

# IANUS

Diritto e Finanza



UNIVERSITÀ  
DI SIENA  
1240

Rivista di studi giuridici

<https://www.rivistaianus.it>

n. 19 - giugno 2019

## MONEY-BASED CITIZENSHIP ACQUISITION vs. COUNTRY BELONGING WORLDWIDE

Iryna Sofinska

## MONEY-BASED CITIZENSHIP ACQUISITION vs. COUNTRY BELONGING WORLDWIDE<sup>°</sup>

**Iryna Sofinska**

*Professore associato,  
National University 'Lviv Polytechnic' (Ucraina)*

*La cittadinanza può essere considerata uno strumento giuridico e politico per erigere muri visibili ed invisibili tra due Paesi, aiutare le persone ad attraversare i confini, esercitare la libertà di movimento o limitare le migrazioni. Inoltre, le questioni sulla cittadinanza, influenzate dal denaro potrebbero mettere in crisi il diritto e la società in un mondo fortemente interconnesso su tre aspetti: la globalizzazione, la migrazione ed il consumismo. Questi tre termini si presentano come concetti chiave del ventunesimo secolo in ragione della loro applicazione quotidiana e la precisa influenza esercitata sulle persone, lo stato e la società. La cittadinanza moderna non è più un collegamento funzionale, ma permanente, legale ed effettivo, tra il singolo e lo stato; essa ha perso la sua esclusività ed i suoi valori, divenendo soltanto un'altra forma di appartenenza. Le autorità europee ci hanno convinto che la cittadinanza non è in vendita; pertanto, non se ne può stabilire un prezzo.*

*Il mondo moderno è pieno di disparità crescenti e diffuse tra gli Stati per quanto concerne il prodotto interno lordo, i conflitti armati, la povertà e la disoccupazione, i cambiamenti climatici, che spingono le persone a lasciare le proprie case alla ricerca di un futuro migliore, di sicurezza e prosperità per se stessi e le loro famiglie. Attualmente, in un mondo fortemente interconnesso, le migrazioni internazionali e la mobilità dei capitali sono diventate una realtà che interessa tutti gli angoli del globo. Sotto certi profili, il prezzo reale di tale campagna non è la cittadinanza in sé, bensì la residenza in uno Stato ospite. Sono convinta che in uno scenario ideale dovremmo seriamente migliorare il concetto di cittadinanza, per apportare cambiamenti reali ed utili, non soltanto cosmetici. La cittadinanza dovrebbe essere colta come strumento di condivisione di valori e simboli, indipendentemente dalle separazioni artificiali e dalle barriere mentali che sono state erette soltanto per impedire alle persone di integrarsi nella vita di uno Stato e nelle attività di una società.*

*Citizenship might be considered to be an artificial legal and political instrument that can establish visible and invisible walls between two countries, can help people to cross borders between them, to enjoy the freedom of movement or to prevent them from migration. Moreover, citizenship-related issues influenced by money might produce challenges for law and society in an inter-connected world regarding globalization, migration, and consumerism. Those three words appeared to be contemporary megatrends in XXI century because of their application in everyday life and precise influence on a person, state and society. Modern citizenship is no longer a permanent legal and effective, even a functional link between a person and state, it lost its exclusivity and values, became just another form of belonging. EU officials convince us that citizenship is not for sale; therefore one cannot put a price tag on it.*

*The modern world is full of vast and increasing disparities between countries regarding GDP, frozen arm conflicts, poverty and unemployment, climate changes, which force people*

---

<sup>°</sup> Double blind peer-reviewed paper.

*to leave their homes to search for better future, security and prosperity for themselves and their families. Today, in the intensively inter-connected world, international migration and capital mobility have become a reality that touches nearly all corners of the globe. To some degree, the real prize of such campaign is not citizenship as such, but legal residence in a host state. I am convinced that in an ideal scenario we should seriously upgrade citizenship concept, to proceed with real, proper and useful, but not cosmetic changes. Up to my mind, we should allow drifting on the citizenship front to secure values and shared symbols of citizenship important for every citizen regardless artificial walls, mental-based barriers and obstacles have been built exclusively to prevent people from integration into state and society activity.*

## **Sommario**

1. Introduction
2. What is citizenship?
3. Sovereignty vs. consumerism in terms of citizenship
4. Past and present of citizenship-by-investment
5. CBI as a megatrend in the EU context
6. Conclusions

## 1. Introduction

In modern world full of globalization and permanent migration right of every person to a nationality is considered to be one of the fundamental and inalienable human rights, legally prescribed in the Universal Declaration of Human Rights 1948 (art. 15: everyone has the right to a nationality)<sup>1</sup>, but 'it is for each state to determine under its national law who are its nationals'<sup>2</sup> as we know. By verification of the basic notion of citizenship I try to substantiate the vision that citizenship has a universal complex character: it means not only the formal legal status of a person, but also belonging to the state, as well as points out its permanent in time place legal and effective link between the state and person, without any indication on his/her ethnic origin, which provides for a certain set of mutual rights, duties and privileges<sup>3</sup>. Taking into account the significant European and world experience in the field of citizenship and legal identity of a person we use the basic concept of citizenship without particular differentiation of its four values - the formal legal status of a person; the mutual relationship between a person and a state; a set/bundle of rights, responsibilities, and privileges; collective identity<sup>4</sup>.

U.S. Supreme Court Chief Justice Earl Warren in *Perez v. Brownell* (1958) emphasized that citizenship «*is nothing less than the right to have rights*»<sup>5</sup>. While focusing on this international legal norm, we have to find out what kind of nationality: at birth or after birth, what mode of citizenship acquisition is preferable, how many nationalities can possess one person simultaneously, and finally what is citizenship? Almost 40 years later the Council of Europe adopted the European Convention on nationality 1997, where is highlighted the meaning of nationality in general (art. 2a: nationality is the legal bond between a person and a State and does not indicate the person's ethnic origin)<sup>6</sup>. But in 2018 both articles seem to be too

---

<sup>1</sup> UDHR Art. 15 (1)

<sup>2</sup> Convention on Certain Questions Relating to the Conflict of Nationality Laws, Art. 1 (The Hague, 1930)

<sup>3</sup> Софінська, Ірина. 'Філософсько-правова візія доктрини громадянства'. Львів: Каменярь, 2018. 346 с.: іл

<sup>4</sup> ВАУБӨСК, *Stakeholder Citizenship: An Idea Whose Time Has Come?*, Washington DC: Migration Policy Institute, 2008. P. 3, 12.

<sup>5</sup> WEIL, *The Sovereign Citizen: Denaturalization and the Origins of the American Republic*, Democracy, Citizenship, and Constitutionalism, Philadelphia, 2012, 151-175.

<sup>6</sup> European Convention on Nationality, European Treaty Series - No. 166, Strasbourg, 6.XI.1997 (URL: <https://rm.coe.int/168007f2c8>).

broad since no specific criteria (like period, quantities and modes of citizenship acquisition) which are necessary for every person to satisfy are set.

The core concept of citizenship was a trendy topic during last centuries to discuss among many scholars worldwide in different fields of science, specifically in sociology, political science, history, law, anthropology etc. (D. Beland, R. Bellamy, D. Heater, L. Jamieson, J. Džankić, W. Kymlicka, T.H. Marshall, S. Sassen, Ch. Tilly and B.S. Turner). In the majority, they concentrated on issues of self-awareness, self-definition, and self-consciousness because those features help to discover self-identity as a fundamental concept of selfhood. A lot of scholars across the globe (S. Carrera, J. Dzankic, G.-R. de Groot, J. Habermas, Ch. Joppke, H. Motomura, P. Mouritsen, L. Orgad, H. Schneider, J. Shaw, J.H.H. Weiler, etc.) researched the essence of citizenship, trajectory of its application in different countries since ancient Greece and Rome till XXI century, its political, legal and financial dimension in finding real balance between values, identity, allegiance, security, consumerism.

## **2. What is citizenship?**

Previously citizenship has been based on the pure principle of allegiance (loyalty) to the state, but now we observe a tremendous effect of consumerism on it explicitly in the context of cash-for-passport, citizenship-by-investment, citizenship-for-sale. Sure, those movements are not traditional, but accessible enough for people from the majority of countries worldwide. The modern world is full of vast and increasing disparities between countries regarding GDP, frozen arm conflicts, poverty and unemployment, climate changes, which force people to leave their homes to search for better future, security and prosperity for themselves and their families. Often, results of those movements are beneficial both for the state and a person, who want to improve their welfare, to live more comfortable, to feel safer, not to pay attention to bureaucracy while doing business and not applying for a visa every time they travel worldwide (visa-free travel).

In this article, I'll not write about an assumed contrast between ethnic citizenship regimes based on blood or descent (*ius sanguinis*) and civic ones based on birth in the territory (*ius soli*), because both basic rules are related

to the acquisition of citizenship at birth<sup>7</sup>. Initially, both *ius sanguinis* (bloodline) and *ius soli* (birthplace) are the basic ways to acquire the citizenship and therefore to demonstrate personal self-identity, according to their 'ethnic' or 'civic' conceptions respectively<sup>8</sup>. Contemporary modes of acquisition of citizenship are as followings: by birth: filiation (*ius sanguinis*, *ius soli*, born in a country, born abroad) and after birth (naturalization (ordinary, exceptional/exclusive, privileged); option (voluntarily in case of territory changes); transfer (always arbitrary: filial, spouse, from relatives, to relatives, in case of territory changes). The target of this article is more complex regarding money-based citizenship acquisition after birth based on an individual choice of every person and his/her sizeable investment.

As we know, the concept of 'genuine and effective legal link' is set in the ICJ court ruling in Nottebohm case (Liechtenstein v. Guatemala)<sup>9</sup> in 1955. It supposes to be a kind of 'doctrinal mantra' regarding citizenship: a state's national/citizen, to be a *bona fide* national/citizen entitled to full recognition as such at the international level, must have a 'genuine link' to that particular state<sup>10</sup>. However, the criteria of 'genuine link', specifically the reciprocal relationship between a person and the state granting citizenship are not clear and highly controversial. Also scholars insist that the 'genuine link' theory has questionable pedigree and anachronistic vision of nationality, is the unreflective dogma on the international level, is considered to be inappropriate, ineffective and not flexible tool for the modern legal regulation of nationality<sup>11</sup>.

Among other patterns of citizenship, we can list formal legal status (a legally recognized subject or national of a particular country), belonging (the reciprocal relationship between an individual and a state to which the individual owes allegiance and in turn is entitled to its diplomatic protection). Citizenship implies the status of freedom with accompanying responsibilities. Citizens have a bundle of certain rights, duties, privileges, and responsibilities that are denied or only partially extended to aliens and

---

<sup>7</sup> Софінська, Філософсько-правова візія доктрини громадянства, Львів: Каменяр, 2018. 346 с.: іл

<sup>8</sup> ABRAHAM, *Constitutional patriotism, citizenship and belonging*, *International Journal of Constitutional Law*, 2008, 6 (1), 137–152.

<sup>9</sup> Liechtenstein v. Guatemala, 1955 I.C.J. 4 (1955)

<sup>10</sup> SLOANE, *Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality*, *Harvard International Law Journal*, Vol. 50, Winter 2009, 1 ff., (URL: <https://ssrn.com/abstract=1262877>).

<sup>11</sup> SLOANE, *Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality*, *ibidem*.

other noncitizens residing in a country for an equal time period. Generally speaking, full political rights, including first of all the right to vote and to hold public office, are predicated upon citizenship depending on the mode of its acquisition (in some countries across the globe). The usual responsibilities of citizenship are allegiance, taxation, and military service. Lack of allegiance and/or military service in the foreign country, as well as service in the government of the foreign country (specifically in case of alternative citizenship possession, double nationality), may result in deprivation of citizenship. In a legal sense ‘nationality’ is a somewhat narrower term that is sometimes used to denote the status of those nationals who have full political privileges. Therefore, it must be distinguished from citizenship, because ‘in its narrowest sense, citizenship boils down to ‘nationality’, i.e. a formal affiliation of persons to states<sup>12</sup>.

### 3. Sovereignty vs. consumerism in terms of citizenship

It is a prerogative of every sovereign and democratic state to adopt and determine its own nationality law, to define special/exclusive preconditions for everybody to acquire it by birth or after birth through naturalization, to formulate specific conditions for its termination.

The economic logic of the market XXI century is replacing the political foundation of citizenship by turning it into a commodity: the EU said that you can not place a price tag on it to sell or to buy<sup>13</sup>. However, citizenship by investment industry worldwide has turned nationality into a marketable commodity, no matter the amount written on it<sup>14</sup>. CBI 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>15</sup>. Cash for passport became a new trend and ultimate status symbol for wealthy people all over the world in an era of globalization, but does money-based acquisition of alternative citizenship after birth destroys its essential values (such person loses ties to the country of birth because it is based only on valuable

---

<sup>12</sup> BAUBÖCK, *How migration transforms citizenship: international, multinational and transnational perspectives*, IWE -Working Paper Series, n. 24, February 2002, 4.

<sup>13</sup> REDING, *Citizenship must not be up for sale*, Speech/14/18. Plenary Session debate of the European Parliament on ‘EU citizenship for sale’ /Strasbourg, 15 January 2014 (URL: [http://europa.eu/rapid/press-release\\_SPEECH-14-18\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-18_en.htm))

<sup>14</sup> DZANKIC, *The global market for investor citizenship*, London, 2019, 91-132.

<sup>15</sup> SHACHAR, *Dangerous Liaisons: Money and Citizenship*, in SHACHAR - BAUBÖCK (eds), *Should citizenship be for sale?*, EUI working paper, 2014, 3-8.

contribution of donors) and opens door for persons with corruption and criminal past? Some scholars emphasize that now is high time to act, to investigate the real essence and modern patterns of citizenship, to proceed careful review of its impact on everyday life and to accelerate the global fight against corruption and criminality in sphere of citizenship acquisition after birth since it (exclusively an alternative citizenship) can be sold and bought<sup>16</sup>.

An increasing number of countries across the globe are designing and adopting specific policies to attract high net-worth foreigners from emerging economies or from countries experiencing ongoing political or economic instability by offering them additional opportunities to obtain citizenship in exchange for a substantial financial contribution to the domestic economy<sup>17</sup>. The main reasons for the increasing popularity of CBI programs among the wealthy people (foreign investors' motivations to apply) are the followings: the desire for more comfortable travel, keeping in mind visa restriction index, the search for a safe haven in the context of a deteriorating geopolitical climate and increased security concerns, facilitation of business (access to desirable market, relatively more favorable tax treatment, etc.).

There is also a booming global business of selling passports with high mobility value to foreign investors, where states that offer citizenship for cash or sizeable investment usually do not require that their newly minted citizens must take up residence<sup>18</sup>. The definition of residence means 'habitual residence' or 'usual centre of interests' has wide meaning in EU context (it should be determined by taking into account not on a single factor, but on a collection of elements that together enable the individual's situation to be assessed and categorized as a residence).

The rules of this political and financial 'game' in the world market of investment migration are diverse and shaped enough. On the one hand, government officials effectively demonstrate their preference for quick gains over longer-term impacts (keeping in mind classic definition of citizenship used by the ECN 1997 as 'the legal bond between a person and a State and

---

<sup>16</sup> SOFINSKA, *Obywatelstwo w zamian za inwestycję: analiza konstytucyjno-prawna*, Studia z Zakresu Prawa, Administracji i Zarządzania Uniwersytetu Kazimierza Wielkiego w Bydgoszczy, 2014, nr 5. s. 91–100.

<sup>17</sup> DŽANKIĆ, *Immigrant investor programmes in the EU*, *Journal of contemporary European studies*, 26-1, 2018.

<sup>18</sup> BAUBÖCK, *Migration and Mobility: European Dilemmas*, Knowledge for Change lecture series #6, 2019, (URL: [https://knowledgeforchange.mau.se/files/2019/01/KFC\\_6\\_Rainer\\_Baub%C3%B6ck.pdf](https://knowledgeforchange.mau.se/files/2019/01/KFC_6_Rainer_Baub%C3%B6ck.pdf))

does not indicate the person's ethnic origin'<sup>19</sup>). On the other hand, wealthy foreigners (in the EU context commonly known as third-country nationals, the TCNs) want to seek a better life outside their countries of origin, to secure their lives in future regardless of country of origin, to facilitate business and to have access to particular markets (for example to 'port' it throughout the European market), to have visa-free travel to much more countries worldwide, to receive privileged tax regime, to evade sanctions, etc. In such circumstance, citizenship-by-investment (commonly known as CBI) is considered to be a helpful addition.

In this article I make an effort to verify in shaping and sharpening up which state policy indicators ensure main purposes of the acquisition of citizenship, what legal sources regulate questions related to citizenship, what is citizenship in reality, where is the balance between allegiance and consumerism, values and human rights protection, national identity / public security and public interest / public policy. The schemes of fast-track citizenship acquisition (how to make it easier to acquire alternative citizenship and to buy it in terms of investment migration) threaten the integrity of the EU, contradict European values and pose a potential risk to security, create significant challenges to financial stability and integrity. Those schemes devalue the meaning of citizenship and their patterns.

#### **4. Past and present of citizenship-by-investment**

At the beginning 2019, the European Commission reported warnings about the fact that such programs (citizenship-by-investment or cash-for-passport) pose high 'risks to security, including the possibility of infiltration of non-EU organized crime groups, as well as risks of money laundering, corruption, international tax avoidance and financing of terrorism'<sup>20</sup>. "The commission's proposal is half-hearted and was presented only at the insistence of the European Parliament" said Sven Giegold, Member of the European Parliament from Germany and member of the Alliance 90/The Greens, part of the European Green Party, who has campaigned to abolish

---

<sup>19</sup> European Convention on Nationality Strasbourg, 6.XI.1997, Council of Europe: European Treaty Series - n. 166 (URL:<https://rm.coe.int/168007f2c8>).

<sup>20</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, Brussels, 23.1.2019. P.1 (URL: [https://ec.europa.eu/info/sites/info/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf)).

such practice related to CBI and the golden visa industry within the EU. The European Commissioner for Justice, Consumers and Gender Equality in the 'Juncker Commission' since October 2014, Věra Jourová, who ordered the report, said that in future, people obtaining an EU nationality must have a 'genuine connection to the EU member state'<sup>21</sup>.

However, such specific investor citizenship schemes are broadly based on the discretionary powers of every EU Member State and belong to shared competences in so-called catalogue of competences; it must be more transparent regarding special conditions/options of EU Member States citizenship granting. Also, the EU must have some 'preventive power' and act as a warning to the EU Member States in this particular sphere because «because if in one country a dangerous person gets citizenship, he/she gets citizenship for the whole of Europe»<sup>22</sup>.

CBI programmes as a form of commodification of citizenship are emptying citizenship from within. They are not new, but are growing exponentially since the beginning of the XXI century. Sometimes CBI programmes are mentioned to be a symbol of 'commercialization of sovereignty'. Little-known outside wealthy circles across the globe, citizenship-by-investment (as well as 'the golden visa industry') first came into existence in 1984. The tiny Caribbean islands of St. Kitts and Nevis pioneered the modern-day methods for the marketing of citizenship and decided to bring in additional donations to a national trust fund, or investments in property or government bonds, in exchange for citizenships/passports of a country in which they have never lived<sup>23</sup>.

Afterward, different countries worldwide followed them by setting up schemes to provide foreign investors with passports, residency visas or citizenship in exchange for cash (cash-for-passport or citizenship-for-sale) regardless of their physical presence in the country. They joined a small but growing list of states that offer naturalized citizenship to aliens by significant much-needed investment in their respective economies. In 2013 and 2014, Antigua and Barbuda and Malta launched new citizenship programs

---

<sup>21</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, Brussels, 23.1.2019 (URL: [https://ec.europa.eu/info/sites/info/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf)).

<sup>22</sup> 'Golden passports' threaten European security, warns EU commissioner (URL: <https://www.theguardian.com/world/2018/oct/16/golden-passports-threaten-european-security-warns-eu-commissioner>).

<sup>23</sup> SHACHAR, *Citizenship for Sale?*, in *The Oxford Handbook of Citizenship*, Oxford, 2017, 794-796.

(parliament of both countries approved bills that will allow for the grant of citizenship to foreign investors who inject a significant amount of money into the domestic economy), while Grenada revived its previously retired program. Cyprus amended existing CBI program since 2011 to provide more investment options (including different financial instruments, like government bonds, bank deposits, in addition to its original real estate or other private investment option) to those investors who lost at least EUR 3 million in the European Union bailout. Dominica has also recently amended existing since 1993 CBI program by introducing an additional real estate investment option.

For the past at least ten years, EU Member States have been experiencing a visible population shortage, mainly because of significant socio-economic and financial disparities between them, freedom of movement and visa-free travel. To combat this drain, some EU Member States like Bulgaria, Cyprus, Malta introduced citizenship-by-investment programs in 2005, 2007 and 2013 respectively. In the report 2019 is mentioned that ‘these three EU Member States, there is no obligation of physical residence for the individual, nor a requirement of other genuine connections with the country before obtaining citizenship’<sup>24</sup>. Two EU Member States, Cyprus, and Malta, continue to sell citizenship, while Bulgaria plans to terminate its citizenship-by-investment programme (as it was announced in January 2019 just a day before the EU Commission report was released). Among main reasons for such early termination of Bulgarian CBI program (it was launched in 2013, and only 50 foreigners mainly from Russia, Egypt, Israel, and Pakistan were granted Bulgarian citizenship by investment) we can list the followings: ‘the aim to increase real foreign investment and economic development has not been achieved, new jobs have not been created and economic growth been boosted’<sup>25</sup>.

CBI programme is usually defined as an alternative passport programme, based on investment/donation without the need to abandon your current passport under which investors can enjoy and secure their right to free movement throughout the EU. 23 EU Member States (not Belgium, Denmark, Finland, and Sweden) offer to wealthy foreigners residence

---

<sup>24</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, Brussels, 23.1.2019 (URL: [https://ec.europa.eu/info/sites/info/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf)).

<sup>25</sup> Bulgaria plans to end passport-for-sale scheme (URL: <https://uk.reuters.com/article/uk-eu-passports-bulgaria-idUKKCN1PG1P3>)

permits for cash. However, Hungary suspended its scheme in April 2017. What is efficient, governments of involved EU Member States actively promote such CBI programs, which, usually, contradict the traditional way of acquisition of citizenship ('less stringent conditions than under ordinary naturalization regimes, in particular without effective prior residence in the country concerned')<sup>26</sup>.

At EU level CBI schemes are increasingly being mainstreamed and typically have the following features: their targets are wealthy TCNs; they are provided by a transparent, delineated process for foreign investors to make a sizeable investment in return for citizenship; such investments can be active (for instance, they require the setting up of a business on the territory concerned that comes with the creation of jobs, at least 10), 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 (prior residence or physical presence)<sup>27</sup>.

Five types of investment options related to CBI programs and 'golden visa industry' can usually be observed regarding all the EU Member States:

- capital investment in company (Bulgaria, Estonia, Ireland, Spain, France, Croatia, Italy, Latvia, Lithuania, Netherlands, Portugal, Romania, Slovakia, United Kingdom) or in credit or investment funds / trust funds (Bulgaria, Estonia, Ireland, Spain, Cyprus, Latvia, Netherlands, Portugal),
- investment in immovable property: to buy, or to rent a real estate property of a definite value (Ireland, Greece, Spain, Cyprus, Latvia, Malta, Portugal) to renting it (possible in Malta and Greece),
- investment in Government bonds (Bulgaria, Spain, Italy, Latvia, Hungary, Malta, and the United Kingdom),
- donation or endowment of an activity contributing to the public good, a public project benefiting the arts, sports, health, culture or education

---

<sup>26</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, Brussels, 23.1.2019 (URL: [https://ec.europa.eu/info/sites/info/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf))

<sup>27</sup> SCHERRER – THIRION, *Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU: State of play, issues and impacts*, European Parliamentary Research Service, PE 627.128 – October 2018, 12 (URL: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627128/EPRS\\_STU\(2018\)627128\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627128/EPRS_STU(2018)627128_EN.pdf))

philanthropic donations artistic and research activities (Ireland, Italy, Portugal), and finally

- one-time contributions to the State budget (Latvia, Malta)<sup>28</sup>.

All CBI programs vary substantially in their design, conditions, and cost. Cyprus and Malta have introduced a cap of successful applications per annum for foreigner investors (in particular, Cyprus decided to limit such citizenships-by-investment to 700 applications per year since 2018). However, Bulgaria did not at all<sup>29</sup>. The common feature of all CBI programs is that they allow either direct citizenship (discretionary naturalization) or provide a visible route towards citizenship in return for a sizeable financial investment in the economy of a host country or a contribution to the public sector.

CBI programs as an allowance to the super-rich TCNs to obtain fast-track citizenship of EU Member State (notably Cyprus, Malta and Bulgaria) can arguably be perceived as discriminatory in nature, since all of them are on transit migration route of mixed migration flows to the EU and are not similarly open to refugees and those migrants, who have no money: they remain on the wrong side. A. Shachar argues that «citizenship as we know it (at least since Aristotle) is constituent of political relation; as such, it is expected to both reflect and generate a notion of participation, co-governance, and a degree of solidarity among those included within the body politic. It is difficult to imagine how these values could be preserved under circumstances in which insiders and outsiders are distinguished merely by the ability to pay a certain price»<sup>30</sup>.

Separate attention must be paid to the existence of CBI programs in candidate countries and potential candidates to access the EU, because citizenship of these particular countries becomes rapidly attractive to foreigners. At this point, we should mention that a citizenship investor scheme is already in place in Turkey since 2010<sup>31</sup>, while in Montenegro,

---

<sup>28</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, Brussels, 23.1.2019, 7 (URL: [https://ec.europa.eu/info/sites/info/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf)).

<sup>29</sup> Factual Analysis of Member States' Investor Schemes granting citizenship or residence to third-country nationals investing in the said Member State / prepared by Džankić, Psaila, Leigh and Gómez Rojo for Milieu Ltd. under the contract JUST/2016/RCIT/FW/RIGH/0152 (2017/06). Brussels, July 2018, 23 (URL: [https://ec.europa.eu/info/sites/info/files/deliverable\\_d\\_final\\_30.10.18.pdf](https://ec.europa.eu/info/sites/info/files/deliverable_d_final_30.10.18.pdf)).

<sup>30</sup> SHACHAR, *The Birthright Lottery*, Harvard University Press, 2009, 56.

<sup>31</sup> Regulation on the Application of Turkish Citizenship Act (Official Gazette 6 April 2010, 27544), amended by the Regulation on the Changes on the Regulation Regarding the

preparations for the implementation of such a scheme, which was adopted in November 2018, were launched just recently (in January 2019)<sup>32</sup>. Another challenge appears when CBI schemes have been run by third countries, if possession of their citizenship in question grants visa-free access to the European Union for short stays (like Moldova in 2018).

## 5. CBI as a megatrend in the EU context

Even though the acquisition of national citizenship of every EU Member State is the pure national question and is not governed/covered by EU law because of the principle of subsidiarity application, naturalization decisions adopted by one EU Member State does not matter which are 'not neutral' with regard to the EU as a whole<sup>33</sup>. Indeed, the EU citizenship is additional to national citizenship of every EU Member State.

Academics, politicians and EU Member State government officials are discussing the controversial question on cash-for-passport since 2014, spurred by the Maltese 'citizenship for sale' affair: Maltese governmental initiative dated back to 2013 to launch the CBI<sup>34</sup>. Maltese governmental officials introduced profitable schemes which 'directly or indirectly result' in an effective sale of EU citizenship (being complementary to national citizenship and does not intend to replace it), temporary or permanent residence permits to wealthy foreigners, who make exceptional/substantial/sizeable investments in the EU Member State concerned to enjoy freedom of movement, to obtain Schengen Area residence permits, to have an access to the European market and funds, grants a right of entry to privileged tax regimes, offers easy access to a wide range of other

---

Application of Turkish Citizenship Act (Official Gazette 12 January 2017, 29946) and by the Presidential Decree No. 106 (Official Gazette 19 September 2018, 30540).

<sup>32</sup> Decision of 22 November 2018 on the criteria, method and procedure for selection of persons who may acquire Montenegrin citizenship by admission for the purpose of implementation of special investment programs of special importance for the business and economic interests of Montenegro

<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=344979&rType=2>

<sup>33</sup> REDING, *Citizenship must not be up for sale*, Speech/14/18. Plenary Session debate of the European Parliament on 'EU citizenship for sale' /Strasbourg, 15 January 2014 (URL: [http://europa.eu/rapid/press-release\\_SPEECH-14-18\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-18_en.htm)).

<sup>34</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 Working Paper No. 64/April 2014 (URL: <https://www.ceps.eu/system/files/LSE%20No%2064%20Price%20of%20EU%20Citizenship%20final2.pdf>).

advantages<sup>35</sup>. In the EU context it was going not just about the nationality of the country concerned. Notably, no one can become an EU citizen without first passing through the hands of the EU member state, but also about the supranational status enshrined in the citizenship of the Union<sup>36</sup>. From an EU legal viewpoint every decision of one EU Member State to grant citizenship for investment automatically confers to successful applicant rights in relation to other EU Member States, in particular free movement rights, the right to vote and stand as a candidate in local and EU elections, the right to consular protection if unrepresented outside the EU and rights of access to the internal market to exercise economic activities (Article 20(2) TFEU).

In January 2014, the European Parliament debated the 'citizenship for sale' issue, while the confirmation of the EU deep concern was expressed in the Resolution of 16 January 2014. Viviane Reding, then Vice-President of the European Commission (Barroso II), emphasized promptly that 'citizenship must not be up for sale'<sup>37</sup>.

The Maltese CBI and similar schemes applicable in the other EU Member States were strongly criticized, in particular in relation to the general principle of fairness and discrimination ('long-distance' citizens, who will not actively take part in society), the EU principle of sincere cooperation (benefits of the EU citizenship, enjoyed by wealthy TCNs-investors, having resided outside the EU) and the lawfulness of these schemes as regards the criteria of a 'genuine link' (as it was established by the International Court of Justice in the 1955 *Nottebohm* decision: in order to be recognized as a citizen of a state, a meaningful connection to the state had to be established)<sup>38</sup>.

To apply for the fast-track citizenship-by-investment in the EU, the person must first invest. Both, an amount of the investment (from a very low investment below EUR 100,000 in Croatia) to a very high investment (over

---

<sup>35</sup> European Parliament Resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP)).

<sup>36</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 Working Paper No. 64/April 2014 (URL: <https://www.ceps.eu/system/files/LSE%20No%2064%20Price%20of%20EU%20Citizenship%20final2.pdf>).

<sup>37</sup> REDING, *Citizenship must not be up for sale*, Speech/14/18. Plenary Session debate of the European Parliament on 'EU citizenship for sale' /Strasbourg, 15 January 2014 (URL: [http://europa.eu/rapid/press-release\\_SPEECH-14-18\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-18_en.htm)).

<sup>38</sup> SCHERRER - THIRION, *Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU: State of play, issues and impacts*, European Parliamentary Research Service, PE 627.128 – October 2018, 23-24 (URL: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627128/EPRS\\_STU\(2018\)627128\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627128/EPRS_STU(2018)627128_EN.pdf)).

EUR 5 million in Slovakia and Luxembourg) and application of a physical presence test depend on the country, as well as the ways how it (investment) can be made. A non-financial investment might be required: like the creation of jobs (in Bulgaria, Czechs Republic, Spain, France, Croatia, Latvia, Netherlands, Portugal, Romania) and contribution to the economy (in Bulgaria, Czechia, Greece, Spain).

Fast-track citizenship schemes, whereby countries sell passports or alternative citizenship after birth in exchange for the sizeable investment, are almost universally carried out in complete secrecy (the names of such investors / successful applicants are never published officially while raising sufficient challenges in terms of transparency).

Once the person is approved as the investor and obtained alternative citizenship-by-investment, his / her family members qualify to obtain the permanent residency as well and enjoy the same benefits as the investor by transferred from him/ her alternative citizenship. Even though such investor and his / her family are not physically present in the country of their alternative citizenship, they'll not lose their permanent residency status. The entire process of obtaining a second passport (alternative citizenship after birth in a country other than origin) regarding CBI takes much shorter than the time of ordinary naturalization.

It is up to every state to decide who is eligible/wanted/worthy/desirable to become a citizen. However, there is a variety of naturalization mechanisms, relevant to the acquisition of citizenship in exchange for exceptional investment. They include legal provisions in nationality laws for the discretionary naturalization on the grounds of national interest usually in terms of sports, art, economy, or exceptional services. Common features for CBI and discretionary naturalization on the grounds of national interest: successful applicants do not need to know the language of that particular state and have civic knowledge, can become a dual citizen and do not need to renunciate their prior citizenship, do not need to give an oath of allegiance to this country.

An ordinary person is subject to revocation of naturalization if he or she procured naturalization illegally, which means that the person was not eligible for naturalization because any eligibility requirement for naturalization was not met or a person failed to comply with any of the requirements for naturalization.

## 6. Conclusions

To conclude, conferring citizenship by significant financial investment is supposed to be qualitatively different than conferring citizenship on other bases (filiation, naturalization, option, transfer). Citizenship-by-investment creates formal boundaries and artificial discriminative barriers based exclusively on money for those who are outside and want to be inside. Policymakers might well be motivated to adopt CBI programs to exchange a higher-value good (citizenship) for a lower value good (money), and to bring more investments to the domestic economy. Foreign investors might be interested to apply CBI programs to secure their wealth, business and lifestyle. Promotion of the fundamental values of society results in public confidence in the justice, democracy, the rule of law, fair and impartial immigration system of every EU Member State and the credibility of their government commitments to protect human rights (in particular, right on nationality). In light of the significant impacts affecting the EU Member States and the EU as a whole, the EU should take action, which could bring potential benefits to the EU, but not exceed EU competence regarding citizenship acquisition. In any case, this action should be based on the principles of subsidiarity and proportionality application, ensuring the EU integrity and values.