely on a self-certification or Documentary Evidence if they know, or have reason to know, that such self-certification or Documentary Evidence is unreliable, incorrect or incomplete'.<sup>184</sup>

Adoption of a systematic risk-based approach to the process of verifying tax residence status could also be recommended to Member States. For newly opened bank accounts, financial institutions should treat the account as high risk and require supporting evidence of previous tax residence status. In any case, all applications should be subject to strong oversight and comprehensive

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<sup>180</sup> [Commission points finger at EU governments for dirty-money failures](#), *Politico*, October 2018.

<sup>181</sup> [Commission eyes larger anti-money laundering team](#), *Politico*, October 2018.

<sup>182</sup> IMC/Thomson Reuters, [Staying ahead: due diligence in residence and citizenship by investment programmes](#), July 2018.

<sup>183</sup> [Directive on Administrative Cooperation in the field of taxation](#) (Directive 2011/16/EU, otherwise known as 'DAC 6'). DAC6 came into force in June 2018. It requires Member States to bring the rules into their national law by the end of 2019 and to apply those rules from 1 July 2020. These include new reporting obligations on cross-border arrangements. An arrangement will be 'cross-border' if it concerns a Member State and either another Member State or a third country. Arrangements where all the parties are in one Member State, and there is no tax-related impact in any other jurisdiction, will not be 'cross-border'. The amendment places the reporting obligation, in the first instance, on intermediaries.

<sup>184</sup> OECD, [Consultation document](#), Preventing abuse of residence by investment schemes to circumvent the CRS, 19 February 2018-19 March 2018.

background checks, including establishing a risk profile to identify and assess the criminal background of the applicant.<sup>185</sup>

Finally, the protection of whistleblowers, who often play a pivotal role in unveiling unlawful activities and abuse of law, must be ensured at EU level. In this respect, the Commission submitted a proposal in May 2018, which is currently under negotiation.<sup>186</sup>

### 5.3. Increasing transparency

As underlined by the Irish authorities in an evaluation report on its RBI scheme,<sup>187</sup> the conclusions of which hold true for any other similar scheme, better data collection is a prerequisite for proper and robust assessments of these schemes. The report stresses that 'due to the significant volatility caused by recent international events, there is a necessity that this programme is formally evaluated on an annual basis'. **Better data collection is not only critical to forecast vulnerabilities induced by CBI/RBI schemes: it would also strengthen their reputation and sustainability over the long-term.**<sup>188</sup>

In this regard, and to facilitate this process, the European Commission could provide some guidance on the transparency standards to be followed by the Member States. This could include making the most relevant information and data they hold publicly available, in at least an annual breakdown of:

- The number of main applications and their dependants received (by country of origin);
- The number of citizenship and residencies granted (by country of origin);
- The intermediaries involved in the process and their role;
- The amount of revenues earned;
- Statistics on the total number of accounts and the total account balance of account holders who appear not to be relevant for tax purposes in that jurisdiction, e.g. because they do not have to file tax returns in that jurisdiction.<sup>189</sup>

These efforts would not only increase transparency. They would also enable comparative assessments at EU level.

### 5.4. Clear governance and accountability framework

Related to the issue of transparency outlined above, a clear and accountable governance framework is equally critical to ensuring the viability and reputation of CBI/RBI schemes.<sup>190</sup> The Commission could also issue guidelines on the matter.

In particular, **clear guidance on how private firms operate in the sector of CBI/RBI schemes** should be provided. In order to avoid the potential conflicts of interest raised in section 3.2, private

<sup>185</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>186</sup> [Proposal](#) for a directive on the protection of persons reporting on breaches of Union law, COM(2018) 218 final. See the [related procedure](#) 2018/0106(COD).

<sup>187</sup> Irish Government Economic & Evaluation Service, Interim evaluation of the IIP, 2017.

<sup>188</sup> Xu Xin, El-Ashram Ahmed and Gold Judith, 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs', IMF Working Paper, 2015.

<sup>189</sup> Knobel A., Heitmüller F., Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information, March 2018.

<sup>190</sup> This was underlined by the [Council](#): 'Improving the governance framework is crucial to preserving Malta's reputation and attractiveness as an international investment destination'.

firms should be precluded from simultaneously advising governments on CBI/RBI schemes, implementing them on behalf of the government, promoting them and offering counselling for individuals interested in these schemes. Discussions on how these intermediaries could be regulated could be initiated in that regard.

Moreover, and to ensure a spirit of sincere cooperation and mutual trust among EU Member States, **a structured exchange of information between Member States** could be set up. Information exchanges could include, for instance, the name (or taxpayer identification number – TIN) of unsuccessful applicants and the reasons for the refusal decision, as well as the name (or TIN) of successful applicants, including information on their country of origin and citizenships.

It should be noted that, while the above measures at EU level would help to improve the lack of transparency surrounding these schemes and mitigate the risks associated with them, it is likely **that they would not mitigate most of the social and political impacts** outlined in sections 4.2 and 4.3. When assessing the costs and benefits of CBI/RBI schemes, the qualitative effects of these schemes are equally critical to quantitative effects.<sup>191</sup> Should CBI/RBI schemes be maintained, the policy design accompanying them should carefully assess the objectives of their economic benefit and balance them against the risks they carry and their effect on public opinion. Striking the right balance here is key to preventing distrust and maintaining social justice.

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<sup>191</sup> See Carrera S., How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?, CEPS Paper, No. 64, April 2014.

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## Annex 1 – Methodology

This annex reflects the existing provisions and associated advantages of the CBI/RBI schemes found at EU level. It reflects the balance between the obligations incumbent on the applicant in these schemes and the rights granted in exchange.

Processes of naturalisation that are fully discretionary and where investment amounts are not specified were excluded from this analysis. Also excluded were Member States that have provisions to attract foreign investors in their legal provisions, but where a minimum investment amount is not specified (i.e., without a 'price tag'). As a result, we found that, except for 10 Member States (Austria, Belgium, Denmark, Finland, Germany, Hungary, Poland, Slovakia, Slovenia and Sweden) that do not offer residency in exchange for a specified investment, every Member State currently has a form of RBI schemes in place, including 4 that operate CBI schemes in addition to RBI schemes (Bulgaria, Cyprus, Malta, Romania).

We therefore looked at the eligibility criteria (in particular the investment obligations and the requirements for physical presence on the territory) and the rights obtained via these investments, including those related to free movement and access to preferential tax regimes. Each of these categories was assigned a score between one and four, to rank the schemes from the lowest in terms of obligations and the highest in terms of rights (with a score of four), to the highest in terms of obligations and the lowest in terms of rights (with a score of one). The categories and the criteria used were as follows:

(1) **Eligibility conditions:** What levels of wealth and engagement with the Member State does the scheme require?

- **Investment obligation:** All schemes considered require some kind of active or passive investment. Active investments require the investor to provide detailed business plans and actively build a business, including the use of human capital and job creation.<sup>192</sup> These can be typical features of 'entrepreneurs' permits' if they imply that the applicant is actively involved in the management or the creation of the company. Passive investments require infusing capital into an existing company that the investor will not necessarily run, or involve a lump sum transferred to government bonds or property. We assigned one point for the schemes that offer CBI/RBI in exchange for an active financial investment; two points for schemes that require either an active investment or a passive investment; three points for schemes that only require a passive high level investment (>€500 000) and four points for a passive low level investment (<€500 000).
- **Physical presence requirement:** A lengthy residence requirement (>six months) to maintain the status was scored one; one to six months of physical presence required was scored two; a light physical presence requirement (one day to one month) scored three; and no physical presence requirement scored four.

(2) **Granted rights:** What advantages does the scheme provide in terms of status granted and access to tax advantages?

- **Granted status:** in the EU context, the regulation of free movement for EU citizens and third country nationals (TCNs) also influences policies geared towards investors. That is, citizenship of each Member State grants rights across the Union (Article 20, TFEU), and residence rights in each Member State grant rights in that state and some rights across the Schengen area.

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<sup>192</sup> These schemes typically include 'entrepreneurs permits', i.e. permits granted to individuals willing to establish and manage a business in the country or 'start-up permits/visas'.

- For **short-term stays** in the Schengen area (i.e., for up to 90 total days in a 180-day period), a Schengen visa or a temporary resident permit obtained by a TCN in a Member State participating in the Schengen agreements allows its holder to circulate throughout the Schengen area without control at the border.<sup>193</sup> In contrast, short-term visas or temporary residence permits issued in non-Schengen EU Member States (Bulgaria, Croatia, Cyprus, Ireland, Romania and the UK) are not valid for travel to the Schengen area.<sup>194</sup> In practice, this means that if a Chinese or a Russian national obtains a short-term visa in Bulgaria, they will not gain unrestricted access to the Schengen area, and will still need to apply for a Schengen visa.
- Concerning TCNs who hold **long-term resident permits** in one EU Member State, if they fulfil Directive 2003/109/EC<sup>195</sup> criteria, they have the right to reside for more than three months in a second Member State. However, they still need to apply for a residence permit in the second Member State. Member States have considerable room for discretion to regulate the numbers of mobile TCNs entitled to be granted right of residence.<sup>196</sup> It should be noted however that Article 13 of the Directive stipulates that if a Member State issues residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by the Directive (i.e., if these permits require less than five years of continuous residence),<sup>197</sup> such residence permits do not confer the right of residence in another Member State. In practice this means that obtaining a permanent resident permit in a Member State with no or very little physical requirements does not grant automatic access to the facilitations provided in Directive 2003/109/EC for TCNs who hold long-term resident permits in one EU Member State.<sup>198</sup> In contrast to all the above-mentioned situations, TCNs who have been granted **citizenship of one EU Member State** de facto become EU citizens, free to move and reside within the territory of the Member States.

For the above reasons, we gave four points for the schemes granting citizenship; three for those granting long-term residence permit in a Schengen Member State (>five years, matching the requirements of the Directive); two for those granting a temporary residence permit (<five years) in a Schengen Member State; and one for a residence permit granting access to only one Member State (non-Schengen Member State).

**Tax advantages granted by/associated to the status:** the Member States granting residency or citizenship that offer access to preferential tax regimes (including 'non-dom' tax regimes)<sup>199</sup> and

<sup>193</sup> Schengen countries also include the following non-EU countries: Iceland, Norway, Switzerland and Liechtenstein.

<sup>194</sup> Unless these TCNs are exempt from a short stay visa in the Schengen area.

<sup>195</sup> [Directive 2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

<sup>196</sup> For further details, see: European Migration Network, [Intra-EU Mobility of third-country nationals](#), 2013.

<sup>197</sup> In the Directive, 'continuous residence' is calculated over the whole period of 5 years – allowing only for absences from the territory of less than 6 consecutive months and no more than 10 months over the whole period.

<sup>198</sup> See: Van den Brink, M., [Investment residence and the concept of residence in EU law](#), IMC/RP 2017. As noted by Van den Brink, a number of firms involved in the practice of providing advice on citizenship and residence planning often make false promises to applicants, or use ambiguous wording. Section 3.1.2 provides more details on these private firms.

<sup>199</sup> In countries offering a 'non-domiciled status', a person living in these countries can be considered as resident for tax purposes but still be domiciled (i.e. with their permanent home) in another country. Such status enables an individual to pay no tax on their foreign income and capital gains unless the money is brought into the country of residence.



those who apply comprehensive a personal income tax (PIT) regime were identified.<sup>200</sup> We assigned four for Member States offering access to preferential tax regimes; three to low level PIT (10-19 %), two to medium level PIT (20-40 %) and one point to high level PIT (above 40 %).<sup>201</sup>

The scores are outlined below:

Member State	Access condition	Granted status
Bulgaria - RBI (1) <sup>202</sup>	6	5
Bulgaria - RBI (2) <sup>203</sup>	7	5
Bulgaria - CBI <sup>204</sup>	7	7
Croatia <sup>205</sup>	5	2
Cyprus - RBI <sup>206</sup>	7	5
Cyprus - CBI <sup>207</sup>	6	8
Czech Republic <sup>208</sup>	3	6
Estonia - RBI (1) <sup>209</sup>	2	6
Estonia - RBI (2) <sup>210</sup>	7	6
France <sup>211</sup>	2	3
Greece <sup>212</sup>	8	4

<sup>200</sup> As noted in the [Tax Justice Network Financial secrecy Index](#), in principle, the only indicator that could clearly attribute tax residency of an individual to one jurisdiction and thus avoid both double-taxation and double-non-taxation is the test whether the individual effectively spends 183 days or more in the jurisdiction. However, since this is not always easy to assess and since it also theoretically possible that a frequently moving individual does not spend 183 days in a year in any jurisdiction, most jurisdictions use several indicators to determine tax residency, such as disposal of a permanent home and the centre of economic and personal interests of an individual.

<sup>201</sup> Mainly based on [Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information](#), Knobel A., Heitmüller F., March 2018.

<sup>202</sup> [Law on Foreigners](#), Article 24.

<sup>203</sup> [Law on Foreigners](#), Article 25.

<sup>204</sup> [Bulgarian Citizenship Law](#) (amended, Official Gazette 16, February 2013), Article 14.

<sup>205</sup> [Aliens Act](#), articles 76–78.

<sup>206</sup> Provisions of Regulation 6(2) of the [Aliens and Immigration Regulations](#).

<sup>207</sup> Subsection (2) of section 111A of the [Civil Registry Laws](#) of 2002-2015.

<sup>208</sup> [Act on the Residence of Foreign Nationals](#), section 31.

<sup>209</sup> Paragraphs 192 and 197 of the [Aliens Act](#).

<sup>210</sup> Paragraphs 192 and 197 of the [Aliens Act](#).

<sup>211</sup> *Article R.313-64 Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA). Créé par [Décret n°2016-1456](#) du 28 octobre 2016 - Article 10.*

<sup>212</sup> [Immigration and Social Integration Code](#) (Law 4251/2014, Government Gazette 1, no 80).

Ireland <sup>213</sup>	5	5
Italy <sup>214</sup>	7	6
Latvia <sup>215</sup>	6	5
Lithuania <sup>216</sup>	2	6
Luxembourg <sup>217</sup>	2	3
Malta - RBI (1) <sup>218</sup>	8	6
Malta - RBI (2) <sup>219</sup>	7	7
Malta - CBI <sup>220</sup>	7	8
Netherlands <sup>221</sup>	4	6
Portugal <sup>222</sup>	5	6
Romania - RBI <sup>223</sup>	2	4
Romania - CBI <sup>224</sup>	4	7
Spain <sup>225</sup>	6	3
United Kingdom <sup>226</sup>	4	5

Source: EPRS.

<sup>213</sup> Irish Naturalisation and Immigration Services, official [guidelines](#).

<sup>214</sup> Provisional budget of the State for 2017 and multi-annual budget for the triennial period 2017–2019, paragraphs 152–159. See [official guidelines](#) issued in November 2017.

<sup>215</sup> See section 23 of [Immigration Law of Latvia](#).

<sup>216</sup> [Law on the Legal Status of Aliens](#), articles 45 and 50

<sup>217</sup> [Loi du 8 mars 2017](#) portant modification de la loi modifiée du 29 août 2008 sur la libre circulation des personnes et l'immigration

<sup>218</sup> Maltese global residence programme, see Malta Commissioner for revenue [website](#).

<sup>219</sup> Subsidiary legislation 217.18, [Malta residence and visa programme regulations](#), 25 August 2015.

<sup>220</sup> Maltese Citizenship Act, Cap 188.

<sup>221</sup> Modern Migration Act - see [Ministry of Justice and Security](#)

<sup>222</sup> Order n. 1661-A/2013 of the Ministry of Foreign Affairs and of the Ministry of Internal Affairs - see [SEF dedicated webpage](#).

<sup>223</sup> [Emergency Ordinance No. 194](#) from 12 December 2002, art. 43

<sup>224</sup> [Romania Citizenship Act](#) (Official Gazette of Romania, Part I, May 2009), article 8, para 2d

<sup>225</sup> [Act 14/2013](#), Article 63.

<sup>226</sup> [Tier 1 Visa for investors](#)

## Annex 2 – Main features of key CBI/RBI schemes in the EU

Member States	Access conditions		Granted status	
	Investment requirements	Physical presence requirements	Main tax advantages	Granted Residence/Citizenship status and access to mobility
<p><b>Bulgaria</b></p> <p>Bulgaria currently operates two RBI schemes and one CBI scheme</p> <p>RBI scheme 1<sup>227</sup></p>	Investment of minimum BGN600 000 (approx. €300 000) in real estate or in company shares; OR investment of BGN250 000 (approx. €127 000) in poorer regions with the creation of at least 5 new jobs created for Bulgarian citizens.	Persons must have accommodation – no other specific requirements.	Interests and discounts on bonds are exempt from taxation  Personal income tax rate of 10 %.	Temporary residence of 1 year, renewable.  As Bulgaria is a non-Schengen State, TCNs who hold a Bulgarian residency permit still need to apply for a Schengen visa if they are not citizens of a visa-exempted country.
<p><b>Bulgaria</b></p> <p>Bulgaria currently operates two RBI schemes and one CBI scheme</p> <p>RBI scheme 2<sup>228</sup></p>	Investment of BGN1 000 000 (approx. €510 000) through the acquisition of shares in Bulgarian companies, traded on a Bulgarian regulated market; OR in investments in treasury bonds; OR in holding or shares in public companies; OR in Bulgarian intellectual	No specific requirements.	Interests and discounts on bonds are exempt from taxation  Personal income tax rate of 10 %.	Permanent residency.  As Bulgaria is a non-Schengen State, TCNs who hold a Bulgarian residency permit still need to apply for a Schengen visa if they are not citizens of a visa-exempted country.

<sup>227</sup> [Foreigners Act](#), Article 24.

<sup>228</sup> Based on Article 25 of the [Foreigners Act](#).

	<p>property/patent protected inventions; OR in a licensed credit institution in Bulgaria under a trust management agreement.</p> <p>Other options include investment of BGN6 000 000 (approx. €300 000) in the capital of a Bulgarian company, which shares are not traded on a regulated market.</p>			
<p><b>Bulgaria</b></p> <p>Bulgaria currently operates two RBI schemes and one CBI scheme</p> <p>CBI scheme:<sup>229</sup></p>	<p>A fast track option is available for permanent residents who have invested in Bulgaria (under the terms of the above scheme 2) and wish to become citizens. This option requires, in addition to the investments already made, an investment of an additional BGN1 million (approx. €510 000) OR an investment of BGN1 million (approx. €510 000) in a Bulgarian company's priority investment project.</p>	<p>Citizenship granted after 1 year of residence (at least 6 months of physical presence prior to the application for citizenship).</p>		<p>Citizenship.</p> <p>Bulgarian citizens have visa-free or visa on arrival access to 169 countries and territories – they are free to reside and travel throughout the EU.</p>

<sup>229</sup> Bulgarian Citizenship Law (amend. Official Gazette 16, February 2013), Article 14.

<p><b>Cyprus</b></p> <p>Cyprus currently operates one RBI scheme and one CBI scheme</p> <p>RBI scheme<sup>230</sup></p>	<p>€300 000 in property + deposit of €30 000 in a Cypriot bank + income of at least €30 000 a year.</p>	<p>Visit required once every 2 years to maintain the status.</p>	<p>NON-DOM regime* (exemption on foreign income) can be granted for individuals residing in Cyprus not less than 6 months within each tax year,<sup>231</sup> who do not plan to be domiciled in Cyprus. The non-dom status can be granted for 17 consecutive years after settling in Cyprus</p> <p>Dividends, interest and rental income (passive income) are not subject to personal income tax.</p>	<p>Permanent residency.</p> <p>As Cyprus is a non-Schengen State, TCNs who hold a residency permit in Cyprus still need to apply for a Schengen visa if they are not citizens of a visa-exempted country.</p>
<p><b>Cyprus</b></p> <p>Cyprus currently operates one RBI scheme and one CBI scheme</p>	<p>€2 million for the purchase or construction of buildings or for the construction of other land development projects or other infrastructure projects; OR participation in companies or organisations established and operating in Cyprus with investment costs of at least</p>	<p>Prior to naturalisation, the applicant must hold a residence permit in Cyprus (which can be obtained in less than 6 months and which requires just one visit to Cyprus to provide biometric data).</p>	<p>NON-DOM regime* (exemption on foreign income) can be granted for individuals residing in Cyprus not less than 6 months within each tax year,<sup>233</sup> who do not plan to be domiciled in Cyprus. The non-dom status can be granted for</p>	<p>Citizenship.</p> <p>Cyprus citizens have visa-free or visa on arrival access to 171 countries and territories<sup>234</sup> – they are free to reside and travel throughout the EU.</p>

<sup>230</sup> Regulation 6(2) of the Aliens and Immigration Regulations.

<sup>231</sup> However, Cyprus applies this provision flexibly: the legal relocation of the tax residence is available to persons spending only 60 days per year in Cyprus. This applies regardless of whether the person has spent this minimum of 60 days in Cyprus as a single period or through several visits. See: [Privacy Management Group](#).

<sup>233</sup> However, Cyprus apply this provision flexibly: the legal relocation of the tax residence is available to persons spending only 60 days per year in Cyprus. This applies regardless of whether the person has spent this minimum of 60 days in Cyprus as a single period or through several visits. See: [Privacy Management Group](#).

<sup>234</sup> Based on the '[Henley Passport Index](#)'.

<p>CBI scheme<sup>232</sup></p>	<p>€2 million; OR investments of at least €2 million in alternative investment funds established in Cyprus.</p> <p><i>NB:</i> the applicant may proceed with a combination of the above investments, provided that the total investment amounts to at least €2 million.</p> <p>In addition to the above, the applicant must possess a permanent privately-owned residence in Cyprus, the purchase price of which must be at least €500 000, plus VAT.</p>		<p>17 consecutive years after settling in Cyprus.</p> <p>Dividends, interest and rental income (passive income) are not subject to personal income tax.</p>	
<p><b>Estonia</b></p> <p>Estonia currently runs two RBI schemes<sup>235</sup></p> <p>RBI scheme 1</p>	<p>Requires an investment of €65 000 in business activity in Estonia. Applicants are required to be the sole proprietor of the enterprise and requires a business plan.</p>		<p>Personal income tax rate of 20 % including capital gains.</p> <p>+ Estonian tax residents are not charged personal income tax on foreign dividends, if income tax has already been paid on the share of profit on the basis of which the</p>	<p>A temporary residence permit for enterprise may be granted for a shorter period than up to 5 years and extended for a shorter period, up to 10 years.</p> <p>TCNs who hold a residency permit issued in Estonia are allowed to circulate freely in</p>

<sup>232</sup> Decision of the Council of Ministers dated 19 March 2014; Paragraph (2) of Article 111A of the Civil Registry and Migration Law of 2002-2013 – see Cyprus Migration Department's [information sheet](#), last updated on 3 September 2018.

<sup>235</sup> Paragraphs 192 and 197 of the [Aliens Act](#) currently in force. Translation published in 05.07.2018.

			dividends are paid or if income tax on the dividends has been withheld abroad.	the Schengen area for up to 90 total days in a 180-day period.
<p><b>Estonia</b></p> <p>Estonia currently runs two RBI schemes <sup>236</sup></p> <p>RBI scheme 2</p>	Requires a direct investment of at least €1 000 000 in a company registered in the Estonian Commercial Register.	The law specifies that the requirement for actual residence and for the registration of the place of residence in the population register need not be fulfilled as a requirement for the issue and extension of a temporary residence permit to a large investor for enterprise.	<p>Personal income tax rate of 20 % including capital gains.</p> <p>+ Estonian tax residents are not charged personal income tax on foreign dividends, if income tax has already been paid on the share of profit on the basis of which the dividends are paid or if income tax on the dividends has been withheld abroad.</p>	<p>5 year residence permit.</p> <p>TCNs who hold a residency permit issued in Estonia are allowed to circulate freely in the Schengen area for up to 90 total days in a 180-day period.</p>
<p><b>Ireland</b></p> <p>Ireland currently operates one RBI scheme<sup>237</sup></p>	<p>Requires €1 000 000 investment in an Irish company (must be held for 3 years, business plan needed)</p> <p>OR €1 000 000 in investor bonds; OR €2 000 000 in Real Estate Investment Trusts;</p> <p>OR €500 000 donation in an approved fund.</p>	1 day per year.	NON-DOM regime* (exemption on foreign income) can be granted to new residents.	<p>2 year residence permit renewable for 3 years (so 5 years in total)</p> <p>As Ireland is a non-Schengen State, TCNs who hold a residency permit in Ireland still need to apply for a Schengen visa if they are not citizens of a visa-exempted country.</p>

<sup>236</sup> Para.192 and [197](#) of the [Aliens Act](#) currently in force. Translation published in 05.07.2018.

<sup>237</sup> Immigrant Investor Programme: see [official guidelines](#) issued in January 2018

<p><b>Italy</b></p> <p>Italy currently runs one RBI scheme<sup>238</sup></p>	<p>Requires one of the following:                  €2 000 000 investment in Government Bonds;                  €1 000 000 investment in limited companies or philanthropic donations;                  €500 000 investment in innovative start-ups.</p>	<p>No physical presence requirement.</p>	<p>New residents can apply to opt in to a lump sum tax regime (€100 000 substitute tax) that substitutes personal income tax and provides full exemption on foreign income. The status can be maintained for 15 years. The status can be extended to any family member who would then have to pay an annual lump sum of €25 000.<sup>239</sup></p>	<p>2 year residence permit, renewable for three years (so 5 years in total)</p> <p>TCNs who hold a residency permit issued in Italy are allowed to circulate freely in the Schengen area for up to 90 total days in a 180-day period.</p>
<p><b>Latvia</b></p> <p>Latvia currently runs one RBI scheme<sup>240</sup></p>	<p>Requires €250 000 investment in property (AND 5 % of the value of immovable property into the State budget);</p> <p>OR an investment of €50 000 or €100 000 (depending on the number of employees in the company) invested in equity capital of a Latvian company; AND €10 000 to the state budget;</p>	<p>No physical presence requirement specified (requirements only specified for those who apply for a permanent status).</p>	<p>Latvian residents are liable for personal income tax (PIT) on their worldwide income.</p> <p>Personal income tax rate at 23 %.</p> <p>Dividends received by individuals are taxed at 10 %.</p> <p>Capital gains on disposal of capital assets (e.g. property, shares) are taxed at 15 %.</p>	<p>Temporary residence for a maximum of 5 years.</p> <p>TCNs who hold a residency permit issued in Latvia are allowed to circulate freely in the Schengen area for up to 90 total days in a 180-day period.</p>

<sup>238</sup> Provisional budget of the State for 2017 and multi-annual budget for the triennial period 2017–2019, para 152–159. See [official guidelines](#) issued in November 2017.

<sup>239</sup> It should be noted that according to several law firms, the taxpayers who apply for this special regime would be exempted from reporting obligations concerning assets held abroad. However, CRS and FATCA reporting obligations would still apply. See: GGI Forum, [The new special res non-dom tax regime in Italy](#), March 2017; Gianni, Origoni, Grippo, Cappelli and Partners, Legal update, [Italy introduces a preferential tax regime available for 15 years to wealthy individuals who take up tax residence in Italy](#), February 2017.

<sup>240</sup> See section 23 of [Immigration Law of Latvia](#) (last amendments from February 2017).



	<p>OR €280 000 of subordinated liabilities with a Latvian credit institution AND €25 000 into the State budget;</p> <p>OR €250 000 investment in interest-free State securities dedicated to a specific purpose AND €38 000 into the State budget.</p>		Interest and royalties are not subject to tax.	
<p><b>Malta</b></p> <p>Malta currently runs two RBI schemes and one CBI scheme.</p> <p>RBI scheme 1 (Global Residency Programme)<sup>241</sup></p>	<p>Requires investment of €220 000 in property in the south of Malta OR €250 000 in Gozo OR €275 000 in the rest of Malta OR rent property at minimum €9 600/year (€8 750 in the south of Malta and Gozo).</p>	<p>No physical presence requirement specified.</p>	<p>NON-DOM regime* (exemption on foreign income) can be granted to new residents. The status can be maintained permanently.</p> <p>The following tax advantages are granted as part of the scheme: 15 % tax on foreign income remitted to Malta;</p> <p>35 % on income and capital gains generated in Malta;</p>	<p>Temporary residence, which needs to be renewed annually. To renew residency, a minimum tax of €15 000 is required.<sup>242</sup></p> <p>TCNs who hold a residency permit issued in Malta are allowed to circulate freely in the Schengen area for up to 90 total days in a 180-day period.</p>

<sup>241</sup> Maltese global residence programme, see Malta Commissioner for revenue [website](#).

<sup>242</sup> NB: when an individual who was granted special tax status as part of the Global Residence Programme becomes a long-term resident, in principle they no longer benefit from the tax treatment and will be taxable on a worldwide basis, i.e. on any income accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of income mentioned in Article 4 of the income tax. This income will be subject to tax at the applicable rates set out in Article 56 of the Income Tax Act. See Malta Commissioner for revenue [website](#).

			0 % tax on foreign income not-remitted to Malta; 0 % tax on foreign capital gains.	
<p><b>Malta</b></p> <p>Malta currently runs two RBI schemes and one CBI scheme.</p> <p>RBI scheme 2 (Malta Residence and Visa programme)<sup>243</sup></p>	<p>Requires an initial contribution of €35 000 + an investment of €250 000 in bonds (for 5 years) + an investment in qualifying property: of a minimum value of €320 000 for a property situated in Malta; or €270 000 for a property situated in Gozo or in the south of Malta OR rent real estate at minimum €12 000 in Central/North Malta or €10 000 in the South/Gozo.</p>	<p>No physical presence requirement specified.</p>	<p>NON-DOM regime* (exemption on foreign income) can be granted to new residents. The status can be maintained permanently.</p> <p>If a tax resident, the beneficiary will be subject to tax on income and capital gains arising in Malta and on foreign income which is received in Malta; if not a resident (i.e., benefiting from non-dom status), the beneficiary will only be taxed on income and capital gains arising in Malta.</p>	<p>RBI scheme 2 (MRVP): residency valid for 5 years (renewable)<sup>244</sup> with no recurring minimum tax.</p> <p>TCNs who hold a residency permit issued in Malta are allowed to circulate freely in the Schengen area for up to 90 total days in a 180-day period.</p>
<p><b>Malta</b></p>	<p>Contribution of €1.15 million (consisting of €0.65 million in net contribution + €0.35 million in property</p>	<p>Granted after 1 year of residence prior to the application (but with no</p>		<p>Citizenship.</p> <p>Maltese citizens have visa-free or visa on arrival access to 182 countries and</p>

<sup>243</sup> Subsidiary legislation 217.18, [Malta residence and visa programme regulations](#), 25 August 2015. NB: Identity Malta notified in September 2018 that the investments referred to in these regulations can now also be made in debt or equity securities listed on the Official List of the Malta Stock Exchange. Accredited agents, moreover, will now receive a 5 % commission on the administration fee. See: Investment Migration Insider, [Malta Golden Visa Hits 1,000 Apps, Celebrates by Adding Commissions and Investment Options](#), September 2018. Differences between the GRP & MRVP explained [here](#). Specifications of the MRVP explained [here](#).

<sup>244</sup> NB: In order to renew its permit, the beneficiary is not obliged to retain possession of the Qualifying Property stipulated in the respective legal notice. However, to retain residence s/he must provide a suitable residential address. See: Identity Malta, [FAQ on MRVP](#).

<p>Malta currently runs two RBI schemes and one CBI scheme.</p> <p>CBI scheme.<sup>245</sup></p>	<p>purchases; and €0.15 million in investment in state bonds or projects.</p>	<p>physical presence required by law).</p>		<p>territories<sup>246</sup> – they are free to reside and travel throughout the EU.</p>
<p><b>Portugal</b></p> <p>Portugal currently runs one RBI scheme<sup>247</sup></p>	<p>Requires one of the following: a capital transfer of minimum €1 million; the creation of at least 10 job positions; a purchase of property with a value of minimum €500 000. Other options include investments between €250 000 and €350 000 in capitalisation of small/medium enterprises or in real estate purchase in an urban regeneration area, or into research activities, or artistic production or natural heritage</p>	<p>Minimum of 7 days in the first year - Minimum of 14 days in the subsequent years.</p>	<p>NON-HABITUAL RESIDENT REGIME – Access to this special tax regime is an option for individuals obtaining resident status for the first time – this regime applies within 10 years from the moment of relocation to Portugal. To qualify for this status, the new resident must either stay more than 183 days in Portugal per tax year or hold a dwelling (i.e., a house in Portugal, which can either be a rental or can be owned by the individual).</p> <p>Under this regime, most types of foreign source income are not taxable in Portugal.</p> <p>+ within the 10 years some income is taxed at lower tax rate or even fully tax-exempt.</p>	<p>1 year residence permit that can be renewed twice for 2 years (5 years in total).</p> <p>TCNs who hold a residency permit issued in Portugal are allowed to circulate freely in the Schengen area for up to 90 total days in a 180-day period.</p>

<sup>245</sup> Maltese Citizenship Act, Cap 188.

<sup>246</sup> Based on the '[Henley Passport Index](#)'.

<sup>247</sup> Order no 1661-A/2013 of the Ministry of Foreign Affairs and of the Ministry of Internal Affairs.

			<p>+ Foreign pension income is exempt from income tax.</p> <p>+ Foreign sources investment is exempt from tax in Portugal according to the Double Tax Treaties, however, controlled foreign company rules apply.</p>	
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\* EU Member States that have 'non-Dom regimes' include the UK, Ireland, Malta, Cyprus and now Italy. While their provisions differ, their commonalities include a differentiation in tax laws between 'residents' and 'domiciles'. With this regime, an individual can therefore be deemed as 'domiciled' in a country that differs from her/his country of residence. These regimes operate on a remittance basis, whereby tax is only due when income is remitted to the country in which the taxpayer is resident: it is not taxable when it actually arises. It should be noted that for countries that apply a non-dom regime, citizenship alone does not change the tax treatment of an individual unless they take up residence in the country of question. As a result, the connecting factors for tax jurisdiction are residence and domicile (not nationality).







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This study analyses the state of play and issues surrounding Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes within the European Union (known as 'golden passports' and 'golden visas'). It looks at the economic social and political impacts of such schemes and examines the risks they carry in respect of corruption, money laundering and tax evasion. Finally, it explores the potential for EU action in this field.

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