

## Statement by the Investment Migration Council (IMC) concerning the European added value assessment: ‘Avenues for EU action on citizenship and residence by investment schemes’ of the European Parliamentary Research Service

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Geneva, 4 November 2021

On the 21 October 2021, the European Parliamentary Research Service (EPRS) published a Study - [European added value assessment](#) (EAVA) intended to support the drawing up of a legislative-initiative report on Citizenship and residence by investment (CBI/RBI) programmes by the European Parliament's Committee on Civil Liberties and Home Affairs (LIBE Committee). The ERPS defined five policy options for the future of investment migration programmes in the EAVA:

- Phasing out CBI/RBI programmes;
- Taxing CBI/RBI programmes;
- Regulating conditions, guarantees and safeguards of CBI/RBI programmes;
- Introducing minimum presence requirements for RBI schemes and amending the scope of the Long-term Residence Directive (2003/109/EC);
- Regulating access to the EU for third countries with CBI/RBI schemes.

The Investment Migration Council (IMC) welcomes the EAVA and EPRS efforts to take into consideration both positive and negative aspects of investment migration programmes. We are also pleased to see that our efforts in engaging are useful and that many academic research papers and reports we published or worked on have been consulted for the preparation of the EAVA.

The IMC has been restlessly working on the strengthening of standards under which investment migration programmes operate. Thus, in 2019, the IMC together with due diligence experts BDO USA, Exiger and Refinitiv formed a Due Diligence Working Group to examine the state of due diligence within IM and then explore the potential for creating minimum standards for agents dealing with IM programmes and governments with such programmes. The work of the Due Diligence Working Group resulted in the publication of two reports by Oxford Analytica in 2020. The First Report, ‘Due Diligence in Investment Migration: Current Applications and Trends’, explained the circumstances and trends in the field of investment migration, while the Second Report, ‘Due Diligence in Investment Migration: Best Approach and Minimum Standard Recommendations’ recommended the adoption of minimum standards in investment migration. These two reports present the actual situation on the ground and offer solid solutions to the existing problems in the field. The EAVA closely resembles some of the observations and



recommendations made in the reports even if it does not directly rely on them. However, we feel that EPRS has not used the reports to their full potential, omitting to take into consideration and elaborate further the proposed minimum due diligence standards. The two reports were conducted by highly respectable due diligence experts with significant experience in the field and represent a first yet solid attempt for setting common standards for the investment migration industry.

With regard to the suggested policy options in the EAVA, the IMC is supportive of the third option. In fact, the IMC is a strong advocate of regulating investment migration and has repeatedly offered its support and cooperation in the field to international and supranational organisations.

We welcome that the third option for regulating conditions, guarantees and safeguards of investment migration comes very close to the recommendations made by the IMC and expert due diligence providers for creating strict harmonised standards for all parties working in investment migration.

Unlike other policy options defined in the EAVA that either start with the premise that investment migration has essentially detrimental effects and should, therefore, cease to exist or be made less attractive through certain measures, the third option offers a lasting solution that addresses risks inherent to investment migration while allowing for continuity of debt-free capital inflows to Member States with investment programmes. Furthermore, and as recognised by the ERPS, the legal basis for phasing out citizenship by investment by the EU are weak and even if such a step is taken, heightened demand for other, similar, migration pathways would rise. The IMC, therefore, does not support the first option suggested by the EPRS.

Similarly, the second option is aimed at compensating for negative externalities and/or discouraging the use of investment programmes. To that end, the EPRS has suggested that tax is introduced similar to the tax demanded from environmental polluters. However, unlike pollution that has proven negative effects, no known negative effects of investment migration have been established or quantified yet. While associated risks cannot be denied and should be addressed accordingly, investment migration has contributed significantly to financial inflows of states with such frameworks. The IMC is, therefore, of the view that investment migration should not be discouraged but encouraged along with the strengthening of transparency and harmonised due diligence standards.

Regulation of investment migration by implementing measures to promote transparency, consult and facilitate audits at EU level, as suggested by the third policy option, is an acceptable and much needed solution. In such scenario, investment migration would be regulated in four general areas: 1) Regulation of the service providers' value chain; 2) Regulation of approvals and approval procedures; 3) Regulation of investments and capital inflows related to the programmes; 4) Information and consultation with the EU when programmes are established and modified, and EU level audit of the schemes. There are solid legal bases in EU law for such regulation of investment migration that would minimise inherent risks of the industry allowing for increased transparency, oversight and higher due diligence standards.



Contrary to this, introducing minimum residence requirements for residence by investment programmes as suggested by the fourth option would discourage investors (who are usually busy people with dynamic lifestyles) from applying, making investment migration unattractive. Same applies to the fifth option which is related to enhanced vetting of third-country nationals entering the EU. Such policy is primarily meant for non-EU countries with investment programmes rather than for EU Member States and is, therefore, insufficient in itself. Enhancing vetting of third-country nationals who have gained their citizenship through investment may create discrimination among citizens of same nationality and make investment migration unattractive.

In summary, the suggested option for regulation of investment migration is the only viable option that would address all risks inherent to the industry while maintaining the benefits. Notwithstanding the strong efforts of the IMC to enforce minimum due diligence standards in the field, the lack of regulation on an international or supranational level has prevented the full implementation of such standards. The IMC, therefore, welcomes the proposal of the EPRS for regulation of investment migration, hoping that the third policy option will be seriously taken into consideration and further elaborated by the LIBE Committee.



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# Avenues for EU action on citizenship and residence by investment schemes

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European added  
value assessment

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## STUDY

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**EPRS | European Parliamentary Research Service**

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European Added Value Unit  
PE 694.217 – October 2021

EN



# Avenues for EU action on citizenship and residence by investment schemes

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## European added value assessment

Citizenship and residence by investment schemes allow third-country nationals to obtain residence or citizenship in a host country in exchange for a financial contribution. In the European Union (EU), at least 130 000 persons have taken advantage of such schemes, which have generated over €21.8 billion in revenue for the countries concerned. This European added value assessment (EAVA) reviews the key issues raised by investment schemes and the possible legal bases on which the EU could act to address them. Several policy options are put forward that could be implemented through amendments to existing EU legislation or by introducing new legislation. The policy options include: (1) Phasing out investment schemes in the EU; (2) Applying an EU-level tax on investment schemes; and (3) Regulating investment schemes. In addition, the assessment considers the introduction of minimum physical presence requirements on residence by investment schemes and regulating access to the EU for investor migrants from third countries. The policy options are assessed in terms of their potential consequences and impacts, subsidiarity, proportionality and the overall added value the EU might gain.

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Annex II – Citizenship and residence by investment schemes - State of play and avenues for EU action – was written by Dr Kristin Surak, Associate Professor at the London School of Economics.

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## Executive summary

### Why this assessment?

Citizenship by investment (CBI) and residence by investment (RBI) schemes allow third-country nationals to obtain residence or citizenship in a host country in exchange for a financial contribution. The global market for such schemes has increased over time and are in operation in more than 60 countries around the world.<sup>1</sup> Mirroring this trend, four EU Member States had such schemes in 2011, compared with more than half the Member States today.<sup>2</sup> In total, at least 130 000 persons have gained EU citizenship or residence, under investment schemes that have brought in over €21.8 billion.<sup>3</sup>

The European Parliament's Committee on Civil Liberties and Home Affairs (LIBE Committee) is drawing up a **legislative-initiative report (INL) on 'Citizenship and residence by investment schemes'**. This European added value assessment (EAVA) is intended to support the European Parliament's legislative initiative. The assessment presents an objective, evidence-based review of the key issues raised by the operation of investment schemes in the EU. It then investigates the possible legal bases for EU action and assesses several policy options that could be pursued at the EU level.

The EAVA is accompanied by two annexes – **Annex I** is a review of possible legal bases for EU action, while **Annex II** is a research paper prepared on commission by expert Dr Kristin Surak.

### What are the key issues raised by CBI/RBI schemes and their impacts?

CBI and RBI schemes raise five key issues:

- Issue 1: Risk of violating the principle of sincere cooperation,
- Issue 2: Risk of commodification of EU citizenship and residence,
- Issue 3: Risks of violation of the principles of fairness and discrimination,
- Issue 4: Risk of weak vetting and due diligence,
- Issue 5: Lack of sufficient safeguards for macro-economic governance.

The potential risk that Member States face in violating the principle of **sincere cooperation** can lead to a '**free riding**' situation, where Member States charge a price for a 'good' that is collectively created and provided at the EU level. Moreover, the potential risks of RBI/CBI schemes can be understood as externalities that are borne by all Member States, while the benefits of the schemes only accrue to some. As highlighted previously by the European Parliament and the European Commission, the risk of commodification of EU citizenship and residence is an issue. This study argues that, rather than focusing on the lack of a 'genuine link' with the EU or its Member States, attention should be paid to **discrimination and the lack of fairness** when comparing CBI/RBI schemes with traditional pathways to residence and citizenship in the EU, particularly for labour

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<sup>1</sup> Alan G., Chris K. and Ashby M., 'Citizenship as Sovereign Wealth: Re-thinking Investor Immigration', Global Policy 10 (4), 2019, pp. 527-41.

<sup>2</sup> The following Member States have CBI and/or RBI schemes where the investment requirement is purely financial: Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal and Spain. The assessment contrasts with a previous assessment by the EPRS, which included schemes that require active human capital investment within its scope: A. Scherrer and E. Thirion on [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU – State of play, issues and impacts](#), EPRS, European Parliament, 2018

<sup>3</sup> Please see Section 2.3 for more information.



migrants and their family members. While studies outline the potential risks of RBI/CBI in terms of corruption, money laundering, tax evasion and avoidance, it is difficult to substantiate the scale of this risk due to **limited data and transparency**. Nevertheless, indices show CBI/RBI schemes are more likely to be found where there is **higher financial secrecy** and/or **poorer control of corruption**. Considerations of macro-economic governance are also relevant, since in some countries these schemes represent non-negligible shares of gross domestic profit (GDP) or of the economy in some sectors – as are considerations in the light of European Parliament resolutions on **tax competition** and **access to housing**.

### What can the EU do?

The Treaty on the Functioning of the European Union (TFEU) offers several avenues for EU action on CBI/RBI schemes. These include the **fundamental principles** of the EU followed by **criminal law**, as these schemes 'have raised concerns about certain inherent risks, in particular as regards security, money laundering, tax evasion and corruption'. Articles 21 and 79 TFEU concerning **citizenship and immigration** are also relevant because of the rights granted by CBI/RBI schemes, albeit legally contested. **Internal market law** is also relevant, given that investment schemes are primarily based on financial transactions and are supported by an industry of private providers. Several legal bases within the area of the EU's **external action** are also reviewed with respect to rules on border checks, asylum and immigration, and subsequently, external, commercial and enlargement policy. Lastly, **administrative law** is relevant to support cooperation and exchange at the Member State level.

### Scope of the assessment

The assessment defines five broad policy options which are described briefly below.

**Policy option 1: Phase out CBI/RBI schemes.** This policy option considers a phasing out of CBI/RBI schemes in the EU. On CBI, this possibility will be investigated separately from RBI, due to the different legal basis requirements and the potential consequences and impacts.

**Policy option 2: Tax CBI/RBI schemes.** This policy option would regulate CBI and RBI schemes via a tax to uphold fundamental rights and rule of law, which are enshrined in the Treaties. The tax can aim to 'compensate' for the negative externality and/or discourage the use of these schemes.

**Policy option 3: Regulate conditions, guarantees and safeguards of CBI/RBI schemes.** This policy option would regulate CBI and RBI schemes by requiring Member States that implement them to introduce measures to promote transparency, consult and facilitate audits at EU level. The schemes would be regulated in four general areas:

- Regulation of the service providers' value chain;
- Regulation of approvals and approval procedures (e.g. setting a cap on the annual number of approvals, strengthen due diligence procedures on applicants, strengthen tax transparency measures);
- Regulation of investments and capital inflows related to the schemes (e.g. in line with anti-money-laundering (AML) requirements);
- Information and consultation with the EU when schemes are established and modified, and EU level audit of the schemes.

This policy option is the most complex in terms of the number of elements and the different legal bases to support them.

**Policy option 4: Introduce minimum presence requirements for RBI schemes and amend the scope of the Long-term Residence Directive (2003/109/EC).** This policy option focuses specifically on RBI schemes and could be implemented together with policy options 2, 3 and/or 5.

**Policy option 5: Regulate access to the EU for third countries with CBI/RBI schemes.** This policy option differs from policy options 1-4 and can rather be understood as an action that could be taken in parallel focusing on the EU's external relations. Its design could mirror EU policy changes with respect to policy options 1-4. These actions would include:

- Regulation of access to the EU by participants in investment migration programmes in countries undergoing the accession process;
- Regulation of access to the EU for participants in CBI programmes in other third countries that have visa-free agreements with the EU.

All the policy options would be expected to reduce (or eliminate in the case of policy option 1) the demand for CBI/RBI schemes while promoting their integrity. Policy option 3 would imply the most substantial costs and administrative burden for the EU and its Member States, but these could be passed on to some extent to the applicants for CBI/RBI schemes.

The assessment identified three key legal issues that could hinder EU action on RBI/CBI. The first is that of **EU and Member State competences**. The scope of Union competence on acquisition and loss of citizenship is disputed, since these are often considered to be within the exclusive remit of the Member States, which may constitute a barrier for policy option 1. Moreover, this action may go beyond what is necessary to achieve the desired objectives. Taxation policy also pertains mainly to Member State competence, which would represent an obstacle for policy option 2. Second, regulating CBI/RBI schemes could require a **range of different legal bases** without a reliance on a single basis, although respect for the integrity of the internal market would be key. Third, the **legal basis is stronger for revisions of existing directives or regulations**, such as those related to AML, due diligence and long-term residence, as in the case of policy options 3 and 4. Subsidiarity and proportionality considerations are also stronger in these cases. Regulating third-country access to the EU and ensuring an area of prosperity and good neighbourliness are, however, within the realm of EU competence, as discussed in policy option 5. The EAVA does not take into consideration the political feasibility of the policy options.

Overall, EU action on CBI/RBI schemes could generate a **range of desirable impacts**, including:

- Increased transparency and governance of CBI/RBI schemes;
- Lower risk profile of persons admitted to the EU through CBI/RBI schemes;
- Greater cooperation between Member States;
- Lower risks of money laundering and tax avoidance;
- Reduced conflicts of interests of private actors, leading to lower risk of corruption.

This assessment finds that EU action could generate **EU added value** in several areas:

- Increasing awareness of EU citizenship;
- Promoting mutual trust and cooperation among Member States;
- Levelling the playing field across Member States;
- Greater coherence with anti-discrimination and legal migration policy frameworks in the EU.

CBI/RBI schemes contribute to a global competition for securing capital that leads countries to lower their standards for background security checks, on tax coordination and controlling corruption. EU action on CBI/RBI schemes could offer value as a **counterweight to national private interests and the global 'race to the bottom'**. In other words, EU action could promote the common good in the EU and globally in terms of the transparency and coordination of tax and capital flows, thus generating **positive spill-over effects** to areas beyond CBI/RBI schemes.

Table 1 – Summary of assessment

		Strength of legal basis	Proportionality/ subsidiarity	Consequences and impacts
Policy option 1	Phase out CBI schemes	*	*	<ul style="list-style-type: none"> <li>Reduced commodification of EU citizenship/residence and associated risks</li> </ul>
	Phase out RBI schemes	*/**	*/**	<ul style="list-style-type: none"> <li>Lower financial inflows to Member States with CBI/RBI schemes</li> <li>Heightened demand for other, similar, migration channels</li> </ul>
Policy option 2	'Externality tax' on CBI/RBI schemes	**	**	<ul style="list-style-type: none"> <li>Reduced incentives to use the schemes</li> <li>Lower financial inflows to Member States with CBI/RBI schemes</li> <li>Member States with no CBI/RBI schemes would gain financially</li> </ul>
Policy option 3	Regulate CBI/RBI schemes	**/**	**/**	<ul style="list-style-type: none"> <li>Reduced conflicts of interest between service providers and governments</li> <li>Increased transparency and EU oversight</li> <li>Greater vetting of persons and money admitted through CBI/RBI schemes</li> <li>Lower risk of money laundering and tax avoidance</li> </ul>
Policy option 4	Introduce minimum physical presence requirements	**/**	**/**	<ul style="list-style-type: none"> <li>Lower financial inflows to Member States with RBI schemes</li> <li>Increased engagement of RBI applicants with interests in the countries of residence</li> <li>Lower risk of tax avoidance</li> <li>Increased secondary spending</li> </ul>
Policy option 5	Regulate access to the EU	***	***	<ul style="list-style-type: none"> <li>Enhanced vetting of third-country nationals entering the EU</li> <li>Lower demand for RBI/CBI schemes in third countries</li> <li>Lower security risks</li> </ul>

Source: Authors' elaboration.

Note: \* weak, \*\* strong, \*\*\* very strong

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## 1. Introduction

### 1.1. What is citizenship and residence by investment?

Citizenship by investment (CBI) and residence by investment (RBI) schemes are formalised procedures that allow third-country nationals (TCNs) to obtain **residence or citizenship in a host country in exchange for a passive financial contribution** that may include government bonds, real estate, or bank deposits. They are also known as investment migration programmes, immigrant investor programmes and economic citizenship programmes.

This study focuses on CBI and RBI programmes in the EU that clearly offer a **passive, financial investment option**. Its scope excludes migration channels with an 'active', human capital component such as business and entrepreneurship visas.<sup>4</sup>

Such CBI and RBI schemes exist in more than 60 countries around the world, including countries in the EU. The **number of Member States with schemes has increased with time** - three Member States had such schemes in 2011, compared to 13 Member States today (see Figures 1 and 2).<sup>5</sup> CBI and RBI schemes in the EU Member States present a special situation - this is because **the rights stemming from residence or citizenship in an EU Member State extend beyond it**, most notably freedom of movement within the EU.

The EU's legislative framework on legal migration does not currently cover CBI and RBI schemes, as it largely aims at attracting the human (as opposed to financial) capital of TCNs.<sup>6</sup>

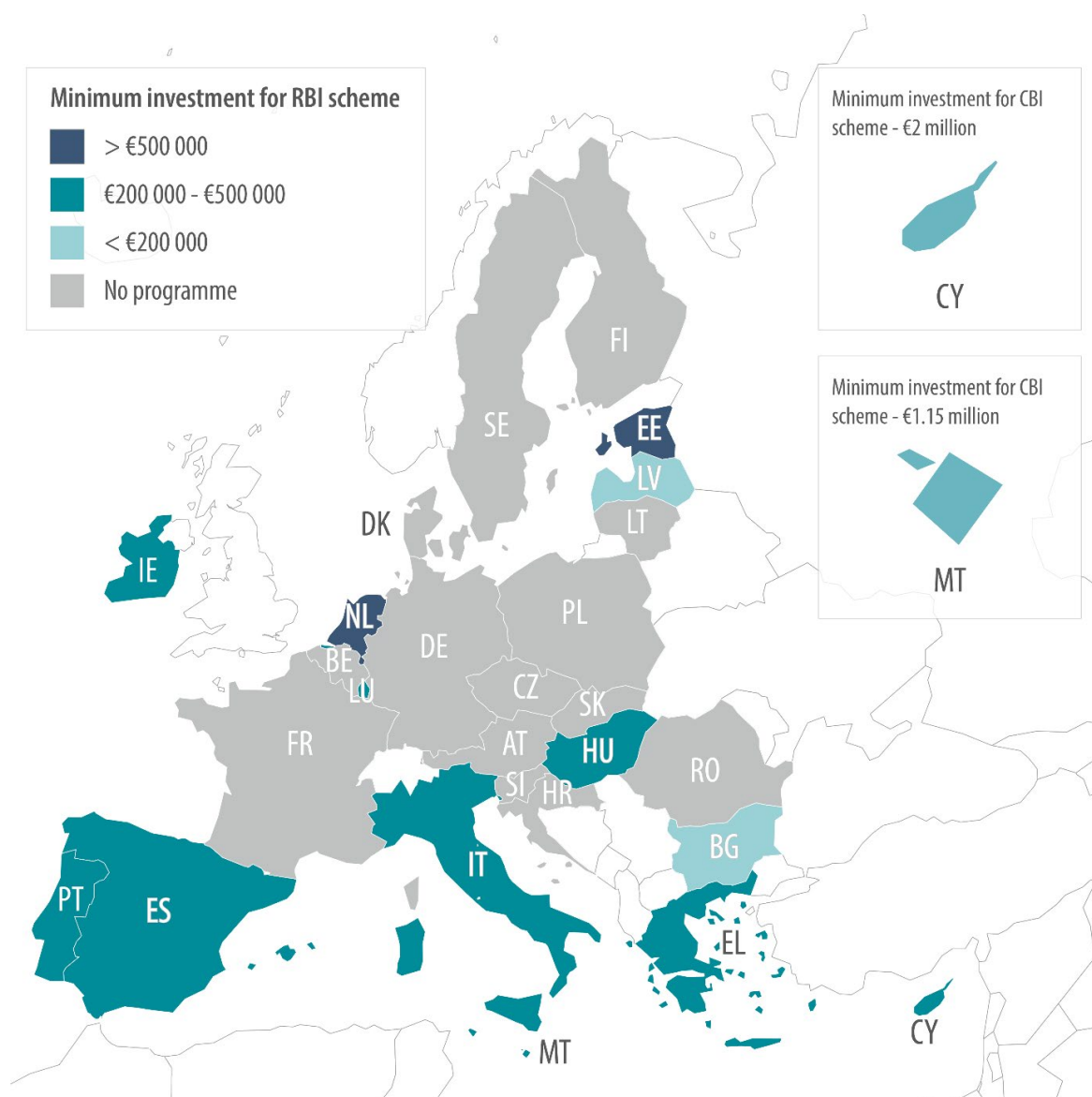
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<sup>4</sup> The set of CBI/RBI schemes in the study by A. Scherrer and E. Thirion on [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU – State of play, issues and impacts](#), EPRS, European Parliament, 2018, was tailored to the needs of the request for the study from the Special Committee on financial crimes, tax evasion and tax avoidance.

<sup>5</sup> Malta, Bulgaria and Latvia had CBI/RBI schemes in 2011. The United Kingdom also had a RBI scheme in 2011.

<sup>6</sup> The legislative framework is composed of seven directives: the Blue Card Directive (2009/50/EC), the Single Permit Directive (2011/98/EU), the Seasonal Workers Directive (2014/36/EU), the Intra-Corporate Transferees Directive (2014/66/EU), the Students and Researchers Directive (2016/801), the Family Reunification Directive (2003/86/EC) and the Long-term Residents Directive (2003/109/EC). For a discussion of this framework, including the existing issues, please see Navarra, C. and Fernandes M., [European Added Value Assessment - Legal migration policy and law](#), EPRS, European Parliament, 2021.

Figure 1 – EU Member States with CBI/RBI programmes



Source: EPRS elaboration based on Annex II – Surak.

## 1.2. EU attention to the issue

In 2014, the European Parliament expressed concerns about CBI and RBI schemes, specifically that **'the direct or indirect outright sale of EU citizenship, undermines the very concept of European citizenship'**.<sup>7</sup> Following a request from the European Parliament's special committee on financial crimes, tax evasion and tax avoidance (TAX3 Committee), the European Parliamentary Research Service (EPRS) carried out a study on the state of play.<sup>8</sup> Drawing on this EPRS study and other sources, in 2019, the European Parliament concluded that the **potential economic benefits of CBI and RBI schemes do not offset the serious risks** they present, including security and corruption risks, and called on Member States to phase out the schemes.<sup>9</sup> That same year, the European Commission issued a report that investigated the key issues and challenges posed by CBI and RBI schemes.<sup>10</sup> In her State of the Union Address of September 2020, European Commission President Ursula von der Leyen declared: 'Be it about the primacy of European law, the freedom of the press, the independence of the judiciary or the sale of golden passports. European values are not for sale'.<sup>11</sup> In the following month, the **European Commission launched infringement proceedings** against Cyprus and Malta concerning their CBI schemes.<sup>12</sup> In June 2021, the European Commission advanced its infringement proceedings.<sup>13</sup>

Since 2016, the European Commission has also pursued specific measures to **mitigate the risk of money laundering**, including via CBI and RBI schemes.<sup>14</sup> In 2018, The 5th Anti-Money Laundering Directive (AMLD) introduced a new requirement for obliged entities to perform enhanced due diligence on customers who are third-country nationals who apply for residence rights or citizenship in the Member State in exchange for capital transfers, purchase of property or government bonds, or investment in corporate entities in that Member State.<sup>15</sup> A package including a proposal for a 6th AMLD and a proposal for Regulation, launched by the European Commission in July 2021, indicates further measures regarding service providers in investor migration schemes.<sup>16</sup>

<sup>7</sup> European Parliament resolution of [16 January 2014](#) on EU citizenship for sale (2013/2995(RSP)).

<sup>8</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU – State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>9</sup> European Parliament resolution of [26 March 2019](#) on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).

<sup>10</sup> European Commission, 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](#), 2019.

<sup>11</sup> [State of the Union Address by President von der Leyen at the European Parliament Plenary](#), 16 September 2020.

<sup>12</sup> [Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for 'selling' EU citizenship](#), European Commission, 2020.

<sup>13</sup> [Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for 'selling' EU citizenship](#), European Commission, 2020. European Commission, [June infringements package: key decisions](#), 2021. The press release notes the following with respect to CBI schemes: European Commission urges Cyprus and Malta to stop 'selling' EU citizenship. The press release indicates that 'these two Member States fail to fulfil their obligations under the principle of sincere cooperation (Article 4(3) TEU) and the definition of citizenship of the Union as laid down in the Treaties (Article 20 TFEU).'

<sup>14</sup> The European Commission announced a proposal for the 5th Anti-Money Laundering Directive in July 2016.

<sup>15</sup> European Commission, [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU](#).

<sup>16</sup> Recital 16 of European Commission, [proposal for a regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#), COM(2021) 420 final.

## 1.3. Objectives of this assessment

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) is drawing up a legislative own-initiative report (INL) on '**Citizenship and residence by investment schemes**' (2021/2026 (INL)). This initiative builds on the European Parliament's 2014 and 2019 resolutions, as well as several exchanges, convened by the European Parliament's Monitoring Group on Democracy, Rule of Law and Fundamental Rights, with the European Commission, experts and stakeholders.

This **European added value assessment (EAVA)** is intended to support the European Parliament's legislative initiative. The assessment builds on the 2018 EPRS study by reviewing the scale of CBI and RBI schemes in the EU and the potential problems. It reviews the possible legal bases for EU action and assesses several policy options that could be pursued at the EU level.

**Section 2** sets the context and scope for the study. Following a review of the main pathways to residence and citizenship in the EU, it then presents the scale of CBI/RBI schemes in the EU and sheds light on the profile of applicants. **Section 3** reviews the evidence concerning the key issues posed by investment schemes in the EU and their impacts. **Section 4** briefly highlights the possible avenues for EU action, which are described in greater detail in Annex I. **Section 5** presents and assesses five possible EU-level policy options. **Section 6** summarises the assessment.

The primary sources of information for this EAVA are the 2018 EPRS study<sup>17</sup> and a research paper conducted by Dr Kristin Surak (see Annex II). The EAVA also draws on legal analysis (see Annex I), quantitative analysis and consultation with key experts.

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<sup>17</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU - State of play, issues and impacts](#), EPRS, European Parliament, 2018.

## 2. Setting the context and scope for the study

Third-country nationals (TCNs) can secure residence and citizenship in the EU through a variety of pathways. Some of these avenues are regulated by the EU, while others, such as investment schemes, currently fall under Member States' jurisdiction alone. A growing number of research studies and reports have sought to build the knowledge base on investment schemes in the EU, including its scale and impacts.

This section sets the context and scope for this study. **Section 2.1** presents an overview of pathways to citizenship and residence in the EU. **Section 2.2** highlights the scale of RBI/CBI schemes in terms of applications, approvals and investment. The findings largely draw from original research carried out for this EAVA and presented in Annex II. **Section 2.3** reviews the key issues raised by investment schemes and their impacts.

### 2.1. Pathways to citizenship and residence in the EU

All citizens of an EU Member State have access to the **rights and privileges of EU citizenship**. Most notably, EU citizens have the right to move and reside in another Member State, to vote and stand as a candidate in municipal and European elections, and to benefit from other Member States' diplomatic and consular authorities when in a third country. However, Member States have full competence in granting citizenship to third-country nationals (TCNs). Over time, Member States have widened access to citizenship while also strengthening restrictions in the form of integration clauses and tests.<sup>18</sup> Residence confers fewer rights at the national and EU levels than citizenship.<sup>19</sup> However, with time, **residence in an EU Member State can provide a path to secure long-term residence and eventually, EU citizenship**. The minimum period of residence for facilitated naturalisation can range from four to ten years, depending on the Member State.<sup>20</sup> As such, residence in a Member State can facilitate the acquisition of citizenship and its associated rights.

Citizenship of a country is typically acquired at birth via descent (*jus sanguinis*), country of birth (*jus soli*) or via a naturalisation procedure.<sup>21</sup> **Naturalisation procedures** vary across Member States and are typically based on length of residence, family ties (e.g. marriage), economic and social integration.<sup>22</sup> *Jus sanguinis* can also be invoked for distant descent or ancestry without any requirement of residence. This option is possible in Hungary (to descendants of Hungarian ancestors),<sup>23</sup> Italy (to descendants of Italian ancestors),<sup>24</sup> Austria (to descendants of victims of Nazi

<sup>18</sup> Mentzelopoulou M. and Dumbrava C., [Acquisition and loss of citizenship in EU Member States: Key trends and issues](#), EPRS, 2018.

<sup>19</sup> Rights include the right to enter another Member State of the EU without a visa and reside (but not work) for no longer than 90 days.

<sup>20</sup> Global Citizenship Observatory / Robert Schuman Centre for Advanced Studies, [Global Database on Modes of Acquisition of Citizenship](#) - Mode A 06, 2018.

<sup>21</sup> In total, there are 27 different mechanisms through which citizenship can be obtained in a country at birth or after birth. For more information, please refer to the [Global Database on Modes of Acquisition of Citizenship](#).

<sup>22</sup> Mentzelopoulou M. and Dumbrava C., [Acquisition and loss of citizenship in EU Member States: Key trends and issues](#), EPRS, 2018.

<sup>23</sup> Tóth, J., [The curious case of Hungary: why the naturalisation rate does not always show how inclusive a country is](#), European University Institute Global Citizenship Observatory, 2018.

<sup>24</sup> Ministero degli Affari Esteri e della Cooperazione Internazionale website on [citizenship for foreign nationals](#).

persecution),<sup>25</sup> and in Portugal (to Sephardic Jews of Portuguese origin).<sup>26</sup> The 'ancestry channel' is the main route to naturalisation in Hungary.<sup>27</sup> In Italy, from 1998 to 2010, there were about three times more naturalisations via descent from Italian consulates than through other channels of acquisition of citizenship for residents in Italy.<sup>28</sup> Investigative research has identified illicit service providers that can provide forged documents to support applications for naturalisations via distant descent.<sup>29</sup>

Citizenship may also be granted to an individual that has made an exceptional contribution in the economic, sporting, cultural or scientific arenas. Overall, 22 Member States offer such discretionary naturalisation procedures.<sup>30</sup> In total, about 706 400 TCNs became naturalised citizens of EU Member States in 2019.<sup>31</sup>

EU Member States may **issue residence permits** for work, study, family reasons and for humanitarian reasons. Some may also operate entrepreneur or business visa schemes.<sup>32</sup> The conditions to be admitted to these schemes may include a business plan, financial investment and/or involvement in the day-to-day operations of the start-up business.<sup>33</sup> In 2019, EU Member States issued about three million first residence permits (less than five years), and half a million new long-term residence permits (more than five years) to TCNs.<sup>34</sup> The share of naturalisations that occur primarily through residence in the Member State, known as 'ordinary naturalisation', could not be assessed, but is possible in all EU Member States and occurs after multiannual residence and the fulfilment of a number of conditions.<sup>35</sup>

<sup>25</sup> City of Vienna website on [acquiring Austrian citizenship for persons persecuted by the Nazi regime and their descendants](#).

<sup>26</sup> Kerem, Y., [Portugal's citizenship for Sephardic Jewry: A golden fountainhead](#), Contemporary Jewry, 2021.

<sup>27</sup> For example, Hungary naturalised more people through ancestry options between 2011 and 2016 than Germany or France naturalised individuals in total (Y. Harpaz, *Global Citizenship 2.0: Dual Nationality as a Global Asset*: 31-2).

<sup>28</sup> Over one million people were granted Italian citizenship from 1998 to 2010, Global Citizenship Observatory website. 'According to the latest available data, between 1998 and 2010, 1,003,403 individuals got Italian citizenship by descent at Italian consulates abroad'. Eurostat data (variable name: migr\_acq) suggests that about 375 000 naturalisations occurred in Italy over the same period.

<sup>29</sup> K. Surak, primary interviews. See also [Romania Has Allegedly Allowed Russians and Ukrainians to Buy EU Passports](#), Vice News.

<sup>30</sup> Global Citizenship Observatory / Robert Schuman Centre for Advanced Studies, [Global Database on Modes of Acquisition of Citizenship](#) - Mode A 24, 2018.

<sup>31</sup> Eurostat database on naturalisations (variable name : migr\_acq).

<sup>32</sup> European Commission, [Migratory Pathways for Start-Ups and Innovative Entrepreneurs in the European Union](#), EMN Synthesis Report for the EMN Study 2019, December 2019.

<sup>33</sup> Examples include France's 'talent passport' and Denmark's 'start-up programme, which offer residence to innovative business founders.' For more information, please refer to Annex II – Surak.

<sup>34</sup> First time residence permits – Eurostat indicator migr\_restfirst. Long-term residence permits – Eurostat indicator migr\_resltr. Data on long-term residence permits (minimum five-year validity) was not available for Czechia, Germany or the Netherlands.

<sup>35</sup> Please see: Milieu, Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State, 2018.

## 2.2. RBI/CBI schemes in the EU

Over the past 10 years, **RBI and CBI schemes have emerged as an alternative pathway to residence and citizenship** in certain EU Member States.<sup>36</sup> These schemes are characterised by the derivation of a legal status (resident or citizen) from a transfer of financial assets to a country.<sup>37</sup>

Despite consensus on this general definition, **there is no universally accepted definition of CBI and RBI schemes**. The European Commission focused its investigation on schemes where financial investment is the main condition for entry and residence in an EU Member State.<sup>38</sup> A previous EPRS study<sup>39</sup> focused on schemes that minimise constraints (e.g. physical presence) on applicants, require passive investments, and grant maximum benefits in terms of mobility and access to a favourable tax regime.

Following the approach taken in Annex II, the EAVA focuses on schemes that do not require applicants to be actively involved in the financial investment – as such, the investments are understood to be passive.<sup>40</sup> The sample<sup>41</sup> of CBI/RBI schemes includes Member States that offer **at least one clearly passive investment option** – such as an investment in government bonds, an investment in real estate, an investment in funds or stocks, or a deposit in a bank – either on its own or in addition to an investment in a business. This definition implies the exclusion of some Member States that were included in the European Commission's study, such as Czechia, Croatia, Lithuania, Poland, Romania and Slovakia.<sup>42</sup> Bulgaria's scheme was classified as an RBI scheme in the EAVA, rather than a CBI scheme as per other studies.<sup>43</sup> Moreover, the EAVA focuses on **formalised programmes**. As such, it excludes pathways such as the discretionary granting of nationality on the grounds of the 'economic interest of the State', which have been identified in Austria, Bulgaria, Slovakia and Slovenia.<sup>44</sup>

The assessment of the scope of CBI/RBI schemes focuses on **2011-2019**. The scope therefore includes the CBI schemes in Cyprus and Malta, which are subject to infringement proceedings

<sup>36</sup> The demand for investment migration has also increased over time outside the EU. For more information please refer to Annex II – Surak.

<sup>37</sup> J. Džankić, Immigrant investor programmes in the European Union, *Journal of Contemporary European Studies*, 26:1, 2018.

<sup>38</sup> European Commission, Minutes from the First Meeting of the Group of Member State Experts on Investor Citizenship and Residence Schemes in the EU, 2019.

<sup>39</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>40</sup> Schemes that require applicants to present a business plan or be involved in a company's day-to-day activities can in contrast be understood as requiring an 'active' investment. Some migration programs that appear to have 'active' requirements may in practice be 'passive'. For more information, please refer to Annex II - Surak.

<sup>41</sup> The sample follows the definition taken in Annex II - Surak.

<sup>42</sup> European Commission, 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](#), 2019.

<sup>43</sup> As noted in Annex II - Surak, Bulgaria's RBI scheme is often categorised as a CBI scheme as it eases standard residence requirements for citizenship.

<sup>44</sup> Milieu, Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State, 2018. The challenges to distinguish CBI/RBI schemes from discretionary programmes is evident in the example of Austria where the discretionary channel is advertised as 'citizenship by investment' by a [service provider La Vida](#).



launched by the European Commission.<sup>45</sup> The processing of investor visas and passports was moreover affected in all countries in 2020, due to the coronavirus pandemic. The effect on demand for such schemes is still unclear, but it is expected to increase worldwide.<sup>46</sup> Some research suggests that interest in dual nationality and CBI as a pathway to its acquisition has increased since the pandemic.<sup>47</sup>

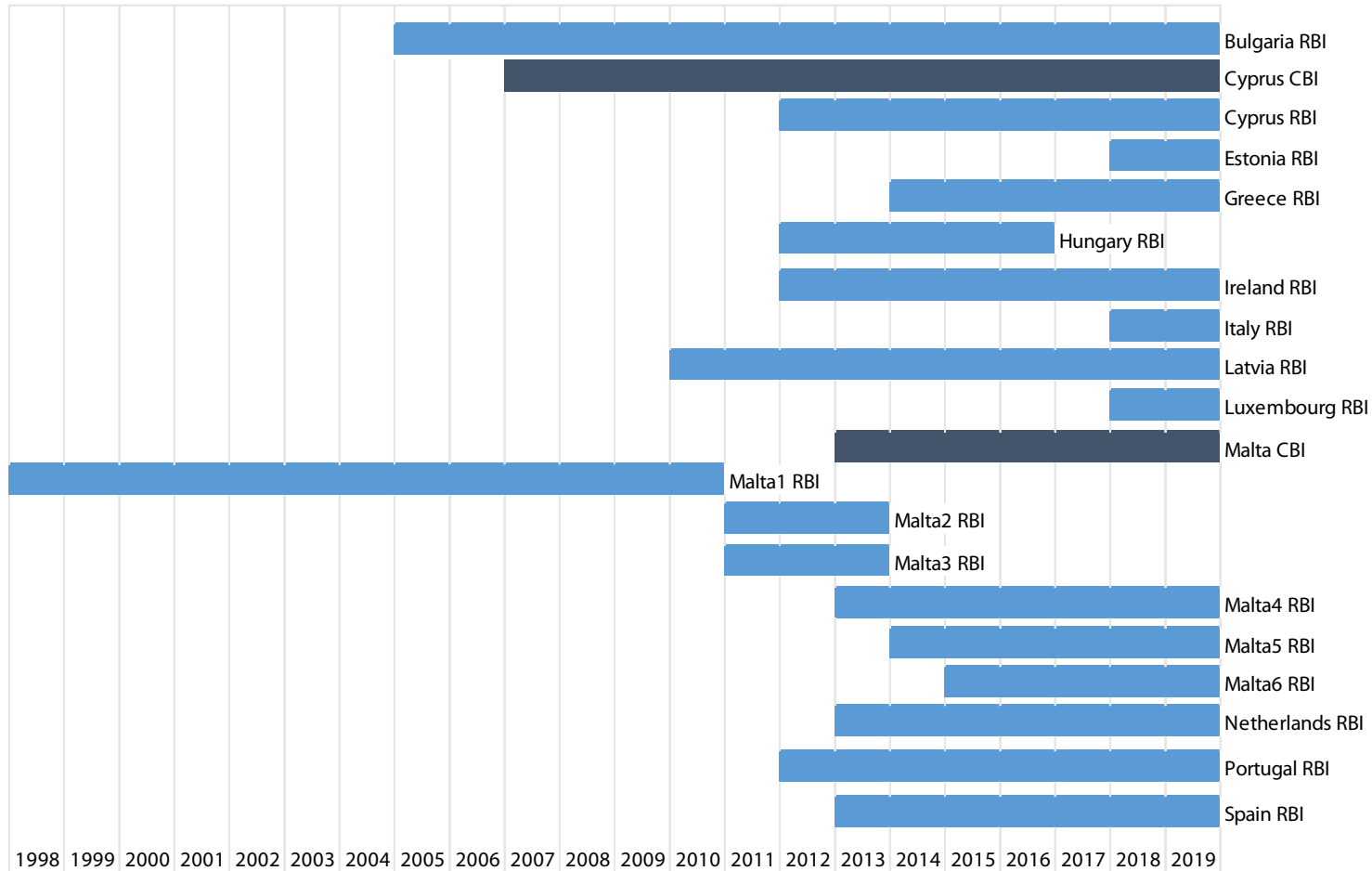
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<sup>45</sup> As noted in a [June 2021 press release](#) from the European Commission, Cyprus discontinued its CBI scheme in 1 November 2020, but continues to process applications that were received before that date. Malta ended its CBI scheme, but established a new one at the end of 2020.

<sup>46</sup> [The Frank Knight Wealth Report](#), 2021

<sup>47</sup> P. Spiro. 'The past and (post-COVID) future of dual citizenship' in *Dual Citizenship and Naturalisation: Global, Comparative, and Austrian Perspectives*, Austrian Academy of Sciences Press, 2021. The research reports that the global demand for investor citizenship increased over 40 percent in the first quarter of 2020.

Figure 2 – Timeline of RBI and CBI schemes in the EU



Source: Annex II – Surak.

Figure 2 illustrates the timeline of CBI and RBI schemes covered in this assessment. **CBI/RBI schemes have become more common over time** with a marked growth since 2012. Hungary suspended its RBI scheme in 2017. About half of the EU Member States (13 in total) had RBI schemes in place in 2019.

### ***What could explain the growth in CBI/RBI schemes in the EU?***

The introduction of CBI and RBI schemes by EU Member States is often justified by the potential to **attract revenue**. In fact, regression analyses find that countries are more likely to launch a programme following a sustained economic downturn.<sup>48</sup> The introduction of CBI/RBI schemes within and beyond the EU also responds to **rising levels of wealth in emerging economies**. It is worth noting that in 2000, an estimated 7 % of ultra-high-net worth individuals (people with an equivalent of €857 500 to €25.7 million of investable assets) came from emerging economies. This figure grew to 25 % by 2015.<sup>49</sup> This trend can be expected to continue and drive demand for CBI/RBI schemes in the years to come. Demand for CBI/RBI schemes in the EU is lower than for other countries outside the EU. Research finds that Turkey's CBI scheme approved as many as 1 000 applications per month in 2020.<sup>50</sup> Malaysia's RBI scheme has the highest number of approved applications, which in some years has exceeded the total of RBI schemes in the EU.<sup>51</sup>

The CBI and RBI schemes offered by EU Member States vary in their **conditions and requirements**. Cyprus' CBI scheme required a **minimum investment** of €2 million in real estate, companies or investment funds, in addition to an investment in a permanent privately-owned residence worth at least €500 000.<sup>52</sup> Malta's CBI scheme required a minimum total investment of €1.15 million in residential immovable property, investments, and contributions to the state budget.<sup>53</sup> Among RBI schemes in the EU, the minimum investment level can vary from €60 000 (Latvia) to €1.25 million (the Netherlands), as shown in Figure 3.

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<sup>48</sup> For more information please refer to Annex II – Surak.

<sup>49</sup> Surak K., 'What Money Can Buy: Citizenship by Investment on a Global Scale', In Fassin D., ed. *Deepening Divides: How Borders and Boundaries Drive Our World Apart*. Pluto Press, 2020.

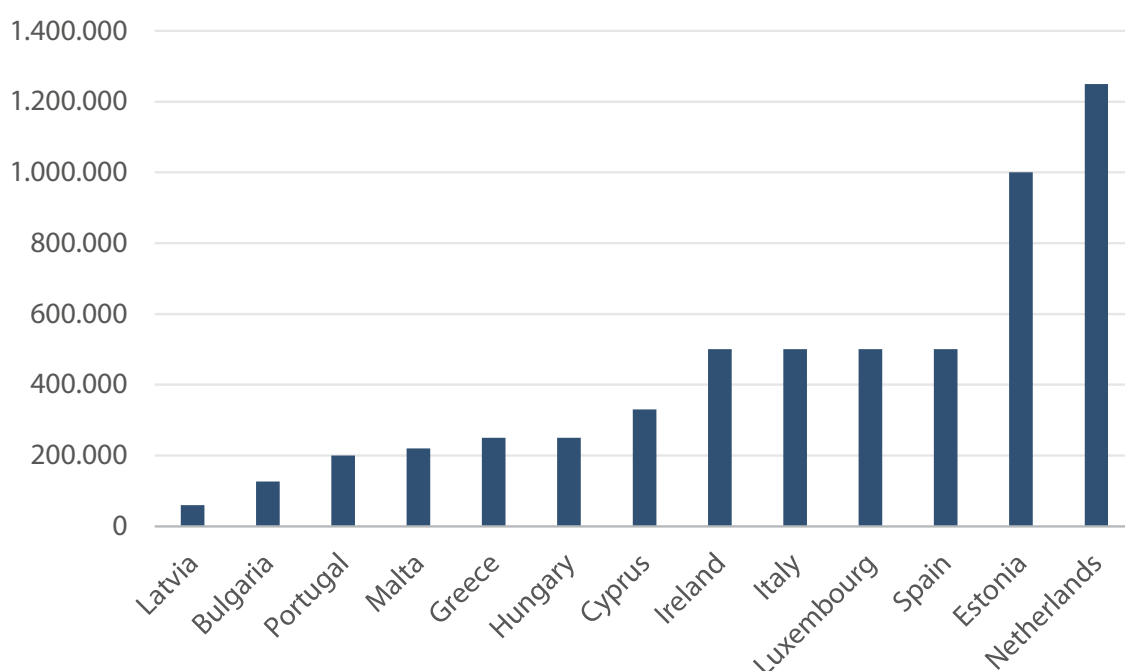
<sup>50</sup> Annex II – Surak. The research paper finds that prospective EU membership is not a major attraction of Turkey's CBI programme, as the accession process is perceived as stalled.

<sup>51</sup> For more information please refer to Annex II – Surak.

<sup>52</sup> Milieu, Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State, 2018.

<sup>53</sup> Milieu, Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State, 2018.

Figure 3 – Minimum investment requirement for RBI programmes (€)



Source: Annex II – Surak.

Note: These are the minimum investments requested for the cheapest option in 2020.

There is also a range of investment options. For RBI schemes, investment in companies is the most commonly offered (11 Member States), followed by investment bonds (offered by 8 Member States) and real estate (offered by 8 Member States) (see Table 2). Applicants may also be subject to administrative fees and income thresholds.<sup>54</sup>

Table 2 – Investment options for RBI programmes

Investment option	Member States	Total
Company	BG, EE, EL, ES, IE, IT, LV, LU, MT, NL, PT	11
Investment bond	BG, EE, ES, IE, LU, LV, NL, PT	8
Real estate	BG, CY, EL, ES, IE, LV, MT, PT	8
Government bonds	BG, ES, HU, IT, LV, MT, PT	7
Bank deposit	BG, CY, ES, LU, LV, PT	6
Public good	IE, IT, PT	3

Source: For more information, please refer to Annex II – Surak.

<sup>54</sup> For more information, please refer to: Milieu, Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State, 2018.

## 2.3. Applications and investment from RBI/CBI schemes

Previous studies conducted by the European Commission and the EPRS have underscored the **limited availability of data** concerning CBI and RBI schemes in the EU.<sup>55</sup> Most notably, data on the number of applications and investment is often neither published nor available through information requests to the governments concerned. The European Commission did not publish estimates on the number of applications, nor on investment, although the supporting study reported some figures.<sup>56</sup> The EPRS study estimated the number of naturalisations and investment gained via CBI schemes in Malta and Cyprus, as well as the number of residence permits and investment via RBI schemes in Bulgaria (permits only), Ireland, Latvia (permits only) and Portugal.<sup>57</sup>

Statistics such as the annual number of submitted and/or approved applications and the level of investment is necessary to **gauge the scale of CBI/RBI schemes**. A higher number of applications and investment, coupled with the issues raised by CBI/RBI schemes (see Section 3) could support a better understanding of the problem and the need for policy intervention.

The EPRS commissioned a research study to obtain key statistics on CBI/RBI schemes in the EU (see Annex II – Surak). The statistics were obtained through the triangulation of a variety of sources including interviews, information requests and desk research.

### ***What is the scale of CBI/RBI schemes in the EU?***

Overall, in the EU, the EAVA estimates that **more than 132 000 people** from third countries have obtained residence or citizenship in EU Member States via CBI/RBI schemes between 2011 and 2019 (see Table 3). The total investment inflow is estimated to be **at least €21.3 billion** over the same period. Figure 4 highlights the sharp rise in investment in CBI/RBI over time.

Overall, the CBI scheme in Cyprus has generated more naturalisations compared with Malta (5 064 versus 3 705 respectively), as well as more investment (€6.3 billion versus €1.2 billion respectively). The largest RBI scheme is in Portugal (22 214 residence permits, estimated investment of €5.0 billion), followed by Spain (12 104 residence permits, estimated investment of €2.7 billion) and Greece (22 802 residence permits and €1.9 billion).<sup>58</sup>

The **investment generated by CBI/RBI schemes is likely to be higher** than the estimated figure for two reasons:

<sup>55</sup> The European Commission concluded that: 'clear statistics on applications received, accepted and rejected are missing or insufficient'. See: European Commission, 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](#), 2019.

<sup>56</sup> Milieu, Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State, 2018.

<sup>57</sup> The EPRS 2018 study reported that 947 naturalisations occurred via Malta's CBI scheme between 2014 and 2016 while 25 810 naturalisations occurred via Cyprus' CBI scheme between 2008 and 2016. With regards to RBI schemes, the study estimated that 490 residence permits were issued via Bulgaria's RBI scheme (2009-2017), and similarly, 380 residence permits in Ireland (2012-2016), 14 047 residence permits in Latvia (2012-2016), and 17 687 residence permits in Portugal (2013-2018). With regards to investment, the EPRS study provides estimates for the CBI schemes in Cyprus (€4.8 billion) and Malta (€203.7 million), and RBI schemes in Ireland (€209.7 million) and Portugal (€4.0 billion). For more information, please see: A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>58</sup> For additional breakdowns please see Annex II – Surak.

**Reason 1:** Due to the limited availability of data, the estimation does not include RBI schemes from Estonia, Luxembourg, the Netherlands, Cyprus, Italy, Malta, and Bulgaria (2005-2013).

**Reason 2:** The estimation drew on actual amounts when the information was available, but were estimated in some cases by multiplying the number of approved individuals by the minimum investment. However, investors may not have chosen the cheapest option. For example in Latvia, most investors selected the more expensive real estate option.<sup>59</sup>

Table 3 – Estimated cumulative scale of CBI/RBI schemes in the EU, 2011-2019

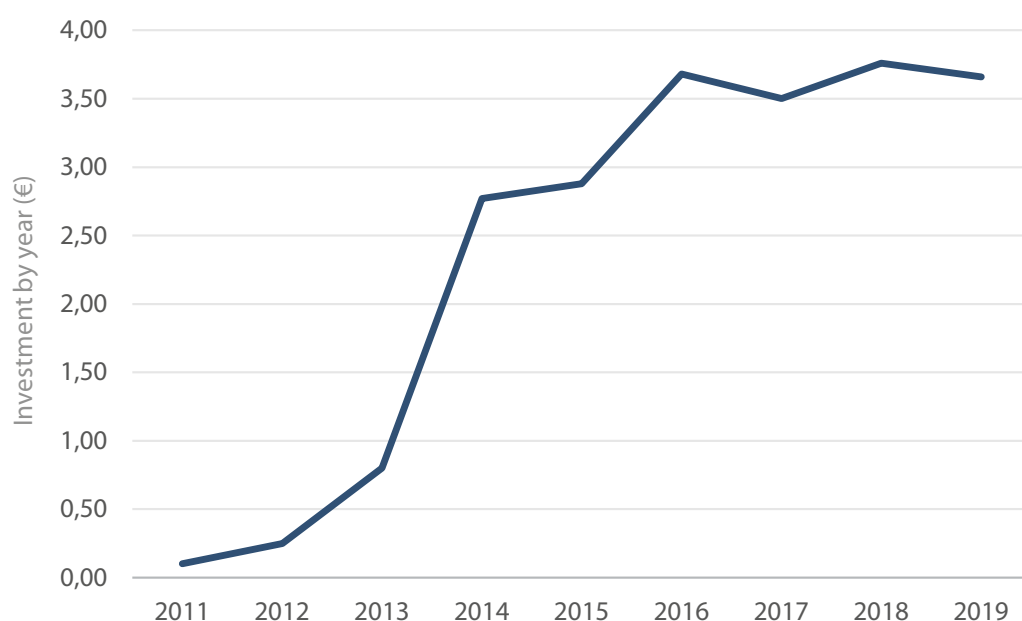
Policy option	CBI schemes	RBI schemes	Total
Applications	3 811	38 369	42 180
Total individuals including family members	8 769	123 374	132 143
Investment (€, millions)	7 497	13 877	21 374

Source: Annex II – Surak.

Notes: The estimates cover the years in which the CBI/RBI schemes were in operation, with a few exceptions. Data from RBI schemes in Estonia, Luxembourg and the Netherlands were excluded due to their small size. Data could not be obtained for RBI schemes in Cyprus, Italy, Malta, and Bulgaria (2005-2013). Actual investment amounts were used when available. In some cases investment was estimated by the number of applications multiplied by the minimum investment amount.

<sup>59</sup> For more information, please see Annex II – Surak.

Figure 4 – Investment in CBI/RBI schemes by year



Source: Annex II – Surak.

Note: Investment was estimated by multiplying the number of approved applications by the minimum investment amounts in a given year for Bulgaria, Estonia, Greece, Spain, Hungary, Ireland, Luxembourg and Latvia and Cyprus (2019 only). Actual investment figures were used in other instances. Data from RBI schemes in Cyprus, Italy, Malta, Bulgaria (2011-2013) and the Netherlands are not reflected.

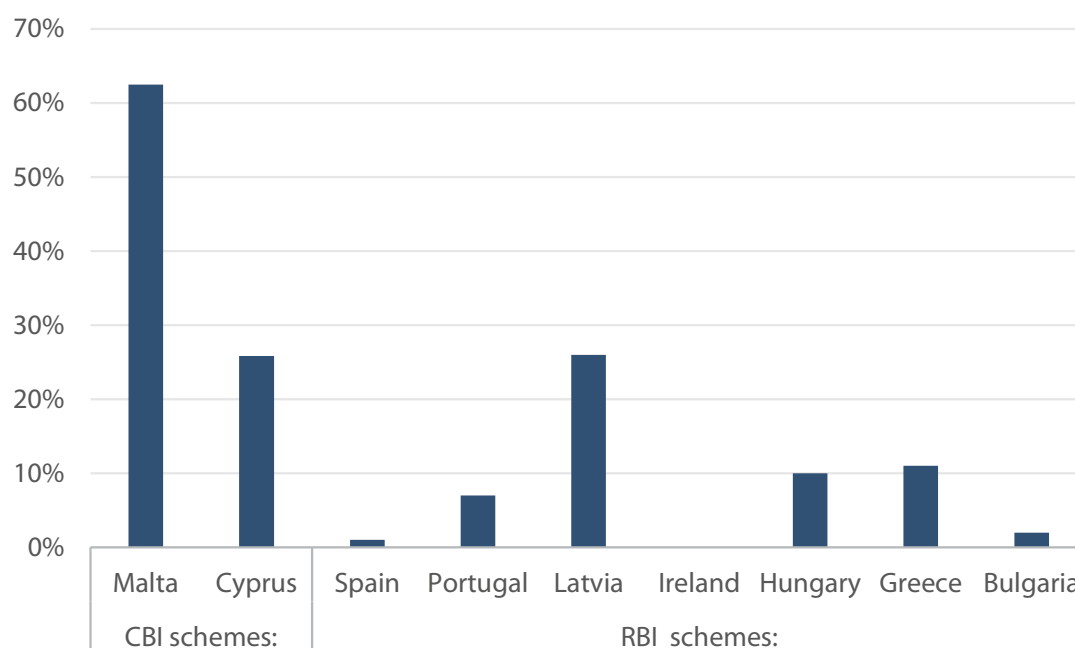
### How significant is the pathway to residence and citizenship in the EU offered by RBI/CBI schemes relative to other pathways?

Figure 5 highlights **the contribution of CBI/RBI schemes to the issuance of first-time residence permits and naturalisations** in the Member States with the schemes. The analysis finds that more than half of naturalisations (63 %) in Malta between 2015 and 2019 were facilitated by **CBI**. In Cyprus, CBI can account for almost one third of naturalisations (26 %) between 2012 and 2019. These figures are higher than those reported in the 2018 EPRS study, which focused on a different sample of countries and years.<sup>60</sup> With regard to **RBI**, the most significant scheme with respect to is Latvia – about 26 % of first-time residence permits can be accounted for by its RBI scheme. Residence permits issued through RBI schemes is lower, but still substantial, in Greece (11 %) and Portugal (7 %). These figures are lower than those reported in the 2018 EPRS study.<sup>61</sup>

<sup>60</sup> The EPRS 2018 study estimated that the shares were 38 % in Malta (2014-2016) and 10 % in Cyprus (2008-2016). For more information, please see: A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>61</sup> The EPRS 2018 study estimated that the shares were 40 % in Latvia (2012-2016) and 7 % in Portugal (2013-2018). For more information, please see: A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

Figure 5 – Contribution of CBI/RBI schemes to total first-time residence permits issued and naturalisations



Source: Authors' elaboration based on Annex II – Surak. The number of first-time residence permits (migr\_resfirst) and naturalisations (migr\_acq) were obtained from Eurostat. The time period was selected to match the time period of the CBI/RBI scheme as indicated in Figure 2.

Note: The time frame varies by country and is aligned with the dates presented in Figure 2. The last year of data was from 2019.

### Where do applicants to CBI/RBI schemes in the EU come from?

Previous research has found that applicants to CBI/RBI schemes are mainly very wealthy individuals from Russia, China, Turkey, the Middle East and Central Asian countries. The research paper prepared for the EAVA analysed data from CBI schemes and 6 of the 13 RBI schemes in the EU (see Figure 6). Russian nationals can account for about half of approved applications to CBI schemes in the EU. Chinese nationals can account for the majority of RBI application approvals in all six countries except Latvia, where RBI application approvals are dominated by Russians for linguistic and cultural reasons.<sup>62</sup> It is worth noting that the investment migration industry is well-developed in China and Hong Kong, and Chinese nationals are not allowed to have dual citizenship.<sup>63</sup> Individuals from the Middle East and North Africa are also well-represented among RBI application approvals. A possible driver of demand from China and Russia is the high growth in wealth and inequality in recent years, paired with an authoritarian governance model.<sup>64</sup>

<sup>62</sup> K. Surak, 'Who Wants to Buy a Visa? Comparing the Uptake of Residence by Investment Programs in the EU', *Journal of Contemporary European Studies*, 2020.

<sup>63</sup> K. Surak, 'Empirical Developments in Investment Migration.' In Kochenov D. and Surak K., eds. *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*, Under contract with Cambridge University Press, 2021.

<sup>64</sup> For more information, please refer to Annex II – Surak.



Figure 6a – Approved applications to CBI schemes, by region of origin

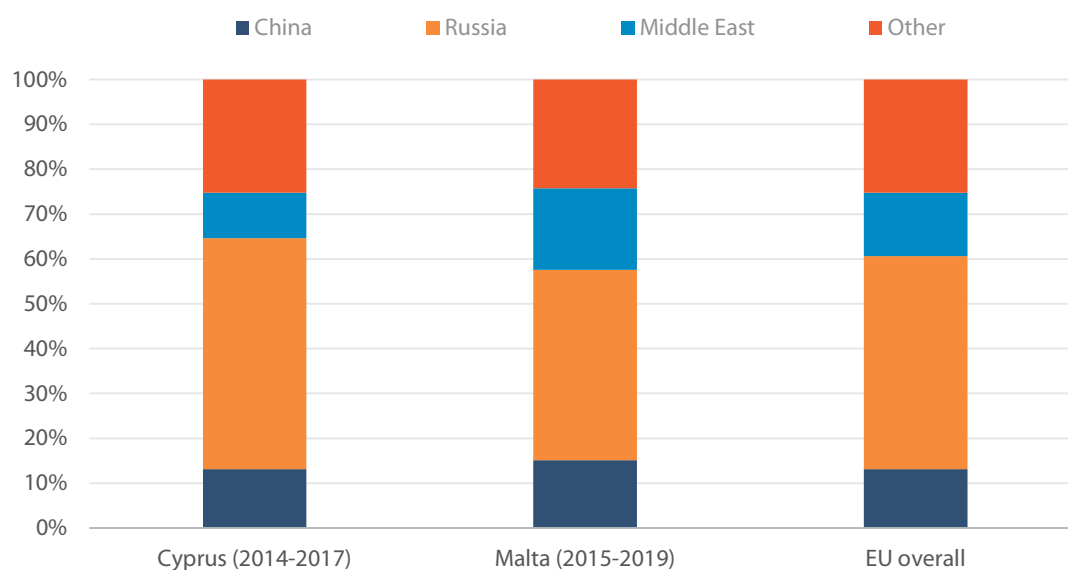
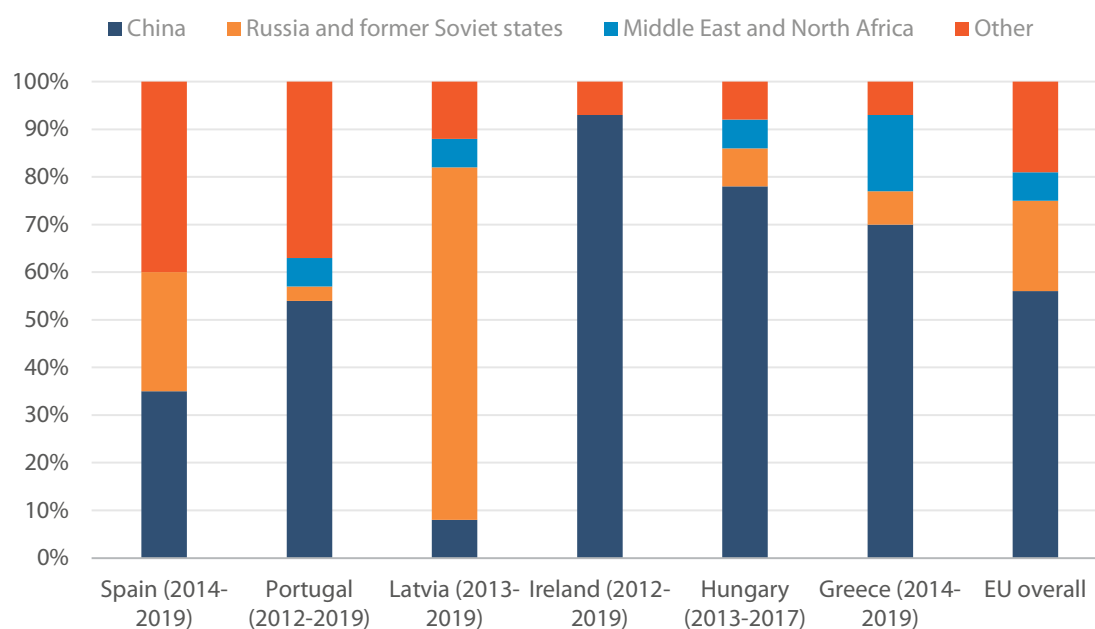


Figure 6b – Approved applications to RBI schemes, by region of origin



Source: Annex II – Surak.

Note: Data were not available for Latvia from 2010-2012, Bulgaria, Cyprus, Estonia, Ireland, Italy, Malta, and the Netherlands.

### What motivates applicants to CBI/RBI schemes in the EU?

Citizenship and residency are distinct in the rights conferred to an individual. Citizenship typically provides more rights particularly with regards to passport acquisition and consequently, wider

possibilities for visa-free travel to third countries. A passport from Germany for example offers visa-free travel to 190 countries while a passport from China offers visa-free travel to 79 countries.<sup>65</sup>

Research suggests four main possibilities – mobility, education and lifestyle, business opportunities and the preservation of wealth motivate applicants to CBI/RBI schemes in the EU (see Table 4). Among these, the most important is the possibilities offered for mobility. For beneficiaries of **CBI schemes**, a passport of an EU Member State can facilitate visa-free access travel to a high number of countries both within and beyond the EU, as well as provide a 'Plan B' should there be political or social unrest in the individual's country of origin. Although in relatively smaller numbers, stateless people with financial means have resorted to CBIs. Beneficiaries of **RBI schemes** can enter the EU without applying for a visa. This is relevant in the case of nationals from Russia and China, the primary source countries for RBI schemes in the EU (see Figure 6), who cannot enter the EU without a Schengen visa.<sup>66</sup>

Table 4 – Motivation of applicants to CBI/RBI schemes in the EU

Motivation of applicants	CBI schemes:	RBI schemes:
Mobility	<ul style="list-style-type: none"> <li>Easier international travel</li> <li>'Plan B' for the future</li> </ul>	<ul style="list-style-type: none"> <li>Visa-free entry to the EU for up to 90 days</li> </ul>
Education and lifestyle	<ul style="list-style-type: none"> <li>Educational opportunities for children</li> <li>Holidays (real estate option)</li> </ul>	<ul style="list-style-type: none"> <li>Holidays (real estate option)</li> </ul>
Business opportunities	<ul style="list-style-type: none"> <li>Lower barriers to carrying out business within the EU</li> <li>Avoid geopolitical conflict</li> </ul>	n.a.
Preserve wealth	<ul style="list-style-type: none"> <li>Diversify assets into a relatively stable currency – (real estate option)<sup>1</sup></li> <li>Tax avoidance</li> </ul>	

Source: Authors' elaboration based on Annex II – Surak.

<sup>1</sup> This would not apply to countries that do not use the euro (e.g. Hungary and Bulgaria).

## 2.4. The supply chain in RBI/CBI schemes

Research finds that **private intermediaries are involved in almost all CBI/RBI applications**.<sup>67</sup> An individual interested in CBI/RBI may consult a private service provider who may subsequently support the preparation of the application. Service providers may be based in the applicant's country of origin, or in the destination country.

<sup>65</sup> Henley & Partners, [Global Passport Ranking](#), 2021.

<sup>66</sup> Ireland operates a RBI scheme, but is not a Schengen member state. As noted in Figure 4, more than 90 % of approved applications to the RBI scheme in Ireland were granted to Chinese nationals. Benefits other than short-term mobility may apply in this case such as access to English-language schools and visa-free access to the UK. In addition, five years of residency in Ireland can qualify an applicant for citizenship. Some sources suggest that Irish residency could also facilitate tax avoidance.

<sup>67</sup> For more information, please refer to Annex II – Surak, Section 1.5.

Private firms may be connected to each other, applicants (or clients) and governments through a **web of contracts and commissions**. These firms may focus on 'business to business' relationships while others may focus on 'business to applicant' relationships. Some firms may focus on applicants with a more complex file while others may seek a higher turnover.<sup>68</sup>

There are five general types of service provider firm:<sup>69</sup>

- **Law firms and private client divisions of major accountancies and banks.** These actors are typically engaged in a wide range of activities that may also include investment migration. They typically have a professional license and are regulated by bar associations.
- **Investment migration consultancies.** These firms focus on investment migration services and may provide direct support to clients and/or support to other actors including governments. These firms typically have offices in multiple countries.
- **Large migration service providers.** These firms are typically large (500+ employees) and focus on student and work visas, while also assisting applicants to investment migration programmes. They may also lobby foreign governments. These firms can mainly be found in China.
- **Small and medium-sized migration service providers.** These firms typically operate in one country and may pass CBI/RBI applications on to larger service providers.
- **Service providers that submit applications to the government.** These firms are based in the destination country and may be the only means through which an applicant can submit a CBI/RBI application.<sup>70</sup> These firms are typically local law firms that have a license from the government to carry out their services.

The 2018 EPRS study underscores the key role played by private firm intermediaries in the **design and implementation of CBI/RBI schemes** in the EU. Private firms may be contracted by national public authorities, for example, in the case of Malta, where private firm Henley & Partners (one of the main companies in the industry) supported the design, implementation and promotion of the Malta individual investor programme (MIIP – Malta's CBI scheme).<sup>71</sup> Private firms may also be entrusted with **vetting and due diligence of applicants** to CBI and RBI schemes.

Other private actors may include **specialised international due diligence firms**. Governments may appoint these firms to carry out background checks on CBI/RBI applicants. These firms offer different packages of services for rates that can range from a few thousand euro to tens of thousands of euro.<sup>72</sup> **Real estate developers** may also facilitate CBI/RBI applications in countries where housing and infrastructure projects can qualify as investment. Other private companies can support applicants in securing qualifying investments.

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<sup>68</sup> For more information, please refer to Annex II – Surak, Section 1.5.

<sup>69</sup> For more information, please refer to Annex II – Surak.

<sup>70</sup> In some cases, an individual can directly submit a CBI/RBI application to the government. For more information please see Annex II – Surak.

<sup>71</sup> For more information, please refer to Annex II – Surak.

<sup>72</sup> For more information, please refer to Annex II – Surak, Section 1.5.

### 3. Key issues raised by CBI/RBI and their potential impacts

The EPRS study and other sources suggest that CBI/RBI schemes in the EU raise five key issues that can provide grounds for EU action.<sup>73</sup> These issues are:

- Member States may violate the principle of sincere cooperation (Key issue 1)
- Risk of commodification of EU citizenship and residency rights (Key issue 2)
- Risks of violations of the principles of fairness and discrimination (Key issue 3)
- Risk of weak vetting and due diligence systems (Key issue 4)
- Lack of sufficient safeguards for macro-economic governance (Key issue 5)

Table 5 summarises the potential impacts of each key issue.

The impacts that stem from key issues 3-5 are generally broader than CBI/RBI schemes – for example, the risks of corruption and money laundering are driven primarily by **global, structural factors such as globalisation, technological advances, corruption and kleptocracy, and inequalities in income, wealth and opportunities**. Only a small share of these overall risks may be attributable to vetting and due diligence systems for CBI/RBI schemes. EU action may nonetheless be justifiable if relevant and proportionate.<sup>74</sup>

Each of these key issues, as well as their impacts and implications for possible EU action, is reviewed in the sub-sections below.

Table 5 – Overview of key issues and the potential impacts

Key issue	Potential impacts
Key issue 1: Member States may violate the principle of sincere cooperation	Free riding by Member States Security risk due to high-risk third-country nationals entering the EU without a visa
Key issue 2: Risk of commodification of EU citizenship and residency rights	Devaluation of EU citizenship Divergence from the Long-term Residence Directive
Key issue 3: Risks of violations of the principles of fairness and discrimination	'Fast track' for TCNs with high financial resources Limited coherence with EU's framework on asylum and migration
Key issue 4: Risk of weak vetting and due diligence systems	Risks of corruption, money laundering, security threats and tax avoidance Weakened integrity of EU citizenship
Key issue 5: Lack of sufficient safeguards for macro-economic governance	Vulnerability to macro-economic volatility Harmful tax competition Lower access to housing 'Uneven' playing field for Member States

Source: Authors' elaboration based on literature review and Annex II – Surak.

<sup>73</sup> The two main studies are: European Commission, 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](#), 2019; and A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>74</sup> Possible EU action and its assessment is summarised in Section 4.6.

### 3.1. Key issue 1: Risk of violating the principle of sincere cooperation

Citizenship and residence in an EU Member State can be obtained through several channels (see Section 2.1). Regardless of the specific channel, **residence and citizenship of a Member State automatically confers rights and privileges afforded by the EU**. For this reason, the European Commission has indicated that the exchange of money for EU citizenship is incompatible with the principle of 'sincere cooperation'.<sup>75</sup> While the Commission report links this issue to the lack of a 'genuine link' between the applicant and the Member State concerned. This EAVA treats them separately, in the light of earlier research.<sup>76</sup>

The principle of '**sincere cooperation**' (see Annex I for more information) implies that there is an obligation for Member States to abstain from adopting measures that jeopardise the Union's objectives. Among these objectives, as scholars have underlined, is the coherence of the internal market.<sup>77</sup> Thus, as noted in the 2018 EPRS study, 'Member States that operate [RBI/CBI 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', and charge a price for people to buy something that other EU Member States and the entire EU provide.'<sup>78</sup>

Is there a '**value**' of EU citizenship? The issue has been widely discussed and debated by academics and scholars.<sup>79</sup> While challenging to quantify, the concept and value of EU citizenship is well-recognised. A Eurobarometer survey found that more than 90 % of EU citizens were familiar with the term 'citizen of the European Union' and what it means, while more than 80 % were aware of their rights. More than 80 % of respondents believe that EU citizens' free movement rights generate overall benefits to their country, and this view has strengthened since 2012.<sup>80</sup> Another indication of the value of EU citizenship can be found in the ranking of the **Quality of Nationality Index (QNI)**.<sup>81</sup> Seven of the top 10 most valuable passports in the world, according to the 2021 QNI index, are EU Member States. Following the exit of the United Kingdom (UK) from the EU, the UK passport went from the 8th most-valuable to the 35th most-valuable, according to the QNI. This drop has been

<sup>75</sup> European Commission, [Monitoring the application of European Union law – 2020 Annual Report](#), COM(2021) 432 final, 2021. 'The Commission opened infringement proceedings against Cyprus and Malta regarding their investor citizenship schemes, also referred to as 'golden passport' schemes. The Commission considered that systematically granting nationality – and thereby EU citizenship – in exchange for a **pre-determined payment or investment** and without a **genuine link** with the Member States concerned is incompatible with the **principle of 'sincere cooperation'**. The Commission also considered that those schemes undermine the status of EU citizenship.'

<sup>76</sup> See e.g. De Groot, G.-R., 'Towards a European Nationality Law, Inaugural Lecture delivered on the occasion of the acceptance of the Pierre Harmel chair of *professeur invité* at the University of Liege, Unigraphic, University of Maastricht, 2003, and 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>77</sup> See Carrera, 2014, *ibid*.

<sup>78</sup> Carrera, 2014, *ibid* and EPRS, 2018, *ibid*.

<sup>79</sup> inter alia discussion in Bauböck (ed), [Debating Transformations of National Citizenship](#), Springer, 2018, 3-70.

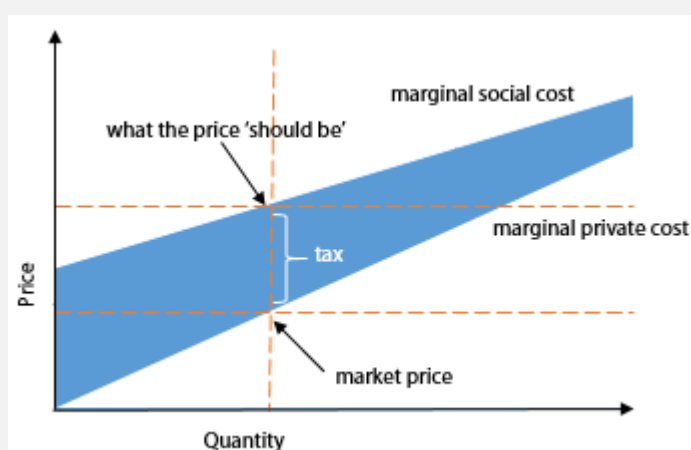
<sup>80</sup> European Commission, [Flash Eurobarometer 485 – European Union Citizenship and Democracy](#), July 2020. Eurobarometer surveys on this topic were also conducted in 2012 and 2015.

<sup>81</sup> This [index](#) is produced by D. Kochenov and Ch. Kälén, the chairman of Henley & Partners, a private company that is a key player in the investment migration industry. The index reflects inter alia the number of destinations to which a holder of a passport can travel to without applying for a visa. For more information, please see: Kochenov D, Lindeboom J., [Kälén and Kochenov's Quality of Nationality Index](#), Hart Publishing, 2020.

attributed to the 'loss of rights to work, reside and travel without restrictions' in the EU.<sup>82</sup> So, securing national citizenship could represent an 'access point' or 'entry door' to obtaining EU rights.<sup>83</sup> The same appears to be true for residency rights: representatives of the Latvian immigration office told a hearing before a Latvian parliamentary committee that 70 % of buyers simply wanted the right to travel and reside within the EU.<sup>84</sup>

#### Box 1 – Negative externalities

According to economic theory, a negative externality occurs when the social cost of production diverges from the private cost. As a result, the market price is too low as it does not capture all costs imposed on society. This situation could be corrected by a tax that corrects the market price to match the marginal social cost. In the figure below, the externality is the area in blue.



Source: Authors' elaboration.

Individual Member States with CBI/RBI schemes gain advantage from the added benefits of EU citizenship, by charging a price to TCNs to gain access to these benefits. This can be seen as free-riding behaviour. As discussed above, one of the main factors drawing applicants to CBI/RBI schemes in the EU is the possibility of gaining EU citizenship rights. Member States with CBI/RBI schemes benefit from their EU membership – yet, the risks that these schemes may create<sup>85</sup> are borne by all Member States, rather than these Member States alone. This can be understood as a **negative externality** (see Box 1). For this reason, the

principle of subsidiarity would also be fulfilled in the case of EU action, since measures at the European level are required to solve the issues created at the national level. Similar problems arise in cases of (candidate and post-candidate) accession countries and countries with visa-free agreements with the EU, while sincere cooperation can be invoked among Member States alone. Nevertheless, **accession countries** with RBI/CBI programmes could be seen as free riding on the expectation of the benefits that could be associated with nationality or residence once the country becomes an EU Member State. The schemes run by countries in the accession process are summarised in Table 6 below). Without such benefits, the demand and investment thresholds for CBI/RBI schemes in most of these countries would likely be substantially less.<sup>86</sup>

<sup>82</sup> New Europeans.net, [Value of UK citizenship drops by 27.1% on Quality of Nationality Index](#). The loss of visa-free rights does not apply to Ireland, the EEA States and Switzerland.

<sup>83</sup> The term 'entry door' was used by Commissioner Reding in her speech: Reding V., ['Citizenship must not be up for sale'](#), European Commission, Speech/14/18, 15 January 2014.

<sup>84</sup> Jemberga S., and Kolesnikova, X., [Latvia's Once-Golden Visas Lose their Shine — But Why?](#), Organised Crime and Corruption Reporting Project, 2018.

<sup>85</sup> See EPRS, 2018, *ibid.* and Section 3.3 of this document.

<sup>86</sup> At present, the estimated investment thresholds for these countries can start from US\$100 000 (about €85.7 000) based on information on the [Henley & Partners](#) website. In Turkey – which has a very large scheme – it seems that accession is not the main driver of the programme (see Annex II – Surak).

Table 6 – Characteristics of CBI/RBI schemes in candidate ascension countries

	Physical presence requirement?	Other requirements	Path to naturalisation
Serbia – RBI scheme <sup>1</sup>	None	Business investment or purchase of property: €250 000	Can apply for permanent residence after five years of temporary residence. Can apply for naturalisation after three years of permanent residence.
Albania – RBI scheme <sup>2</sup>	None	Business investment: €250 000	Can apply for naturalisation after seven years of permanent residence.
Turkey – CBI scheme <sup>3</sup>	None	Purchase of property with a minimum value of US\$250 000 (about €214 300) Bank deposit and capital deposit: US\$1 million (about €857 500)	Three-six months to receive citizenship.
Montenegro – CBI scheme <sup>4</sup>	None	Development projects and government fee: €800 000	Within three months of receiving citizenship.
Montenegro – RBI scheme <sup>4</sup>	Minimal	€100 000	Permanent residence would be received automatically. Naturalisation could occur 10 years after.
North Macedonia – CBI scheme <sup>5</sup>	None	Development investment: €200 000	Within three-four months to receive citizenship.

Source: Authors' elaboration.

Notes: <sup>1</sup> Hudson's Global Residence Index, [Serbia Residence by Investment](#); <sup>2</sup> NTL Trust, [Albania and Residency by Investment](#). The website notes that setting up a company is not difficult and can be done on a one-day visit; <sup>3</sup> La Vida Golden Visas, [Citizenship by Investment Turkey](#); <sup>4</sup> Best citizenships, [Montenegro Citizenship by Investment](#); <sup>5</sup> Harvey Law Group, [North Macedonia Economic Investment Citizenship Program](#).

Third countries operating CBI schemes that offer **visa-free access to the Schengen area** (see Table 7), which includes most EU countries,<sup>87</sup> also benefit from the possibility to travel to the EU.<sup>88</sup> Applicants may be attracted by the websites of private service providers for such schemes, which often market visa-free travel to the Schengen area as a benefit.<sup>89</sup> The demand and investment thresholds for these CBI schemes may be driven in part by the benefits offered by visa-free access to the EU.

<sup>87</sup> Five EU countries are not part of the Schengen Agreement (Ireland, Romania, Bulgaria, Croatia and Cyprus).

<sup>88</sup> M. Sumption and K. Hooper, [Selling Visas and Citizenship - Policy Questions from the Global Boom in Investor Immigration](#), Migration Policy Institute 2014, p. 16.

<sup>89</sup> See, for example, the website of a service provider for the citizenship by investment scheme in Antigua and Barbuda: <https://www.henleyglobal.com/citizenship-investment/antigua-barbuda>.



Table 7 – Third countries with visa-free access to the Schengen area

	No CBI scheme:	CBI scheme:
Other third countries	Argentina, Australia, Bahamas, Barbados, Brazil, Brunei, Canada, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Kiribati, Malaysia, Mexico, New Zealand, Nicaragua, Panama, Paraguay, Saint Vincent and the Grenadines, Samoa, Singapore, Solomon Islands, South Korea, Tonga, Trinidad and Tobago, Tuvalu, Uruguay, Vanuatu.	Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia and Vanuatu

Source: Authors' elaboration.

Table 7 shows those countries that have visa-free agreements with the EU, which also have CBI schemes. Table 8 shows the main characteristics of the CBI schemes in these countries.

Table 8 – Characteristics of CBI schemes in third countries with visa free access to the EU

	Physical presence requirement?	Minimum investment	Waiting period
Antigua and Barbuda <sup>1</sup>	Minimal	US\$100 000 (about €85 700)	Six to seven months
Dominica <sup>2</sup>	None	US\$100 000 (about €85 700)	Less than six months
Grenada <sup>3</sup>	None	US\$140 000 (about €120 000)	Three to four months
Saint Kitts and Nevis <sup>4</sup>	None	US\$140 000 (about €120 000)	Three to six months
Saint Lucia <sup>5</sup>	None	US\$100 000 (about €85 700)	Three to four months

Source: Authors' elaboration.

Notes: <sup>1</sup> CS Global Partners, [Antigua and Barbuda Citizenship by Investment](#). The website states that 'Successful applicants are required to reside in the country for a minimum of five days within five years after receiving citizenship'; <sup>2</sup> [Dominica Citizenship by Investment](#); <sup>3</sup> Henley & Partners, [Grenada Citizenship-by-Investment Program](#); <sup>4</sup> Henley & Partners, [St. Kitts and Nevis Citizenship-by-Investment](#); Henley & Partners, [St. Lucia Citizenship-by-Investment](#).

### 3.2. Key issue 2: Risk of commodification of EU citizenship and residency rights

The CBI/RBI schemes differ from other pathways to residence and citizenship in the EU because they centre on a **market transaction**, where the requirement to obtain the EU visa or the passport is



**Box2 – An example of the issues at stake: Canada**

In 1986, Canada developed the Federal Immigrant Investor Programme (FIIP) from an existing business investor programme, which became the leading RBI scheme globally. Under the FIIP, investors were no longer required to be actively involved in running a business, they could simply make a passive investment of CAD\$150 000 – a base amount that increased over time until it eventually reached CAD\$800 000. With this qualifying investment, investors and their families received conditional residence, which became permanent residence after five years. For many years, the government did not assess whether the investors were physically present in the country, which meant that many divided their time between Canada and East Asia and some did not move at all. Due in part to the possibility to live as 'flexible citizens', this very popular option produced over 200 000 new Canadian citizens or residents over its course. In 2014, the government ended the programme, due largely to **unclear economic advantages** for Canada. Because Canadian banks were allowed to finance the investment, many investors simply paid a flat fee of around CAD\$250 000 to a bank, which then invested the full qualifying amount on behalf of the client. The result was that most of the invested money was effectively printed within Canada. The government also noted that the programme '**undervalued Canadian permanent residence**' and did not attract investors who maintained ties to the country. A variant of the programme in Quebec, the Quebec Immigrant Investor Programme, continued until 2019, when it was frozen.

Source: K. Surak, 'Marketizing Sovereign Prerogatives: How to Sell Citizenship', *European Journal of Sociology*, 62(2), 2021.

primarily based on wealth and is a capital flow, or an investment of a 'passive' nature.<sup>90</sup> Academics have argued that the possibility of obtaining citizenship or residence rights through a market transaction risks its **commodification and devaluation**.<sup>91</sup> As noted in the 2018 EPRS study, it risks 'undermining of the political notions of citizenship grounded in reciprocity, equality, and solidarity', a lack of cooperation and mutual trust among the Member States, and a risk of inequality between applicants depending on their wealth, and risk of dilution of national cohesion.<sup>92</sup> The EPRS study also underlines that the involvement of private service providers in these transactions further contribute to the commodification issue, as profit-seeking companies may have incentives to lower vetting criteria, or not to resolve situations with a conflict of interest.

In its 2014 resolution, the European Parliament expressed strong views against such treatment of citizenship as a market good for sale.<sup>93</sup> The European Commission echoed this view in its infringement proceedings against Cyprus and Malta, by urging them to 'stop "selling" EU citizenship'.<sup>94</sup> The devaluation of citizenship has been also raised by some opponents to these

schemes as an issue in terms of 'international standing'.<sup>95</sup>

<sup>90</sup> Džankić, J., 'Immigrant investor programmes in the European Union (EU)', *Journal of Contemporary European Studies*, 26(1), 2018, pp. 478-497.

<sup>91</sup> K. Surak, 'Marketizing Sovereign Prerogatives: How to Sell Citizenship', *European Journal of Sociology*, 62(2), 2021; Shachar, A., Hirschl, R., On Citizenship, States, and Markets, *Political Philosophy* 22(2), 231-257.

<sup>92</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018; and Džankić, J., '[Long-Distance Citizens: Strategies and Interests of States, Companies and Individuals in the Global Race for Wealth](#)', *The Global Market for Investor Citizenship. Politics of Citizenship and Migration*, Palgrave Macmillan, 2019, pp. 147-148.

<sup>93</sup> European Parliament resolution of [16 January 2014](#) on EU citizenship for sale (2013/2995(RSP)).

<sup>94</sup> European Commission, [June infringements package: key decisions](#), 2021.

<sup>95</sup> This view was expressed, for example, in the context of a parliamentary debate in Ireland, which had a citizenship by investment scheme in place from 1984 to 1994. In the discussion, one member noted that the risks of the programme were a 'threat to [Ireland's] international standing'. Statement by Feargal Quinn in 1998: <https://www.oireachtas.ie/qa/debates/debate/seanad/1998-03-04/9/>.

The **commodification of residence is also relevant** not only to the extent that it facilitates the acquisition of long-term residence and citizenship (see Section 2.1), but also because, by providing a fast-track based on wealth, it risks **divergence from the EU Long-term Residence Directive**, which is centred around the criterion of 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.<sup>96</sup>

In their arguments against the commodification of EU citizenship, the European Parliament and the European Commission have invoked the '**genuine link' criterion**, which was established in the 1955 *Nottebohm* decision by the International Court of Justice.<sup>97</sup> In its 2014 resolution, the European Parliament notes that 'EU citizenship implies the holding of a stake in the Union and depends on a person's ties with Europe and the Member States or on personal ties with EU citizens; stresses that EU citizenship should never become a tradeable commodity'. In her 2014 speech, Commissioner Viviane Reding stated: 'Member States should only award citizenship to persons where there is a 'genuine link' or 'genuine connection' to the country in question.'

The 'genuine link' argument has been much **criticised**.<sup>98</sup> Without an established definition, it can be interpreted in different ways, e.g. cultural ties or physical presence. Especially if interpreted as cultural ties, critics have argued that the argument risks being used to justify nationalistic policies to restrict the long-term integration of migrants.<sup>99</sup> Moreover, in practice, the acquisition of citizenship by distant descent or ancestry for example, may pose similar problems to CBIs, while business investment visas may pose similar problems to RBIs. While these channels may require applicants meet some conditions, in practice they may be almost purely financial.<sup>100</sup>

Linking citizenship to the **period of residence** appears to be a more promising approach, as the period of residence is actually the main criterion to access 'ordinary naturalisation'. As noted in the EU Long-term Residence Directive, the purpose of the five year residence requirement is to ensure that 'the person has put down roots in the country' (Recital 6). It is also notable that, in response to an inquiry by the European Commission in 2014, Malta introduced the condition of effective residence status to obtain naturalisation via its CBI scheme.<sup>101</sup> At the same time, it was unclear whether residence implied a legal or physical status in a Member State and whether the requirement would be the same as for other 'naturalisers'.<sup>102</sup>

### 3.3. Key issue 3: Risk of violations of the principles of fairness and discrimination

Previous studies have highlighted the inherent lack of fairness and discrimination CBI/RBI schemes represent, relative to other pathways to residence and citizenship. As noted in the 2018 EPRS study, CBI/RBI schemes provide a formal access door to residence or citizenship conditioned mainly on

<sup>96</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>97</sup> ICJ judgment of 6 April 1955, [Nottebohm case \(Liechtenstein v. Guatemala\)](#).

<sup>98</sup> i.a. Weingerl, P., Tratnik, M., Citizenship by Investment Programs from the Perspective of International and EU Law, *LeXenonica* 11(2), 2019, 95-126; Spiro, P., [Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion](#), Investment Migration Working Papers IMC-RP2019/1

<sup>99</sup> Carrera, S., *ibid*, 2014.

<sup>100</sup> For more information, please see Section 2.1 and Annex II – Surak.

<sup>101</sup> European Commission, [Joint Press Statement by the European Commission and the Maltese Authorities on Malta's Individual Investor Programme \(IIP\)](#), 2014.

<sup>102</sup> Carrera S., *ibid*, 2014.

financial resources; the procedure is simpler than more traditional pathways; and vulnerable to evasion (see Issue 4).<sup>103</sup> One academic has noted that the residence requirements demanded by CBI/RBI schemes (or lack thereof) are at odds with the EU's Long-term Residence Directive and may undermine its central underpinnings on the **physical presence requirement**.<sup>104</sup>

Issues of fairness are also raised by observing that the growth in CBI/RBI schemes since 2010 occurred in parallel with the trend in Member States to place more stringent requirements on migrants through labour market and social integration tests.<sup>105</sup> The EPRS recently prepared an assessment of future possible avenues for EU action that focused on attracting human capital to the EU, specifically low- and medium-skilled workers, and entrepreneurs.<sup>106</sup> In sum, **CBI/RBI schemes provide a 'fast track' access to residence and citizenship to a privileged few**. They are not aligned with other EU external action, particularly in the area of legal migration and asylum. Moreover, according to the Council of Europe, the 'sale of citizenship also violates the principle of equality before the law'.<sup>107</sup>

The European Parliament highlighted these issues in 2014 with respect to CBI schemes – but not RBI schemes, although the same argument could be made.<sup>108</sup> Respondents to a public consultation organised by the European Commission also underscored the need to harmonise rules on obtaining citizenship.<sup>109</sup> During the 2015 refugee crisis, the European Parliament was critical of Member States that welcomed investors through CBI/RBI schemes, but were less willing to admit refugees.<sup>110</sup>

The same study underlines that the procedures for obtaining the right to live in EU Member States are usually much longer for asylum seekers than for foreign investors (about three months for RBIs, while the period for obtaining asylum status is usually above the six-month deadline envisioned in the EU Asylum Procedures Directive).<sup>111</sup>

Table 9 highlights differences between CBI/RBI requirements for physical presence and tests as compared with traditional pathways. The conditions and time requirements appear to differ substantially between the 'investors' schemes' and the other channels. While most CBI and RBI schemes have no residence requirements, access to citizenship in all Member States is conditioned to a minimum of years of residence.

<sup>103</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018, Section 2.1.

<sup>104</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>105</sup> Mentzelopoulou M. and Dumbrava C., Acquisition and loss of citizenship in EU Member States: Key trends and issues, EPRS, 2018.

<sup>106</sup> Navarra, C. and Fernandes M., [European Added Value Assessment – Legal migration policy and law](#), EPRS, 2021.

<sup>107</sup> Council of Europe, [Resolution 2355](#), Investment Migration, 2020.

<sup>108</sup> European Parliament resolution of [16 January 2014](#) on EU citizenship for sale (2013/2995(RSP)).

<sup>109</sup> Some 36 % of respondents were in favour of this action, [Report on the consultation on the future of EU legal migration](#), European Commission, 2021.

<sup>110</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018, Section 2.1.

<sup>111</sup> [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\)](#). An EPRS study finds that the deadline is often not respected and the delay varies by source country. For more information, please see: van Ballegooij W. and Navarra, C. [The Cost of non-Europe in Asylum Policy](#), 2018.

This minimum may extend from four to ten years (see Section 2.1). Recognised refugees in most cases face longer residency requirements to obtain citizenship and the procedure is often discretionary.

Table 9 – Comparison of CBI/RBI with other pathways to residence and citizenship in the EU

	CBI/RBI scheme requirements		Traditional pathways to residence and citizenship			Rules of naturalisation for recognised refugees		
	Residence requirement	Test including language requirement	Rules of <i>jus soli</i> citizenship <sup>6</sup>	Minimum period of residence for citizenship <sup>7</sup>	Citizenship test	Procedure	Residence period	Other conditions
Bulgaria	None	Person must have accommodation	No <i>jus soli</i>	5 years	No	Entitlement	6 years	Yes
Cyprus	RBI: Visit required once every two years to maintain the status. CBI: Valid residence permit	None	No <i>jus soli</i>	5 years	No	--	–	–
Estonia	None	None	No <i>jus soli</i>	8 years	Yes	–	–	–
Greece <sup>4</sup>	None	Physical presence and cultural ties needed to apply for citizenship	Conditional double <i>jus soli</i>	10 years	Yes	Discretionary	3 years	No
Hungary <sup>1</sup>	None	None	No <i>jus soli</i>	8 years	Yes	Entitlement	3 years	Yes
Ireland	One day per year	None	Conditional <i>jus soli</i>	5 years	No	Discretionary	None	No
Italy	None	None	No <i>jus soli</i>	10 years	Yes	Discretionary	5 years	Yes
Latvia	None	None	No <i>jus soli</i>	5 years	Yes	–	–	–
Luxembourg <sup>5</sup>	Only for permanent residence	Language and civics tests to apply for citizenship	Automatic double <i>jus soli</i>	7 years	Yes	Discretionary	0 years	Yes
Malta	RBI: None CBI: None	None	No <i>jus soli</i>	5 years	No	–	–	–

	CBI/RBI scheme requirements		Traditional pathways to residence and citizenship			Rules of naturalisation for recognised refugees		
	Residence requirement	Test including language requirement	Rules of <i>jus soli</i> citizenship <sup>6</sup>	Minimum period of residence for citizenship <sup>7</sup>	Citizenship test	Procedure	Residence period	Other conditions
Netherlands <sup>3</sup>	Four months per year	Language & culture tests to apply for citizenship	Automatic double <i>jus soli</i>	5 years	Yes	Entitlement	5 years	Yes
Portugal	Minimum of 7 days in the first year – Minimum of 14 days in subsequent years.	None	Conditional <i>jus soli</i>	5 years	No	–	–	–
Spain <sup>2</sup>	No minimum stay requirement	None	Automatic double <i>jus soli</i>	10 years	Yes	Entitlement	5 years	Yes

Source: CBI/RBI scheme requirements were obtained from Annex II of the 2018 EPRS study. Conditions related to traditional pathways to residence and citizenship as well as naturalisation for recognised refugees was obtained from: Mentzelopoulou M. and Dumbrava C., Acquisition and loss of citizenship in EU Member States: Key trends and issues, EPRS, 2018 and Vink M, van der Baaren L, Bauböck R, Honohan I and Manby Bronwen. GLOBALCIT Citizenship Law Dataset, V1.00. Global Citizenship Observatory, 2021.

Notes: <sup>1</sup> [La Vida Golden Visas](#); <sup>2</sup> Henley & Partners, [Spain - Residence-by-Investment Overview](#); <sup>3</sup> La Vida Golden Visas, [Netherlands Golden Visa](#); <sup>4</sup> Schengen Visa Info, <sup>5</sup> [Greece Golden Visa – How to Get Permanent Residency and Citizenship](#); <sup>6</sup> Citizenship may be acquisition of citizenship at birth via descent (*jus sanguinis*), or by birth in the territory of a country (*jus soli*); citizenship may otherwise be obtained through naturalisation; <sup>7</sup> This requirement is typically qualified and only certain types (e.g. permanent, continuous, etc.) may be admissible.

### 3.4. Key issue 4: Risk of weak vetting and limited due diligence of applicants

The RBI/CBI schemes pose a wide range of risks that include **corruption, money laundering, security threats and tax avoidance**.<sup>112</sup> These risks are currently not sufficiently managed by weak vetting and due diligence of applicants to RBI/CBI schemes in the Member States, although efforts in this direction should be acknowledged, for example in the area of money laundering.<sup>113</sup> The **lack of transparency regarding the process and the capital inflows** is also highlighted as a major problem, including by the Council of Europe.<sup>114</sup>

The **scope of vetting**, which focuses on the applicant and does not encompass family members who could also receive a residence permit or citizenship of an EU Member State if the RBI/CBI application is approved, is an example of such limitations.<sup>115</sup> The EU's evolving legal framework on tax and money laundering may also contribute to inconsistent implementation by the Member States. Another driver of weak vetting and limited due diligence has been attributed to the **conflict of interest** faced by private actors simultaneously supporting applications and also assisting governments in running RBI/CBI schemes. The **limited human and financial resources of public authorities** to conduct effective due diligence may be an issue, coupled with a disinclination to apply rules and standards that could reduce the likelihood of approving an application.

A **recent report issued by the Attorney General of Cyprus** concerning the Cypriot CBI scheme provides an illustration of these concerns. Specifically, the report notes that 53 % of the passports issued by the scheme were for family members or top company executives. About 12 % of approved applicants did not own a permanent residence in the country as stipulated by the scheme's rules. An estimated 8 % did not meet the condition of investing in the country.<sup>116</sup>

The vetting and due diligence of **CBI schemes in third countries** is also relevant to the EU to the extent that these countries have visa-free agreements with the EU (see Table 2). In addition to contributing to the commodification of EU citizenship (Key issue 2), these CBI schemes may facilitate travel to the EU by high-risk individuals.

The main risks posed by RBI/CBI schemes are briefly described below.

**Corruption and security:** The 2018 EPRS study presents a comprehensive review of the corruption and security risks posed by CBI/RBI schemes. **Conflicts of interest** are a notable concern among service providers that simultaneously support applicants and national authorities, and governments

<sup>112</sup> European Commission, 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](#), 2019; A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>113</sup> 5th Anti-money Laundering Directive (Directive (EU) 2018/843), European Commission, [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018, amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU](#).

<sup>114</sup> Council of Europe, [Resolution 2355](#), Investment Migration, 2020.

<sup>115</sup> This phenomenon is referred to as 'family work around' in Annex II - Surak.

<sup>116</sup> Euronews, Cyprus wrongly issued passports despite warnings, probe concludes, 8 June 2021, based on: Republic of Cyprus Audit office, Audit of Granting of the Cypriot Citizenship within the Framework of the Cyprus Investment Programme, Special report no YΠΕΣ/01/2020, September 2020.



who seek to generate revenue and ensure sufficient safeguards that carry a financial cost.<sup>117</sup> The risk of a conflict of interest and ensuing corruption is also highlighted by the Council of Europe.<sup>118</sup> Moreover, applicants with greater wealth and/or more complex backgrounds may require enhanced vetting and due diligence, and yet are more likely to have the means to circumvent these procedures. A survey found that about a third of respondents in the EU felt that corruption was getting worse in their country, while about half (44 %) considered that it was not improving. In particular, respondents were concerned about government corruption and government's impunity from wrongdoing, including the use of personal connections to obtain better access to public services.<sup>119</sup>

These same concerns may also be evident in third countries with CBI schemes and visa-free access to the EU. High-risk individuals may be able to obtain citizenship in such a third country and enter the EU freely without having to apply and await approval for a Schengen visa.

**Money laundering:** At present, the EU's legal framework on anti-money-laundering and countering the financing of terrorism (AML/CFT) requires obliged entities to apply due diligence requirements on all their customers. These obliged entities include credit institutions, tax advisors, notaries and estate agents. Moreover, the framework requires obliged entities to conduct enhanced due diligence on customers that carry a higher risk of money laundering or financing of terrorism, which include applicants to CBI/RBI in the Member States. In the context of CBI/RBI, obliged entities are thus expected to obtain information on the source of the investment directed to the scheme as well as the wealth of the CBI/RBI customer. The European Commission's proposal for a 6th AMLD and a proposal for a regulation would include 'migration operators' in the list of obliged entities. While this measure would help to address the key issue, several gaps would still remain:

- Due diligence requirements may not be applied to family members who may also benefit from the customer's application to a CBI/RBI scheme;<sup>120</sup>
- Governmental organisations and agencies are also not covered by AML legislation;
- Challenges in the implementation of the AML legislation.

Central to the implementation of the AML legislation is cooperation and sharing of information. The 2018 EPRS study highlighted challenges in this respect across national authorities and financial intelligence units (FIUs). In 2018, the European Commission sought to apply fines to Romania and Greece, while an additional five Member States with CBI/RBI schemes – Estonia, Ireland, Latvia, Luxembourg, and Malta – were placed under scrutiny.<sup>121</sup> In Latvia, for example, Transparency International noted that the real estate option for the RBI scheme was susceptible to the use of laundered money.<sup>122</sup>

<sup>117</sup> As noted in Section 2.1, CBI/RBI schemes are often introduced for the explicit objective of generating revenue.

<sup>118</sup> Council of Europe, [Resolution 2355](#), Investment Migration, 2020: 'Member States should ensure that immigration is not based on corrupt practices by domestic administrations and that any conflicts of interest are avoided in the process of selecting and advising immigration applicants, vetting them and deciding whether to grant residence status or citizenship.'

<sup>119</sup> Transparency International, [Global Corruption Barometer - EU 2021](#), 2021. The survey was conducted with more than 44 000 individuals in all 27 EU Member States.

<sup>120</sup> At present, due diligence may only be applied to family members of politically-exposed persons (PEPs).

<sup>121</sup> European Commission, [Infringements: Commission refers Greece, Ireland and Romania to the Court of Justice for not implementing anti-money laundering rules](#), 2018.

<sup>122</sup> Jemberga S., Kolesnikova X., [Latvia's once golden visas lose their shine - but why?](#) Organised crime and corruption reporting project, 2018.



**Tax avoidance:** The 2018 EPRS study provides an extensive review of the tax risks related to RBI/CBI schemes. Rather than tax evasion, RBI/CBI schemes are more likely to facilitate tax avoidance by reducing tax transparency. Moreover, these schemes are targeted at wealthy individuals. According to the 2018 Wealth Report, 34 % of 'high net worth individuals' have a second passport and this tendency is on the rise, according to the 2021 Report. The Organisation for Economic Co-operation and Development (OECD)<sup>123</sup> identifies the characteristics of CBI/RBI schemes that pose greater risk in terms of tax transparency: low physical presence requirements; favourable tax regimes; and absence of mitigating factors (e.g. exchange of information systems).

#### Box 3 – Examples of incidents with CBI/RBI schemes in the EU reported in the media

In the Passport Papers released in 2021, the Daphne Caruana Galizia Foundation identified a number of shortcomings of the CBI scheme in **Malta**<sup>i</sup> that included:

- Limited number of days spent in Malta before filing application;
- Renting of apartments still under construction to fulfill the 12-month residency requirement;
- Applicants from countries that do not permit dual citizenship.

In the Cyprus Papers, an exposé, released by Al Jazeera in 2020, highlighted shortcomings in the CBI scheme in **Cyprus**:<sup>ii</sup>

- Exchange of investment in high-end real estate for passports;
- High-risk applicants were approved;
- Executive branch of government participated in approval procedures.

In **Portugal**, a number of government officials, including the former interior minister Miguel Macedo, were accused of taking kickbacks by artificially inflating the prices of investor visas in exchange for an expedited application review. Macedo resigned in 2014 after the charges were brought. In 2019, he was acquitted, while two senior officials were found guilty of corruption.<sup>iii</sup>

In **Greece**, applicants have reported cases of fraud in relation to the purchase of properties through service providers. Card payments were banned in 2014, when it was discovered that some were registered under fake names and could facilitate money laundering.<sup>iv</sup>

<sup>i</sup> Daphne Caruana Galizia Foundation, [Passport Papers](#), 2021.

<sup>ii</sup> Al Jazeera's Investigative Unit, [Cyprus Papers](#), 2020.

<sup>iii</sup> AP News, [Former Portuguese minister cleared in visa corruption case](#), 2019.

<sup>iv</sup> Schengen Visa Info News, [Fraudulent Agencies Using Greece's 'Golden Visa' Program to Rip-Off Chinese Nationals](#), 2020.

Some Member States with CBI/RBI schemes apply low taxes to personal income (Bulgaria, Estonia and Latvia), while others (Cyprus, Ireland, Malta and Portugal) allow for an individual to have a tax domicile that differs from his or her country of residence, thereby avoiding tax payments on income earned in the country of residence. In Italy, new residents can play a 'substitute tax' of €100 000 on income from abroad.<sup>124</sup> Candidates to EU accession and countries with visa-free agreements with

<sup>123</sup> OECD, consultation document, [Preventing abuse of residence by investment schemes to circumvent the CRS](#), 19 February-19 March 2018.

<sup>124</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

the EU sometimes advertise low tax regimes for CBI/RBI, as is the case of the North Macedonian CBI scheme.<sup>125</sup>

Due to weaknesses identified in vetting and due diligence, some suggest that RBI/CBI schemes do not adequately manage the risks outlined above and have **poor integrity**. In other words, RBI/CBI schemes may facilitate money laundering, corruption, tax avoidance and security risks in the EU. The extent to which this concern can be substantiated is less evident, however. While a number of scandals have come to light in recent years (see Box 3), it is unclear if they are isolated events to which Member States have adequately responded, or indicative of a structural problem. This knowledge gap is driven by the **opacity in which RBI/CBI schemes operate in the EU** – obtaining figures on applications and approvals alone is a challenge, as discussed in Section 2. Thus, while the EAVA can confirm the security, tax avoidance, money laundering and corruption risks posed by RBI/CBI schemes in the EU, it cannot assess the scale of these risks.

In the absence of robust, comprehensive data, the EAVA considers how Member States with RBI/CBI schemes compare with other Member States in terms of several statistical indices. The first index, produced by the Tax Justice Network, ranks countries by the level of **financial secrecy**.<sup>126</sup> The second index, produced by the World Bank, ranks countries by **control of corruption**.<sup>127</sup> Figure 7 plots the distribution of Member States in terms of the two indices and whether or not they had an RBI/CBI scheme in place. The analysis suggests that RBI/CBI schemes are located where there is higher financial secrecy and poorer control of corruption. The analysis should not be interpreted in a causal manner e.g. that RBI/CBI schemes generate higher financial secrecy and a lower control of corruption. Rather, the analysis suggests that Member States with RBI/CBI schemes are more prone to risks related to financial secrecy (e.g. tax avoidance and money laundering) and corruption.

The analysis also investigated how Member States performed on an OECD assessment concerning the **automatic exchange of financial account information**.<sup>128</sup> As shown in Figure 8, most Member States have a legislative framework in place.<sup>129</sup> However, 10 Member States had a weak legislative framework that could hamper the automatic exchange of financial information and therefore enhance the risk of tax avoidance. Among these Member States, three (Estonia, Latvia and the Netherlands) were operating an RBI scheme in 2019.

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<sup>125</sup> Harvey Law Group, [North Macedonia Economic Investment Citizenship Program](#).

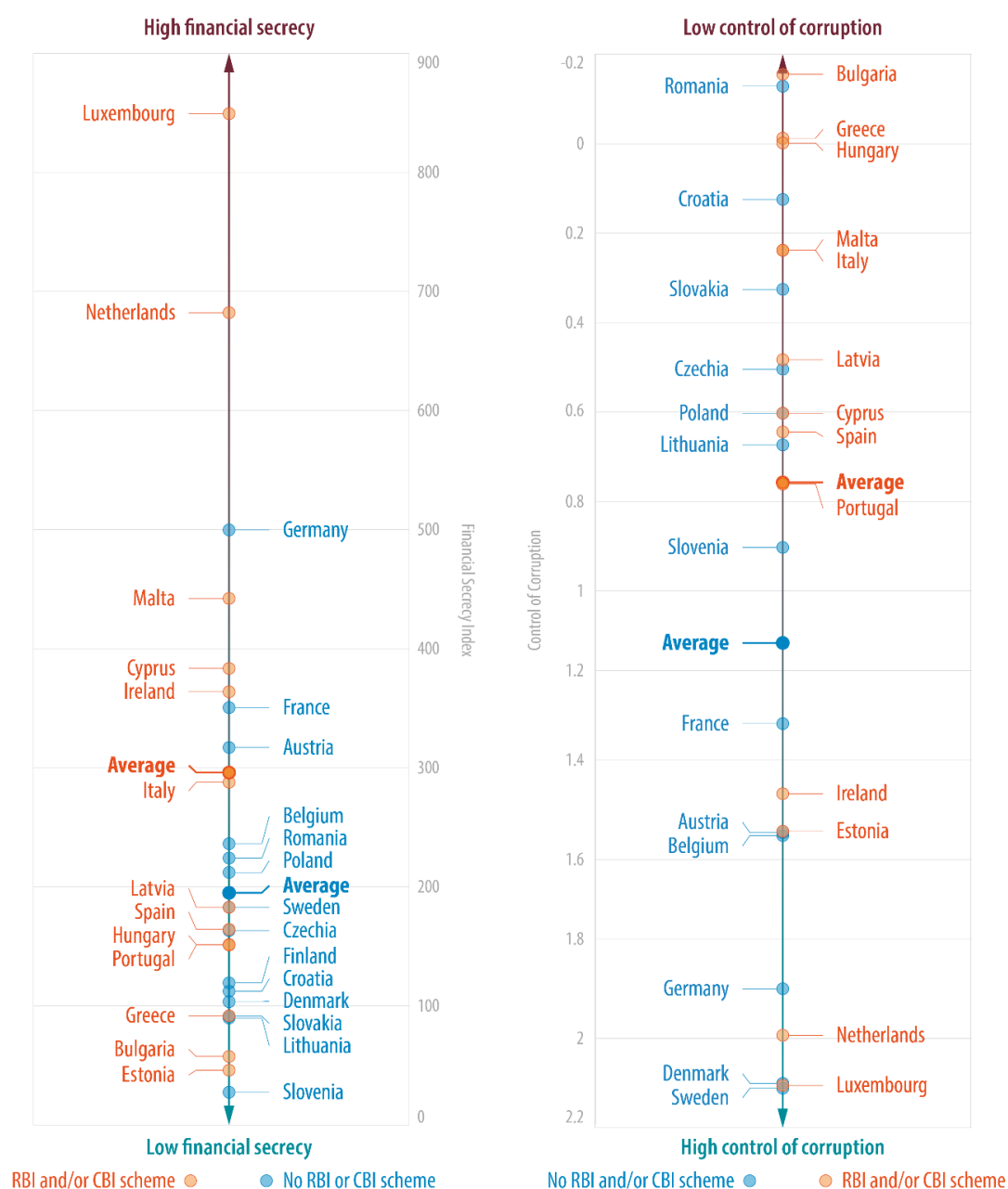
<sup>126</sup> Tax Justice Network, [Financial Secrecy Index 2020](#). The index is based on 20 indicators gathered through a questionnaire completed by national ministries of finance, national audit offices and financial intelligence units and a weight reflecting the contribution of the jurisdiction to the global market for financial services provided to non-residents.

<sup>127</sup> World Bank, [Worldwide Governance Indicators 2019](#). The indicators are reported annually for over 200 countries and territories for 6 dimensions of governance, one of which includes 'control of corruption'. The indicators draw on over 30 data sources and reflect views from citizens, businesses and experts.

<sup>128</sup> [Peer Review of the Automatic Exchange of Financial Account Information](#), 2020, OECD.

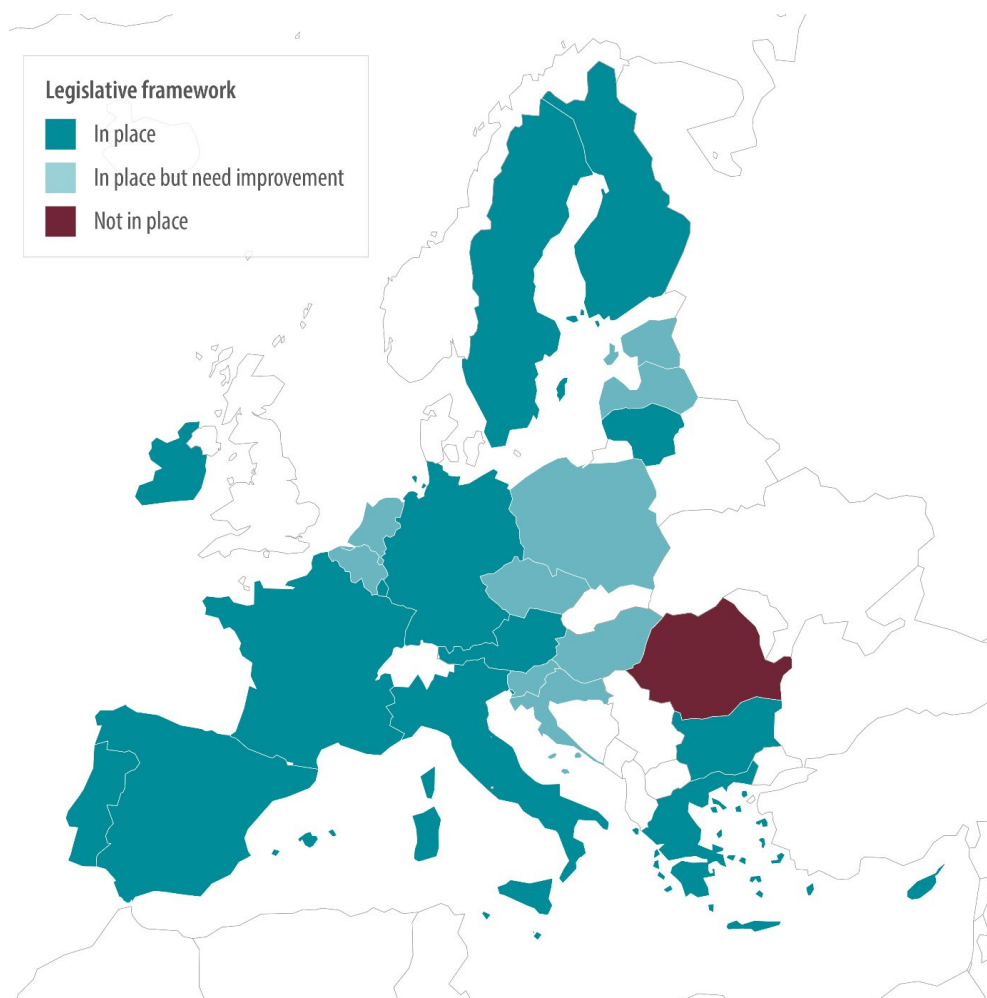
<sup>129</sup> According to the indicator presented in the 2020 OECD study, only Romania did not have a legislative framework in place.

Figure 7 – Financial secrecy and control of corruption in the Member States



Source: Authors' elaboration based on 2020 data from the Tax Justice Network's [Financial Secrecy Index](#) and 2019 data on the 'control of corruption' dimension from the World Bank's [Worldwide Governance Indicators](#) project. Countries are classified as having RBI/CBI if they are part of the sample of this study,

Figure 8 – State of national legislation to support the automatic exchange of financial account information



Source: Authors' elaboration based on OECD, [Peer Review of the Automatic Exchange of Financial Account Information](#), 2020.

The EU and its Member States have taken some action since 2019 to address the issue of weak vetting and poor due diligence of applicants.

The **European Commission** established a Member State **expert group to further investigate and monitor the risks posed by RBI/CBI schemes**.<sup>130</sup> The group was tasked with developing a common set of checks for security, corruption, money-laundering and tax evasion risks and promoting transparency in CBI/RBI schemes. The group met four times in 2019. A stakeholder consultation was organised in May 2019, to gather feedback on the European Commission's report.<sup>131</sup> The European

<sup>130</sup> European Commission, [Activities of the Group of Member State Experts on Investor Citizenship and Residence Schemes](#).

<sup>131</sup> European Commission, [Summary note of the stakeholder consultation on investor schemes in the EU of 16 May 2019](#), 2019.

Commission has also moved forward with infringement proceedings in Malta and Cyprus concerning their CBI schemes.

Some **Member States** have also introduced measures to improve programme vetting, due diligence and safeguards. For example, Portugal introduced a requirement for applicants to provide a fiscal number from their country of origin and previous residence. Bulgaria set up a working group to review the RBI scheme and to consider abolishing it.<sup>132</sup>

### 3.5. Key issue 5: Lack of sufficient safeguards for macroeconomic governance

The RBI/CBI schemes in the EU have also raised concerns regarding macroeconomic governance in three areas – financial stability and volatility, tax competition and access to housing. Each is reviewed briefly below.

#### 3.5.1. Financial stability and volatility

As noted in the EPRS study, the large investments associated with CBI/RBI schemes can impact financial stability in small states, particularly when the inflows represent a large share of GDP or foreign investment in a particular sector.<sup>133</sup> In such cases, key sectors of the economy, or indeed the entire economy, may become dependent on RBI/CBI schemes and vulnerable to changes in applications and investment inflows.

In Malta and Cyprus, **CBI schemes** play an important role in the overall economy. The investments received between 2017 and 2019 are estimated to be 2.1 % of GDP in Malta and 4.5 % of GDP in Cyprus.<sup>134</sup> The International Monetary Fund (IMF) has highlighted the macroeconomic risks associated with Malta's CBI scheme. Specifically, following a mission in 2019, it noted that Malta's high reliance on its investor schemes and corporate tax regime rendered it vulnerable. Moreover, shortcomings in implementing AML legislation could lead to volatility in the financial and housing markets.<sup>135</sup> With regards to Cyprus, the IMF has noted that Cyprus' weakened fiscal position due to a decline in foreign direct investment (FDI), in particular the termination of the citizenship by investment programme, could hinder recovery from the coronavirus pandemic.<sup>136</sup> These effects may be concentrated in the real estate and construction sector, where 17 % of the revenue can be attributed to the CBI scheme.<sup>137</sup>

With regards to **RBI schemes**, their value as a share of GDP in EU Member States is relatively small. Their revenue constitutes a large share of FDI in Greece, Latvia and Portugal, but FDI is not a significant component of these economies. Real estate and construction sectors are also relevant for the eight Member States with a real estate option in the RBI scheme. There is concern with regards to Greece, where the RBI scheme accounted for about one third of real estate transactions

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<sup>132</sup> [First meeting of the Group of Member State Experts on Investor Citizenship and Residence Schemes in the EU](#), 5 April 2019.

<sup>133</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU – State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>134</sup> For more information, please refer to Annex II – Surak.

<sup>135</sup> International Monetary Fund (IMF), [Malta—Concluding Statement of the 2019 Article IV Mission](#), 2019.

<sup>136</sup> [IMF Executive Board Concludes 2021 Article IV Consultation with Cyprus](#), 2021.

<sup>137</sup> [Cyprus Real Estate Market Report – The Insights \(11th edition\)](#), KPMG, July 2020.

in 2018.<sup>138</sup> The data that could be obtained from Latvia, Portugal and Spain suggest that the risk that RBI schemes pose to the stability of the housing market is low.<sup>139</sup>

### 3.5.2. Tax competition

Such CBI/RBI schemes may also encourage tax competition between Member States. As noted in Section 3.3, some Member States offer privileged tax regimes that could provide a greater impetus for applicants to lodge an application in one Member State rather than another. Member States also vary in terms of compliance with corporate social responsibility (CSR) standards. For example, an OECD study found that the CBI and RBI schemes in Malta may not be compliant with CSR standards, as they do not require a significant period of residence to gain rights and the benefit of low income tax rates.<sup>140</sup>

Tax competition between Member States may lead to an **uneven playing field** in the market for investors and may also **hinder the sharing and exchange of information** between Member States to limit passport and visa 'shopping'. In a 2015 resolution, the European Parliament noted that tax competition can weaken integrity of the single market and erode the tax base.<sup>141</sup> As underlined by the Council of Europe Resolution in 2020, 'Member States should not attract investment migration by offering an undue tax shelter for assets and revenue generated abroad'.<sup>142</sup>

The effects of tax competition globally could be called a '**race to the bottom**' that is leading to a shrinking tax base and shifting the tax burden away from corporations and from wealthier individuals.<sup>143</sup> This occurs for several reasons that go beyond CBI/RBI (competition on corporate tax, especially), but the EU is highly affected – studies show that profit shifting by EU companies substantially occurs within the EU.<sup>144</sup> Moreover, taxation on high-income individuals is declining.<sup>145</sup> The European Parliament has repeatedly called attention to harmful tax practices that may lead to these outcomes and has recently called for the inclusion of preferential personal income tax regimes in the scope of the Code of Conduct on Business Taxation, 'to cover special citizenship schemes or measures to attract highly mobile wealthy individuals'.<sup>146</sup>

### 3.5.3. Access to housing

The increased demand for housing in Member States due to CBI/RBI schemes could potentially affect the price and availability of housing. This is a concern at the EU level, considering that access to housing is a fundamental right according to the European Social Charter as well as the European

<sup>138</sup> For more information, please see Annex II – Surak.

<sup>139</sup> See Annex II – Surak. In Portugal, the RBI scheme contributed 2.9 % to total real estate transactions in 2018. In Spain, the share was 0.2 % for 2013-2017 and in Latvia the estimated share was estimated at between 1.7 % and 6.7 % during 2014-2015.

<sup>140</sup> [RBI and CBI](#), Automatic Exchange Portal, OECD.

<sup>141</sup> European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect (2015/2066(INI)).

<sup>142</sup> Council of Europe, [Resolution 2355](#) (2020), Investment Migration

<sup>143</sup> Egger, P. H., Nigai, S., & Strecker, N. M., The taxing deed of globalization, *American Economic Review*, 109(2), 2019, p. 353-90.

<sup>144</sup> Tørsløv, T. R., Wier, L. S., & Zucman, G., The missing profits of nations (No. w24701), National Bureau of Economic Research, 2018

<sup>145</sup> Egger et al, *ibid*, 2019.

<sup>146</sup> European Parliament, Report on reforming the EU policy on harmful tax practices (including the reform of the Code of Conduct Group) ([2020/2258\(INI\)](#)).

Pillar of Social Rights. The European Parliament has drawn attention to the need for more EU action in this area following the coronavirus pandemic. In January 2021, the European Parliament called upon the European Commission to propose a strategy on affordable and social housing and to include access to housing as a policy goal in the European semester.<sup>147</sup>

The Council of Europe has also underlined that CBI/RBI schemes with a real estate investment option may have potential to affect access to housing.<sup>148</sup> The CBI schemes in Malta and Cyprus both require financial transfers to the real estate sector. With regards to RBI schemes, 8 of the 13 RBI schemes offer a real estate option<sup>149</sup> – of these, data on the choice of investment could be obtained for three Member States (see Figure 7). In all three examples, real estate may account for more than 80 % of investment.

Assessing the impact of CBI/RBI schemes on access to housing is challenging due to the localisation of housing markets and the distinction between different factors that can impact access to housing. Impacts that raise housing prices and lowering access to housing may be local in tourist areas or more globally. For example, in Portugal, the RBI scheme has been identified as a potential factor in the gap between purchasing power on the internal and external market in Lisbon's historic centre.<sup>150</sup> The study concludes that, due to several factors, including foreign real estate purchases, including by RBI participants, 'real estate prices are pushed above the financial capacity of most households, and an enclave-type exploitation of the housing stock emerges in Lisbon's historic centre that jeopardizes the former's access to housing in that territory and its immediate surroundings'. The situation in Greece presents a case where an RBI scheme has a relevant impact on the real estate market,<sup>151</sup> which possibly impacts housing affordability, but no further data are available. In sum, CBI/RBI schemes may have an impact on access to housing in small markets and in small countries.

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<sup>147</sup> European Parliament Resolution Access to Decent and Affordable Housing for All.

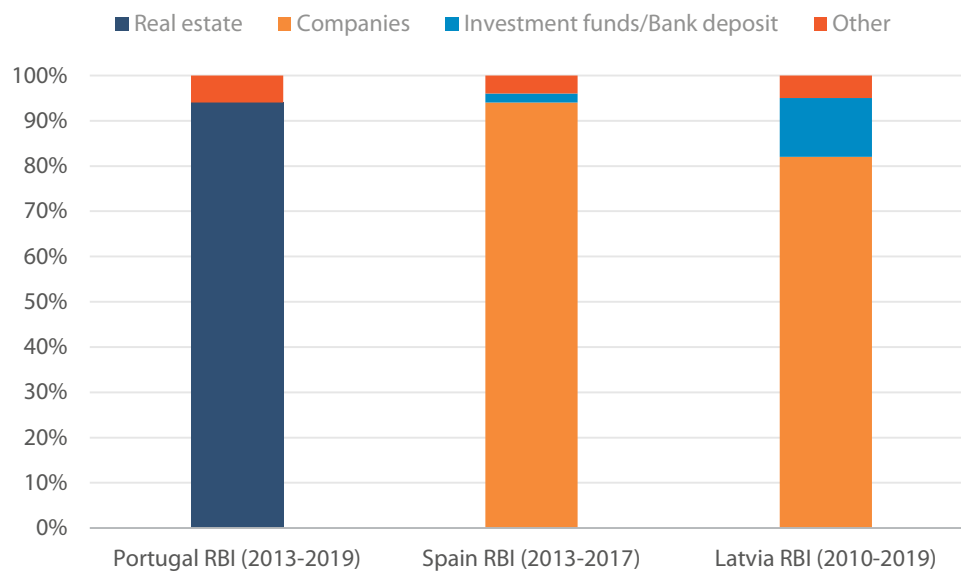
<sup>148</sup> Council of Europe, [Resolution 2355](#) (2020), Investment Migration

<sup>149</sup> Bulgaria, Cyprus, Greece, Ireland, Latvia, Malta, Portugal and Spain. See Table 2 for more information.

<sup>150</sup> Lestegás, I., Lois-González, R.C. and Seixas, J., The global rent gap of Lisbon's historic centre, *Sustain, City*, 13, 2018, pp. 683694.

<sup>151</sup> For more information, please refer to Annex II – Surak.

Figure 9 – RBI: investment type selected



Source: Annex II – Surak



## 4. Possible EU-level policy options and their potential impacts

This EAVA investigates **five EU-level policy options**, which focus on the treatment of CBI/RBI schemes in the EU, as well as those external to the EU. These policy options are:

- **Policy option 1:** Phase out CBI/RBI schemes;
- **Policy option 2:** Tax CBI/RBI schemes;
- **Policy option 3:** Regulate the conditions, guarantees and safeguards of CBI/RBI schemes;
- **Policy option 4:** Establish minimum physical presence requirements for RBI schemes;
- **Policy option 5:** Regulate access to the EU for investor migrants from third countries with CBI schemes.

Policy options 1-3 can be understood as alternative approaches to act on CBI/CBI schemes. Within policy option 1, sub-options are defined for CBI and RBI schemes separately, due to the differing legal basis and potential impacts. Policy option 2 considers the possibility of applying a tax to CBI/RBI schemes to 'correct' for the externality identified in the assessment of key issue 1 (see Section 3.1). Policy option 3 consists of three, discrete sub-options of measures each of which has a specific objective. The objective of policy option 4 differs in that it focuses on RBI schemes and alignment with other pathways to residence and citizenship to the EU. Policy option 5 stands apart from the other options in that it focuses on the EU's external action – it could be taken in parallel to any of the other policy options and would not serve as an alternative to them. Policy option 5 considers two groups of third countries – third countries participating in the EU accession process and other third countries with CBI schemes. Each is discussed as a sub-option.

Table 10 presents an overview of the policy options and the **possible primary legal bases for EU action**. The possible legal base for each policy option draws from the avenues for EU action presented in Annex I.

Sections 4.1 to 4.5 describe each policy option in more detail and assesses their **potential consequences and impacts**, as well as provides a legal assessment. The political feasibility of the policy options is not assessed. This legal assessment includes an assessment of subsidiarity and proportionality. According to the principle of **subsidiarity**, the EU should act if, and in so far as, the action at national, regional or local level is not enough to effectively achieve the objectives of a proposed measure. Article 5(3) TFEU establishes three conditions to justify an action at EU level: first, the policies concerned are not included as exclusive competences of the EU; second, the objectives of the proposed policies cannot be effectively fulfilled at national, regional or local level; and, third, the action at EU level would bring added value. Under the principle of **proportionality**, the EU should exercise its power to the extent necessary – and should not go beyond that – to achieve the objectives set out in the Treaties. Section 4.6 summarises the assessments of the policy options.

Table 10 – Possible legal basis for EU-level policy options under consideration

Policy option	Sub-option	Measure	Primary legal basis
Policy option 1: Phase out CBI/RBI schemes	1a: Phase out CBI schemes		Art. 79(2)(b) TFEU and Art. 21(2) TFEU
	1b: Phase out RBI schemes		Art. 79(2)(a) TFEU
Policy option 2: Tax CBI/RBI schemes		Externality tax on revenue generated by RBI/CBI schemes with redistribution to all Member States	Article 311 TFEU (Own Resources) or Article 79(2)(a) jo. 80 TFEU.
Policy option 3: Regulate the conditions, guarantees and safeguards of CBI/RBI schemes	3a: Regulate the investor migration industry	Code of Conduct	Art. 50(1) or Art. 53(1) TFEU (establishment) and Art. 59 or 62 TFEU (services)
		Licensing procedure	Articles 53(1), 62 and 114 TFEU jo. Article 79(2)(a) and (b) TFEU
		Due diligence obligations	Art. 79(2)(a) TFEU
	3b: Regulate approvals and approval procedures	Background check requirements	Article 21(2) jo. 79(2)(a) and (b) TFEU as a legal basis for CBI and Article 79(2)(a) TFEU for RBI.
		EU annual audit	Article 21(2) jo. 79(2)(a) and (b) TFEU as a legal basis for CBI and Article 79(2)(a) TFEU for RBI.
		Enhanced due diligence	Article 21(2) jo. 79(2)(a) and (b) TFEU as a legal basis for CBI and Article 79(2)(a) TFEU for RBI.
		Set maximum cap on number of approvals	Article 21(2) jo. 79(2)(a) and (b) TFEU as a legal basis for CBI and Article 79(2)(a) TFEU for RBI.
		Support training of administration	Art. 197(2) TFEU
		Cap on administrative fees	Art. 79(2)(a) and (b) TFEU
		Conditions on revoking citizenship	Art. 21(2) TFEU

Policy option	Sub-option	Measure	Primary legal basis
		Conditions on revoking residence	Art. 79(2)(a) and (c) TFEU
	3c: Regulate investments	Regulate types and holding times	Article 64(2) TFEU
		Due diligence and AML	Extending AML to governmental bodies would be subject to Article 114 TFEU.
		Involvement of FIU	Article 114 TFEU (heightened cooperation among FIUs is in line with the current revision of AML)
	3d: Transversal measures	Duty to notify EU and Member States before establishing/modifying a scheme	Article 114 TFEU jo. 337 TFEU
		EU level audit	Article 114 TFEU jo. Article 79(2)(a) and (b) TFEU
Policy option 4: Introduce minimum physical presence requirements for RBI schemes			Art. 79(2)(a) and (b) TFEU
Policy option 5: Regulate access to the EU	5a: Countries in the accession process with investment migration programmes	Could be considered part of Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) of the EU <i>acquis</i>	
	5b. Third countries with CBI schemes and visa-free agreements with the EU	Art. 77(2)(a) TFEU alone, with Art. 218(6) TFEU for agreements with third countries or with Article 87(2) TFEU in the area of police cooperation to prevent, detect and investigate criminal offences	

Source: Authors' elaboration.

Notes: <sup>a</sup> This measure would have to take the conditions set in Article 7 of the European Convention on Nationality (ECN) into account and to fulfil the proportionality test of *Rottmann* and *Tjebbes*.

<sup>b</sup> Article 79(5) TFEU gives Member States the right to determine the volume of admissions of third-country nationals in order to seek work. This article cannot be invoked for investment schemes as applicants are neither seeking work nor investing in human capital.

## 4.1. Policy option 1: Phase out CBI/RBI schemes in the EU

Two resolutions adopted by the European Parliament in 2019<sup>152</sup> and in 2020<sup>153</sup> have called 'on Member States to phase out all existing CBI or RBI schemes as soon as possible'. The Council of Europe has also supported this position.<sup>154</sup> This first policy option would seek to phase out CBI/RBI schemes in the EU. The first sub-option (policy option 1a) focuses on CBI schemes, while the second sub-option (policy option 1b) concerns RBI schemes.<sup>155</sup>

To support this policy option, it would be critical to **establish an appropriately detailed definition of CBI/RBI schemes**. Central elements of the definition should include:

- Primarily financial conditions that require 'passive' capital investments;
- Minimal to no physical presence requirements; and/or
- 'Fast track' to residency or citizenship in the country compared to traditional channels.

The definitions may need to be sufficiently broad to ensure that similar, but not exact, schemes fall outside the scope of attention.

### 4.1.1. Phase out CBI schemes (*policy option 1a*)

#### Measures proposed under the policy option

This policy option would introduce an EU-wide requirement to phase out CBI schemes. It could be implemented over time to limit the possible negative impacts for Member States that have such schemes in place.

#### Legal basis, subsidiarity and proportionality

Although the acquisition and loss of citizenship pertain to the exclusive remit of Member States, the Court of Justice of the European Union (CJEU) has reiterated, in various rulings, that this competence 'must be exercised in due regard of Union law'.<sup>156</sup> Article 21(2) TFEU could arguably be used as a legal basis for this EU action, in conjunction with Article 79(2)(b) TFEU, when naturalisation is considered a right.<sup>157</sup>

This policy option would take the form of a regulation.

In the area of freedom, security and justice policy, EU acts have to comply with the principle of subsidiarity, as actions in this area are competences shared with the Member States. In particular, any action at EU level 'shall not affect the right of Member States to determine volumes of admission

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<sup>152</sup> Report on financial crimes, tax evasion and tax avoidance, European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance ([2018/2121\(INI\)](#)).

<sup>153</sup> European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing – the Commission's action plan and other recent developments ([2020/2686\(RSP\)](#)).

<sup>154</sup> This policy option has also the support of a Council of Europe resolution. See Council of Europe, [Resolution 2355](#) (2020), Investment Migration.

<sup>155</sup> This policy option has also the support of a Council of Europe resolution. See Council of Europe, [Resolution 2355](#) (2020), Investment Migration.

<sup>156</sup> See for example case C-369/90 *Micheletti* ECLI:EU:C:1992:295.

<sup>157</sup> This would especially be the case for EU citizens additionally acquiring the nationality of another Member State by CBI and thus being dual citizens. See also: De Groot, D., 'Free Movement of Dual EU Citizens', in: Cambien N., Kochenov D., Muir E., *European Citizenship under Stress*, Brill 2020.

of third-country nationals coming from third countries to their territory in order to seek work'.<sup>158</sup> Since, CBI and RBI schemes are exactly not for the purpose of seeking work, this exception does not apply.<sup>159</sup> It is therefore key to assess the 'Union relevance' of banning CBI schemes. This relevance might stem from the fact that CBI may pose cross-border and common challenges particularly with respect to concerns regarding weak vetting (key issue 4, see Section 3.4). As RBI schemes may be conditional on retaining the capital within the Member States, investors would also be restricted in moving capital across the Union. This also ties applicants to the host Member States, restricting the freedom of movement of persons and their ability to provide services in cases where the investor is an organisation.<sup>160</sup> It is also necessary to consider whether the risks that CBI might entail, would be effectively addressed at national level. On the other hand, CBI schemes are in place in only a few EU countries and, coupled with the fact that citizenship laws lie primarily within national competences, a ban of CBI at EU level might run counter to the principle of subsidiarity assuming that the legal basis is deemed adequate.

When it comes to assessing the proportionality of this policy option, a complete ban on CBI schemes may go beyond what is necessary to limit the risks that this scheme may pose. Arguably, the choice of a **regulation** as a legal instrument does not leave Member States free to decide how to address potential risks. The EU's competence in this area is limited to ensure that every **EU citizen** has the right to move and reside freely within the territory of the Member States. Article 79(2)(b) confers the competence to define the rights of **third-country nationals residing legally** in a Member State upon the EU. However, that does not imply that third-country nationals are entitled by EU law to claim a lawful residence permit in one of the Member States.<sup>161</sup> This lack of a solid legal justification may cast doubts on the feasibility of EU action.

Where a Union measure were to include means of requiring the withdrawal of nationality of persons previously naturalised by means of CBI, Article 21(2) TFEU would provide a legal basis, since it would concern the loss of EU citizenship and its associated rights. Such withdrawal actions would always have to be in conformity with the individual proportionality assessment required by the CJEU in the *Rottmann* and *Tjebbes* cases.<sup>162</sup>

## Consequences and impacts

Phasing out CBI schemes in the EU could **address several key issues** noted in Section 3, notably the risk of violating the principle of sincere cooperation (key issue 1), the risk of commodification of EU citizenship (key issue 2), the principles of fairness and discrimination (key issue 3), and the lack of sufficient safeguards for macroeconomic governance (key issue 4), specifically with regards to international capital flows, and the limited coordination on taxation issues and shrinking tax base. While the drivers of these issues extend beyond CBI, the policy option could address these risks to some extent.

<sup>158</sup> See Article 79(5) TFEU.

<sup>159</sup> Sarmiento, D., Van den Brink, M., '[EU Competence and Investor Migration](#)', in: Kochenov, D., Surak, K. (eds), *The Law of Citizenship and Money*, CUP, forthcoming.

<sup>160</sup> S. Kudryashova, 'The 'Sale' of Conditional Citizenship: the Cyprus Investment Programme under the Lens of EU Law', *European Papers*, Vol. 3, 2018, No 3, pp. 1265-1288.

<sup>161</sup> [Opinion of Advocate General Sharpston](#) delivered on 12 December 2013 on Case C-456/12, *Minister voor Immigratie, Integratie en Asiel v O.* and Case C-457/12, *Minister voor Immigratie, Integratie en Asiel v S.*, paragraph 51.

<sup>162</sup> Judgment of the CJEU delivered on 2 March 2010 on case C-135/08, [Janko Rottmann v Freistaat Bayern](#), ECLI:EU:C:2010:104; Judgment of the CJEU delivered on 12 March 2019 on case C-221/17, [Tjebbes e.a. v Minister van Buitenlandse Zaken](#), ECLI:EU:C:2019:189.

In response to this policy option, potential investors and applicants to CBI schemes in the EU may turn to other channels offered by Member States, in particular options for naturalisation based on ancestry where possible.<sup>163</sup> Persons with extraordinary wealth could also seek a discretionary route to naturalisation.<sup>164</sup> Overall, the expected shift to other channels is not known and it could be justified to monitor their take-up and the extent to which they are at risk of weak vetting and due diligence. The policy option could adversely affect countries where revenue from CBI schemes represents a **non-negligible proportion of GDP**. This was the case in Malta and Cyprus, where programme receipts accounted for between 2.1 % and 4.5 % of GDP. In Malta, the CBI scheme has been identified as one of the four drivers of economic growth since 2013.<sup>165</sup> Therefore, phasing out CBI schemes would **negatively impact the fiscal position** of Malta and Cyprus (see Section 3.5.1).<sup>166</sup> Banning the CBI scheme could lead to a tapering of the budget surplus. This effect may be acceptable as the Maltese government, with the accord of the IMF, defined fiscal objectives excluding CBI proceedings, to avoid being dependent on them regarding macroeconomic stability.<sup>167</sup> Revenue for social welfare projects may also be curtailed, unless other sources are mobilised – to date, proceeds from the National Development and Social Fund (NDSF) have been used to build social housing units (€66 million), upgrade over 50 health clinics (€10 million), and support voluntary organizations (€33 million). These projects represent about 18 % of total proceeds to the NDSF.<sup>168</sup> In Cyprus, ending the scheme could **negatively impact the real estate and construction sector**, since, according to a KPMG report, the CBI has been a driving factor in the real estate recovery in the country since 2013 (in 2019, the sector represented 17 % of the economy and a significant share of employment).<sup>169</sup> At the same time, there could be positive impacts on **access to housing** in small countries where high-end real estate is concentrated in specific areas, see Section 3.5.3).

The impact on inequalities could be twofold: on one hand, nationals of third countries that offer fewer mobility rights and less political stability would lose an option to have the same rights as EU citizens, which could be especially harmful to stateless people; on the other hand, the policy option would reduce inequalities in the pathways to residence and citizenship in the EU, since these schemes are available only to the wealthy.

#### 4.1.2. Phase out RBI schemes (*policy option 1b*)

##### Measures proposed under the policy option

This policy option would introduce a ban on RBI schemes. It could take the form of a '0-quota', i.e. a system where the EU authorises a quota of RBI permits and sets the quota at zero. It could be implemented over a span of time to limit the possible negative impacts for Member States that have RBI schemes in place.

<sup>163</sup> This demand may in turn heighten the demand for services that offer forged documents to support false naturalisations (see Annex II – Surak).

<sup>164</sup> Please see Annex II – Surak.

<sup>165</sup> Deloitte, [Malta Budget 2020 - Connecting the dots](#).

<sup>166</sup> Cyprus stopped receiving new applications for its CBI programme in November 2020 after the [infringement procedure opened by the European Commission](#). Cyprus is still processing the pending applications. It is too early to observe the economic impact of these changes.

<sup>167</sup> International Monetary Fund, [Staff report for the 2020 Article IV Consultation – Supplementary information](#), 2020.

<sup>168</sup> National Development and Social Fund, [Annual Report 2020](#).

<sup>169</sup> KPMG, [Cyprus real estate market report – the insights](#), 11th edition, 2021.

## Legal basis, subsidiarity and proportionality

This policy option would take the form of a regulation. The main legal basis for this action could arguably be Article 79(2)(a) TFEU. This is a shared competence between the EU and the Member States. As a consequence, any measure at EU level 'shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work'.<sup>170</sup> Since RBI schemes are precisely intended for individuals who are not seeking work, this exception arguably does not apply to the situation at hand.

When it comes to assessing the principle of subsidiarity, as previously mentioned, it is key to justifying the 'Union relevance' of banning RBI schemes. Action by the EU may be based in the idea of a common understanding of the risks of this scheme to allow for intra-EU mobility. Such RBI schemes may constitute an obstacle to the free movement of capital and to the freedom to establish and provide services, as mentioned above. These limitations may take the form of a threshold for minimum investments; fixed annual income or investment in public assets such as state bonds; acquisition of properties within the territory of the country; a threshold for minimum investment in a national bank; and, sometimes, a threshold for a minimum philanthropic donation.<sup>171</sup> It is also necessary to consider if the risks that RBI might entail could be effectively addressed at national level. Unlike CBI programmes, RBI schemes are present in a considerable number of Member States (see Figure 1) and, coupled with the fact that Article 79(2)(a) allows the EU to regulate the issuance of residence permits and long-term visas, a ban of RBI at EU level might comply with the principle of subsidiarity.

When it comes to assessing the proportionality of this policy option, a complete ban on RBI schemes may go beyond what is necessary to limit the risks that this scheme may pose. Arguably, the choice of a **regulation** as a legal instrument does not leave Member States free to decide how to address potential risks. Lastly, as stated in the TFEU, the EU has competence to establish the conditions governing the entry and the legal residency of third-country nationals. The EU has also competence to prevent irregular migration by means of a return policy, as long as fundamental rights are respected. The key issue here is that applicants of RBI do not represent, as a general rule an irregular migration flow. Moreover, the Treaty does not confer competence upon the EU to harmonise these rules at national level. As a result, the EU's competence in this area is limited to ensuring the conditions of entry and residence and laying down standards on long-term visas and residence permits. It should be noted, however, that where a right to residence is retracted, the individual is subsequently considered to be in an irregular situation.

## Consequences and impacts

This policy option would address the same issues as policy option 1a. It may similarly raise the demand for alternative and possibly 'substitute' channels available from the Member States such as **start-up business visa schemes**. For example, the Netherlands and Estonia both have an RBI scheme as well as relatively large start-up business visa schemes.<sup>172</sup> Entrepreneur visa schemes differ conceptually from RBI schemes as they are linked to the human capital offered by the applicant. In practice, however, some entrepreneurial visa schemes may not impose significant requirements and

<sup>170</sup> See Article 79(5) TFEU.

<sup>171</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>172</sup> In 2019, the start-up visa programme in Estonia issued 2 102 visas while the start-up programme in the Netherlands issued 22 030 visas. For more information, please see: EMN, [Migratory pathways for start-ups and innovative entrepreneurs in the European Union](#), EMN Synthesis Report for the EMN Study, 2019.



approximate an RBI scheme. Other Member States with an RBI scheme may launch a scheme or expand an existing one in response to this policy option. This effect could be mitigated by EU action on such schemes, as put forward in another EAVA related to a legislative initiative on legal labour migration.<sup>173</sup>

In some respects, phasing out RBI schemes would generate similar **economic impacts** to the proposed ban on CBI schemes (policy option 1a), but these are usually **less significant**. This is because RBI schemes represent a smaller share of GDP than the two cases for CBI. Nevertheless, there could be a marked impact in Member States where RBI schemes generate relatively high financial inflows, such as Greece, Portugal and Spain (see Section 3.5.1). A ban could also potentially reduce funding available for social welfare projects, for example in Ireland, unless new sources of funding are mobilised. Phasing out RBIs may also **negatively impact the real estate market** in Greece, where the sector has become more dependent on RBI capital – in 2018, real estate transactions from RBI applicants represented around one-third of total real estate transactions.<sup>174</sup> At the same time, **access to housing** could be positively impacted in those cases where housing prices increased because of the schemes (for example academics have detected such an impact in Lisbon,<sup>175</sup> even though incentives to renovate old buildings were present). The impact on inequalities would be similar to those identified for policy option 1a.

### 4.1.3. Summary of assessment

Table 11 summarises the assessment given above. Policy option 1 would address two key issues defined in Section 3 – commodification of EU rights and discrimination. In terms of implementation, it would be important for the proposed regulation to define what it seeks to ban in an appropriate manner. A narrow definition may allow for Member States to set up schemes that circumvent the regulation. A broad definition may exclude persons who should rightfully receive EU citizenship and residence. The definition should be fine-tuned in order to minimise work-around opportunities while limiting the rights of other TCNs that are not applicants to CBI/RBI schemes.

Table 11 – Summary of assessment for policy option 1

Dimension	Summary of assessment
Possible legal basis	Article 79(2)(b) jo. 21(2) TFEU for policy option 1a (ban CBI schemes) Article 79(2)(a) TFEU for policy option 1b (ban RBI schemes)
Main issue(s) addressed	Risk of violating the principle of sincere cooperation Risk of commodification of EU citizenship and residency rights
Costs and limitations	Debates around the legal basis, especially for policy option 1a and proportionality Risk of shifting demand to other channels, that may also suffer weak vetting, or that would need stronger monitoring
Potential consequences and impacts	Reduced free-riding on the EU Low inflow of resources into public budgets of Member States with large programmes with resulting impacts on construction and real estate sectors in some Member States

<sup>173</sup> See policy 4f in Navarra C. and Fernandes M., [Legal Migration Policy and Law. European Added Value Assessment](#), EPRS, 2021.

<sup>174</sup> For more information, please refer to Annex II – Surak.

<sup>175</sup> Lestegás, I., Lois-González, R. C., & Seixas, J., The global rent gap of Lisbon's historic centre, *Sustain, City*, 13, 2018, pp. 683-694.



Dimension	Summary of assessment
Potential impacts	Heightened demand for other migration channels offered by Member States, in particular ancestral options for naturalisation (policy option 1a) and 'passively oriented' entrepreneurial and start-up visas for residence (policy option 1b) Lower inequality in accessing EU nationality/residence
EU added value	Greater coherence with policies on legal migration and anti-discrimination Greater awareness of EU citizenship

Source: Authors' elaboration.

## 4.2. Policy option 2: Tax CBI/RBI schemes in the EU

This policy option would seek to tax and discourage CBIs and RBIs. The first policy options impose a tax in order to 'compensate' for the costs due to CBI/RBI that are borne by other Member States. The second policy option aims at de facto phasing out of these schemes via a 100% tax.

### 4.2.1. Measures proposed under the policy option

This policy option would introduce a tax that Member States with CBI/RBI schemes would pay into the EU budget. This tax would be proportional to the revenue that Member States generate from the schemes.

As argued in Section 3, RBI/CBI schemes may also impose negative externalities on other Member States, since some of the risks related to these schemes are borne by the entire EU and/or preventing these risks incurs a cost. One possible way to compensate for this 'negative externality' is the 'Pigouvian' tax, which has inspired taxes demanded from environmental polluters. The principle would be similar to the [tax on non-recycled plastic products](#), which came into effect on 1 January 2021, and is expected to encourage Member States to reduce packaging waste and to contribute to the EU's own resources.<sup>176</sup> This 'plastic tax' acknowledges the negative externality that is imposed on all citizens by the Member States that do not invest in the reduction of non-recycled plastics.

The potential externality posed by CBI/RBI schemes is discussed in Section 3.1. In fact, the negative externality could stem from several issues and could justify setting the tax at a certain level (see Table 12). Setting a tax requires a quantification of the 'external cost' of CBI/RBI schemes as well as the share attributable to CBI/RBI schemes.

<sup>176</sup> The EU also collects a part of [value added tax](#) raised by Member States.

Table 12 - 'External costs' of CBI/RBI

Issue	Possibility to quantify	Share attributable to CBI/RBI
Commodification and devaluation of EU citizenship	Difficult to quantify	High
Risk of violation of principles of fairness and non-discrimination	Could be partially quantified using the lost earnings of family and labour migrants who face obstacles in accessing long term residence and citizenship <sup>a</sup>	Medium/high
Security and money laundering risks	Could be approximated by the costs of setting up the AML authority – €42 million/year <sup>b</sup>	Low/medium
Risk of macroeconomic volatility	Could be quantified using evidence of the impacts of macroeconomic instability in the Member States	Low
Increased tax competition	Could be quantified on the basis of lost income due to harmful tax competition within the EU – €154 billion/year <sup>c</sup>	Low

Source: Authors' elaboration.

Notes: <sup>a</sup> Delayed access to long-term residency has a negative economic impact: being long-term residents increases the probability of TCNs being employed by 5 percentage points for men and 7 percentage points for women (C. Navarra and M. Fernandes, [Legal Migration Policy and Law](#), EPRS, 2021); <sup>b</sup> [Impact Assessment accompanying the anti-money laundering package](#), Commission Staff Working Document SWD(2021) 190 final. This figure is a lower bound. The costs of money laundering itself, which could also be understood as a cost, is much higher; <sup>c</sup> According to a recent EPRS study (J. Saulnier and M. Garcia Munoz, [Fair and simpler taxation supporting the recovery strategy – Ways to lower compliance costs and improve EU corporate income taxation](#), EPRS 2021), the corporate income tax gap for the EU as whole, including cross-border CIT evasion and frauds, could be estimated at around €154 billion in 2020. CIT could be an approximation of tax avoidance at the EU level, although RBI/CBI mainly involve personal income tax.

We assume that a low, but substantive tax could be set at 20 %<sup>177</sup> of each Member State's revenues generated by the schemes. On the basis of 2019 data, this would amount to about **€700 million** (20 % of €3.5 billion, which is the approximate amount of revenues from CBI and RBI in the EU in 2019).<sup>178</sup> The tax could also be higher – up to 100 % – which could effectively transfer all direct, financial gains from the Member State where a CBI or RBI application was lodged to all EU Member States.<sup>179</sup> A 100% tax could be expected to fully discourage Member States from operating these schemes.

<sup>177</sup> 20% is an arbitrary figure and a proper calculation should be made for the tax to be equal to the cost of the externalities.

<sup>178</sup> For more information, please refer to Annex II – Surak.

<sup>179</sup> The treatment of real estate investment would have to be determined. Also, Member States may still benefit from secondary effects of such investments via renovation and maintenance.

### 4.2.2. Legal basis, subsidiarity and proportionality

Although the EU has limited competence in the area of taxation, the European Commission can present a proposal for new sources of revenue. An EU tax on RBI and CBI schemes could take the form of a decision or a regulation. A decision could be established on the basis of Article 311 TFEU (Own Resources), which established that the EU 'shall provide itself with the means necessary to attain its objectives and carry through its policies'. Alternatively, a regulation could be established to redistribute the revenue that Member States gain from CBI/RBI schemes on the basis of Article 79(2)(a) jo. 80 TFEU. Article 79(2)(a) lays down the EU competence to set out the 'conditions of entry and residence' and the standards for long-term visas and residence permits. Article 80 enshrines the principle of solidarity, which includes any financial implications, between Member States when it comes to implementing policies on border checks, asylum and immigration.

The own resources system of the EU can evolve to pursue EU policy priorities as long as the procedure laid down in Article 311 TFEU is respected.<sup>180</sup> For example, the priority behind the plastics own resource is to encourage Member States to advance towards a circular economy, in the context of the ambitious EU Green Deal. Similarly, the EU might propose a tax on CBI/RBI schemes to uphold a 'European way of life' based on fundamental rights and, importantly, on the rule of law. In the area of non-exclusive competence, the action at EU level shall be properly justified in terms of subsidiarity and proportionality checks. Concerning the first principle, by the nature of the EU budget, any new own resource revenue shall be implemented at EU level. Should Member States act on their own to levy a different tax, based on their own financial interests, this would prove costly and run counter to the principles of the internal market.

It is in the interests of the Union's principles to establish an own resources system to sustain its budget and promote EU values. A tax on these schemes, to the extent that it would reduce the negative externalities posed by them and contribute to the EU budget, does not therefore exceed what is essential to attain the objective of the EU's policies. The EU's tax should build on objective evidence, for instance provided by Eurostat, to comply with the proportionality test. Lastly, the choice of instrument, a decision or a regulation, is in accordance with the Treaties.

### 4.2.3. Consequences and impacts

This policy option would effectively transfer a small share of financial gains, from the Member State where a CBI or RBI application is lodged, to all EU Member States. Other Member States would therefore stand to gain financially from this policy option and **the issue of free-riding would be reduced to some extent** (see Section 3.1).

In response, Member States offering CBI or RBI schemes may pass the tax on to applicants by increasing the investment requirements or application fees, which may in turn **reduce the level of demand for CBI and RBI schemes in the EU**. It is not clear, however, if applicants would be deterred by the higher 'price' of citizenship or residence offered by EU Member States. In the case of Ireland for example, demand for the RBI scheme actually increased subsequent to an increase in the minimum investment amounts.<sup>181</sup>

A high tax of up to 100 % might go beyond what is necessary to attain the objectives of the EU's action and may create unjustified costs for the Member States involved, which could shut down CBI/RBI schemes rather than incur financial losses. Gathering enough objective evidence to support a 100 % tax would also be burdensome for the EU. These costs would not be commensurate with

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<sup>180</sup> Article 2 of [Council Decision](#) of 26 May 2014, on the system of own resources of the European Union.

<sup>181</sup> See Annex II – Surak.

the potential benefits. As a consequence, this policy option may not comply with the principle of proportionality.

#### 4.2.4. Summary of assessment

Table 13 – Overall assessment of policy option 2

Dimension	Summary of assessment
Possible legal basis	Article 311 TFEU (Own Resources) (Directive) or Article 79(2)(a) jo. 80 TFEU (Regulation)
Main issue(s) addressed	Risk of violating the principle of sincere cooperation
Costs and limitations	Resources for an EU body to monitor the application and administration of the tax or quota The definition of CBI and RBI schemes is central to the effective implementation of this policy option Risk of shifting demand to other channels (namely ancestry channel for citizenship and entrepreneurship visas for residence), where weak vetting may also be an issue, or that would need stronger monitoring
Potential consequences	Member States without a CBI or RBI scheme gain financially and/or Member States phase out CBI/RBI schemes
Potential impacts	A low tax would introduce a new source of revenue for all Member States that could support the public budget or be put towards a specific use e.g. social welfare projects A 100 % tax would offer similar impacts as policy option 1.
EU added value	Greater coherence with EU policies on legal migration Promote mutual trust and cooperation among Member States

Source: Authors' elaboration.

### 4.3. Policy option 3: Regulate conditions, guarantees and safeguards in CBI/RBI schemes

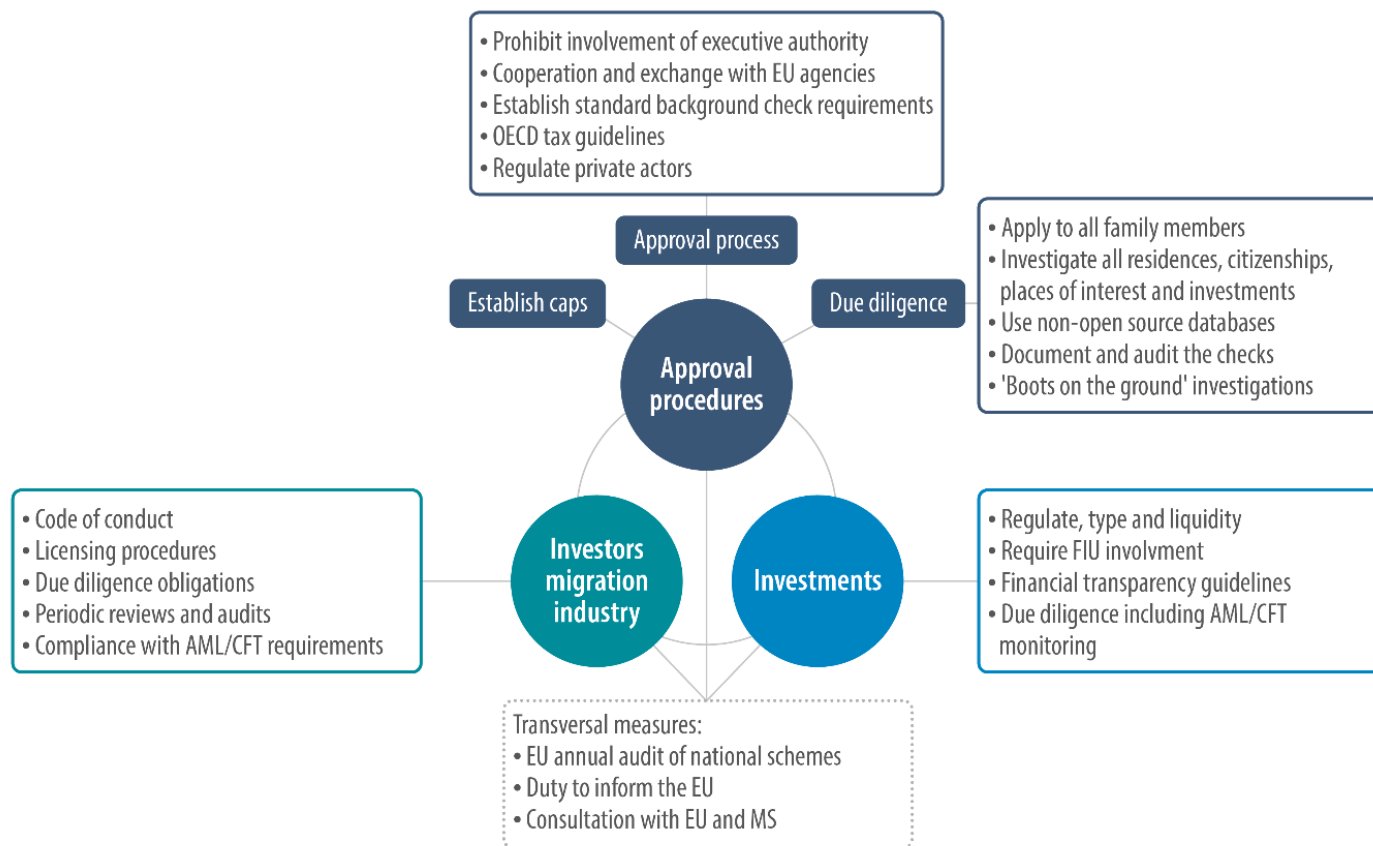
This policy option would encompass a number of measures to regulate CBI/RBI schemes. These measures can be grouped into three sub-options:

- **Policy option 3a:** Regulate the investor migration industry;
- **Policy option 3b:** Regulate approval procedures (e.g. caps, approval process, due diligence);
- **Policy option 3c:** Regulate investments (e.g. type of investments, holding times, due diligence and transparency).

In addition, the policy option considers two **transversal measures** that could complement any of the three sub-options described above and would promote information exchange on CBI/RBI schemes in the EU. The first measure would establish a form of consultation, whereby Member States would inform other Member States and the EU when introducing or modifying a RBI/CBI scheme, as well as annual audits of Member State CBI/RBI schemes by the EU.

Figure 10 presents an overview of the sub-options and the measures encompassed by each policy option.

Figure 10 – Key measures for policy option 3: Regulate conditions, guarantees and safeguards of CBI/RBI schemes



Source: Authors' elaboration drawing on Annex II - Surak.

### 4.3.1. Regulate the investor migration industry (policy option 3a)

#### Measures proposed under the policy option

The EU could introduce several measures to regulate the investor migration industry.

First of all, the EU could define **licensing procedures for service providers** that submit CBI/RBI applications. Cyprus and Malta required that service providers submitting applications to their CBI programmes are licensed – an option that could also be extended to RBI programmes. Such a license could prohibit service providers from supporting applicants to CBI/RBI schemes, as well as implementing the schemes on behalf of the government, or carrying out consulting activities for governments, a situation that studies suggest has led to weak vetting and conflict of interests (see Section 3.4).<sup>182</sup> Approved service providers should undergo periodic review. This review could include, as also indicated by the European Commission in the proposed 6th AMLD, verification that the service providers in the investment migration industry **comply with AML/CFT obligations** at the EU level. Those that fail review – by, for example, engaging in improper business transactions that violate the AML/CFT obligations, or not screening all the potential risks posed by an applicant, could have their license revoked or be subject to fines. To ensure high standards of professionalism, the engagement with CBI/RBI schemes could be exclusively limited to accredited law firms or accountancies that are also regulated by professional organisations.

As suggested by the European Economic and Social Committee (EESC), the EU could develop guidelines for national authorities to prepare a **code of conduct** for approved service providers under public procurement rules/concessions.<sup>183</sup> Both the Investment Migration Council and the Global Investor Immigration Council have codes of conduct for their members. Such codes should however not be set up by private bodies involved in the investment scheme, as issues regarding possible conflicts of interest could arise.

Such a code of conduct could encompass basic ethical practice, matters producing conflicts of interest, issues of regulatory compliance, and disciplinary rules and procedures. It could define internal channels to report cases of wrongdoing and protection for whistleblowers, in line with the EU directive.<sup>184</sup> The code could stipulate the sorts of business transactions in which service providers are able to engage; to prevent conflicts of interests, the code of conduct could prevent service providers from holding any stake in any of the investment options offered. Approved service providers could also be required to pay a deposit to the government, which would be forfeit should they violate the code of conduct.

The EU could introduce a **due diligence obligation** for all actors in the value chain of CBI and RBI service providers that operate in the EU. Since the 'investment migration value chain' is a complex value chain that may involve several intermediaries in different countries,<sup>185</sup> legislation could be proposed that is in line with a recent European Parliament resolution on establishing an obligation for companies to carry out due diligence throughout their whole value chain, including in third

<sup>182</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>183</sup> European Economic and Social Committee, Opinion on [Investor Citizenship and Residence Schemes in the European Union](#), SOC/618-EESC-2019, 2019.

<sup>184</sup> European Commission, [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law](#).

<sup>185</sup> See Annex II – Surak.

countries.<sup>186</sup> An assessment found that establishing due diligence procedures on social, environmental and governance standards (including on corruption) has not only positive social impacts, but also positive economic consequences, by increasing company profitability when they comply with higher standards.<sup>187</sup> The study also finds that there is limited company take-up of current compliance with voluntary guidelines and that mandatory due diligence would enhance the level playing field in the single market as well as increase legal certainty. It is important that these procedures are not 'box-ticking' exercises, but develop actual processes that shape the choices of companies towards more sustainable and ethical practices.<sup>188</sup>

### Legal basis, subsidiarity and proportionality

Regulating the migration industry would require several different legal bases depending on the specific measures that would be introduced. In most cases Articles 53(1), 62 and 114 TFEU would be required as a legal basis, possibly in conjunction with Article 79(2)(a) and (b) TFEU. Measures would take the form of regulations and directives. According to the Better Regulation Toolbox, Article 114 should be used as a legal basis only if this action may prevent the 'likely emergence' of barriers and distortions in the internal market. Actions taken to address mere divergences between national legal frameworks and the potential risk of barriers to the single market are not properly justified by this article. As a consequence, an alternative and more targeted legal basis, such as those to protect the freedom of establishment and provide services, should be used jointly with Article 114 TFEU.

The fact that these schemes may entail potential risks to the internal market, as discussed in Annex I, justify action at EU level on this grounds. These risks might take the form of a restriction of, essentially, the freedom of movement of capital, the freedom of establishment and provision of services. To assess the principles of proportionality and subsidiarity, it is essential to justify if there are additional costs for EU citizens or EU businesses to operate in the internal market because of the presence of these schemes. As capital investments have to remain blocked in some of the Member States that offer these schemes – otherwise, the applicants lose their rights – it is questionable whether this measure hinders the EU's efforts to promote a harmonised internal market. The fact that investing in some countries entails more benefits than in others may also be used to justify this policy option. Additionally, allowing Member States to prepare their own codes of conduct based on general EU-level guidance permit adaptation to the national context. This is in accordance with the principle of proportionality. Similarly, the implementation of a due diligence obligation, that would require a rethink of existing legal instruments, would also be in accordance with this principle.

### Consequences and impacts

This policy option would **increase transparency** in the 'investment migration' value chain thanks to the proposed code of conduct and licensing system that would allow greater transparency of the identity of service providers and their actions. Oversight activity by an EU level authority would also increase transparency of these schemes at the EU level.

Through due diligence measures, this option would place obligations on the final actor in the chain of service providers, which should help ensure that the earlier links in the chain operate adequately. It could help to **raise industry standards** by **reducing conflicts of interest** for service providers, and by reducing the incentives for service providers to compete by lowering the vetting procedures

<sup>186</sup> European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability ([2020/2129\(INL\)](#)).

<sup>187</sup> Navarra, C., [Corporate due diligence and corporate accountability - European Added Value Assessment](#), 2020.

<sup>188</sup> Navarra C., *ibid.* The main reference on practical implementation of due diligence is OECD, [Due Diligence Guidance for Responsible Business Conduct](#).



and thus **level the playing field** across Member States. This option is therefore also expected to **reduce the problem of weak vetting** of applicants and the risk of corruption and fraud.

The **costs** that the investor migration industry would face in complying with these measures may be passed along to applicants, which may increase the price of the services. The number of service providers able to comply may fall.

#### 4.3.2. Regulate approvals and approval procedures (policy option 3b)

##### Measures proposed under the policy option

The EU could introduce measures related to the approval process (e.g. establish standard background check requirements), programme caps and due diligence.

With regards to the **approval process**, the EU could **prohibit national executive authorities** from weighing in on approval decisions and limit the involvement of private service providers in the examination of applications and decisions.<sup>189</sup> If private service providers are involved, they should abide by a code of conduct, procurement procedures should be sound and transparent, and these private providers should be clearly different from those marketing the schemes to investors. According to the EESC, the 'specialist agencies should be selected according to robust contracting principles that prioritise high quality service over delivery cost and be barred from marketing the schemes or providing additional services to applicants, and their remuneration must not depend on the outcome of the applications'.<sup>190</sup>

The EU could establish a set of standard **background check requirements** concerning security and financial risks. In this context, the EU could **promote cooperation and exchange with EU agencies** such as Frontex, Europol and national Financial Intelligence Units (FIUs), and favour a structured exchange of information between Member States on both accepted and rejected applicants. This should be done in compliance with data protection law and, if necessary, involve the European Data Protection Supervisor.<sup>191</sup> A uniform approach to security checks on CBI/RBI applicants was the main topic of the Member State expert group set up by the European Commission on Investor Citizenship and Residence Schemes.<sup>192</sup> The approach could follow that established by the European Travel and Information Authorisation System (ETIAS), which will come into effect by the end of 2022 (see Policy option 5a for more information). The EU could also introduce a requirement that applicants to CBI and RBI schemes present evidence that they already hold a Schengen visa. The new background checks could be overseen by a specific **authority**, or by the proposed new authority on anti-money-laundering and terrorism financing envisaged by the European Commission's proposal for a 6th AMLD.

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<sup>189</sup> As noted by the EESC, public authorities may need the support of private specialist agencies to carry out due diligence checks, but 'insists that authorities should nevertheless maintain primary responsibility for accepting or rejecting applicants'. [Opinion of the European Economic and Social Committee](#), Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, [COM(2019)12 final].

<sup>190</sup> EESC, *ibid.*

<sup>191</sup> [Website](#) of the European Data Protection Supervisor (EDPS).

<sup>192</sup> For example, see the minutes of the third meeting of the [Group of Member State Experts on Investor Citizenship and Residence Schemes in the EU](#), held on 2 October 2019.



The EU could recommend a systematic risk-based approach to the establishment of applicants' **tax residence status**.<sup>193</sup> The EU could support the verification of this status by assessing tax avoidance risk and the risk of circumventing the CRS. This process could be supported by enhanced exchange of information between national tax authorities with regards to CBI/RBI applicants and adherence to guidelines from the OECD on how to limit circumvention of the common reporting standard (CRS) through the abuse of CBI/RBI schemes.<sup>194</sup>

- 1 The requirement to have a real, permanent, physical residence address (and not just a post office box or '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;
- 2 The requirement to instruct account holders to include all jurisdictions of tax residence in their self-certification.
- 3 The rule that financial institutions cannot rely on 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.

The EU could **also establish caps** on the number of citizenship (residence) approvals permitted via CBI (RBI) schemes per year, as well as the number of approvals allowed for the entire duration of the programme. The cap could take the form of the number of applications approved or of citizenships granted (main applicants plus family members).<sup>195</sup>

The EU could also take action to broaden the scope and enhance the rigour of **due diligence procedures** including those related to the AML legislation. Due diligence checks should be applied not only to the person making the investment (the 'main applicant'), but also all family members securing visas or citizenship together with them.<sup>196</sup> Following a recommendation from the OECD, all documents submitted by the applicant could be verified independently.<sup>197</sup>

This policy option would also require the EU to set up a process whereby applicants to CBI/RBI schemes who are rejected can appeal the decision.

### Legal basis, subsidiarity and proportionality

Regulating approvals and approval procedures would arguably have a legal basis in Article 21(2) jo. 79(2)(a) and (b) TFEU, as a legal basis for CBI, and Article 79(2)(a) TFEU for RBI. Specifically to avoid the risk of tax avoidance and tax evasion, [Directive 2011/16/EU](#) (based on Articles 113 and 115 TFEU), on administrative cooperation in the field of taxation, provides a basis for spontaneous exchange of information between national tax authorities and could support the background check requirements for CBI/RBI applicants.

The policy option would take the form of regulations, directives and a recommendation. This policy option might entail the revision of existing legal instruments, such as the AML Directive and the

<sup>193</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU – State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>194</sup> OECD, [Preventing abuse of residence by investment schemes to circumvent the CRS](#), 19 February 2018. See also, Scherrer and Thirion, 2018.

<sup>195</sup> Malta, for example, placed a total cap of 1 800 on the number of applications that could be approved over the course of its original CBI programme. Cyprus introduced an annual cap of 700 approved applications on its CBI programme.

<sup>196</sup> The [OECD](#) recommends extending checks to all potential beneficiaries of a CBI/RBI application (main applicant or dependent) over the age of 13 years.

<sup>197</sup> OECD, [Corruption Risks Associated with Citizen- and Resident-by-Investment Schemes](#), 2019.

Directive on Administrative Cooperation, which could be robust and proportional. In contrast, it is evident that establishing caps on the number of approvals of RBI and CBI would be compliant with the principles of subsidiarity and proportionality. A recommendation could be issued to develop existing instruments in line with the OECD standards, especially in the area of exchange of information across countries.

### Consequences and impacts

The strengthening of the approval process and procedures, and improved due diligence checks on applicants have the potential to **improve the quality of vetting** and reduce the risk of applications approved of 'high risk' individuals, by identifying them more easily and by deterring them from making applications. As a consequence, these high-risk individuals may seek other less-regulated options, such as ancestral citizenship in the case of CBI, or business investor visas in the case of RBI. Persons admitted through CBI/RBI schemes (as the main applicant or a family member) would nonetheless be expected to have higher integrity and pose lower risks in terms of security, tax avoidance and money laundering.

These caps could **limit the macroeconomic risks** in terms of financial inflows and inflation of the housing market, and therefore improve the macroeconomic governance of these capital flows (see Section 3.5).

The policy option could also generate spill-over benefits for national governments by financing measures, such as increased access to databases<sup>198</sup> that can support objectives beyond CBI/RBI schemes, including tackling money laundering. **Increased transparency** is a major objective of greater reporting and information exchange. This has positive spill-over effects on tackling money laundering and tax avoidance and evasion, which may be linked to RBI/CBI schemes, but are also objectives per se. Greater cooperation on taxation matters (although a bigger issue than RBI/CBI schemes) would lead to **better macroeconomic governance** within the EU. Greater transparency allows for greater control, which does not completely solve the **free-riding problem**, but allows some control from the EU, with a better balance between the benefits that Member States obtain in an RBI/CBI process thanks to EU membership and EU control over the process.

A due diligence procedure on applications is likely to increase the **waiting time** for processing each application. This is also likely to occur as a consequence of introducing caps, since demands are not expected to decline and a backlog is likely to accumulate. This can be problematic from the applicants' point of view in some cases (e.g. stateless people), but at the same time it reduces a privilege specific to the applicant for these schemes, i.e. to be able to substantially reduce the time for processing a request for residency or citizenship thanks to wealth endowment.

Due diligence procedures may deter high-risk applicants, which could improve the **integrity of applicant profiles**. Since caps, by increasing waiting times and possibly rejections, may generate the risk that waiting or rejected applicants may seek loopholes to proceed their application. It is therefore **necessary that caps are accompanied by strong due diligence procedures**. It is possible that these measures lead to an **increase in costs** for an applicant: the introduction of due diligence is also costly for service providers, who may pass these costs on to the applicants.

#### 4.3.3. Regulate investments (policy option 3c)

There is a wide variety in the minimum levels of investment and the type of investments permissible under CBI and RBI schemes in the Member States (see Sections 2.2 and 2.3). Furthermore,

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<sup>198</sup> Compliance with data protection should be ensured (e.g. involvement of EDPS).

implementation varies across Member State schemes, including on divestment rules.<sup>199</sup> The wide variation may lead to 'passport/visa shopping' and a race to the bottom in terms of lowering vetting standards to increase demand for the investment scheme from potential applicants.

### Measures proposed under the policy option

The EU could regulate the amount, type and liquidity of investments TCNs would be permitted to make to Member States in return for CBI and RBI schemes. For example, research suggests that donations to the government budget may be the most effective way for states to channel investments in economically productive ways.<sup>200</sup> As such, the EU could **limit the types of acceptable investments** to contributions to the government's budget and/or a sovereign wealth fund, as was the case for the CBI scheme in Malta. Other indications, with the aim of increasing the transparent allocation of the inflow of money from RBI/CBI programmes, could include requests to subdivide the qualifying investment. For example, investors could be required to donate 50 % of the minimum qualifying amount to charitable causes and invest 50 % in a business. Since a specific problem of CBI/RBIs is the passive nature of the investment, regulations could require all investments to be made in businesses – stipulating the extent of 'active' or 'passive' involvement – transforming the programmes into business investor schemes, with a clear entrepreneurial component. The EU may also **regulate investment holding times**, although to make such an investment indefinite could be a violation of Article 1, Protocol 1, ECHR. Stipulations could also be made for investors to submit evidence on a regular basis to prove the maintenance of the investment in line with EU rules. Following the OECD recommendations, the EU could also regulate the source of the investment by requiring that it is made from the applicant's personal bank account and verifying its sources and proportionality to the applicant's reported income and wealth.<sup>201</sup>

As discussed in Section 3.4, the EU's framework on AML/CFT includes measures to limit the risk of anti-money laundering in CBI/RBI schemes.<sup>202</sup> The European Commission's proposal for a 6th AMLD and a proposal for a Regulation would add migration operators to the list of obliged entities.<sup>203</sup> The EU could also require that **governmental bodies are also subject to the obligations of EU AML legislation**, for example, to apply enhanced due diligence to applicants of CBI and RBI schemes.<sup>204</sup> The EU could also forbid cash payments of any amount from CBI/RBI applicants to governmental bodies.<sup>205</sup>

The EU could provide clear guidance on **financial transparency standards**, including the duty to publish the revenues obtained by CBI/RBI. As shown in Section 3.4, the countries that currently have RBI/CBI schemes have a lower transparency index on average than the Member States that have no

<sup>199</sup> Countries with CBI programmes and those granting permanent residence by investment have typically allowed for divestment after a specific period of time, whereas countries with RBI programmes that grant only temporary residence require the investment to be maintained for the visa to be renewed (Annex I – Surak).

<sup>200</sup> For more information, please refer to Annex II – Surak.

<sup>201</sup> OECD 2019 [note](#).

<sup>202</sup> [Directive \(EU\) 2018/843](#) of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

<sup>203</sup> European Commission, [proposal for a regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#), COM(2021) 420 final.

<sup>204</sup> At present they are not covered. See: Articles 32 and 33 of Directive (EU) 2015/849. This measure is recommended by Transparency International and Global Witness, see: [European Getaway – Inside the murky world of golden visas](#), Transparency International and Global Witness, 2018, p. 48 and pp. 50–51.

<sup>205</sup> AML has a bottom threshold of €10 000.

such scheme. This is why transparency requirements regarding the flow of capital are crucial, together with cooperation on tax matters; and regarding CRS, disclosure on applications and improved transparency in the service provider value chain (policy options 3a and 3b). Cooperation between national authorities and national Financial Intelligence Units is critical to enhance transparency and limit the financial risks of CBI and RBI schemes.<sup>206</sup> The FIUs and the European Central Bank should have access to the central platform of interconnected registers across Member States, to monitor due diligence procedures and approval processes (see Section 3.4). The **FIUs could be given legal responsibility for review of each application** and to determine if the application is acceptable.<sup>207</sup> An enhanced role for FIUs and supervisory bodies is also envisaged in the European Commission's 2021 proposal.<sup>208</sup>

### Legal basis, subsidiarity and proportionality

An appropriate legal basis to regulate CBI/RBI investments would be Article 64(2) TFEU. Extending AML to governmental bodies would be subject to Article 114 TFEU. Revising the AML Directive and Regulation to fill the gaps in due diligence on the money that flows into Member States and to include governmental bodies under AML obligations, would be in line with the principles of proportionality and subsidiarity. In the same vein, enhanced cooperation among FIUs is in line with the current revision of AML. Building on the recommendation from the OECD, the EU can issue guidelines to encourage Member States to enhance security checks on applicants. This measure would comply with the subsidiarity principle. On the other hand, regulating the investment holding time through EU law could be properly justified on the grounds of the single market principles.

### Consequences and impacts

The extension of the AML requirement is expected to **reduce the risk of money laundering**. More broadly, improved transparency of investments are expected to **decrease the risk of tax avoidance and evasion**, and also **decrease economic risks**, by allowing forecasting of potential negative economic shocks.

The requirement to harmonise investments could reduce passport shopping practices.<sup>209</sup> Regulating the type of the investment required may lead to greater **economic benefits**, by gradually transforming these programmes into entrepreneurs' visas, which have an active component. Regulating the duration of the investment may reduce the economic risks by reducing the risk of a sudden withdrawal of large amounts of money.

By increasing information sharing and financial monitoring, this policy option reduces the potential negative impact of these schemes on the EU, thereby reducing one possible aspect of the free-riding problem. A positive spill-over effect could be a reduction in the areas of financial secrecy that pose problems beyond the CBI/RBI investments.

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<sup>206</sup> Proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, [COM\(2021\) 420 final](#), European Commission, July 2021.

<sup>207</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 SWD(2019) 5 final, January 2019.

<sup>208</sup> See explanatory memorandum of the proposal for a regulation and a directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

<sup>209</sup> Opinion of the European Economic and Social Committee on 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union', [\(COM\(2019\) 12 final\)](#), October 2019.

#### 4.3.4. Transversal measures (Policy option 3d)

##### Measures proposed under the policy option

This policy option would introduce a **duty on Member States that seek to establish or modify an RBI/CBI scheme** to notify other Member States and the European Commission. The policy option would also establish an **annual audit system of national schemes** to gather relevant data and to verify that measures in place are being respected. Relevant data could include the number of applicants and approved applications, and the level and type of investment received.

The policy measure could be supported by an EU regulatory authority, tasked with **overseeing these measures and their implementation in the Member States**. This authority could carry out periodic reviews and audits that include collection of harmonised statistics on applications and investment and introducing a mechanism for Member States to share information on rejected applicants.<sup>210</sup> In case a new authority is not created, the proposed EU authority for anti-money laundering and countering the financing of terrorism, as proposed by the most recent Commission proposal on anti-money laundering, could be most relevant.<sup>211</sup> Annual audits by an independent EU-level ombudsman could also be implemented, to supply external oversight, ensure the correct operation of the programme, and facilitate improvements where necessary.

##### Legal basis, subsidiarity and proportionality

A duty to notify the EU and other Member States prior to establishing these schemes would have Article 114 jo. 337 TFEU as a legal basis. Policy option 3a provides a summary of the challenges of using this article as the legal basis. This policy option might take the form of a revision of the European Commission proposal for a regulation establishing a new EU AML/CFT authority.<sup>212</sup> The idea would be to include, at the request of the authority, the obligation for Member States to provide the authority with all necessary information, including regarding the granting of these schemes. Informing other Member States and the European Parliament would not represent burdensome costs to the Member States in question. When it comes to analysing whether the measure would adhere to the principle of proportionality, it is necessary to assess if the request for information is needed for the intended aim of this policy option. The fact that other measures, such as the revision of the AML or due diligence, would also enhance cooperation among Member States, casts some doubt on the proportionality of this policy option.

##### Consequences and impacts

This measure would **partly address the current lack of sincere cooperation** (key issue 1), since Member States would have a duty to inform the European Parliament of their intention to establish an RBI or CBI scheme, and to provide information about their functioning and modification. This would increase **transparency** and would allow the European Parliament to collect relevant information on the schemes.

<sup>210</sup> These measures are proposed by Transparency International, Global Witness and the EESC in the following reports: [European Getaway – Inside the murky world of golden visas](#), Transparency International and Global Witness, 2018, p. 48 and pp. 50-51 and EESC, Opinion on [Investor Citizenship and Residence Schemes in the European Union](#), SOC/618-EESC-2019.

<sup>211</sup> European Commission, [proposal for a regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#), COM(2021) 420 final.

<sup>212</sup> A similar system is used concerning goods. See Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 [laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services \(codification\)](#).

### 4.3.5. Summary of assessment

Table 14 – Overall assessment of policy option 3

Dimension	Summary of assessment
Possible legal basis	53(1), 62, 114 and 337 TFEU jo. 79(2)(a) and (b) TFEU
Main issue(s) addressed	Risk of violating the principle of sincere cooperation Risks of weak vetting and limited due diligence Risks of violating the principles of fairness and discrimination Lack of sufficient safeguards for macroeconomic governance
Costs and limitations	Modifying systems to promote exchange of information across agencies and Member States Establishing monitoring mechanisms, although tax cooperation mechanisms already exist to some extent, the proposed 6th AML directive proposes the creation of an AML authority Administrative burden for Member States
Potential consequences	Improved business practices of CBI/RBI service providers Enhanced EU oversight of TCNs and flows of capital admitted to the EU via CBI/RBI schemes Higher costs may be passed on to investors leading to higher administrative fees for CBI/RBI investors Heightened demand for other migration channels offered by Member States in particular ancestry-based options for naturalisation and 'passively oriented' entrepreneurial and start-up visas for residence Enhanced implementation of AML legislation
Potential impacts	Increased transparency and governance Lower risk of money laundering and tax avoidance Higher integrity of TCNs admitted to the EU via CBI/RBI schemes
EU added value	Level the playing field across Member States Greater coherence with EU and international policy frameworks on AML, legal migration and tax avoidance

Source: Authors' elaboration.

## 4.4. Policy option 4: Introduce minimum physical presence requirements for RBI schemes

Typically, RBI schemes have no physical presence requirement, while a valid permit can, with time, provide a pathway to citizenship. This pathway differs from traditional pathways to citizenship and can be understood to violate the principles of fairness and discrimination (see Section 3.3, Table 9).

### Measures proposed under the policy option

This option could introduce **minimum physical residence requirements** for beneficiaries of RBI schemes. The applicant and family members would need to be physically present for the minimum period in order to renew a visa. A minimum period of six months over a twelve month period could be appropriate, considering that this is also the time period to establish tax residence and would also be in line with the durations prescribed by the Long-term Residence Directive.



The policy option could **amend the Long-term Residence Directive** (2003/109/EC) to exclude beneficiaries of RBI schemes.<sup>213</sup> The directive notes that 'Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years' and that 'the acquisition of long-term resident status should be certified by residence permits'. The directive notes that 'periods of absence from the territory of the Member State ... shall be taken into account'. None of the RBI schemes in the EU have a physical presence requirement (see Section 3.3, Table 9), and it would be challenging to determine physical presence or absence. Residence permits alone cannot determine actual physical presence or absence from the territory.

Establishing a clear EU-level definition of RBI would be an important condition for this policy option.<sup>214</sup>

### Legal basis, subsidiarity and proportionality

Article 79(2)(a) and (b) TFEU could provide a suitable legal basis for this policy option. The policy option would take the form of a directive. To assess the principle of subsidiarity, it is essential to justify the relevance of implementing this policy option at EU level. Additionally, the EU competence in this regard is not subject to debate, as the EU sets the standards on y Member States' issue of long-term visas and residence permits. Applicants to these schemes would be put on equal footing with other migrants, who have to comply with residence requirements to obtain EU citizenship. This would result in an improvement in the functioning of the internal market and would give consistency to EU migration policy. A directive would therefore be likely to respect the principle of proportionality.

### Consequences and impacts

At present, the EU Long-term Residence Directive is under-used compared to national long-term residence permits. In 2019, three million TCNs held an EU long-term residence permit as compared with seven million TCNs with a national long-term residence permit. In its inception impact assessment, the European Commission notes that there is no 'level-playing field' between the EU and national schemes and TCNs are not presented with a 'real choice'.<sup>215</sup> The proposed revision of the Long-term Residence Directive could lead to higher take-up.<sup>216</sup> The consideration of an amendment is thus relevant and could be complementary to establishing minimum physical presence requirements.

Overall, the policy option could increase **coherence with the EU legal framework on migration**. More specifically, it could **reduce the discriminatory elements** of RBI, that have minimal to no residence requirements – in striking contrast to other legal migration channels (see Table 9). It would also reduce discrimination with respect to obtaining long-term residence status.<sup>217</sup>

<sup>213</sup> Article 3(2) excludes a number of groups that include persons such as those 'residing on temporary grounds', such as seasonal workers, posted workers and au pairs.

<sup>214</sup> See policy option 1 for more information.

<sup>215</sup> European Commission, [Inception Impact Assessment - Rights of third-country nationals who are long-term residents in the EU](#), 2021.

<sup>216</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. [Commission Work Programme 2021](#) – A Union of vitality in a world of fragility, COM(2020) 690 final.

<sup>217</sup> The issue of discrimination with respect to long-term residence has been highlighted in another EAVA (see source below), which proposes a policy option 4c – Reduce uncertainty with respect to obtaining long-term residence status – to tackle it. The policy option would address the problem that many TCN workers, who have accumulated long

Stricter physical presence requirements on RBI schemes may deter applicants with strong international business interests and work obligations, **leading to RBI schemes generating lower revenue for the Member States that implement them**. Rather than RBI schemes, applicants may instead consider entrepreneur or business visa options with low physical presence requirements. The take-up of entrepreneur or business visas may increase and generate benefits for Member States that may offset the losses from RBI schemes to some extent. The benefits generated via entrepreneur or business visas may be purely financial and/or include 'active' investment, depending on the visa schemes.<sup>218</sup>

This policy option may increase the share of people in these schemes investing in **real estate**, thus increasing the pressure on that market. However, it may not affect others whose primary motivation is related to lifestyle and leisure (see Table 3), who are those who have a greater interest in the real estate option. Overall, the impact on the real estate market may not be substantial.

This policy option could also **generate higher spending on goods and services** in the Member State. Stricter physical presence requirements may also **reduce the risk of tax avoidance**.

Table 15 – Overall assessment of policy option 4

Dimension	Summary of assessment
Possible legal basis	Directive and amendment to the Long-term Residence Directive - Article 79(2)(a) and (b) TFEU
Main issue(s) addressed	Risks of violations of the principles of fairness and discrimination
Costs and limitations	Could shift demand to other channels, decreasing vetting levels and the entrepreneurial content of these channels. Difficulties to monitor and ensure physical presence in the country.
Potential consequences	Lower take-up of RBI schemes Heightened demand for entrepreneurial and start-up visas with unclear impacts Increased engagement of RBI applicants whose motivation is primarily related to lifestyle Greater take-up of real estate option in Member States that offer it, but effect may be limited
Potential impacts	Negative impact on revenue inflow in implementing Member States, due to lower take-up of RBI scheme Greater private spending on goods and services Possible higher pressure on real estate market, but potentially limited Lower risk of tax avoidance
EU added value	Greater coherence with EU policies on legal migration

Source: Authors' elaboration.

periods of residence in the EU, face obstacles to integration and social mobility. This policy option would be complementary to policy option 4 in the present study in addressing discrimination. Navarra C. and Fernandes M., [European Added Value Assessment – Legal migration policy and law](#), EPRS, 2021.

<sup>218</sup> As noted in Section 2.2, entrepreneur or business visa schemes may, in practice, be quite similar to RBI schemes. Action by the EU in the area of entrepreneurship is reviewed in another assessment (see policy option 3a): Navarra C. and Fernandes M. [European Added Value Assessment – Legal migration policy and law](#), EPRS, 2021. Policy option 3a would seek to ensure an 'active' investment in terms of a business plan, day-to-day involvement etc.



## 4.5. Policy option 5: Regulate access to the EU

This policy option would seek to regulate access to the EU by participants in CBI/RBI schemes in third countries. It could regulate access to the EU for participants in CBI/RBI schemes that are operated by **countries in the EU accession process** (policy option 5a), and/or regulate access to the EU for participants in CBI schemes in other third countries with **visa-free agreements with the EU** (policy option 5b). Regulating access to the EU for beneficiaries of CBI schemes in third countries was a topic covered by the Member State expert group set up by the European Commission on Investor Citizenship and Residence Schemes.<sup>219</sup> This EAVA also considers EU action on RBI schemes in accession countries, as residence could lead to EU citizenship in the post-accession future.

### 4.5.1. Regulate access to the EU for participants in investment migration programmes in countries in the EU accession process (sub-option 5a)

#### Measures proposed under the policy option

Under this policy option, the EU could establish a condition for EU accession countries (candidate and potential candidates) with CBI/RBI schemes **to align their vetting and due diligence measures** with those established in the EU, such as the AML legislation, as well as **physical presence requirements**. This alignment would ultimately need to happen by the time of accession in the absence of the policy option. This policy option could be viewed in conjunction with policy option 3, which puts forward a set of measures to strengthen the conditions, guarantees and safeguards of CBI/RBI schemes in the EU, as well as policy option 4 on physical presence requirements. Access to long-term residence and citizenship with minimal to no physical presence requirement is expressly advertised on the websites of service providers of RBI schemes in several accession countries.<sup>220</sup>

The policy option could also introduce **monitoring of CBI/RBI schemes** in EU accession countries. Key indicators would include the number of approved applications, and how many beneficiaries travel to the EU. The European Commission has already committed to monitoring CBI schemes (but not RBI), in the context of the **visa suspension mechanism**.<sup>221</sup> The report specifically notes that any shortcomings in security and background checks could be 'grounds for re-imposing a visa requirement and suspending or terminating visa waiver agreements'. Since 2017, the European Commission has had the power to trigger the mechanism (for specific offences).<sup>222</sup> An amendment to Regulation 2018/1806 could be envisaged under this policy option, as well as adjustments to the list of countries in Annex II that have an exemption from the visa requirement.<sup>223</sup>

<sup>219</sup> For example, see the minutes of the third meeting of the [Group of Member State Experts on Investor Citizenship and Residence Schemes in the EU](#), held on 2 October 2019.

<sup>220</sup> For more information, please see Section 3.1, Table 6.

<sup>221</sup> European Commission, 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](#), 2019.

<sup>222</sup> The regulation states: 'in an emergency situation, where an urgent response is needed in order to solve the difficulties faced by at least one Member State, and taking the overall impact of the emergency situation on the Union as a whole into account'.

<sup>223</sup> European Commission, [Regulation \(EU\) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement](#).

**Security concerns** could be addressed by the European Travel and Information Authorisation System (ETIAS), which is scheduled to come into effect by the end of 2022.<sup>224</sup> The ETIAS will be used to monitor and assess the security risk of all persons traveling to the Schengen area, including from countries with visa-free access. It will assess security risks by checking an applicant's data against databases from Europol, the Visa Information System (VIS), and the European Criminal Records Information System (ECRIS), amongst others. In the case of a positive hit, the application will be reviewed manually. After approval, an individual's registration in ETIAS would be valid for five years or until the expiry of the individual's passport. With this system in place, nationals travelling to the EU from EU accession candidate countries with visa-free access would be reviewed according to their risk profile.

### Legal basis, subsidiarity and proportionality

Article 49 TEU would provide the legal basis for actions concerning countries in the EU accession process. Fulfilling the EU's rules concerning RBI and CBI schemes could be considered within Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) of the *acquis*.

### Consequences and impacts

Three accession countries have CBI schemes – Montenegro, North Macedonia and Turkey, while Albania is considering launching a CBI scheme. The CBI schemes in Montenegro and North Macedonia are small in size. Montenegro's CBI scheme is scheduled to end in December 2021. In contrast, Turkey, hosts the largest CBI scheme in the world. According to academics, the prospect of EU citizenship is not the main driver, nor is visa-free access to the Schengen area possible at this time.<sup>225</sup>

This policy option could provide incentives to accession countries with large investor schemes (e.g. Turkey) to **ensure alignment of vetting and due diligence systems and physical presence requirements** with EU standards. An accession country could pass on the implied costs of vetting and due diligence systems to applicants of the CBI scheme, as EU countries might do under policy option 3, thus increasing the prices for applicants.

Accession countries with relatively small investor schemes may find that the costs of alignment are too substantial and do not offset the generated gains. These countries may **potentially suspend their schemes**. Accession countries that do not have investor schemes at present may be **deterred from launching an investor scheme in the future** under this policy option.

#### 4.5.2. Regulate access to the EU for participants in CBI schemes in other third countries with visa-free agreements with the EU (sub-option 5b)

##### Measures proposed under the policy option

This policy option could take several approaches. One approach would be to **amend Annex II of Regulation 2018/1806**, which lists third countries whose nationals are exempt from the visa requirement.<sup>226</sup> At present, the list notes conditions for some countries, for example, that the

<sup>224</sup> Radjenovic, A. [European Travel Information and Authorisation System \(ETIAS\)](#), EPRS, 2018.

<sup>225</sup> See Annex II – Surak.

<sup>226</sup> European Commission, [Regulation \(EU\) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement](#). These countries include: Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis and Saint Lucia.

exemption from the visa requirement can only apply to holders of biometric passports. Under this policy option, Annex II of Regulation 2018/1806 could be amended to exclude all nationals from countries which have a CBI scheme. These persons would consequently need to apply for a Schengen visa to enter the EU.

Alternatively, the policy option could introduce **enhanced checks** for persons who travel to the EU with a passport from a third country with a CBI scheme and visa-free access to the EU. The extent of these checks could depend on the CBI scheme in the third country's alignment of vetting and due diligence systems with EU standards, e.g. with respect to AML legislation. At present, none of the countries with CBI schemes which are the focus of this policy option impose physical presence requirements. The evidence available suggests that vetting and due diligence procedures are rigorous,<sup>227</sup> but this could be **verified by the EU in consultation with international organisations**, such as the IMF.

Third countries with CBI schemes and visa-free access to the EU could be classified as 'high-risk', based on this assessment.<sup>228</sup> Nationals from third countries that are not 'high risk' could be subject to a regular check when travelling to the EU, while those from 'high risk' countries could be subject to an enhanced check.<sup>229</sup> This policy option could be viewed in conjunction with policy option 3, which clearly defines what constitutes 'strong' and 'weak' vetting standards.

This policy option could also introduce an obligation to **monitor CBI schemes in third countries with visa-free access to the EU**, as well as in the context of the visa suspension mechanism, in a similar way to policy option 5a. Information could be gathered on the number of approved applications and the number of people with a CBI passport travelling to the EU without a Schengen visa. Also similar to policy option 5a, it would be critical to establish an appropriately detailed definition of CBI/RBI schemes, to ensure effective implementation. Third countries could be required to report information on a regular basis to maintain their status in Annex II of Regulation 2018/1806.<sup>230</sup>

Similarly to policy option 5a, **security concerns** could be addressed by ETIAS, which will be in operation by the end of 2022.<sup>231</sup> Nationals travelling to the EU with a passport from a country with a CBI scheme and an exemption from the visa requirement would be subject to security checks.

## Legal basis, subsidiarity and proportionality

Regarding visa policy, Article 77(2) TFEU could provide the legal basis. Where an amendment of an existing agreement or new agreement is required, Article 218 TFEU in conjunction with Article 77(2) TFEU would apply. In the area of police cooperation to prevent, detect and investigate criminal offences potentially caused by these schemes, Article 87(2) TFEU could also be invoked as legal basis in conjunction with Article 77(2) TFEU. Since the objective of this policy option – additional checks on applicants from visa-free countries – cannot be sufficiently achieved by Member States acting on their own, the EU action would be in accordance with the principle of

<sup>227</sup> See Annex II – Surak.

<sup>228</sup> This approach would build on and broaden the approach currently followed for AML. Article 9 of [Directive 2015/849](#), which classifies third countries as 'high-risk third countries' that have 'strategic deficiencies in their national AML/CFT regimes.

<sup>229</sup> The time taken to issue travel authorisation may be longer for applicants with a higher-risk profile. Additional information may be requested and the applicant could even be invited for an interview.

<sup>230</sup> [Regulation \(EU\) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement](#), Official Journal of the European Union 303/39, 2018.

<sup>231</sup> Radjenovic, A. [European Travel Information and Authorisation System \(ETIAS\)](#), EPRS, 2018.

subsidiarity. Decisions on visa-free access countries are mainly adopted through bilateral negotiations between the EU and the relevant country. Adopting tailored measures in these negotiations to counteract the risks that CBI and RBI schemes might pose does not raise proportionality concerns. While such measures could be understood as a way of promoting EU values, it could bring diplomatic pressure to bear on EU external policy.

### Consequences and impacts

The aim of this policy option would be to **align the vetting standards** of all countries with visa-free agreements with the EU to the EU's high standards, as defined in policy option 3. This could have a positive effect in terms of increased **transparency**, greater **security**, and enhanced possibilities to collaborate on tax issues and anti-money laundering.

Several third countries with visa-free agreements with the EU are **heavily dependent on CBI** programmes for their economic stability. Saint Kitts, for example, earns 35 % to 40 % of its GDP through its CBI programme, and in other countries in the Caribbean the rate is around 15 % to 20 % of GDP.<sup>232</sup> Visa-free access to the EU represents a strong draw to these CBI schemes and may be a driver of demand and high minimum investment levels, as noted in Section 3.1.

Third countries with CBI schemes and visa-free access to the EU may experience negative impacts under this policy option. The magnitude of these impacts would depend on the extent to which visa-free access to the EU is curtailed. Additional monitoring or security checks would be less consequential for third countries than the removal of visa-free access, which could lead to a reduction in the **demand for CBI schemes in third countries** and potentially economic crisis, due to the lower revenue obtained.

This policy option would place a high incentive on third countries with CBI schemes and visa-free access to the EU to ensure a **robust vetting and due diligence system**. The financial costs would be justified in return for maintaining the CBI scheme and the revenue it generates. Some of these financial costs could also be passed on to applicants, as might be the case for applicants to CBI schemes in the EU under policy option 3, thus increasing the price of these schemes for applicants.

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<sup>232</sup> See Annex II – Surak.

### 4.5.3. Summary of assessment

Table 16 – Overall assessment of policy option 5

Dimension	Summary of assessment
Possible legal basis	Article 49 TEU and Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) of the <i>acquis</i> Article 77(2) TFEU alone, with Article 218 TFEU for agreements with third countries or with Article 87(2) TFEU in the area of police cooperation to prevent, detect and investigate criminal offences
Main issue(s) addressed	Risks of weak vetting and limited due diligence
Costs and limitations	Third countries with CBI programmes may incur higher costs in ensuring alignment with EU standards Small countries with CBI programmes and visa-free agreements may suffer negative economic impacts if CBIs are excluded from visa-free access to the EU
Consequences	Enhanced monitoring of TCNs' entry to the EU from high-risk countries with CBI programmes
Potential impacts	Higher integrity of TCNs entering the EU via investor schemes Greater transparency Lower demand for CBI schemes in third countries with visa-free access to the EU
EU added value	Greater awareness of EU citizenship Improved coherence of EU's stance on legal migration and anti-discrimination Level the playing field

Source: Authors' elaboration.

## 4.6. Summary of policy options assessment

Some policy options are stand-alone options, while others can be combined. Policy option 2 (Tax) could be combined with policy option 3 (Regulate), policy option 4 (Physical presence requirements) and policy option 5 (External action).

Section 3 of this EAVA discussed **five key issues** raised by CBI/RBI schemes. Policy options differ in terms of which key issues and the extent to which they are addressed. The main connections between policy options and key issues are outlined below. The policy options can generate **EU added value** in several respects.

Policy option 1 (Phase-out) could contribute to a greater recognition of the **value of EU citizenship** and its rights that stand distinctly apart from national citizenships.

Policy options that address the key issue of sincere cooperation can **promote mutual trust** across the Member States and a **more robust Union**. Mutual trust could be achieved by capturing the negative externality on Member States through a tax (Policy option 2) and/or through the promotion of transparency and information (through measures in Policy option 3). Policy option 5 could enhance the trust placed in visa-free agreements with third countries and prospective Member States.

Policy option 1 (Phase out) and policy option 3 (Regulate) could enhance the strength and the resilience of the internal market by **levelling the playing field** across Member States, especially with regards to capital flows and macro-economic governance.

CBI/RBI schemes offer a 'fast-track' to residence and naturalisation – solely on the basis of wealth – that is not offered by other traditional pathways (see Section 3.3). The phasing out of the schemes (policy option 1), regulating them (policy option 3), or setting minimum physical presence requirements (policy option 4), could lead to **greater coherence and harmonisation** between the Member States in discrimination and legal migration policy. **Greater efficiencies** could result from a common understanding and treatment of TCNs.

The CBI/RBI schemes are closely linked to broader issues and trends in society concerning the **rule of law**, including income inequality and corruption. The schemes can contribute to some degree to a global competition for securing capital that leads countries to lower their standards in terms of background security checks, tax coordination, and control of corruption, which can be understood as a 'race to the bottom'. EU action on CBI/RBI schemes thus offers value as a **counterweight to national private interests and the global 'race to the bottom'** and promotes the EU common good. Such EU action on RBI/CBI could spur debate in the global governance arena of the risks raised by this possible 'race to the bottom' to attract capital and wealth by lowering tax and governance standards, and the contribution of RBI/CBI to these risks. Furthermore, EU action to promote transparency, and coordination of tax and capital flows, could generate **positive spill-over effects** to areas beyond CBI/RBI schemes.

Table 17 – Key issues that are tackled to some extent by each policy option

Key issues	Policy option 1: Phase out CBI/RBI schemes	Policy option 2: Tax	Policy option 3: Regulate conditions, guarantees, and safeguards	Policy option 4: Establish minimum physical presence requirements	Policy option 5: Regulate access to the EU
Sincere cooperation	✓✓	✓✓	✓✓		✓
Commodification of EU citizenship	✓✓				
Fairness and discrimination	✓		✓	✓✓	
Weak vetting and due diligence	✓	✓	✓✓	✓	✓✓
Limited macro-economic governance	✓	✓	✓✓	✓	

Source: Authors' elaboration.



## 5. Conclusions

This EAVA identifies a spectrum of possible avenues for EU action on CBI/RBI schemes. One of the challenges in defining these avenues is the possible legal bases, which can span six areas of EU law where the EU has shared competences with the Member States. The EU's competence has shifted over time, particularly with respect to nationality and immigration law, leaving some legal uncertainty as to the strength of certain legal bases for a proposed action. The policy options presented in this EAVA reflect what might be possible and take recent judgments and opinions issued by the ECJ into account.

Apart from the assessment of policy options, summarised in Section 4.6, this EAVA generated several key findings that can support effective EU action on CBI/RBI schemes. These findings are:

- **EU action could be justified by the need to promote 'sincere cooperation'.** The European Commission's use of 'sincere cooperation' to justify EU action on CBI schemes appears to be more appropriate than the 'genuine link' argument. The need for 'sincere cooperation' could similarly justify EU action on RBI schemes.
- Granting a fast-track to residence and naturalisation on the basis of wealth has a number of limitations as regards **fairness and non-discrimination**.
- The **growing scale of CBI/RBI schemes** in the EU can also justify the need for action. This EAVA provides comprehensive statistics on the level of investment and approved applicants from CBI/RBI schemes in the EU (see Section 2.3). The figures suggest that CBI/RBI schemes are significant and that their scale will increase over time in the absence of a change in trends and policy intervention.
- EU action could **address both CBI and RBI schemes**. This EAVA identifies five key issues (see Section 3) that are relevant to both types of schemes. Residence can provide a pathway to citizenship and the two status are therefore linked. However, to date, the European Commission has focused its action on CBI schemes.
- EU action could **minimise or eliminate conflicts of interest within governments and service providers**. This study finds that conflicts of interest may arise in the relationships between a government administering a CBI/RBI scheme and the private sector, the global supply chain for service providers. The role of the private sector in supporting applicants and governments to administer CBI/RBI schemes should be regulated.
- **Clear definitions of CBI/RBI schemes are needed.** The EAVA focuses on formalised schemes that offer at least one clearly passive investment option. The sample of CBI/RBI schemes analysed in this EAVA differs from the sample used in the European Commission study.<sup>233</sup> The CBI/RBI schemes must also be distinct from other similar pathways that are not subject to EU action (e.g. ancestry channels for naturalisation and entrepreneurship/business visa channels for residence).
- Overall, there is a **lack of transparency, sharing of information, and reporting**. Transversal actions noted in policy option 3 (e.g. the duty to inform the EU, annual

<sup>233</sup> This EAVA excludes schemes from the following countries that were covered in the 2019 European Commission study: Czechia, Croatia, Lithuania, Poland, Romania and Slovakia. European Commission, 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](#), 2019.

audits, sharing of information between FIUs) can easily meet the proportionality test while generating positive spill-over effects beyond CBI/RBI schemes. Otherwise, given the difficulty in assessing risks because of limited transparency, the proportionality of some EU actions is challenging to assess.



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## Annex I: Legal bases for possible EU action

The Treaty on the Functioning of the European Union (TFEU) offers several avenues for EU action on investment schemes. These avenues span several areas of EU law, as outlined in Table 18 below.

Two key areas are the fundamental principles of the EU, followed by criminal law, as these schemes 'have raised concerns about certain inherent risks, in particular as regards security, money laundering, tax evasion and corruption'. A third area concerns citizenship and immigration, due to the rights granted by these schemes, although the EU's competence in this area is contested. Given the passive nature of investment schemes that are based solely on financial transactions, EU law concerning the internal market is also relevant. Such CBI/RBI schemes can also affect rules on border checks, asylum and immigration, and subsequently, external, commercial and enlargement policy. Lastly, EU law on administrative cooperation can support cooperation and mutual assistance between Member States.

Each of these areas is discussed in the sub-sections below.

Table 18 – Possible legal basis for EU action on investment schemes

Area	Legal basis	Articles	Areas it can tackle
Fundamental principles of the EU	Principle of solidarity	Art. 80 TFEU	Sharing of financial gains
	Duty of sincere cooperation	Art. 4(3) TEU	Assistance between Member States
Criminal law and the fight against fraud	Criminal law	Art. 83(1) TFEU	Corruption
	Financial fraud	Art. 325(4) TFEU	Terrorism
Citizenship and immigration	Nationality and immigration	Art. 21 and Art. 79 TFEU	Financial fraud
Internal market	Common market	Art. 114 TFEU	Residence and citizenship rights
			Money laundering
	Free movement of capital	Art. 64(2) TFEU or Art. 64(3) TFEU	Consumer protection
	Free movement of persons, services	Art. 50(1) TFEU or Art. 53(1) TFEU	Movement of capital between the EU and third countries
		Art. 59 or Art. 62 TFEU	Freedom of establishment
External action	Policies on border checks, asylum and immigration	Art. 77(2)(a) TFEU	Freedom to provide services
	International agreements	Art. 218(6) TFEU	Common policy on visas and short-stay residence permits
	Common commercial policy	Art. 207 TFEU	Visa-free agreements
			Foreign direct investments

Area	Legal basis	Articles	Areas it can tackle
	EU enlargement policy	Chapter 23	Rule of law and fighting corruption
		Chapter 24	Migration (incl. citizenship acquisition), law enforcement
Administrative cooperation		Art. 197(2) TFEU	Administrative capacity of Member States to implement EU law
		Art. 113 and Art. 115 TFEU	Administrative cooperation in the field of taxation

Source: EPRS legal analysis.

## 5.1. Fundamental principles of the EU

The **principle of solidarity**, noted in Article 3(3) TEU, represents one of the objectives of the Union, along with economic promotion and social and territorial cohesion between Member States. The principle seeks to promote solidarity among the Member States when an EU policy is at risk. As concerns border checks, asylum and immigration, Article 80 TFEU states that the principle of solidarity and fair sharing of responsibility between Member States also has financial implications. The first part of Article 80 enshrines the general principle as guidance when setting and implementing specific strategic policies on border checks, asylum and immigration.<sup>234</sup> The principle along with the principles of subsidiarity and proportionality should be referred to in the recitals of a legislative act and not in the citations. The subsequent text in Article 80 confers the EU competence to take appropriate measures whenever necessary.<sup>235</sup> However, Article 80 could be used as a legal basis only if included jointly with others in the same chapter of the TFEU (i.e. Articles 77, 78 and/or 79), when the latter are not sufficient to promote solidarity.

While Article 80 TFEU has only been considered for negative implications to date, the possibility of positive implications could also be considered. In this sense, not only costs but also potential advantages could be evenly distributed among Member States. Considering the funds they generate for Member States that operate them, investment schemes clearly have positive financial implications. Article 80 could therefore be used to argue for EU intervention to facilitate the fair sharing of these financial benefits.<sup>236</sup> Doing so could potentially support the correction of the externality imposed by investment schemes whereby certain Member States are the sole beneficiaries of funds that are given for benefits that are beyond the Member State, specifically access to the EU (see Section 3.1).

<sup>234</sup> Which states: 'The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States'.

<sup>235</sup> 'Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle'.

<sup>236</sup> Article 80 TFEU states: 'The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle'.

The **duty of sincere cooperation**,<sup>237</sup> set out in Article 4(3) TEU, is an expression of EU solidarity. This duty establishes both a positive and a negative obligation. First, the Union and Member States shall 'assist each other in carrying out tasks which flow from the Treaties' and 'facilitate the achievement of the Union's tasks'. Second, by way of a negative obligation, Member States shall 'refrain from any measure which could jeopardise the attainment of the Union's objectives'. This principle is particularly relevant in the area of nationality and citizenship matters, as national rules on naturalisation decisions are not 'neutral' vis-à-vis other EU countries. Member States must therefore take this principle into account when granting or removing nationality, since it also means granting or removing EU citizenship.<sup>238</sup> In this regard, in his Opinion in case C-135/08 *Rottmann*, Advocate General Poiares Maduro, making reference to the literature,<sup>239</sup> considered that the principle of sincere cooperation 'could be affected if a Member State were to carry out, without consulting the Commission or its partners, an unjustified mass naturalisation of nationals of non-Member States'.<sup>240</sup> Academics are divided on the question of whether the process of granting citizens' or residents' rights via CBI and RBI can be understood as a mass naturalisation.<sup>241</sup> Additionally, the fact that Member States with these schemes might be seen as free-riders is in breach of the principle of sincere cooperation.<sup>242</sup> The coherence of the internal market might be at risk as, on one hand, their attractiveness stems from the fact that they give access to EU citizenship rights. On the other hand, Member States offering these schemes are mainly motivated by their own economic interests.<sup>243</sup>

## 5.2. Criminal law and the fight against fraud

Possible EU action on CBI/RBI schemes could draw on **EU criminal law** in the area of judicial cooperation in criminal matters. Article 83(1) TFEU enables the EU to establish minimum rules concerning the definition and sanctions regarding 'EU crimes'. Article 83(1) states that the EU might act by means of a directive, in accordance with the ordinary legislative procedure, 'in the areas of particularly serious crime with a cross-border dimension'. Article 83(1) offers a list of ten specific criminal offences or 'euro-crimes'.<sup>244</sup> To justify the action at EU level, these crimes might pose a threat 'resulting from the nature or impact of such offences or from a special need to combat them on a common basis'. While the scale of corruption, money-laundering and security risks stemming from CBI/RBI schemes is not easily ascertainable due to a lack of transparency, the risks have nonetheless been acknowledged. More specifically, the European Commission noted that these

<sup>237</sup> A. Radjenovic, [Solidarity in EU asylum policy](#), EPRS, European Parliament, March 2020.

<sup>238</sup> [EU Citizenship Report 2017: Strengthening Citizens' Rights in a Union of Democratic Change](#), European Commission, 2017.

<sup>239</sup> de Groot, G. R., 'The relationship between nationality legislation of the Member States of the European Union and European citizenship', in La Torre, M., (ed.), *European citizenship: an institutional challenge*, Kluwer Law International 1998, p. 115, specifically pp. 123 and 128-135; Zimmermann, A., 'Europäisches Gemeinschaftsrecht und Staatsangehörigkeitsrecht der Mitgliedstaaten unter besonderer Berücksichtigung der Probleme mehrfacher Staatsangehörigkeit', EuR, 1995, No 1/2, p. 54, specifically pp. 62-63.

<sup>240</sup> [Opinion of Advocate General Poiares Maduro](#) delivered on 30 September 2009 on Case C-135/08, *Janko Rottmann v Freistaat Bayern*, paragraph 30.

<sup>241</sup> Shaw has [argued](#) that the 'mass naturalisation case' would not apply to CBIs since it concerns a limited number of persons. Conversely, Carrera [considered](#) that this is less of a quantitative issue and rather a qualitative one.

<sup>242</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>243</sup> S. Carrera, [How much does EU citizenship cost?](#), *CEPS Paper in Liberty and Security*, No 64, April 2014.

<sup>244</sup> 'Euro-crimes' are: terrorism, trafficking in human beings, sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime, and organised crime.



risks concern a lack of security, 'including the possibility of infiltration of non-EU organised groups', money laundering, corruption and tax evasion.<sup>245</sup> Article 83(1) could therefore be used to argue for EU intervention to fight the 'euro-crimes' that might be involved, potentially corruption and terrorism.<sup>246</sup>

As noted in Section 3, investment schemes have demonstrated the risk of tax evasion and avoidance, which might put the EU's financial interest at risk. For this reason, EU law to **combat fraud that affects the financial interests of the Union** is relevant. Both the EU and Member States have the shared responsibility of taking action, as set out in Article 325 TFEU, to 'counter fraud and any other illegal activities affecting them'. The second paragraph states that Member States shall also protect their national interests and the EU's financial interests. Jointly with the European Commission, Member States should submit an annual report to the European Parliament and to the Council, detailing the measures taken in this regard. In 2019, Member States reported 66 measures were taken to prevent, detect, investigate and compensate fraud. While the measures spanned the entire anti-fraud cycle, **more than 70 % of the measures were taken at the initial stage (i.e. prevention and detection)**.<sup>247</sup> Article 325(4) TFEU states that, in this case, the EU can adopt measures to prevent and tackle fraud against its financial interests, following the ordinary legislative procedure and, after consulting the Court of Auditors. The idea behind Article 325(4) is to provide for an 'effective and equivalent protection' of the EU's financial interest across countries and the EU institutions.<sup>248</sup> Article 325(4) would then constitute a proper legal basis to fight against tax evasion resulting from CBI and RBI schemes on the grounds of protecting the EU's interests.

### 5.3. Citizenship and immigration

Having described the competences, the next step concerns the criteria to meet to be considered a national of an EU Member State. The **genuine link** principle provided for in the *Nottebohm* Case, established that nationality with which the individual has the most effective link should be applied for the purpose of diplomatic protection. The 'genuine link' argument, however, has been much **criticised**.<sup>249</sup> The European Parliament, following this idea nevertheless, highlighted that EU citizenship depends on the 'person's ties with Europe and the Member State'.<sup>250</sup> The interpretation of these ties raises a dilemma as, on one hand, if understood as residence, it leads to defining

<sup>245</sup> Report from the Commission on Investor Citizenship and Residence Schemes in the European Union, [COM\(2019\) 12 final](#), January 2019.

<sup>246</sup> According to Article 83(1) TFEU, EU intervention in the 'areas of particularly serious crime with cross-border dimension' would be based on the establishment of 'minimum rules concerning the definition of criminal offence and sanctions'. It would promote a more harmonised and cross-border response to counteracting terrorism and corruption at EU level and, most importantly, it would represent a step towards the deepening of the area of freedom, security and justice.

<sup>247</sup> Commission staff working document, Implementation of Article 325 TFEU by the Member States in 2019, [SWD\(2020\) 159 final](#), September 2020.

<sup>248</sup> Article 325(4) states: 'The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies'.

<sup>249</sup> i.a. Weingerl, P., Tratnik, M., Citizenship by Investment Programs from the Perspective of International and EU Law, *LeXonomica* 11(2), 2019, 95-126; Spiro, P., [Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion](#), Investment Migration Working Papers IMC-RP2019/1; Glazer, J. 'Affair Nottebohm (Liechtenstein v. Guatemala) – a Critique', *Georgetown Law Journal*, Vol 44, 1956, 313-323.

<sup>250</sup> [Resolution](#) of 16 January 2014 on EU citizenship for sale, European Parliament.

contested concepts such as 'habitual residence' or 'effective residence';<sup>251</sup> on the other hand, it could 'paradoxically fuel nationalistic misuses by Member States'.<sup>252</sup> Moreover, a strict interpretation may result in de facto statelessness, where a person is unable to prove any genuine connection with any state of nationality.<sup>253</sup> Additionally, the CJEU specifically held in *Micheletti* that a Member State may not make the recognition of the nationality of another Member State conditional on the person having a genuine link with that state.

Concerning the EU legal basis, some articles of the TFEU might be relevant to justifying an action at EU level, if needed. **Article 21(1)** presents the right of citizens to free movement within the EU while **Article 21(2)** permits EU action to ensure this right if 'the Treaties have not provided the necessary powers' to do so. **Article 79(2)(b)** allows the EU to adopt measures supporting the 'definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States' for the purposes of developing a 'common immigration policy'.

Although EU competence in these areas is limited and contested, in some landmark judgments the CJEU has recognised that the 'rights of third-country nationals' could be argued to include naturalisation rights for two reasons – naturalisation is considered the ultimate form of integration and consequently, the final stage in the migration process; secondly, the rights flowing from Articles 20 and 21 TFEU are derived from the naturalisation and therefore the access to the rights are equally covered.<sup>254</sup>

- 1) **The rights of third-country nationals should include the possibility to acquire a permanent status and approximate the rights of Member State nationals.** The durable use of rights, as noted in Article 8 of the European Convention on Human Rights (ECHR) and Article 7 of the Charter of Fundamental Rights (CFR), require the existence of means to acquire permanent status i.e. naturalisation procedures. In the Tampere Conclusions, the European Council states that 'the legal status of third-country nationals should be approximated to that of Member States' nationals. The European Council endorses the objective that long-term legally resident third-country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident'.<sup>255</sup> This also follows from Article 6(3) of the European Convention on Nationality,<sup>256</sup> to which 13 Member States are party, and which requires state parties to have a naturalisation procedure.
- 2) **Acquiring nationality is the ultimate form of integration.** In C-165/16 *Lounes*, the CJEU stated: 'it would be contrary to the underlying logic of gradual integration that informs Article 21(1) TFEU to hold that such citizens, who have acquired rights under that provision as a result of having exercised their freedom of movement, must forego those rights – in particular the right to family life in the host Member State – because they have sought, by becoming naturalised in that Member State, to become more deeply integrated in the society of that

<sup>251</sup> S. Carrera, [How much does EU citizenship cost?](#), CEPS Paper in Liberty and Security, No 64, April 2014.

<sup>252</sup> A. Scherrer, E. Thirion, [Citizenship by investment \(CBI\) and residency by investment \(RBI\) schemes in the EU- State of play, issues and impacts](#), EPRS, European Parliament, 2018.

<sup>253</sup> [Legal and Protection Policy Research Services: UNHCR and De facto Statelessness](#), United Nations High Commissioner for Refugees (UNHCR), April 2010.

<sup>254</sup> De Groot, D., 'Free Movement of Dual EU Citizens', in: Cambien, N., Kochenov, D., Muir, E., European Citizenship under Stress, Brill, 2020.

<sup>255</sup> European Council's Tampere Conclusions, para. 21.

<sup>256</sup> Council of Europe, [European Convention on Nationality](#), Strasbourg, 6 November 1997, ETS 166.



State'.<sup>257</sup> Whereas the *Lounes* case concerned the integration of a person who was already an EU citizen, the CJEU has applied the same line for persons who were previously third-country nationals.<sup>258</sup>

The **legal basis concerning the acquisition of residence** is stronger and can be directly identified from the TFEU – Article 79(2)(a) allows the EU to regulate the issuance of residence permits and long-term visas.<sup>259</sup>

Article 79(2)(a) and (c) TFEU can be used to revoke residence. Article 21(2) TFEU can be used to revoke citizenship if it takes the conditions set out in Article 7 ECN into account and fulfils the proportionality test of *Rottman*.

CJEU case on acquisition of nationality – C-490/20 *V.M.A.*

In this case, Advocate General Kokott considered that a child could not rely on the TFEU articles on EU citizenship, since the child had not yet acquired the nationality of a Member State. Therefore, in the Court's interpretation, the acquisition of nationality, and thus EU citizenship, is not covered by the Treaties. It is yet to be seen how the Court will decide in this case.

## 5.4. Internal market legislation

One of the EU's greatest achievements, the internal market represents a single market governed by four freedoms: of movements within the EU of goods, persons, services and capital. The CBI and RBI schemes carry several risks to the integrity of this free market, as noted in Section 3.<sup>260</sup> There could therefore be a legal basis for the EU to pursue their regulation using internal market law. In this regard, the Treaties expressly confers competences on the EU to adopt measures for the harmonisation of the Member States' provisions concerning both the establishment and functioning of the internal market.

The most relevant article to consider regarding EU action on CBI/RBI schemes in respect of the internal market is **Article 114 TFEU**, which is the primary legal basis for ensuring consumer protection.<sup>261</sup> It also represents the legal basis for EU action on money laundering and terrorist financing.<sup>262</sup> Article 114 TFEU could be used to regulate the investment migration industry as well as assess the origin of funds. Article 114 could act as a legal basis to the extent that the measures

<sup>257</sup> C-165/16 - (para. 58).

<sup>258</sup> See for example, Joined Cases C-7/10 and C-9/10 *Kahveci and Inan* (para. 31-33) and also, De Groot, D., 'Free Movement of Dual EU Citizens', in: Cambien, N., Kochenov, D., Muir, E., European Citizenship under Stress, Brill 2020.

<sup>259</sup> Article 79(2)(a) states: (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification.

<sup>260</sup> Article 3(3) TEU states: '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>261</sup> [Directive 2011/83](#) of 25 October 2011 on consumer rights.

<sup>262</sup> [Directive \(EU\) 2015/849](#) of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

taken would remove existing barriers in the internal market as stated in the CJEU case law (*Tobacco Advertising*).<sup>263</sup> Article 114 does not therefore provide a EU general competence.

The AML Directives make specific reference to CBI and RBI schemes, which may pose risks related to money laundering and fraud. In Annex II and III of the directive, there are two lists of non-exhaustive risk factors which set out the tools the obliged entities should use when deciding either to apply the enhanced or the simplified due diligence procedure. An applicant to a CBI/RBI scheme 'in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in that Member State' would be considered as a high risk factor, therefore the enhanced customer due diligence procedure applies. The directive requires gatekeepers – financial institutions such as banks and other obliged entities – to safeguard EU finances by identifying clients, monitoring relevant transactions and reporting suspicion in respect of either money laundering or terrorist financing to the relevant authorities.<sup>264</sup> Second, the directive establishes that European supervisory authorities shall issue guidelines to help national authorities when enacting this procedure.<sup>265</sup> And, lastly, the obliged entities cover credit institutions, financial institutions and natural or legal person acting in exercise of certain professional activities, such as auditors or notaries.<sup>266</sup> These EU level legal tools are in line with the International standards on Combating Money Laundering and the Financing of Terrorism and Proliferation.<sup>267</sup>

On July 2021, the European Commission presented a **new package on Anti-money laundering and countering the financing of terrorism**, which includes a proposal for establishing an EU AML authority, a new regulation and a new directive.<sup>268</sup> The proposed regulation acknowledges that RBI programmes are prone to money laundering, corruption and tax evasion. This is particularly acute in this scheme, as residence status in one Member State gives cross-border rights to their applicants in the whole EU. However, CBI schemes are explicitly excluded from the regulation, as they may 'undermine the fundamental the status of Union citizenship', as enshrined in Article 20 TFEU and runs counter to the sincere cooperation principle as established in Article 4(3) TEU. When assessing high-risk factors in Annex III, CBI schemes are also excluded.<sup>269</sup> Although RBI programmes may entail less risks, they might also act as a gateway to permanent residence and even citizenship.<sup>270</sup>

The general principle of **free movements of capital** is enshrined in Article 63 TFEU. Article 63 states that all the restrictions on the movement of capital, including restrictions on payments, within the EU and between the EU and third countries shall be prohibited. The EU has competence to regulate the movement of capital to and from third countries via **Article 64 TFEU**. Specifically, Article 64(2) TFEU states that the EU could support measures to ensure this freedom 'to the greatest extent possible'. Article 64(2) covers direct investment, including those involved in real estate

<sup>263</sup> [Case C-376/98, Federal Republic of Germany v European Parliament and Council of the European Union, Advertising and sponsorship of tobacco products](#), October 2000.

<sup>264</sup> Chapter II, Section 3 of the AML Directive.

<sup>265</sup> Article 17 of the AML Directive.

<sup>266</sup> See Article 2 of the AML Directive.

<sup>267</sup> [International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation](#), Financial Action Task Force, 2020.

<sup>268</sup> [Anti-money laundering and countering the financing of terrorism legislative package](#), European Commission website.

<sup>269</sup> Proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, [COM\(2021\) 420 final](#), European Commission, July 2021.

<sup>270</sup> Opinion of the European Economic and Social Committee on 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union', [COM\(2019\) 12 final](#), October 2019.

operations, establishment, provision of financial services, or the admission of securities to the capital markets. To adopt these measures, the EU shall follow the ordinary legislative procedure. Conversely, and because of the fundamental character of this freedom, the special legislative procedure governs the adoption of measures that represent 'a step backwards in Union law' concerning the free movement of capital, as stated in Article 64(3) TFEU. In this case, the Council would act unanimously and the European Parliament would take a consultative role. Such EU action could be justified as CBI/ RBI schemes make the relevant countries more attractive to investors to channel their investments, and because some of these schemes require investors to retain their properties in the Member State.

The first restriction to these freedoms that CBI/RBI schemes may pose is based on the unequal treatment between national and cross-border movement and between two different Member States (one with CBI and/or RBI in place). As noted by the CJEU, the prohibition of restrictions on capital movements is not limited to ensuring an equal treatment.<sup>271</sup> Rather, any barrier that may put some investors in a more advantageous position in comparison with others should be eliminated. The fact that investments in some countries may grant residence permit or citizen status, which is not the case in other countries, puts the former in a more favourable position than the latter. It may be understood also as State aid, which might run counter to EU competition policy. The second restriction is based on the fact that the relocation of the investment in another Member State may result in the revocation of the newly-acquired citizenship or residency. These measures act as a barrier for new citizens to invest in other Member States, which run counter to Article 63 TFEU.<sup>272</sup>

Exceptions to the restrictions on free capital movements from third countries are largely found in Article 64 TFEU. In the case that economic and monetary union is put at risk, restrictions on capital movements concerning third countries are allowed for up to six months, according to Article 66 TFEU. Lastly, according to Article 65 TFEU, Member States can introduce restrictive measures even in relation to capital movements within the EU to pursue one of the following objectives: (1) prevent infringements of national laws on taxation and financial services; (2) to allow for the declaration of capital movements for administrative or statistical purposes, and (3) to ensure public policy or public security. One could argue that these exceptions might justify restrictions on the part of the EU, if the flow of investments coming from CBI/RBI schemes affects the integrity of the internal market.<sup>273</sup>

Lastly, internal market law could also provide a legal basis to regulate the 'profession' of intermediaries that facilitate the provision of investment visas and passports. More specifically, **Article 50(1) TFEU or Article 53(1) TFEU** could be used regarding the establishment of intermediaries, while **Article 59 TFEU or Article 62 TFEU** could be used to regulate the services of intermediaries. The EU could issue directives to pursue these objectives acting in accordance with the ordinary legislative procedure. Consulting the European Economic and Social Committee is mandatory when taking measures to ensure the freedom of establishment and the liberalisation of a specific service. Restrictions imposed on a specific or new profession would possibly be contested, as they could run counter to the liberalisation required by Article 59 TFEU. The use of these articles would require drawing on Article 114, as well as concerning the regulation of the industry.

<sup>271</sup> See for example C-483/99 *Commission v France* and C-367/98 *Commission v Portuguese Republic*.

<sup>272</sup> S. Kudryashova, 'The "Sale" of Conditional Citizenship: the Cyprus Investment Programme under the Lens of EU Law', *European Papers*, Vol. 3, 2018, No 3, pp. 1265-1288.

<sup>273</sup> Especially in countries such as Cyprus and Malta that are part of the monetary union.

## 5.5. External action

In the area of freedom, security and justice, the TFEU provides a legal basis for the EU to regulate visas and short-term stays. As noted in **Article 77(2)(a) TFEU**, for the purpose of ensuring that there is no control when crossing internal borders, an efficient control and monitoring mechanism at the external borders and a common system for external border management, the EU could adopt measures concerning a common policy on visas and short-stay residence permits. Ensuring a border-free Schengen area is based on two pillars: the abolition of any internal control and a common policy on external borders. This area covers 26 states, not all of them part of the EU (such as Iceland, Norway, Switzerland and Liechtenstein). On the other hand, five EU countries are not part of the Agreement (Bulgaria, Croatia, Cyprus, Ireland and Romania).<sup>274</sup> For non-EU citizens entering the Schengen area, short-stay permits cover a maximum of 90 days stay in a 180 day period. Such persons must hold a Schengen visa when crossing the borders. In this regard and using Article 77(2) as a legal basis, Regulation 2018/1806 offers a list of countries whose citizens are subject to or exempt from the requirement of holding a visa.<sup>275</sup> Regulation 810/2009 establishes the Visa Code and Regulation 2017/1370 lays down the standardised visa format.<sup>276</sup> Other legal instruments cover the total of 13 Visa Facilitation Agreements that the EU has signed in order to ease visa procedures with third countries. Nationals from countries that do not have a visa-free agreement with the EU may obtain visa-free entry if they benefit from an EU CBI or RBI scheme.<sup>277</sup>

The EU also has a basis to intervene in agreements with third countries. The above-mentioned **Article 77(2), jointly with Article 218(6) TFEU**, could be used as a legal basis for visa-free agreements on short-stays. The Council can conclude the agreement after obtaining the consent of the European Parliament when one of the following is involved: association agreements, agreement on the accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, agreements on specific institutional frameworks by organising cooperation procedures, agreements that affect budgetary governance, and agreements that legally required the consent of the European Parliament. In the remaining cases, the Council can conclude the agreement after the European Parliament submits its opinion.

Common commercial policy can also potentially be used to regulate foreign direct investment. This is particularly relevant as the EU is the main provider and one of the most favoured places to invest for foreigners.<sup>278</sup> Specifically, **Article 207 TFEU** sets out the rules of the EU trade policy that covers trade in goods and services, commercial issues concerning intellectual property, public procurement and, relevantly, foreign direct investment. The principles and objectives that guide the EU's external action shall guide the EU's commercial policy; to investment policy; the preservation of the rule of law; the principles of international law; and the respect for EU values and interests. To preserve these principles and to 'safeguard key European assets and protect collective security', the EU has developed the EU foreign investment screening mechanism.<sup>279</sup> This mechanism should

<sup>274</sup> [Schengen Area - the World's Largest Visa Free Zone](#), Schengen visa info website.

<sup>275</sup> [Regulation 2018/1806](#) of 14 November 2018, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

<sup>276</sup> [Regulation 810/2009](#) of 13 July 2009 establishing a Community Code on Visas (Visa Code) and [Regulation 2017/1370](#) of 4 July 2017 amending Council Regulation 1683/95 laying down a uniform format for visas.

<sup>277</sup> [Visa policy](#), European Commission website. These agreements have been signed by the EU with Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Cape Verde, Former Yugoslav Republic of Macedonia, Georgia, Moldova, Montenegro, Serbia, Russia, Ukraine.

<sup>278</sup> White Paper on levelling the playing field as regards foreign subsidies, [COM\(2020\) 253 final](#), European Commission, June 2020.

<sup>279</sup> [Regulation 2019/452](#) of 19 March 2019 of foreign direct investments into the Union.

enhance the exchange of information between the European Commission and Member States concerning these investments and raise concerns if security or public order might be at risk. As CBI and RBI schemes attract foreign investments to the countries that offer them, it is for the Member State that received these investments to address the potential threats that they may pose – on a case by case basis – and to mitigate them according to the regulation and the values of the common EU trade policy. These investments generally take the form of foreign portfolio investment (FPI) and property assets, both of which are more volatile than foreign direct investment (FDI).

The EU can also adjust the conditions for membership in its enlargement policy. Specifically, **Chapter 23** of the *acquis* on judiciary and fundamental rights highlights the safeguarding of the rule of law and the tackling of corruption. **Chapter 24** of the *acquis* on justice, freedom and security concerns, among other things, issues of border control, visas and migration, and highlights the need for adequate capacity in law enforcement agencies and police and judicial cooperation.

## 5.6. Administrative cooperation

The area of administrative cooperation is particularly relevant with regards to tax avoidance and evasion challenges concerning RBI and CBI schemes. The most relevant instrument is the Directive on Administrative Cooperation, whose legal basis is Articles 113 and 115 TFEU. The directive lays down the rules and procedures under which Member States shall communicate and cooperate with each other in areas relevant to their national law. The directive provides for a list of categories of income and capital subject to a mandatory or to spontaneous exchange of information between relevant authorities. Information concerning income from employment, director's fees, life insurance products not covered by EU legal instruments, pensions and ownership of an income from immovable property, belong to the automatic exchange of information category. Information 'foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning taxes' is part of the spontaneous exchange of information category. This is especially relevant if the competent authority has reasonable grounds to believe that there may be a risk of tax fraud in the other Member State.<sup>280</sup>

The EU also has a legal basis to support the training of public administrations to properly implement investment schemes. The legal basis can be found in **Article 197(2) TFEU** and can apply to 'facilitating the exchange of information and of civil servants as well as supporting training schemes'. To this end, the European Parliament and the Council can adopt regulations following the ordinary legislative procedure precluding any form of harmonisation of the legislation at Member State level

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<sup>280</sup> [Directive 2011/16](#) of 15 February 2011 on administrative cooperation in the field of taxation. See Articles 8 and 9.

# Citizenship and residence by investment schemes – State of play and avenues for EU action

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This research paper evaluates the potential impacts and added value of supplying a clear legal framework concerning citizenship by investment (CBI) and residence by investment (RBI) programmes. To contextualise the analysis, it supplies an overview of the global trends in CBI and RBI programmes and the location of EU programmes within them. After discussing scope issues and possible alternatives to CBI and RBI schemes, the report lays out the scale and characteristics of the programmes in the EU, as well as how they operate in practice. It assesses several potential problems that might emerge – weak vetting and related risks of security and money laundering; corruption and fraud; limited macroeconomic benefits; limited benefits for the EU; not harnessing human capital; and tax evasion and avoidance – and reviews the evidence to substantiate them. This analysis feeds into the discussion and assessment of five policy options for an EU response to the programmes. These include banning, taxing, and regulating programmes, along with requiring greater physical presence and regulating access to the EU in the case of programmes outside it. The research paper concludes by assessing possible impacts and unintended consequences of each policy option.

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## Executive summary

Over the past decade, citizenship by investment (CBI) and residence by investment (RBI) programmes have grown across the European Union (EU). These schemes, which together are known as investment migration programmes, enable investors to gain residence or citizenship in recognition of a financial contribution to a country and can currently be found in 12 EU Member States. This report assesses the added value of supplying a clear legal framework concerning CBI and RBI programmes. It reviews the state of play, including the scale and characteristics of the programmes and how they are implemented in practice. It investigates several potential issues that may emerge with the programmes and reviews the evidence to substantiate them. Finally, it suggests five EU-level policy options, and reviews their potential impacts and unintended consequences.

The report shows that EU CBI programmes constitute a small proportion of CBI programmes globally, while RBI programmes in the EU, taken as a whole, represent about one-third to one-quarter of the global market. Chinese nationals predominate among RBI participants in the EU, accounting for around 55 % of all residence permits issued. Russian nationals predominate among CBI participants, accounting for over 45% of all citizenships issued. Qualitative research shows that most people pursuing investment migration options are motivated by a search for opportunities for (1) mobility, (2) education and lifestyle, and (3) business. Assisting them in this endeavour is a global investment migration industry. By 2019, around 100 000 individuals had acquired residence through RBI programmes and 10 000 had acquired citizenship through CBI programmes in the EU. Over 5 000 RBI applications and just under 1 000 CBI applications are approved annually, and rejection rates vary across countries. Though a dozen countries host RBI options, demand for investor visas is presently concentrated in three: Greece, Portugal, and Spain.

Currently, CBI and RBI programmes together bring in over €3 billion annually to the EU. The CBI programmes in Malta and Cyprus have made significant contributions to these economies and in 2019 accounted for 2.1 % and 4.5 % of GDP, respectively. The economic contributions of RBI programmes to the countries that host them are proportionally less. Regression analyses show that countries begin investment migration programmes typically out of economic need.

Possible issues that may arise with CBI and RBI programmes and that have been identified elsewhere include the following: weak vetting and related risks of security and money laundering; corruption and fraud; limited macroeconomic benefits; limited benefits for the EU; not harnessing human capital; and tax evasion and avoidance.

This report assesses each of these domains in detail, taking into account how the programmes operate on the ground, in order to evaluate the extent to which each issue can be substantiated. The assessment did not find evidence that the programmes have been used by terrorists. It also could not identify any actual examples of laundered money entering the EU through CBI or RBI programmes. Still there is the risk that individuals who launder money through other mechanisms may receive residence or citizenship through the programmes. In one CBI programme where systematic evidence is available, high-risk individuals account for 2.4 % or less of programme participants. Therefore, this report identifies gaps in the vetting and screening processes and areas where improvements can be made. The assessment notes that exposure of corruption and fraud cases has been limited. It finds that economic benefits of RBI programmes are concentrated in real estate and do not have a major impact on national economies. However, the macroeconomic benefits of CBI programmes have been significant in CY and MT, due largely to the scale of the investment and the size of the economy. It finds also that tax evasion and avoidance are not primary motives of most programme participants.



Within this context, the report elaborates five policy options that could be pursued at the EU level: a ban on CBI and RBI schemes; an EU tax on CBI and RBI schemes; regulating CBI and RBI schemes, focusing on the approval of individuals, the approval of monies, and regulation of the migration industry; implementing stricter residence requirements; and regulating access to the EU to participants in investment migration programmes outside it. The legal bases for these EU actions are not discussed here, but can be found in the European Added Value Assessment.

Assessment of the possible impacts and unintended consequences for each of these five options indicates the following. A complete ban on RBI programmes is likely to have a negative economic impact on specific sectors in countries with larger programmes, but would be unlikely to have broader economic impacts. A complete ban on CBI programmes is likely to have a significant negative macroeconomic impact on CY and MT. Banning CBI or RBI programmes is likely to lead to 'rerouting' as would-be investor migrants seek out options that secure similar benefits, such as business and entrepreneurial visa programmes or retirement visa programmes. Imposing lengthy residence requirements is likely to bring greater economic benefits through increased secondary spending, but it may also lower demand for the programmes. Taxing the programmes could bring direct economic benefits to the EU. However, a 100 % tax would have the same impact as a ban. The EU could also regulate CBI and RBI schemes. The approval process could be strengthened in several ways: by adding caps on the programmes, ensuring that applications are assessed through an appropriate division of labour by different government branches, appointing professional due diligence firms to carry out enhanced background checks, carrying out background checks on all family members accompanying the main applicant, carrying out due diligence not only on the invested money but on the source of wealth, and lengthening the application process. Governments could improve quality control by requiring that applications are filed only by licensed service providers that adhere to a code of conduct and by regulating the associated migration industry. These measures are unlikely to significantly impact overall demand and could increase the integrity and transparency of the programmes. The EU could also regulate the benefits that participants in CBI programmes in countries outside the EU acquire within the EU, such as visa-free access into the Union, if the third country has vetting procedures that are weaker than those of the EU. Such assessments may be best carried out on a country-by-country basis.

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## 1. Introduction: Comments Pertaining to Sections 1-3

### 1.1 Investment migration

Over the past decade, investment migration programmes have grown across the European Union (EU). Investment migration schemes enable investors to gain residence or permanent residence ('residence by investment' or RBI), or citizenship ('citizenship by investment' or CBI) in recognition of a financial contribution to a country. In 2010, three Member States hosted such options, and by 2017, they could be found in 12 Member States.<sup>1</sup> In 2018 the European Parliamentary Research Service (EPRS) issued a report that reviewed the programmes,<sup>2</sup> and in 2019 the European Commission (EC) issued a report questioning their risks and benefits, suggesting that they may incur negative economic, political, and social consequences.<sup>3</sup> This report assesses the added value and potential consequences and impacts of introducing a clear EU legal framework concerning CBI and RBI programmes.

#### 1.1.1 Methods

The scope of this report encompasses the RBI and CBI programmes in current EU Member States (Figure 1). The definition of CBI and RBI programmes applied in this report is discussed in detail in Section 1.3.

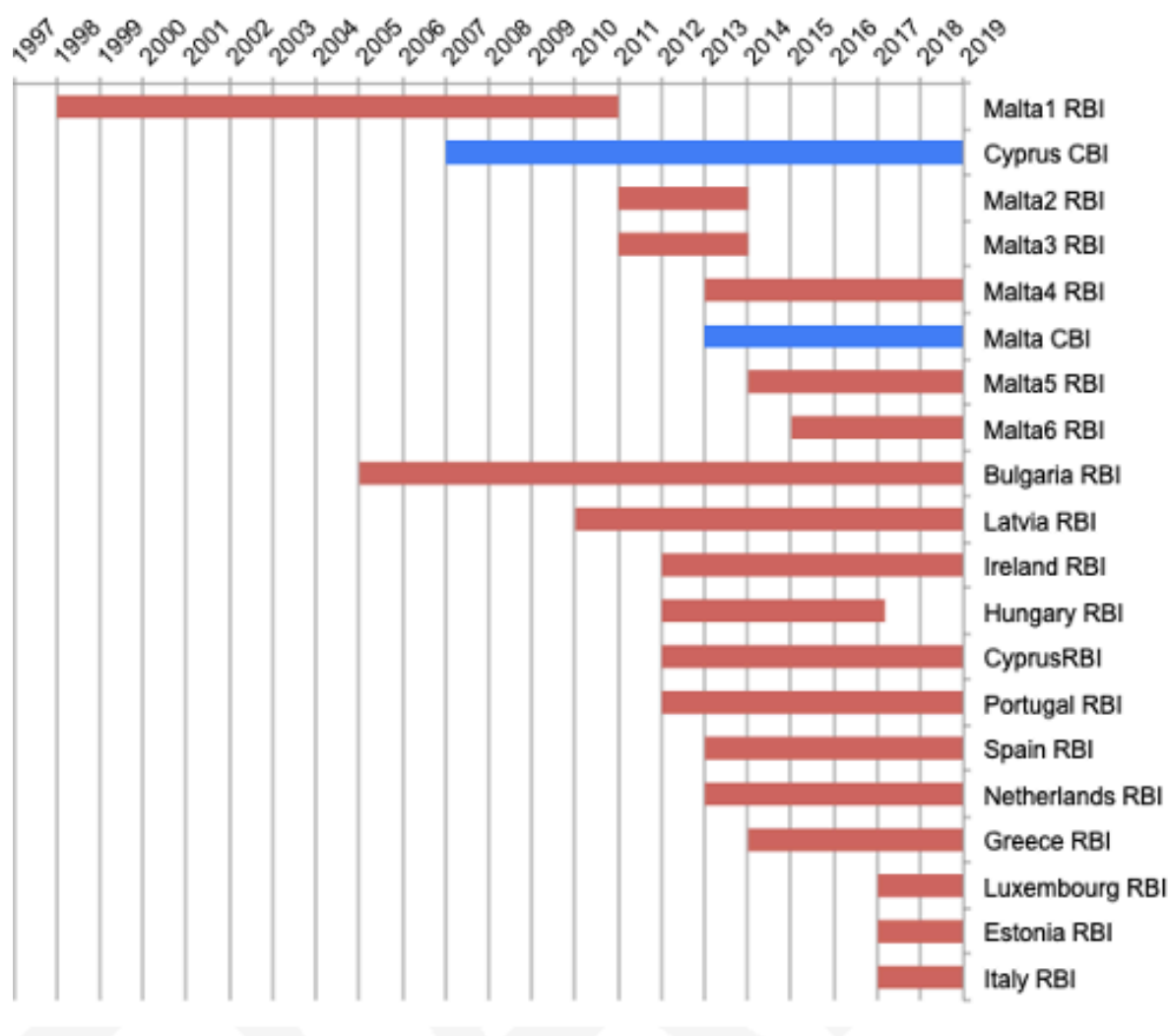
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<sup>1</sup> The member states are BG, CY, EE, EL, ES, IE, IT, LU, LV, MT, NE, PT. The definitions of CBI and RBI used in this report are set out discussed in Section 1.3. The count excludes the UK, even though it had a programme and was a Member State at the time. HU ended its programme in March 2017. The definitions of CBI and RBI used in this report are set out discussed in Section 1.3. See also K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity? Assessing the Economic Origins and Outcomes of Residence by Investment Programmes in the EU', *Journal of Ethnic and Migration Studies*, May 2021, pp. 1–23.

<sup>2</sup> A. Scherrer and E. Thirion, 'Citizenship by Investment (CBI) and Residency by Investment (RBI) Schemes in the EU: State of Play, Issues and Impacts', Brussels: European Parliament, European Parliamentary Research Service, 2018, PE 627.128.

<sup>3</sup> Report on Investor Citizenship and Residence Schemes in the European Union, COM(2019) 12, European Commission, January 2019.

Figure 1: Timeline of Recent RBI and CBI Programmes in Current EU Member States



Source: Author's data collection

Note: Malta 1: Permanent Residence Scheme; Malta 2: High Net Worth Individual Visa for EU/EAA/Switzerland; Malta 3: High Net Worth Individual Visa for non-EU/EAA/Switzerland; Malta 4: Global Residence Programme; Malta 5: The Residence Programme; Malta 6: Malta Residency and Visa Programme

The report addresses programmes through the end of 2019 as the most appropriate timeframe for assessing trends. The Covid-19 pandemic, beginning in early 2020, led to substantial disruptions in visa and citizenship application processing across countries. For investment migration programmes, processing was delayed or put on hold as governments shifted to remote work, and much international travel was banned, which limited or suspended possibilities to submit applications and biometric information in person, where required. As such, approval numbers for 2020 dramatically dropped, leading to backlogs. Furthermore, the pandemic may have shifted demand, as mobility options – which have been significantly affected by the pandemic – are a key driver of demand. It is still too early to assess the overall impact of the pandemic on both supply and demand.

The report assesses the state of play since 2010 where possible: the first date for which statistical information is readily available for a programme (Latvia's (LV) RBI scheme). From 2013, statistical information on approvals is available for the majority of programmes in operation. The level of statistical detail available varies across countries, and occasionally within countries. For example,

for Spain (ES), the investment type selected by approved applicants is known for 2013-2017 only. Descriptions of available and unavailable data, as well as any estimates made, accompany the Figures in the report. The data were gathered through information requests sent to governments, and from publicly available reports and articles in major national newspapers. The data were triangulated and in the case of conflicting data, those gathered directly from the government and that triangulated with other sources were prioritized. EU cases are not unusual in terms of the challenges regarding incomplete and conflicting data, which exist with similar cases in advanced countries, such as the RBI programmes in the US and Australia. In some cases, the application process takes months and it can be the case that the investment must be made several months before approval is given. If a programme opened in October 2013, the first investments might be made in December 2013 and the first approvals might be issued in 2014. As such, the investment data in some countries is available from an earlier date than approval data, and some countries have no approvals in their first year of operation.

On November 1, 2020, Cyprus (CY) stopped accepting new applications and closed its CBI programme in the wake of corruption allegations. In June 2020, MT announced that it would stop accepting applications for its CBI programme on September 30, 2020 as the programme was reaching its cap of 1 800 approved applications. As such, the two CBI programmes analysed in this report no longer operate. In late 2020, Malta (MT) passed provisions for Maltese citizenship by naturalization for exceptional services by direct investment, informally known as Maltese exceptional investor naturalization (MEIN), a policy that enables investors to become citizens.

The United Kingdom (UK) withdrew from the EU on January 31, 2020. While a Member State, it hosted an RBI programme that began in 1994. This report excludes the UK from its analysis as its assessment is oriented to current Member States. In March 2017, Hungary (HU) ended its RBI program.

No data are available on the RBI programmes in CY, MT, and Italy (IT) which have not issued reports and did not respond to repeated information requests. Service providers involved with developing the Italian programme confirm that uptake has been insignificant. The lack of data on CY and MT, however, potentially leaves a larger gap. Both countries hosted popular CBI schemes, and their RBI programmes possess structures similar to popular real estate-based RBI programmes in the Mediterranean.

The assessment also draws on continuing qualitative research by the author on investment migration programmes globally. Since 2015, the author has carried out over 100 formal and 350 informal interviews in 16 countries with individuals involved with multiple aspects of investment migration, including civil servants, government ministers, lawyers, migration service providers, real estate developers, due diligence companies, private wealth managers, and investor citizens and residents, as well as journalists and local people. These interviews inform the understanding of how investment migration programmes operate in practice.

## 1.2 Background

Investment migration programmes are not limited to the EU and can be found in at least 60 countries across the globe.<sup>4</sup> Their number has expanded over the past decades, accompanied by a

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<sup>4</sup> A. Gamlen, C. Kutarna and A. Monk, 'Citizenship as Sovereign Wealth: Re-thinking Investor Immigration', *Global Policy* 10 (4), 2019, pp. 527–41.



global market for investment migration.<sup>5</sup>

## 1.2.1 Origins of investment migration

Polities have long offered residence or citizenship in recognition of a financial contribution to the government, with such practices dating as far back as Ancient Greece. Within pre-modern Europe, it was relatively common to grant citizenship and residence in cities for a specified fee.<sup>6</sup> Some of these pecuniary channels extended into the twentieth century, as was the case with Liechtenstein.<sup>7</sup> In the New World, across the nineteenth and early twentieth centuries, states offered citizenship or residence to those who invested – or promised to invest – in the country.<sup>8</sup> One way that Chinese citizens could circumnavigate racist entry barriers to the US in 1888, for example, was to prove they owned at least \$1 000 of property in the country.<sup>9</sup>

### 1.2.1.1 Early RBI programmes

An important starting point for the current market in investment migration was the United Kingdom's (UK) decision in 1984 to allow capitalist Hong Kong Island to revert back to communist Chinese rule. The result among Hong Kongers was a great demand for 'exit options', particularly in Canada, the United States (US), and Australia. In 1986, Canada developed the Federal Immigrant Investor Programme (FIIP) out of an existing business investor program, which became the leading RBI scheme globally. Under the FIIP, investors were no longer required to be actively involved in running a business; they could simply make a passive investment of CAD\$150 000. This base amount that increased over the course of the program's existence until it eventually reached CAD\$800 000. With this qualifying investment, investors and their families received conditional residence which became permanent residence after five years. For many years, the government did not assess whether the investors were physically present in the country, which meant that many divided their time between Canada and East Asia and some did not move at all.<sup>10</sup> Due in part to the possibility to live as 'flexible citizens',<sup>11</sup> this very popular option produced over 200 000 new Canadian citizens or residents over its course. In 2014, the government ended the programme due to unclear economic advantages.<sup>12</sup> Because Canadian banks were allowed to finance the investment, many investors did not invest the full amount, but simply paid a flat fee of around CAD\$250 000 to a bank, which then invested the full qualifying sum on behalf of the client. The result was that most of the invested money was effectively printed within Canada.<sup>13</sup> The government also noted that the programme 'undervalued Canadian permanent residence' and did not attract investors who maintained ties to the country.<sup>14</sup> However, it was a model that other countries followed. Within a decade of the FIIP's

<sup>5</sup> K. Surak, 'Marketizing Sovereign Prerogatives: How to Sell Citizenship', *European Journal of Sociology*, 62(2), 2021. See also K. Surak, 'Global Citizenship 2.0: The Growth of Citizenship by Investment Programmes', *Investment Migration Paper* 03, 2016; J. Džankić, *Global Market for Investor Citizenship*. Springer, 2019.

<sup>6</sup> M. Prak, *Citizens without Nations: Urban Citizenship in Europe and the World*, c. 1000–1789. Cambridge University Press, 2018.

<sup>7</sup> N. Schwalbach and Historischer Verein für das Fürstentum Liechtenstein, *Bürgerrecht als Wirtschaftsfaktor: Normen und Praxis der Finanzeinbürgerung in Liechtenstein 1919-1955*, Chronos, 2012.

<sup>8</sup> D. Acosta, *The National Versus the Foreigner in South America*. Cambridge University Press, 2018.

<sup>9</sup> J. Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge University Press, 2018.

<sup>10</sup> D. Ley, *Millionaire Migrants: Trans-Pacific Life Lines*. John Wiley & Sons, 2011.

<sup>11</sup> A. Ong, *Flexible Citizenship: The Cultural Logics of Transnationality*, Duke University Press, 1999.

<sup>12</sup> The program's variant in Quebec, the Quebec Immigrant Investor Programme, continued until 2019 when it was frozen.

<sup>13</sup> K. Surak, primary interviews.

<sup>14</sup> J. Flaherty, 'The Road to Balance: Creating Jobs and Opportunities', *Economic Action Plan 2014: The Budget in Brief*, 2014.

launch, the US, UK, Australia, New Zealand, Singapore, and others developed or elaborated RBI programmes along similar lines to Canada's option. Hong Kong became home to a flourishing 'migration industry' of businesses facilitating expatriation or exit options.<sup>15</sup>

Europe, too, has long hosted options for acquiring residence in exchange for an investment. When MT gained independence in 1964, it launched the 'Six-Penny Settler Scheme', which aimed to encourage pensioners to spend their winters on the island and benefit from low income taxes. Participants had merely to purchase a property and prove a minimum annual income to qualify; the government did not assess physical presence in the country. This was further elaborated in 1988 into an early RBI program, 'The Permanent Residence Scheme', which enabled those purchasing or renting a property in MT to gain permanent residence.<sup>16</sup> MT was not alone in offering these early options. ES in the 1980s allowed investors to gain residence by investing in a business or real estate project.<sup>17</sup> Portugal (PT) too in these years enabled investors who purchased real estate and deposited money in a bank to gain residence.<sup>18</sup> Service providers in places like Hong Kong and Taipei touted such countries as offering 'EEC privileges', and some service providers were connected to the real estate developments they showcased.<sup>19</sup> However North American destinations remained the prime choice for people in East Asia through first decade of the 2000s.

### 1.2.1.1 Early CBI programmes

Modern CBI programmes are typically traced back to the legal provision Saint Kitts instituted in 1984, one year after gaining independence. The model for many contemporary programmes emerged in 2006 when a private firm revamped Saint Kitts's offering into a more elaborated and formalized programme over the next five years. Changes included lengthening the application forms, increasing the information gathered on applicants, establishing a dedicated bureaucratic unit ('Citizenship by Investment Unit' or CIU) for screening applicants, creating a separate fund to hold and distribute the monies accrued through the government donation option, and appointing international due diligence firms to screen applicants. The Kittitian government also contracted the firm to advertise its program. The increased formalization – a division of labour for vetting applications and external oversight through due diligence checks that distanced the granting of citizenship from the executive branch – helped lower the risk flags raised at major accountancies, large banks, and other institutions. The result transformed the programme into an option that could be marketed more widely.<sup>20</sup> Within ten years, four other countries in the Caribbean adopted this model, revamping or starting CBI programmes, and the firm that worked with Saint Kitts extended a variant of the model to MT. However, not all countries have followed this pattern. In CY, the government slowly formalized a CBI option from 2007 onwards, without contracting a private firm to design the program, out of a 2003 law enabling the government to grant citizenship for exceptional contributions to the country. More recently, Turkey in 2017 developed a very popular CBI programme designed within the government.

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<sup>15</sup> K. Surak, 'Marketizing Sovereign Prerogatives: How to Sell Citizenship'.

<sup>16</sup> K. Surak, *Citizenship 4 Sale: Millionaires, Microstates, and Mobility*, Harvard University Press, forthcoming.

<sup>17</sup> The Emigrant, 'Financial Independence Merits Residence Visas in Spain', April 1989, pp. 49-51.

<sup>18</sup> The Emigrant, 'Property in Portugal Earns Passports, EEC Privileges', December 1988, pp. 41.

<sup>19</sup> See, for example, The Emigrant, December 1988, pp. 41: 'Property in Portugal Earns Passports, EEC Privileges'.

<sup>20</sup> Not all conflicts of interest were removed, but they were minimized to an extent sufficient for gaining legitimacy in the eyes of other market actors. See K. Surak, *Marketizing Sovereign Prerogatives: How to Sell Citizenship*.

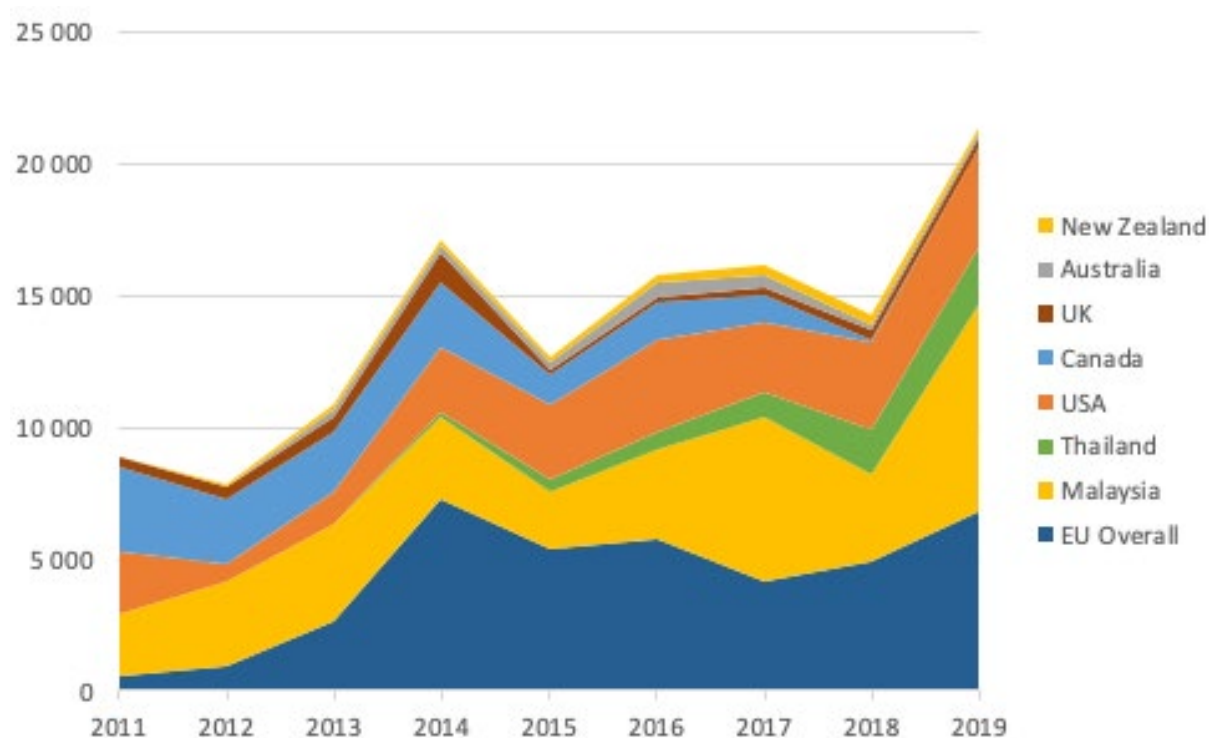
## 1.2.2. The place of EU investment migration programmes within the global array of investment migration programmes

Since these early years, investment migration programmes have taken off globally. Currently at least 60 states offer investment migration options, but their size varies greatly from legally existent channels that are dormant in practice to large programmes that approve thousands of applications annually.

### 1.2.2.1 RBI programmes globally

To date, there are no exhaustive studies of the uptake of RBI programmes globally, nor is there a complete census of the options. However, it is possible to develop a general sketch of the position of the EU RBI programmes by comparing them to the uptake of other key programmes for which data are available (Figure 2).

Figure 2: Total Approved RBI Applications, Select Key Cases



Source: Author's data collection.

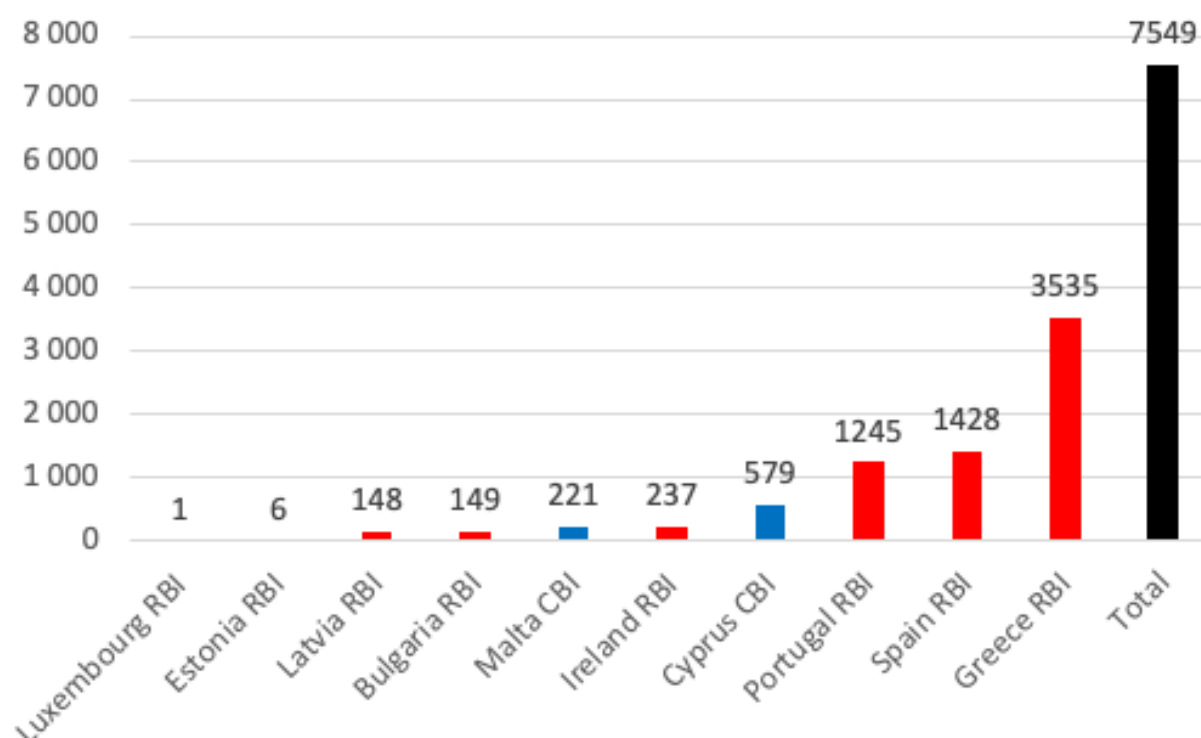
Note: 'EU Overall' includes BG, EE, EL, ES, HU, IE, LU, LV, NL, and PT. Data are unavailable for CY, IT, and MT, and for BG from 2011-2013.

Within a broader field of popular RBI programmes, EU RBI programmes as a whole – a total of 13 country cases including now ended programmes – constitute an important component, though a minority of cases globally. Notably, the proportion of market segment accounted for by EU countries as a whole has declined from a high of 52 % in 2015 to 36 % in 2018 and 25 % in 2019. At present, Malaysia has the most popular RBI programme of those examined, and in some years, its scheme has seen greater uptake than all of the RBI programmes in the EU combined. The US is home to the

second most popular RBI program, the EB-5 visa.<sup>21</sup> The programme has an annual cap of 10 000 total visas issued, which represent around 3 000 applicants, plus their family members. Because participation is apportioned by country, citizens of countries where demand is high, such as China, India, and Vietnam, face backlogs of five to ten years or more.<sup>22</sup> If the US government were to remove the cap, demand would be much greater.

Individual RBI programmes in the EU see much less uptake than those in the US or Malaysia, though Greece (EL) in 2019 approached the US in the number of approvals (Figure 3).<sup>23</sup> In general, the most popular EU programmes approve around 1 000 to 2 000 applications annually, or approximately half the number issued by Thailand presently or by Canada in the 2010s before it ended the FIIP.

Figure 3: Total Approved Applications (2019)



Source: Author's data collection.

Note: Data were obtained through information requests, publicly available reports, and major national newspapers. The RBI programmes in CY, IT, MT and NL are excluded due to lack of information. HU is excluded because its programme ended in 2017.

### 1.2.2.2 CBI programmes globally

Positioning the EU CBI programmes globally is more challenging due to the difficulty of obtaining accurate numbers from several countries outside the EU. Occasional government statements offer benchmarks, in addition to the more complete numbers supplied by some countries. Situated

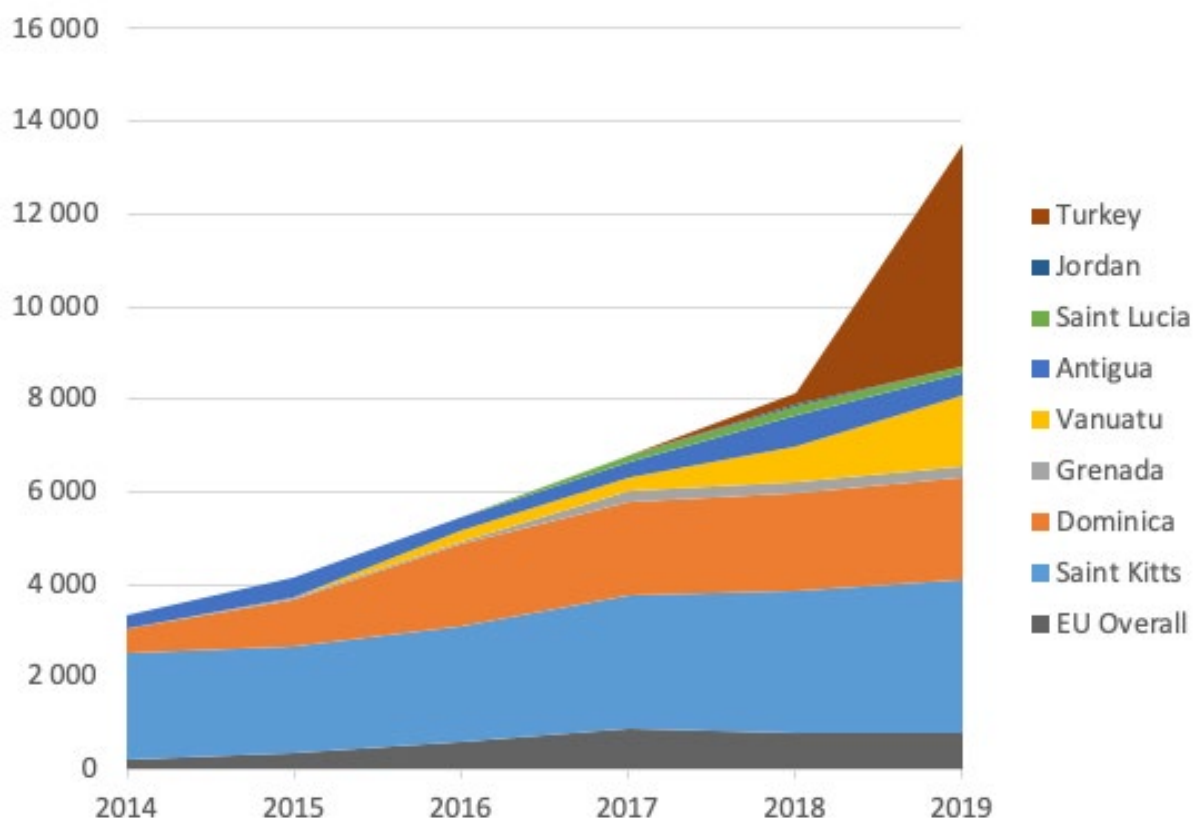
<sup>21</sup> If an expansive definition of RBI programmes, including business options that allow passive investment in practice, is used, then the US's E2 visa, which sees an annual uptake of around 60 000, would be the most popular option among the programmes examined.

<sup>22</sup> K. Wright and M. Fitzpatrick, *EB5 2.0: The Institutionalization of EB5: Changes in Legislation, China, and the Role of the Broker-Dealer*, Gallery Books, 2019.

<sup>23</sup> This total was a substantial increase over 2018 and was followed by a dramatic drop-off in 2020 due to Covid-19.

within these, the EU CBI cases account for a minor component of global uptake: 9 % in 2018 and 6 % in 2019 (Figure 4).

Figure 4: Total Approved CBI Applications



Source: Author's data collection

Note: 'EU Overall' is the total for CY and MT. The figures for Dominica and Saint Kitts from 2016 onward are estimates based on statements by government officials. Vanuatu has multiple programmes and complete data are not available for all of them. The figure is for the two largest programmes: the Vanuatu Development Support Programme and the Vanuatu Contribution Program.

Leading programmes in the Caribbean approve more than 2 000 applications per year, and Vanuatu has begun to approach similar figures as well. Since 2019, however, all of these have become greatly outnumbered by Turkey, which in 2020 was approving as many as 1 000 CBI applications per month.<sup>24</sup> By contrast, the EU CBI programmes as a whole have approved around 700 to 800 applications annually in recent years. Caps on numbers – an overall cap on programme size in MT and an annual cap in CY – account for some of the difference in uptake, as do the higher minimum costs. In the Caribbean, the minimum investment amount for citizenship is \$100 000, or ten times less than in EU Member States that offer programmes.

<sup>24</sup> Interviews with service providers suggest that prospective EU membership is not a major attraction of Turkey's CBI program, as the accession process is perceived as stalled.

## 1.3 Scope issues: CBI programmes, RBI programmes, and alternatives to them

CBI and RBI programmes are part of a broader field of migration policy tools that governments use to attract economic resources, which also include visas for entrepreneurs or business owners and discretionary grants of citizenship on economic grounds. Investment migration programmes can overlap with similar options, and the definition used determines the extent of the overlap. Investors may also select related options should changes affect CBI or RBI programmes. For these reasons, it is important to take into consideration the scope issues discussed below.<sup>25</sup>

### 1.3.1.RBI vs CBI

Frequently CBI and RBI programmes are brought together under the umbrella heading of 'investment migration'. However, it is often necessary to disaggregate the options as they confer different sets of rights and carry different implications. Citizenship in a nation-state is typically inheritable, whereas residence is not. A person who holds citizenship in a country can apply to its government to obtain a passport, whereas a person with a residence permit receives only a visa in a passport and possibly an identity card. Citizenship is much more difficult to lose than residence and is typically held for life. By contrast, if investors in an RBI programme sell the qualifying investment, usually they are unable to renew the residence permit and lose it as a result.<sup>26</sup> This also impacts the economic outcomes of the programmes. In most CBI schemes, the naturalizer is required to hold a qualifying investment for a specific period of time – five years in the EU cases – and then may sell it while still retaining citizenship.<sup>27</sup>

#### 1.3.1.1. Immigration and transitioning from residence into citizenship

Individuals who gain residence in a country may, over time, qualify for citizenship in that country. Whether and how frequently this occurs in investment migration programmes can vary and no data exists on the numbers that do transition. Many investor residents do not permanently move to the country where they have acquired residence: some move to the new country, others maintain bases in multiple countries and spend some weeks or months out of the year in the EU RBI country, and yet others never visit unless required to do so. To date, no empirical studies have investigated the extent to which investors spend time in the country of residence or become immigrants in the traditional sense. Given the mobility of many investors, countries that set minimum physical presence requirements for those applying for citizenship will likely see fewer RBI participants naturalizing. However, it is possible that RBI participants will eventually be able to naturalize if they spend sufficient time in the country or have held their residence permit long enough. PT has enabled RBI participants to naturalize based on their continued status as a residence permit holder, which requires 14 days of physical presence very two years to maintain.

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<sup>25</sup> See also K. Surak, 'Who Wants to Buy a Visa? Comparing the Uptake of Residence by Investment Programmes in the EU', *Journal of Contemporary European Studies*, 2020. See also K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>26</sup> BG's and CY's RBI programmes are the exceptions that grant permanent residence from the outset. In the case of Cyprus, the investor must maintain the real estate purchased for qualification, but can withdraw the bank deposit after three years. See K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>27</sup> In the CBI programmes in both CY and MT, the qualifying investments consisted of a bundle of requirements, such as providing donations to the government and securing permanent housing, and as such the entire qualifying amount could not be divested.



Bulgaria (BG) has an RBI programme that eases standard residence requirements for citizenship, and as such, it is often categorized as a CBI program.<sup>28</sup> However, it is accurately captured as an RBI programme that may – but does not always – lead into a CBI option. In BG, the participant first becomes a resident based on an economic investment. After the status and the investment are held for at least one year, the person may make a second investment and begin a new application process for citizenship. The entire process to naturalization takes around two to three years from the initial RBI investment, and the limited data available suggests that the majority of investors do not move on to the citizenship option.<sup>29</sup> As such, the Bulgarian programme stands apart from the CBI options that were available in MT and CY before 2021, where investors received residence permits immediately after beginning the application process, but residence served solely as a way-station on the path to citizenship. BG, by contrast, requires a second investment and application process, separating the two statuses.

Notably, many RBI participants do not seek citizenship as their end goal. China and India, for example, do not allow dual citizenship, and as a result, often – though not always – people from these countries seek only residence and not naturalization.<sup>30</sup>

### 1.3.2. Closely-related alternative options for citizenship and residence

CBI and RBI programmes are closely related to, and sometimes conflated with, other options for acquiring citizenship or residence. It is important to distinguish these options, as well as be aware of them, as they provide alternatives that may become more popular should investment migration programmes transform or end.

#### 1.3.2.1. RBI vs business and entrepreneurial visas

RBI programmes are closely related to business and entrepreneurial visas, such as France's (FR) 'talent passport' and Denmark's (DK) 'start-up program, which offer residence to innovative business founders'. In these cases, governments aim to attract both economic capital and human capital in the form of business skills. The investments are 'active': the applicant is typically expected to prove a track record in business, submit a viable business plan for evaluation, and be involved in the company's day-to-day activities. The entrepreneur may not be expected to reside in the country, but receives a residence permit to assist in the business endeavour.

By contrast, RBI programmes in the strictest sense do not require the applicant to be actively involved in the investment, and as such it is deemed 'passive'. Typically the qualifying investments are in government bonds, real estate, or investment vehicles, or may include depositing funds in a bank. Under such programmes, governments screen based on economic capital and not human capital.

Between these two possibilities exists a middle ground in the form of 'passive' company investment in which a person establishes or funds a company, but may not be actively involved in running it. In Lithuania, for example, it is possible to qualify for a residence permit by forming or purchasing a business of at least LTL 50 000 (€14 480).<sup>31</sup> In Czechia, foreigners capitalizing a company with €2.85 million and employing at least 20 EU citizens can gain residence permits.<sup>32</sup> In these cases, the extent to which the businessperson is actively involved in the management of the business is not assessed.

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<sup>28</sup> A. Scherrer and E. Thirion, 'CBI and RBI Schemes in the EU'.

<sup>29</sup> Only 12 individuals naturalized through the channel in 2017. See Džankić, *Global Market for Investor Citizenship*, p. 190.

<sup>30</sup> K. Surak, 'Millionaire Migrants and the Sale of Citizenship'.

<sup>31</sup> Legal Status of Aliens Act, Law No. IX-2206 of April 29, 2004, art. 45(1), § 1

<sup>32</sup> Government Decree 223, of 10 July 2017



Similarly, FR's 'Tech Visa for Investors' offers a renewable four-year residence permit to those who invest at least €300 000 in a company and create or protect jobs. The scheme does not require physical presence in the country and the investment can be made with borrowed funds.<sup>33</sup> Furthermore, the implementation of such provisions can shift between the 'active' and 'passive' poles. When Germany established a self-employment provision in its Act on the Residence, Economic Activity, and Integration of Foreigners in the Federal Territory in 2008, it was initially possible to secure residence merely by investing €250 000 in a manner that created five jobs. In 2012, revisions removed the minimum investment amount and required the applicant to prove entrepreneurial experience and supply a viable business proposition assessed by the government: the reforms moved the channel from a relatively 'passive' to a more 'active' option. The upshot is that business investment schemes may also be 'passive', either in law or in practice, and not capture promised human capital, bringing in only economic capital.

The authors of the 2019 EPRS report on investor migration schemes, which subsequently offered a basis for the European Commission report on investor migration schemes, define RBI programmes as including both active and passive investments, but they do not include the full spectrum of residence visas available on the basis of an active investment, such as start-up visas, business visas, and entrepreneur visas.<sup>34</sup> To keep the definition of RBI programmes focused on those offering more controversial passive investments, this report limits its analysis to programmes that include at least one clearly passive investment option – such as an investment in government bonds, an investment in real estate, an investment in funds or stocks, or a deposit in a bank – either on its own or in addition to an investment in a business. For these reasons, the scope of the report's analysis does not include the business investment programmes in Czechia (CZ), France (FR), Croatia (HR), Lithuania (LT), Poland (PL), Romania (RO), and Slovakia (SK) that are included in the EPRS and European Commission reports on investor migration schemes.<sup>35</sup>

### 1.3.2.2. CBI versus 'discretionary economic citizenship'

CBI programmes must also be distinguished from 'discretionary economic citizenship', whereby citizenship is granted in recognition of economic contributions to a country in a more personalized, less formalized way, and sometimes on questionable legal grounds.<sup>36</sup> In Europe, numerous countries have legal provisions or political practices facilitating the discretionary grant of citizenship based on special achievements, including economic ones. FR, for example, used discretion when naturalizing Snapchat CEO Evan Spiegel in 2018, waiving standard requirements, including residence in the country. In Austria (AT), the government extends citizenship to a handful of individuals annually for making exceptional economic contributions. The government does not set minimum investment expectations but instead evaluates applications and the nature of the economic contribution on a case-by-case basis.

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<sup>33</sup> [French Tech Visa for Investor](#) – Article L313-20, paragraph 7 of CESEDA, R313-63ff.

<sup>34</sup> See A. Scherrer and E. Thirion, 'CBI and RBI Schemes in the EU', p12; Report on Investor Citizenship and Residence Schemes in the European Union, COM(2019) 12, European Commission, January 2019. Effectively, their definition is muddled. The authors include active investments in their definition, but limit this in practice to investments that result in job creation, even though there is no clear link between day-to-day management of a business and job creation. The US's EB-5 RBI program, for example, requires only a passive investment that also creates jobs. Furthermore, they do not include all business investor programmes based on active investments in their case selection, limiting them to those considered 'risky.'

<sup>35</sup> On these definitional issues, see also K. Surak, 'Who Wants to Buy a Visa?' and K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>36</sup> On this distinction, see K. Surak, 'Global Citizenship 2.0'; K. Surak, 'Marketizing Sovereign Prerogatives'.

CBI programmes, by contrast, provide a clear set of expectations for applying for citizenship. Typically the minimum investment amount and investment type, application requirements, and due diligence checks are specified, and the application moves through an extended and standardized bureaucratic assessment process.<sup>37</sup> Currently, only MT offers a formalized CBI option via the Maltese exceptional investor naturalization (MEIN) provision, launched in 2021 after its previous CBI programme reached its cap in 2020. CY froze its CBI programme on November 1, 2020 following allegations of high-level government corruption that provided a work-around to the formal application procedure.

### 1.3.2.3. Other channels to residence or citizenship that may serve as alternatives to CBI or RBI programmes

Beyond RBI and CBI options, there are additional channels for gaining residence or citizenship that are available in the EU. These are important to bear in mind because changes affecting investment migration options can shift demand towards these other channels.

### 1.3.2.4 Other residence alternatives

In lieu of RBI programmes, retirement visas, self-employment visas, and visas that require only the demonstration of sufficient means to support oneself offer opportunities to readily gain residence in a country based mainly on the display or investment of economic capital and with little regard to human capital contributions. Such options may, but do not always, carry minimum physical presence requirements. Service providers, too, will assist interested individuals in applying for such options for a fee, resulting in a migration industry around these channels. Should RBI programmes become less attractive or unavailable, demand could increase for these programmes.

### 1.3.2.5 Other citizenship alternatives

Beyond CBI, other options exist for those seeking to strategically naturalize in a country where they do not reside. Of these, ancestry channels are the most frequently used, and in some countries, such as Hungary, they constitute the predominant form of naturalization, outnumbering even immigrant naturalizers.<sup>38</sup> For example, Italy requires those seeking to naturalize based on ancestry only to demonstrate that they are a direct descendent of an Italian male, any number of generations back.<sup>39</sup> Between 1998 and 2010, more than 1 million people naturalized through this provision at Italy's embassies and consulates abroad, showing no evidence that they had ever been to Italy.<sup>40</sup> For many, the opportunity served as a way to secure a 'life-insurance policy' or an EU passport<sup>41</sup> – motives similar to those found in CBI cases.<sup>42</sup> ES and PT have similar provisions. As a result, demand for RBI or CBI is somewhat suppressed in Latin America, where many middle class and wealthy people have the ancestral qualifications and can afford the paperwork, which can cost a few thousand Euro, that

<sup>37</sup> K. Surak, 'Marketizing Sovereign Prerogatives'. In the case of MT's CBI program, the bulk of the qualifying costs took the form of a €650 000 donation to the government. Though this differs from an investment as it cannot be divested and is not expected to make a profit, it will be categorized as an 'investment' or 'revenue' for the sake of pithiness where the distinction is not significant. The same holds for required real estate purchases in MT and CY, as well as the donation component introduced in CY in 2019.

<sup>38</sup> For example, Hungary naturalized more people through ancestry options between 2011 and 2016 than Germany or France naturalized individuals in total. See Y. Harpaz, *Global Citizenship 2.0: Dual Nationality as a Global Asset*: 31-2.

<sup>39</sup> Matrilineal descent can also qualify a person, but only if the ancestor was an Italian citizen after 1945.

<sup>40</sup> [Over one million Italian citizenship granted from 1998 to 2010](#), Global Citizenship Observation website.

<sup>41</sup> G. Tintori, 'The Transnational Political Practices of "Latin American Italians"', *International Migration* 49, No. 3, 2011, pp. 168-188.

<sup>42</sup> K. Surak, 'Millionaire Mobility and the Sale of Citizenship', *Journal of Ethnic and Migration Studies*, 47(1), 2020, pp. 166-89.

enable them to gain EU citizenship through other means.<sup>43</sup> When the UK did not renew Russian oligarch Roman Abramovich's investor visa in 2018, he simply naturalized in Israel based on his Jewish ancestry, which secured for him the possibility of traveling to the UK visa-free and residing there for six months each year.

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<sup>43</sup> Many also acquire US citizenship through *jus soli* provisions. See also D. Cook-Martin, *The Scramble for Citizens*, Stanford University Press, 2020.

## 1.4 Assessment of the size and scale of CBI and RBI programmes

Assessing the size and scale of CBI and RBI programmes in the EU is essential for accurately evaluating them. The analysis below employs figures gained from government sources, information requests, or national newspapers. Unfortunately, no numbers were publicly available for the RBI schemes in CY, MT, and IT, and the governments did not respond to information requests. These cases are therefore excluded from the analysis.<sup>44</sup> The analysis also takes into account the years only through 2019. The UK is excluded from the graphs and quantitative analyses, although it hosted an RBI programme while it was a Member State. HU froze its RBI programme in 2017.<sup>45</sup> The global pandemic of 2020 severely impacted application filing and processing rates as governments closed offices and individuals were unable to travel to submit the biometric information required for applications. Thus 2020 is an exceptional year and the impact of the backlogs generated is likely to affect numbers in 2021 and 2022. Therefore to track the general trend, the analysis takes into account the years through 2019. It is also important to bear in mind that each investor, or 'main applicant', can typically include family members on the application as well. In the EU, an average of 1.61 family members are included on each application, in addition to the main applicant.<sup>46</sup>

Estimating the economic benefits generated through investment migration with precision is challenging. Real estate may be sold above market value or bought through financing, businesses or investments may post losses, and secondary spending by investor migrants is impossible to estimate with any accuracy. However, a general baseline is possible to deduce by multiplying the minimum qualifying investment amount possible by the number of approved applications.

It should also be noted that although the term 'investment' will be used in this report, not all qualifying monies are investments across all cases. Qualification for CY's and MT's CBI programmes consisted of a combination of monetary contributions, including a government donation and real estate purchase (or rental in the case of MT), in addition to an investment. Most RBI programmes have several investment options available, including investments in companies, government bonds, investment funds, and real estate, in addition to depositing money in a bank or donating to the public good, which are not formally investments (Figure 5).

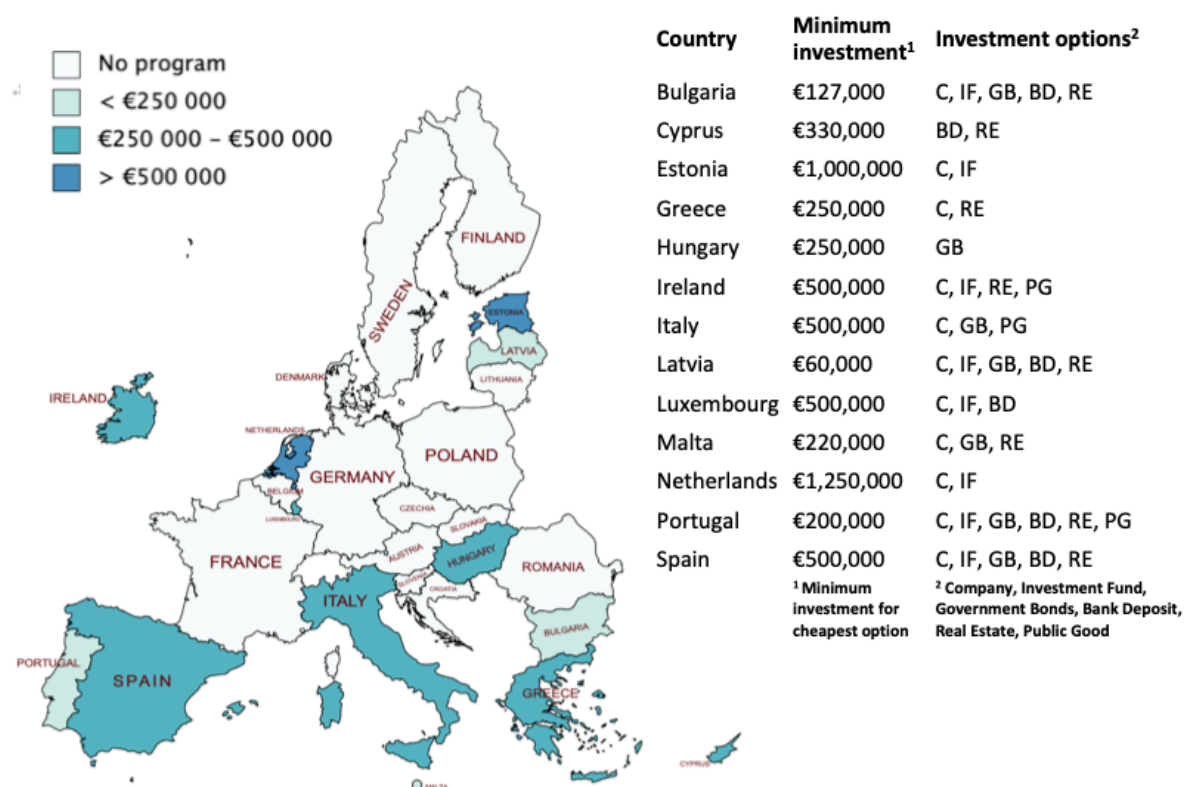
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<sup>44</sup> Service providers involved with the programme in IT confirm that only a handful of people have applied. The lack of data on the RBI programmes in CY and MT is potentially more problematic because they both host popular CBI programmes. See K. Surak and Y. Tsuzuki, *Are Golden Visas a Golden Opportunity?*

<sup>45</sup> K. Surak, 'Who Wants to Buy a Visa?' The precise reasons for ending the programme remain unclear, however the Investment Migration Council and Transparency International released a critical exposé of the programme four months before its closure.

<sup>46</sup> K. Surak, 'Who Wants to Buy a Visa?'

Figure 5: Recent RBI Programmes in Current EU Member States (2019)

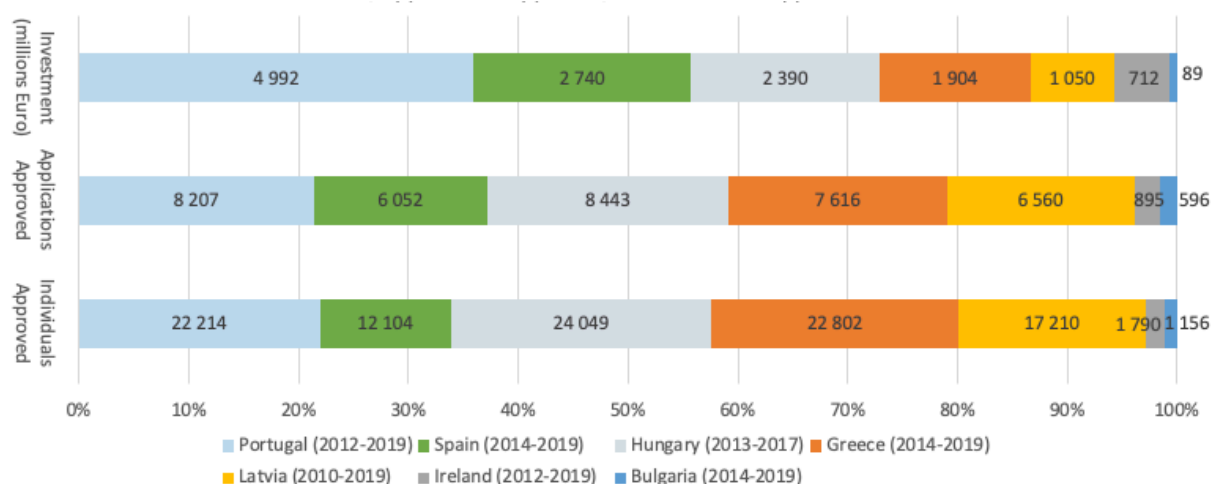


Source: Author's data collection

### 1.4.1. General trends

Although nearly half of all EU Member States host **RBI programmes**, uptake and investment are concentrated in only a handful (see Figure 6). PT, ES, EL, and LV account for around 75% of all applications approved and investments generated. Through 2019, PT received nearly €5 billion, ES €2.7 billion, and EL about €1.9 billion from their programmes. Taken together, the EU RBI programmes brought in over €13 billion in total revenue by 2019 and saw over 100 000 individuals acquire residence visas through them.

Figure 6: RBI: Total Investment, Applications Approved and Individuals Approved

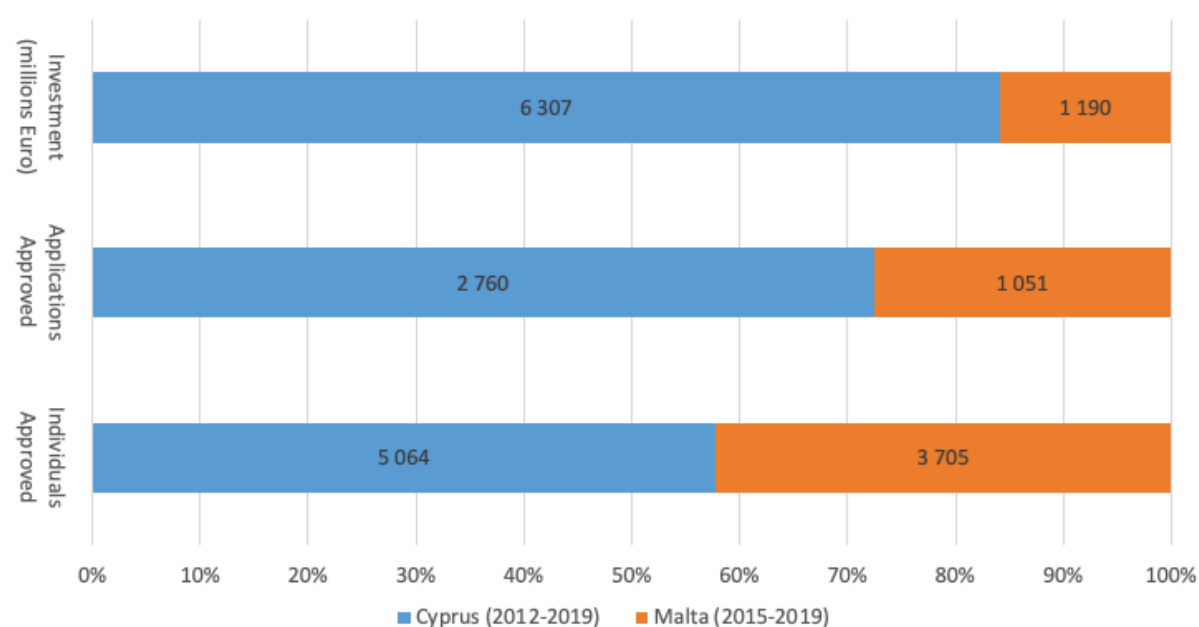


Source: Author's data collection.

Note: Data were obtained through information requests and publicly available reports. Actual investment data are used for PT. Estimates derived by multiplying the number of approved applications by the minimum qualifying investment amount in the given year are used for BG, EE, EL, ES, HU, IE, LU, and LV. In the case of multiple investment categories with different minimum investment levels, the single cheapest option was used. For example, if a programme had an option to qualify by investing €250 000 in real estate or depositing €500 000 in a bank, the cheapest option – here €250 000 – was used. Excluded from the figure are EE, LU, and NL due to small size. Data are unavailable for CY, IT, and MT and for BG from 2005-2013.

In the case of **CBI programmes**, the investment generated is far more substantial – despite the small size of the programmes – due to the greater overall investment requirements, as discussed above (see Figure 7). Most RBI programmes require an investment between €200 000 to €500 000, and the requirements for CBI programmes in MT and CY were around €1 million and €2.5 million respectively. CBI programmes alone generated over €7 billion by 2019 and accounted for nearly 10 000 new citizens in total.

Figure 7: CBI: Total Investment, Applications Approved and Individuals Approved

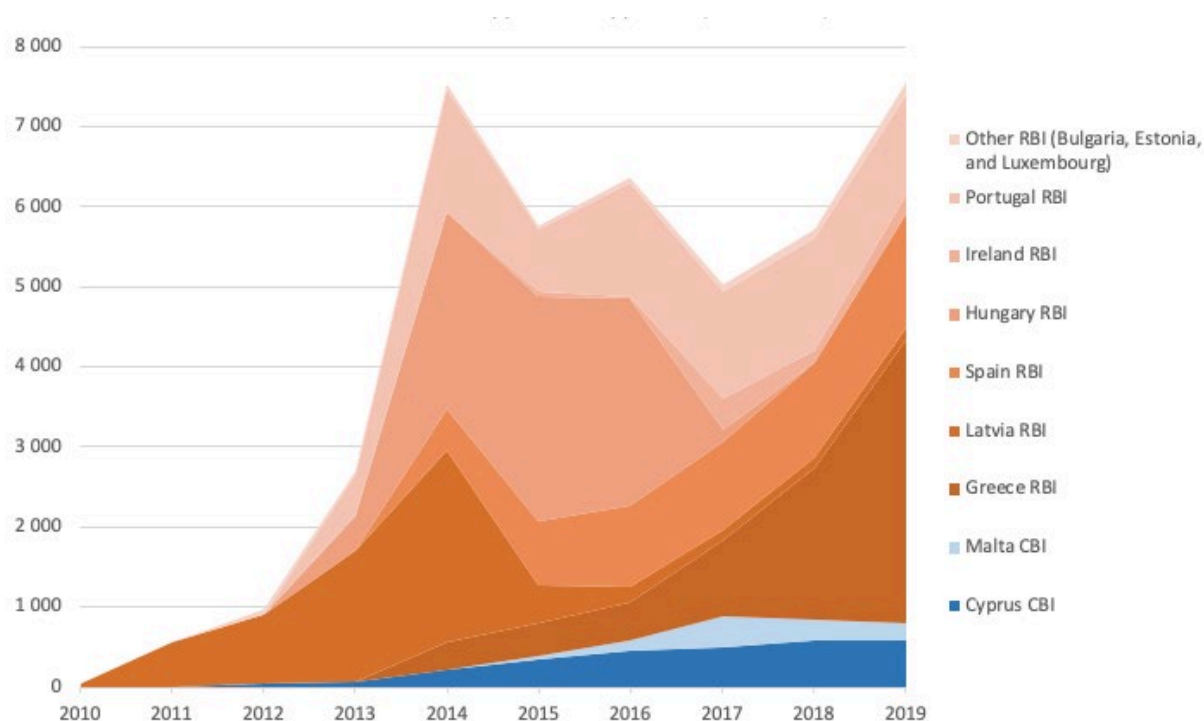


Source: Author's data collection

Note: Data were obtained through publicly available reports and major national newspapers. The data ranges represent the years for which precise numbers are available in all three categories for both countries with one exception: the investment amount for Cyprus in 2019 is estimated by multiplying the number of approved applications by the minimum investment amount in that year.

Over time, the number of application approvals has varied (Figure 8). Following a decline in 2015, the general trend for **RBI programmes** has been one of growth led by EL, ES, and PT, while LV and HU declined. In LV in 2014, a populist party strongly critical of Russia took power and a more hostile stance toward the program, popular among Russians, and dramatically slowed application processing and approvals. In 2017, HU ended its previously popular programme for reasons that remain unclear.<sup>47</sup> Yet even as they grow, the RBI programmes remain small in comparison to other visa channels and constitute only a miniscule proportion – 1.1 % or less – all of first-time issued visas valid for one year or more across the EU. In small countries with more popular programmes, such as PT and EL, approvals can account for around 10 % to 15 % of first-time residence permits issued for 12 months or more in years of high approval rates for RBI applications.<sup>48</sup> Programmes in BG, EE, IE, LU, and NL have seen comparatively little uptake.

Figure 8: Annual Application Approvals (RBI and CBI)



Source: Author's data collection

Note: Data were obtained through information requests, publicly available reports, and major national newspapers. NL is excluded due to incomplete information: it approved less than 10 applications from 2013-2017 and data are missing for 2018-2019. Data are unavailable the RBI programmes in CY, IT, and MT and for BG from 2011-2013.

<sup>47</sup> K. Surak, 'Who Wants to Buy a Visa?'

<sup>48</sup> Ibid.

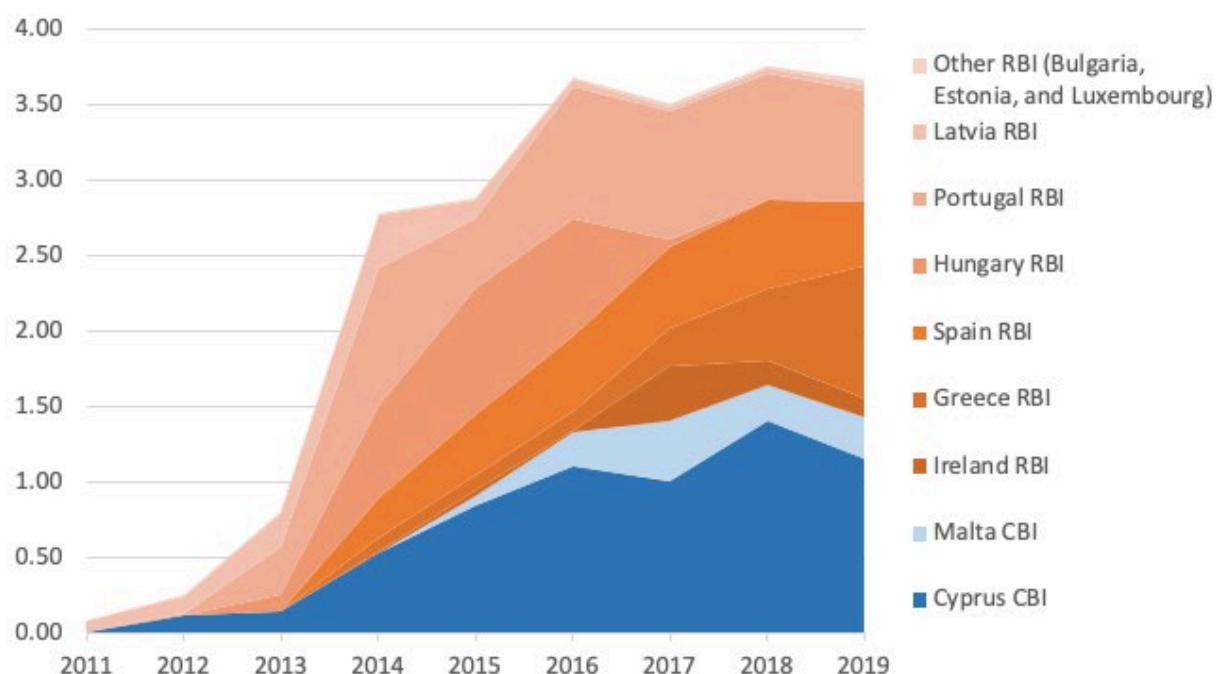


**CBI programme** numbers are affected by caps. MT's CBI programme had an overall cap, but no annual cap, and it is possible that the government managed approvals to regulate the timing of the program's end. In 2018, CY implemented a programme cap of 700 approved applications per year. Thus annual approvals of applications remained under 1 000 per year. As a result, naturalizations through CBI programmes are minuscule within EU totals: they represent only 0.1% of total annual naturalizations in the EU.<sup>49</sup> The proportion of CBI naturalizations within total naturalizations in MT and CY is likely to be substantially higher.

### 1.4.2. Focus on economic trends

Annual investment brought into the EU through the programmes hovered around €3.5 billion from 2016 to 2019 (Figure 9). The investment brought in by **CBI programmes** is, on a per capita basis, substantially more than that of RBI programmes due to the higher costs involved. In CY, the minimum investment amount and investment options changed almost annually, but hovered around €2.5 million for a family since 2013. The result generated over €6 billion from 2013 to 2019, with the country accounting for about 33% of the total investment intake for investment migration programmes within the EU as a whole in 2019. In MT, the amount varied based on the family members included and the real estate option selected, but generally came to about €1 million for a family, bringing over €1.2 billion into the country from 2014 to 2019. Since 2016, it has accrued around €1 billion annually through its program.

Figure 9: Investment Generated through Investment Migration Programmes (billions EUR)



Source: Author's data collection

Note: Data were obtained through information requests, publicly available reports, and major national newspapers. Estimates derived by multiplying the number of approved applications by the minimum qualifying investment amount in the given year are used for BG, EE, EL, ES, HU, IE, LU, and LV, and for CY in 2019. In the case of multiple investment categories with different minimum investment levels, the single

<sup>49</sup> [Acquisitions of citizenship per 1000 persons, EU-27 and EFTA, 2019](#), Eurostat website.

cheapest option was used. For example, if a programme had an option to qualify by investing €250 000 in real estate or depositing €500 000 in a bank, the cheapest option – here €250 000 – was used. Actual investment data are used in all other cases. NL is excluded due to incomplete information: it approved less than 10 applications from 2013-2017 and data are unavailable for 2018-2019. Data are unavailable for the RBI programmes in CY, IT, and MT and for BG from 2011-2013.

Among the **RBI programmes**, the scale of the investment generated varies greatly, following substantial variation in uptake across cases. The most popular schemes, found in EL, ES, and PT, attract around €500 million to €750 million per year to each country. The particular economic impact in each of these cases will be discussed in greater detail in Section 3.3.

## 1.5 How the programmes work

In investment migration programmes, interested participants typically connect to countries offering options via an international network of service providers. Key elements and aspects of this system are outlined below.

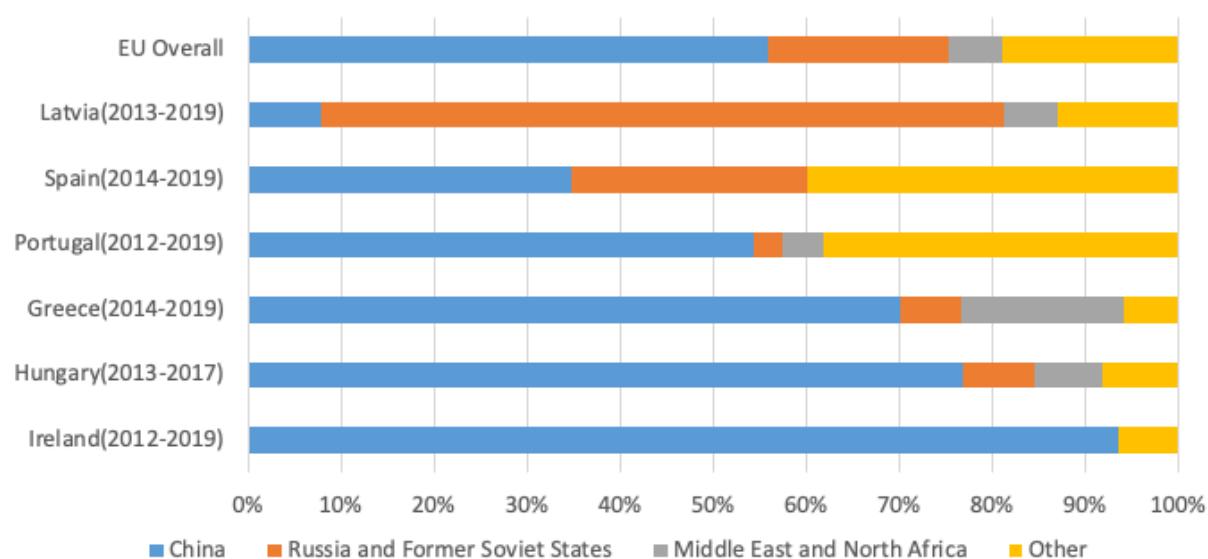
### 1.5.1 Participants' profiles

With the exception of MT's annual reports on the MIIP, no countries offer highly detailed statistical images of their investor migrants. However, it is possible to gain a general picture based on available statistics.

#### 1.5.1.1 RBI programmes

Only 6 out of 13 EU countries that have offered RBI programmes provide information on the country of origin of programme participants. Yet these cases account for over 95 % of participants in EU programmes for which data are available, and therefore supply a solid indicator of the nationalities of the investors (

Figure 10: RBI Applications Approved by Region of Origin



Source: Author's data collection

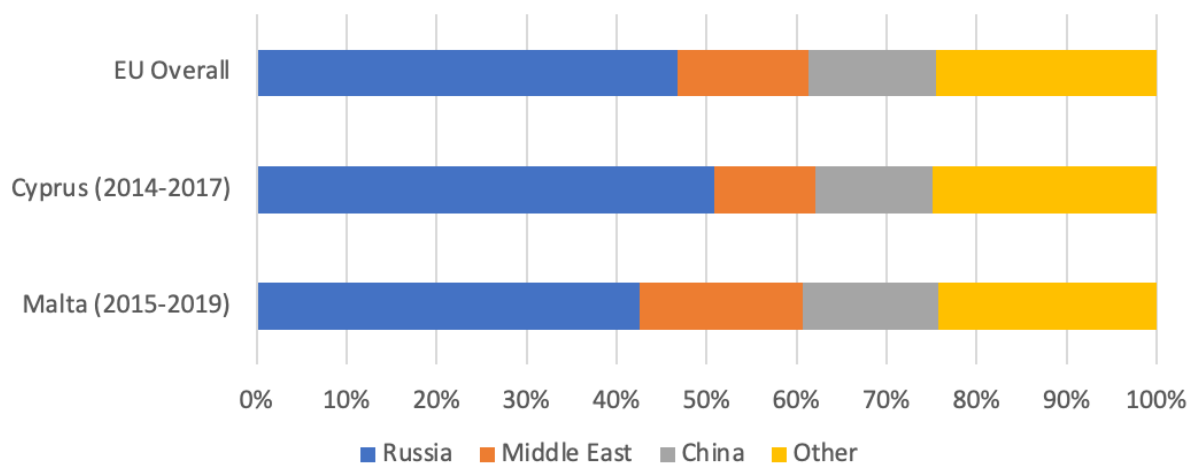
Note: Data were obtained through information requests and from publicly available reports. Data are unavailable for LV from 2010-2012.

Among RBI participants, Chinese nationals predominate, accounting for over half of all residence permits issued. More than 75 % of approvals in HU and Ireland (IE) went to Chinese investors, followed by nearly 70 % in EL, and over 50 % in PT. Notably, China, including Hong Kong, has a long history of demand for investment migration options, as well as a large migration industry assisting interested parties with options.<sup>50</sup> The sole exception to China's predominance as the leading country of origin is LV, where linguistic similarities and historical connections with Russia have focused Russian demand into the country. Together, individuals from China and Russia account for 75 % of all RBI approvals, followed by the Middle East and North Africa.<sup>51</sup> Notably, both Russia and China are authoritarian states that have transitioned from communist to capitalist systems since the 1990s. Both have seen substantial growth in private wealth and inequality over the thirty years, paired with the uncertainty authoritarian rule and limited travel opportunities, which help drive demand.<sup>52</sup>

#### 1.4.1.2 CBI programmes

Among CBI participants, Russian nationals are the leaders, accounting for over 45 % of those naturalizing through the programmes (Figure 11). Chinese nationals and nationals of Middle East countries are the second largest group, accounting for approximately 15 % of naturalizations each. Rates are similar in CY and MT, though Russian nationals account for slightly more of the programme in CY, and Middle East nationals slightly more in MT. The notably lower proportion of Chinese interest in CBI versus RBI programmes is due to the Chinese government's prohibition of most forms of dual citizenship.

Figure 11: CBI Applications Approved by Region of Origin



Source: K. Surak, *Millionaire Mobility and the Sale of Citizenship*

#### 1.4.1.3 Global pool

Typically, investors are willing to pay no more than 10 % of their liquid assets towards an investment migration option. They are also most likely to come from outside the West and to be the first generation of new wealth, as those with inherited wealth have often already secured mobility

<sup>50</sup> B. Xiang, 'Predatory Princes and Princely Peddlers: The State and International Labour Migration Intermediaries in China', *Pacific Affairs* 85, No. 1, 2012, pp. 47-68.

<sup>51</sup> K. Surak, 'Who Wants to Buy a Visa?'

<sup>52</sup> K. Surak, 'Millionaire Mobility and the Sale of Citizenship'. See also K. Surak, 'What Money Can Buy'.

alternatives. Thus a general estimate based on the growth of new wealth in the Global South suggests that the potential population of demand globally is in the ballpark of 4.3 million individuals for RBI programmes and less than 400 000 for CBI programmes.<sup>53</sup>

### 1.5.1.1 Motives

It is not unusual for people from less wealthy countries with weak rule of law, political instability, and low quality of life to seek 'compensatory citizenship' opportunities abroad to make up for the limits of their own citizenship.<sup>54</sup> Those pursuing investment migration options are typically motivated by a search to secure opportunities for (1) mobility, (2) education and lifestyle, and (3) business.<sup>55</sup> For some, all three motives feed into their calculations. Specific motives for investor migrants seeking CBI options vary to some degree from those seeking RBI options due to the differences in rights secured (see Section 1.3.1).<sup>56</sup> However, the general categories remain the same, as discussed below.

#### (a) Mobility

For most people in the world, opportunities for international travel are determined in the first instance by one's citizenship through what is, in effect, a 'birthright lottery'.<sup>57</sup> A person fortunate enough to be born into German citizenship will gain extensive rights in Germany, a wealthy country with a stable democratic government and strong education and health care systems, as well the possibility to live in other EU Member States and enter over 190 countries without applying for a visa. By contrast, a person born into Afghani citizenship, will have rights in a country in political turmoil and with weak education and health systems, and the possibility to enter only 26 countries, mostly in Africa, visa-free. Furthermore, rich countries are more likely to grant visa-free access to citizens of other rich countries while limiting access to those from poor countries.<sup>58</sup> As such, citizenship in a 'second-tier' or 'third-tier' country is a liability for international travel.<sup>59</sup>

In the case of CBI programmes, interviews with service providers and investor migrants indicate that easier international travel is a key motive for participants.<sup>60</sup> 'Upgrading' one's passport can save extensive 'downtime' at embassies waiting for visas. It can also ease border crossings if geopolitical tensions have arisen between one's country of citizenship and travel destination.<sup>61</sup> Additionally, it can facilitate travel for those whose pathways are otherwise blocked. Venezuela, for example, has been hesitant to grant or renew passports, limiting or preventing Venezuelan oil engineers from working internationally. Stateless populations, particularly in the Middle East, have also turned to CBI options to facilitate travel.<sup>62</sup> A recognized successor to the Dali Lama, the 17th Gyalwang

<sup>53</sup> See K. Surak, 'Marketizing Sovereign Prerogatives' for details on how the estimate is generated.

<sup>54</sup> See Y. Harpaz, *Global Citizenship 2.0: Dual Nationality as a Global Asset*, Princeton University Press, 2019.

<sup>55</sup> See K. Surak, 'Millionaire Mobility and the Sale of Citizenship'.

<sup>56</sup> K. Surak, 'Millionaire Mobility and the Sale of Citizenship'; K. Surak, *Empirical Developments in Investment Migration*

<sup>57</sup> A. Shachar, *The Birthright Lottery*, Harvard University Press, 2009. See also D. Kochenov, *Citizenship*, MIT University Press, 2019.

<sup>58</sup> K. Surak, 'Millionaires and Mobility: Inequality and Investment Migration Programmes,' in T. de Lange and W. Maas ed. *Money Matters in Migration*, Cambridge University Press, 2021.

<sup>59</sup> See Y. Harpaz, *Global Citizenship 2.0: Dual Nationality as a Global Asset*.

<sup>60</sup> K. Surak, primary interviews

<sup>61</sup> On occasion, individuals from the Global North seek investor citizenships for similar reasons: it can be easier and safer to travel through parts of Africa as a citizen of the Comoros than as a citizen of the US. On this and motives for CBI participants in general, see K. Surak, *Millionaire Mobility and the Sale of Citizenship*.

<sup>62</sup> The most common cases are found among Palestinians and the *bidūn* ('without papers') populations. Some stateless people freely chose these options. However, there have been also controversial cases of deception and coercion

Karmapa, Ogyen Trinley Dorje, gained his first passport in 2018 when he became an investor citizen of Dominica, enabling him to travel internationally with relative ease for the first time.<sup>63</sup>

In the case of RBI programmes, participants do not qualify for a passport, and therefore the mobility options secured are substantially less than those of CBI programmes. However, within the EU, they do gain the right to enter and reside in the country issuing the visa. If the programme is in a Member State of the Schengen Area, participants also gain the right to travel to other members of the Schengen Area for 90 days out of a 180-day period. These are notable benefits for individuals from countries that do not have visa-free access to the Schengen Area.

Beyond present mobility, future mobility is often an allure for programme participants. Interviews show that people from countries ruled by authoritarian regimes or with a history of economic or political strife may seek out a 'Plan B' citizenship or residence to hedge against unknown risks or to open future possibilities. The result is a portfolio of options should, for example, Taiwan become reincorporated into China, Russia crackdown on certain sectors, regime change in Vietnam destabilize political connections, or a global pandemic diminish travel options to desirable locations for non-citizens or residents.<sup>64</sup>

#### (b) Education and lifestyle

In addition to border-crossing options, programme participants may also seek to reside or spend time in the issuing country. Qualitative research suggests this is more common for RBI than CBI programmes, though no hard data exists on the actual numbers. Chinese investors in particular are interested in international education opportunities for their children, and in some cases, the chance to enrol their children in international schools in Europe is an allure. Expats working in the United Arab Emirates may look for a comfortable place in Europe to spend their retirement – a situation often desirable for South Africans. Parents from the Global South may also see RBI and CBI options as way to secure a better future for their children by providing them with better options than those available back home. Russians may employ the RBI programme in LV and CBI programme in CY to establish a holiday home where they spend time.<sup>65</sup> Notably, the majority of investors into the LV's programme did not go for the cheapest investment option, but selected the more expensive real estate choice and invested in the capital city of Riga and the adjacent resort area of Saulkrasti.<sup>66</sup>

#### (c) Business opportunities

Finally, programme participants may also be interested in the business opportunities available through investment migration. Interviews with service providers indicate that gaining EU citizenship can lower the barriers to carrying out business and trade both with and within the EU.<sup>67</sup> Importantly too, EU citizenship can be useful for circumnavigating geopolitical conflicts outside the

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when the UAE and Kuwaiti governments attempted to impose Comorian citizenship their stateless populations. See A. Abrahamian, *The Cosmopolites: The Coming of the Global Citizen*, Columbia Global Reports, 2010; N. Lori, *Offshore Citizens*, Cambridge University Press, 2019; K. Surak, 'Millionaire Mobility and the Sale of Citizenship'.

<sup>63</sup> [Karmapa now a Dominican citizen](#), The Tribune.

<sup>64</sup> K. Surak, 'Millionaire Mobility and the Sale of Citizenship'.

<sup>65</sup> K. Surak, primary interviews.

<sup>66</sup> The precise minimum costs have changed over time. Before 2014, investment in real estate in the Riga area was LVL 100 000 (€142 288), or substantially more than the investment for real estate in other areas of the country (LVL 50 000, €71 144) or in a small- or medium-sized company (LVL 25 000, €35 572). Changes to the options in 2014 adjusted these price points, but still left real estate the most expensive choice. See K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>67</sup> K. Surak, primary interviews.

EU. For example, citizens of Arab countries doing business with Israel may find it easier to carry out their trade activities by using CY as a business hub and even gaining Cypriot citizenship.<sup>68</sup>

Although such programmes are known as ‘investment migration’ schemes, investors are not usually motivated solely by the opportunity to make a return on the investment. Those from booming economies in the Global South typically accrue larger profits on their investments outside Europe, for the rate of return is often much higher in developing markets.<sup>69</sup> Risk hedging, though, is very important in the calculus: the programmes offer a way to diversify assets into a relatively stable currency. Real estate in particular is seen as a relatively safe investment option for storing assets abroad – and one that may also increase in value.<sup>70</sup>

Tax opportunities attached to the programmes are a more complicated matter and vary greatly depending on an individual’s personal situation. Many wealthy people from outside the West come from countries where income tax is much lower than in Europe and where the state is far less efficient at collecting tax. Furthermore, tax residence is typically calculated based on physical presence within a country: in most situations, individuals – investor migrants or not – are considered a resident for tax purposes if they spend more than 183 days in a country.<sup>71</sup> Interviews with service providers and investor migrants suggest that tax evasion or tax avoidance are not primary motives for most investors.<sup>72</sup> However, qualification for CBI and RBI programmes always has tax implications because investments are involved, and investors will choose options with lower tax burdens if available.<sup>73</sup>

### 1.5.2 Intermediaries: global investment migration industry

Most migration streams are supported by a ‘migration industry’<sup>74</sup> or ‘migration infrastructure’<sup>75</sup> of service providers that facilitate cross-border mobility and connections. Often states formally partner with migration industry actors or informally rely on them to implement migration policies.<sup>76</sup>

In investment migration, intermediaries play an important role in almost all application cases. Individuals who are interested in CBI and RBI options typically consult with a service provider about their options and work with them to compile and file their application (discussed below). Usually the service provider has an office in the applicant’s home country, though some connect directly to service providers in the issuing country.

<sup>68</sup> K. Surak, ‘Millionaire Mobility and the Sale of Citizenship’.

<sup>69</sup> K. Surak, primary interviews. Even if a small return is gained, investors typically describe it as a loss since the money that is invested in Europe could be making more money if invested elsewhere.

<sup>70</sup> K. Surak, primary interviews.

<sup>71</sup> US citizens and permanent residents are a notable exception as they come under the US income tax regime no matter where they reside. If a person does not spend more than 183 days in any single country, then the principles for determining tax residence are more varied and are dependent on numerous individual factors.

<sup>72</sup> K. Surak, primary interviews. The common distinction made between ‘tax avoidance’ and ‘tax evasion’ is that the former uses legal means to lower a tax burden, while the latter employs illegal means to do so.

<sup>73</sup> Ibid.

<sup>74</sup> R. Hernández-León, ‘The Migration Industry in the Mexico-US Migratory System’, California Center for Population Research, Online Working Paper Series (CCPR-049-05), 2005.; T. Gammeltoft-Hansen, and N. Nyberg-Sorensen, *The Migration Industry and the Commercialization of International Migration*, Routledge, 2013.

<sup>75</sup> B. Xiang, and J. Lindquist, ‘Migration Infrastructures’, *International Migration Review* 48, No. 1, 2014, pp. 122-148.

<sup>76</sup> K. Surak, ‘Migration Industries and the State: Guestwork Programmes in East Asia’, *International Migration Review*, 52(2), 2018, pp. 487-523.



The service provider firms that interface with clients can be broken down into five general types:<sup>77</sup>

- (1) **Law firms and private client divisions of major accountancies and banks** employ lawyers who assist clients with applications for investment migration options among the other services that they offer. The lawyers are professionally licensed and regulated by bar associations.
- (2) **Dominant investment migration consultancies** are firms that specialize in investment migration services for clients and other companies. They may receive clients directly or provide services to other migration industry actors. These firms typically have an international footprint that includes offices in several countries. They also play a key role in developing the migration industry itself by advising and lobbying governments, contracting services to governments, and participating in image management.
- (3) **Large migration service providers** are big businesses with more than 500 employees in a single country that assist their clients with a range of migration options. Though they aid clients with investment migration, this is often not the firm's main focus, which is usually student visas and work visas. Companies of this size are typically found in China, where they are a commanding presence; most investment migration applications from China go through these agencies before they are filed. On occasion, these large businesses may lobby foreign governments.
- (4) **Small- and medium-sized migration service providers** are smaller firms that focus on investment migration, but on a smaller scale and with less of an international footprint, if any at all, than dominant consultancies and large firms. Smaller service providers may pass their clients on to larger service providers which take care of the processing.
- (5) **Service providers that submit applications to the government** are based within the issuing country and, in some cases, are the sole type of agency from which the government will accept applications (that is, in some cases, an individual cannot file an application directly with the government). Often these businesses are local law firms, though some countries license other types of service providers. Governments typically issue licenses for a fee and have the ability to revoke the license should the service provider engage in irregular or illegal activity.

In addition, governments may appoint specialized international due diligence firms to carry out background checks on applicants. These firms typically carry out background checks for multinational companies and major banks, which are their main clients, and apply similar approaches to investment migration cases. Due diligence companies offer different packages of services at different rates. The most basic form of background check will typically cost a few thousand Euro and consist of searches of publicly available databases. More thorough 'boots-on-the-ground' checks that investigate a person's record based on information gathered in person in the country of origin will cost a few tens of thousands of Euro.

Finally, there are companies that facilitate the investment itself. The most prominent are real estate developers, which build housing and other infrastructure projects that can be used to qualify for programmes. If an investor seeks to qualify via a business investment, there are companies that can assist in structuring and running the qualifying businesses. Other companies or advisories will aid investors with financial investment routes.

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<sup>77</sup> See also K. Surak, 'Empirical Developments in Investment Migration'.



With the exception of specialized international due diligence firms, all of the firms described above may be connected to other firms, through a web of contracts and commissions, to form the international network of investment migration industry actors.<sup>78</sup> Some firms are connected in 'B-to-B' ('business to business') relationships, while others interface with clients in 'B-to-C' ('business to client') relationships. Typically, the wealthier the client, the more complicated the file, due to the amount of paperwork involved in accounting for their wealth and assets. Some firms seek profit by taking on a small number of clients with more complicated files and a slower turnover, while others process a large number of files with a faster turnover. More specialized firms may offer both B-to-B and B-to-C services.

### 1.5.3 Countries

#### 1.5.3.1 Economic need and contribution

Investment migration programmes are often implemented with the justification that the schemes will attract revenue to build the economy.<sup>79</sup> Regression analyses of the factors correlated with the launch of an RBI programme indicate that EU countries are more likely to start programmes after a sustained economic downturn, and are more likely to do so if the downturn occurred during the Euro crisis. They also show that EU countries, in general, tool the investment options to address economic needs.<sup>80</sup> Specifically, states are more likely to implement real estate and business investment options in response to downturns in the real estate market and unemployment, respectively.<sup>81</sup> Economic impacts and factors are discussed in greater length in Section 2.3.

#### 1.5.3.2. Screening

All EU countries screen foreigners when granting a long-stay visa or citizenship through naturalization. The general procedure is to run a basic background check with the national police agency and the European Union Agency for Law Enforcement and Cooperation (Europol) to ascertain whether a person is wanted, is on a terrorist list, has any criminal convictions, and is of good character.

##### 1.5.3.2.1 RBI due diligence

In the case of RBI programmes, governments typically employ the same due diligence procedures used with other long-stay migration channels and apply them to the individual applicant. In addition, governments apply additional checks to the investment itself to ascertain whether it is bona fide. Outside the government, banks involved in the transaction carry out anti-money laundering (AML) checks on the money, as well as 'Know Your Customer' (KYC) checks on the individual, as required by banking regulations. KYC checks typically involve first establishing a 'risk profile' for a person based on characteristics such as their country of origin, amount of wealth, and source of wealth, and then subsequently carrying out background checks through open-source databases, such as World Check. In addition, actors within the migration industry will often, de facto, supply an additional layer of screening. Many service providers in the sending area<sup>82</sup> will carry out

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<sup>78</sup> In the case of specialized international due diligence firms, such connections would constitute a conflict of interest that would undermine their core service provision and put at risk their entire business, which extends beyond investment migration.

<sup>79</sup> K. Surak, 'Who Wants to Buy a Visa?'

<sup>80</sup> K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>81</sup> However, the rationale of economic need is not borne out by in the implementation of government bond options. See K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>82</sup> Some investor migrants apply for the programmes in their country of origin, while others do so in global hubs such as Dubai, Singapore, and London.

KYC assessments before accepting an individual as a client, which serve as a guard against reputational damage. In addition, the local lawyer or service provider who submits the application may also carry out similar checks for the same reason.

#### 1.5.3.2.2 CBI due diligence

CBI programmes, by contrast to RBI programmes, have implemented additional background checks on their applicants. In MT, the government carried out background checks via World Check and Interpol and created a risk-weighting of each applicant based on the person's profile. Risk-weighting is a common tool in due diligence checks that calculates the possible riskiness of a person. For example, applicants who are politically exposed persons (PEPs)<sup>83</sup> or who earned wealth from industries known for exploitative activities, such as mining, receive a higher risk-weighting than others, which would lead to additional scrutiny. In addition, MT appointed international due diligence firms to carry out background checks on the applicants and charged applicants €7 500 for the service, plus additional fees for each family member included. If standard due diligence pricing was applied on a per-application basis (i.e., the funds were not pooled and more money directed towards thorough assessments of high-risk profiles), the fee would have been sufficient to cover database and public records searches, but not 'boots on the ground' searches in the country of origin unless other provisions were made.

Before 2018, CY completed background checks on main applicants for its CBI programme within two ministries: the Ministry of Interior carried out Europol checks and assessed the police reports from the applicant's countries of birth and residence, and the Ministry of Finance assessed the investment itself and the source of funds. It is unclear whether the checks were extended to family members on the application. In addition, the banks involved would have been under regulations to carry out KYC and AML checks. After 2018, CY implemented an 'enhanced due diligence' process. The government added further due diligence checks using internationally recognized databases and announced plans for continuously auditing investor citizens for offences even after naturalization. The government specified that not only applicants with criminal convictions would be refused, but so would those who face charges of wrongdoing or who have been subject to international or European sanctions. CY prohibited PEPs from applying for the program, as well as individuals who had been rejected by any other EU country for citizenship. Furthermore, all applicants were required to already possess a Schengen visa. In 2019, CY appointed three international due diligence firms to carry out background checks on all new applications, and it began to carry out 'retroactive due diligence' on applicants approved prior to the 2018 changes, applying the new standards to the already naturalized citizens.

As such, applicants to the CBI programmes in MT and CY went through more vetting than is applied to most people gaining citizenship through naturalization. Of the additional vetting, the checks carried out by professional international due diligence firms are likely to supply the greatest contribution to thorough screening. By contrast, applicants to RBI programmes are rarely confronted with vetting procedures by governments that go beyond vetting procedures applied to other long-stay visa categories. However, some undergo an additional layer of vetting by service providers and banks involved, as described above.

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<sup>83</sup> PEPs are people who have been appointed to a high-profile position within a political institution or international body, including members of parliaments, members of high-level courts, ambassadors, high-ranking armed forces officers, members of the board of state-owned enterprises. Family members and close business associates of such individuals are also PEPs.

#### 1.5.3.2.3 Rejections

Most EU countries do not release data on their refusal rate for RBI programmes. Where it is known, however, it is generally low unless political reasons produce higher rates. In LV, a country with an RBI programme once popular among Russians, the number of applications approved suddenly plummeted in 2015 after an anti-Russia nationalist party gained power and wanted to reduce the program's size. More indicative of a refusal rate that reflects the rejection of insufficient or problematic applications is PT, which refuses an estimated 5 % of RBI applications.<sup>84</sup>

Rejection rates for CBI programmes are varied. In CY, they have been low: the country rejected an average of 2 % of applicants from 2013 to 2018, and 4 % of applicants in 2019 after implementing enhanced due diligence procedures.<sup>85</sup> In MT, the rate has been comparatively high, reaching upwards of 30 % in some years.<sup>86</sup> This figure, however, may not solely indicate the strength of the program's vetting process. Because the scheme possessed an overall cap of 1 800 approved applications, but no definitive end date, rejections may have also been used to manage programme numbers and the timing of its completion.

#### 1.5.3.2.4 Revocations

Revocation rates are not reported. However, RBI programme participants will, effectively, leave the programme and lose residence if they do not maintain the investment.<sup>87</sup> Visa renewal typically requires proof that the investment is still in place; if the participant sells the qualifying investment, the visa is not renewed. No figures are available on the number of these lapses.

There are some known revocation cases in CBI programmes. In 2019, CY carried out retroactive due diligence on all CBI applications approved before its 2018 reforms. As a result, the government decided to revoke the citizenships of at least 26 individuals who would not have passed the new screening procedures. These included individuals such as family members of the Prime Minister of Cambodia, as well as Jho Low, wanted by the US as the mastermind behind the 1MDB scandal and who naturalized before the scandal broke. The revocations of citizenship, however, have been legally challenged and remain delayed in the courts.

In MT, known revocations are much fewer. In 2019 the government began the process of revoking the citizenship of Mustafa Abdel Wadood, who faces charges of misappropriating nearly \$400 million from businesses. Global Witness has named three additional individuals who have been linked to fraud and money laundering and still retain their Maltese citizenship.<sup>88</sup>

#### 1.5.3.2.5 Vetting in programmes outside the EU

Investment migration programmes are not limited to the European Union and a dozen countries now offer CBI schemes.<sup>89</sup> If a third country with a CBI programme has visa-free access to the Schengen Area, then its CBI participants will also gain visa-free access. This opportunity can be attractive for individuals from countries whose nationals are required to apply for separate visas for

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<sup>84</sup> [Europe's Golden Doors Lack Power in Stopping Corruption](#), Global Witness.

<sup>85</sup> Page 4 of the briefing here: [Europe's Golden Doors Lack Power in Stopping Corruption](#), Global Witness.

<sup>86</sup> Fifth Annual Report on the Individual Investor Programme of the Government of Malta, ORIip, 2018.

<sup>87</sup> The exceptions are BG and CY which extend permanent residence.

<sup>88</sup> [Europe's Golden Doors](#), Global Witness.

<sup>89</sup> As discussed above, the distinction between CBI and discretionary economic citizenship can be blurry. For the definition of CBI programmes used here, see K. Surak, *Marketizing Sovereign Prerogatives: How to Sell Citizenship*.

each EU Member State they hope to visit, or who travel frequently and receive visas that are valid for only a short period of time, such as one year.<sup>90</sup>

Countries in the accession process can offer an opportunity for individuals to gain citizenship that could eventually become EU citizenship. For example, when PL approached its entry into the EU, the number of naturalizations of Israelis with Polish ancestry grew substantially.<sup>91</sup> As such, the opportunity to become a prospective EU citizen can serve as an attractive element of a program, and service providers will, unsurprisingly, tout such possibilities as well. Montenegro, North Macedonia, and Turkey are accession countries that host CBI programmes, and Albania has discussed launching a CBI program.<sup>92</sup>

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<sup>90</sup> See, for example, K. Surak, 'Millionaire Mobility and the Sale of Citizenship'.

<sup>91</sup> Y. Harpaz, *Global Citizenship 2.0: Dual Nationality as a Global Asset*.

<sup>92</sup> Montenegro has announced that it will conclude its CBI programme at the end of December 2021.

## 2. Assessment of problems in the status quo and their impacts

Previous studies on investment migration schemes have raised a range of concerns. The key ones that merit attention are

1. weak vetting
2. corruption and fraud
3. limited macroeconomic benefits
4. limited benefits for the EU itself
5. harnessing only economic and not human capital
6. tax evasion and avoidance.

The following sections review these potential problems, their actual significance and the evidence to substantiate them, and their impacts.

### 2.1 Weak vetting

A potential problem is weak vetting. If solid due diligence checks are not carried out on all the individuals on the application – not only the main applicant, but also the family members – as well as on the qualifying funds, the possibility exists that the programmes could be used by criminals or terrorists, or for money laundering.<sup>93</sup>

#### 2.1.1 Persons with a high-risk security profile

What proportion of investor migrants have a high-risk security profile, which may bring with it the risk of criminality? The question is difficult to assess objectively. However, the case of CY suggests that the proportion is very small. In CY, only 97 individuals out of 2 500 applications filed have been found to be high risk.<sup>94</sup> Of those, 54 were simply ‘politically exposed persons’ (PEPs) – that is, they were high risk, but not necessarily criminals.<sup>95</sup> The remaining 43 had been convicted of a crime, either before or after naturalization.<sup>96</sup> If the number of family members included on each application is similar to the EU average of 1.61,<sup>97</sup> then between 2.4 % of approvals went to high-risk individuals and 1.1 % to those with or later accruing criminal convictions. These include cases such as Jho Low and members of the Cambodian ruling family, as discussed above.

#### 2.1.2 Family work-around and serial investor migrants

Countries may carry out background checks on the individuals who make the investment and submit the application but not on family members, who can gain residence or citizenship as

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<sup>93</sup> A. Scherrer and E. Thirion, ‘CBI and RBI Schemes in the EU’.

<sup>94</sup> [Cyprus Investment Programme applicants by country \(2017-2019\)](#), The Cyprus Papers.

<sup>95</sup> See Section 1.5.3.2.2 on PEPs.

<sup>96</sup> Source: [The Cyprus Papers Analyzed: Is Al Jazeera's Reporting Balanced?](#), Civitas Post. According to the Cyprus Mail, many of the putative criminals were refused extradition because the charges were weakly supported and contestable, and a number were simply executives at companies subject to sanctions. In total, there were five individuals under sanctions by US, Russia, or Ukraine; six who were executives at companies under US, EU, or Ukrainian sanctions; five who had served or received prison sentences; and three whose application for citizenship coincided with legal action against them. See [Al Jazeera Cyprus Papers web of lies revealed](#), CyprusMail news.

<sup>97</sup> See K. Surak, ‘Who Wants to Buy a Visa?’

dependents of the main applicant.<sup>98</sup> As such, individuals with questionable backgrounds could have a family member, such as a spouse or adult child, serve as the main applicant and then – if the application is approved – gain privileges as a familial dependent. The extent to which such a work-around occurs is unknown, but it is a recognized possibility.<sup>99</sup>

The available information also indicates that there have also been a small number of cases of ‘serial investor migrants’ – that is, individuals who gain citizenship through investment and then use that citizenship to apply for residence elsewhere.<sup>100</sup> In some cases, the investor citizenship may be the only citizenship that the individual possesses, which is common among long-term expatriate Americans who seek an alternative citizenship. However, if countries do not ask for and examine all citizenships, past and present, held by an applicant, it may be possible for individuals to obscure their background by using other investment migration options.<sup>101</sup>

### 2.1.3 Security

To date, there are no reported cases worldwide of terrorist activities carried out by individuals traveling on investor visas or passports acquired through investment migration programmes. It is possible that the ease of gaining citizenship or visas through other routes makes investment migration programmes less desirable for those who may pose a security threat.

### 2.1.4 Money laundering

The 5<sup>th</sup> Anti-Money Laundering Directive (2018) required economic operators to ensure that by January 2020 they carry out enhanced due diligence on third-country nationals who apply for RBI or CBI programmes. Member States are also to ensure that funds used to qualify for RBI and CBI programmes move through ‘obliged entities’, as defined by the Anti-Money Laundering Directives, in order to guarantee that EU AML rules are not circumvented through the programmes.<sup>102</sup> If states have not made these reforms and do not involve their Financial Intelligence Unit (FIU) in the assessment of RBI or CBI applications, they may not be fully implementing AML checks.

Prior reports on the risks of money laundering through investment migration programmes offer only suggestions of how programmes might be leveraged for money laundering.<sup>103</sup> For example, if an investment is made with funds received from a benefactor and enhanced due diligence is not carried out on the benefactor, in addition to the applicants, it may bring a risk of money laundering.<sup>104</sup> However, reports addressing money laundering concerns do not provide evidence or actual examples of investment migration programmes becoming conduits for money laundering.<sup>105</sup>

<sup>98</sup> MT is a notable exception that vetted family members applying to its CBI program.

<sup>99</sup> Al Jazeera exposed individuals working with CY’s CBI programme suggesting this possibility to its undercover reporters.

<sup>100</sup> K. Surak, ‘Who Wants to Buy a Visa?’

<sup>101</sup> Ibid.

<sup>102</sup> See [Questions and Answers](#) on the report on investor citizenship and residence schemes in the European Union.

<sup>103</sup> European Getaway: Inside the Murky World of Golden Visas, Transparency International and Global Witness, 2018, P. 31. See also: [Portugal Continues Refusal to Abolish Golden Visa Scheme](#), OCCRP website. [A Portuguese Crusader Seeks to Tap the Brakes on Golden Visas](#), OCCRP website; A. Scherrer and E. Thirion, CBI and RBI Schemes in the EU.

<sup>104</sup> European Getaway: Inside the Murky World of Golden Visas, Transparency International and Global Witness, 2018, P. 31. See also: [Portugal Continues Refusal to Abolish Golden Visa Scheme](#), OCCRP website. [A Portuguese Crusader Seeks to Tap the Brakes on Golden Visas](#), OCCRP website; A. Scherrer and E. Thirion, CBI and RBI Schemes in the EU.

<sup>105</sup> Examples include European Getaway: Inside the Murky World of Golden Visas, Transparency International and Global Witness, 2018, P. 31. See also: [Portugal Continues Refusal to Abolish Golden Visa Scheme](#), OCCRP website. [A Portuguese Crusader Seeks to Tap the Brakes on Golden Visas](#), OCCRP website; A. Scherrer and E. Thirion, ‘CBI and RBI Schemes in the EU’.

As such, the evidence does not show that the programmes themselves operate as a channel for money laundering. The programmes might not provide a felicitous channel due to the relatively small size of the qualifying investment amounts, as well as to any AML checks carried out by the banks that facilitate the investment. However, it is still possible that individuals applying to the programmes may be involved with laundering other funds, apart from those used for the investment. Such cases may be missed if due diligence checks examine only the source of funds and not the applicant's source of wealth.

### 2.1.5 Discretionary grants

A possible work-around to formal screening procedures can occur when the head of a country has the ability to grant citizenship in a discretionary manner, overriding or going around formal application procedures. Such discretionary grants are not limited to CBI programmes. For example, FR extended citizenship to Snapchat CEO Evan Spiegel and (outside the EU) New Zealand extended citizenship to PayPal founder Peter Thiel, even though both did not meet the formal criteria for naturalization.<sup>106</sup> It is unclear to what extent such discretionary grants occur in practice. However, two types of discretionary grants should be recognized in this context: (1) those that occur despite the existence or not of a CBI program, and those that occur by over-ruling or circumventing the formal vetting procedures of a CBI program. Outside the EU, some countries have passed provisions aimed at eliminating the latter from their CBI programmes. In Saint Kitts and Saint Lucia, for example, have provisions intended to ensure that the prime minister is unable to override rejections based on due diligence outcomes or the decision of the CBI application assessment committee.

### 2.1.6 Vetting in CBI programmes in third countries

As noted above, a number of countries outside the EU also host CBI programmes. If citizens of the issuing country gain visa-free travel to the Schengen Zone and the country's due diligence process is not strong, then questionable figures could travel to the EU visa-free. It is important to note that such issues do not arise as readily when the questionable individuals are from the Global North. A Canadian citizen with a criminal record could easily fly to the EU, yet such a background would disqualify the person from approval in CY's CBI program. Notably, some third countries with CBI programmes carry out more thorough due diligence on applicants than the standard vetting applied to individuals naturalizing in Europe and North America or participating in EU RBI or CBI programmes. Countries in the Caribbean with CBI programmes regularly employ international due diligence firms to carry out background checks on all applicants and work with the US to ensure that the approvals pass muster.<sup>107</sup> The rigor of vetting improvements in places like Saint Kitts has been recognized by the IMF.<sup>108</sup> Still, vetting occurs on a country-by-country basis, and its strength depends on the rigor and systematically applied in each country.

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<sup>106</sup> [New Zealand gave citizenship to a man who spent only 12 days there in five years](#), CNBC news.

<sup>107</sup> K. Surak, 'Marketizing Sovereign Prerogatives'.

<sup>108</sup> Staff Report for the 2017 Article IV Consultation on St. Kitts and Nevis, IMF, July 2017.



## 2.2 Corruption and fraud

Previous studies have noted a potential risk of corruption and fraud, and there are factors that might promote this because the flow of money is of substantial size.<sup>109</sup> This risk is heightened if the flow of funds and the structure of the investment is complex or opaque.<sup>110</sup>

### 2.2.1 Corruption

Some cases of corruption or potential corruption have been identified in past years, but exposure has been limited.<sup>111</sup> In MT in 2017, the Prime Minister's Chief of Staff was accused of receiving a kickback of €100 000 allegedly related to the processing of a CBI application. He has denied the accusation and the investigation remains ongoing.<sup>112</sup> In CY in 2020, Al Jazeera reported on a 'VIP track' for wealthy people with questionable backgrounds for the country's CBI program. Such individuals could pay high-level government officials substantial sums above the programme requirements to obtain a work-around to the formal vetting and application procedures. As a result of Al Jazeera's exposé, the government froze the programme on November 1, 2020 and commenced an extensive review and investigation that remains ongoing. Audits of the programme in CY have also raised concerns about irregularities.<sup>113</sup> The European Commission has launched infringement proceedings.

### 2.2.2 Fraud

Fraud can occur when investment migration service providers in the country of origin misrepresent the programmes, such as describing RBI programmes as offering citizenship. Fraud can also occur if service providers defraud investors of their funds. They may take the investment money but not follow through with filing the application correctly or they may mislead investors into investing more money into a project than it is actually worth. Large-scale fraud has occurred on some occasions in the US's RBI scheme, the EB-5 program. The two most prominent are the 'Chicago Convention Center' scam that drew \$150 million from investors hoping to gain residence, and the Jay Peak ski resort scandal, which defrauded hopeful investor migrants of \$85 million. However, cases of fraud have not appeared in Europe on such a large scale, and the institutional infrastructure for investment in the European cases is different to the 'regional centers' that historically channeled investment in the US.

<sup>109</sup> See [Corruption Risks Associated with Citizen- and Resident-by-Investment Schemes](#), OECD Anti-Corruption and Integrity Forum.

<sup>110</sup> For an example of a complex structure, see Nagy, In Whose Interest? on the RBI programme in HU.

<sup>111</sup> Furthermore, not all accusations of corruption have proven true. In PT in 2014, a scandal broke around the country's RBI programme concerning accusations of kickbacks to officials linked to the programme for expedited application processing. The government suspended the programme for several months, carried out an audit, revamped and then relaunched the program. However, the accusations turned out to be false, and in 2019, the courts acquitted all of the key officials accused of crimes. See [Miguel Macedo claimed scam made him](#), Diário de Notícias news.

<sup>112</sup> [Dozens testify in citizenship sale kickback inquiry](#), MaltaToday news.

[Keith Schembri arrested in connection with passport kickbacks probe](#), Times of Malta news.

<sup>113</sup> [Golden Friends and Neighbors](#), OCCRP investigations.

## 2.3 Limited macroeconomic benefits of RBI programmes

Prior studies have questioned the economic benefits of EU investment migration programmes and raised queries about the risk of promoting macroeconomic imbalances.<sup>114</sup>

Regression analyses show that RBI programmes in the EU tend to be implemented in response to extended economic declines, and particularly when an economic decline followed the Euro crisis. They also show that investment options also are tooled to address specific economic sectors of need.<sup>115</sup> As such, countries view them as a tool for rebuilding economies.

Yet do the schemes make a sizeable macroeconomic impact? As a proportion of GDP, the **RBI programmes** are insignificant given their small size. However, they can be assessed in a more targeted manner. Because the qualifying investments enter the economy from external sources, they resemble foreign direct investment (FDI), though officially they are not categorized as such.<sup>116</sup> Others have used foreign portfolio investment (FPI) to assess the size of flows.<sup>117</sup> However, FDI offers a better measure as the investments are relatively illiquid: if they are sold, then the visa is not renewed.<sup>118</sup> The result is a longer-term orientation more characteristic of FDI than FPI.

As is evident in Figure 12, even the largest RBI programmes bring in less than 2 % of GDP to a country. In some countries, such as EL and PT, the revenue from RBI programmes is equivalent to a substantial portion of FDI, and therefore can be compared to an important form of foreign investment. However, in neither of these countries is FDI a sizeable proportion of the overall economy.

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<sup>114</sup> A. Scherrer and E. Thirion, 'CBI and RBI Schemes in the EU'.

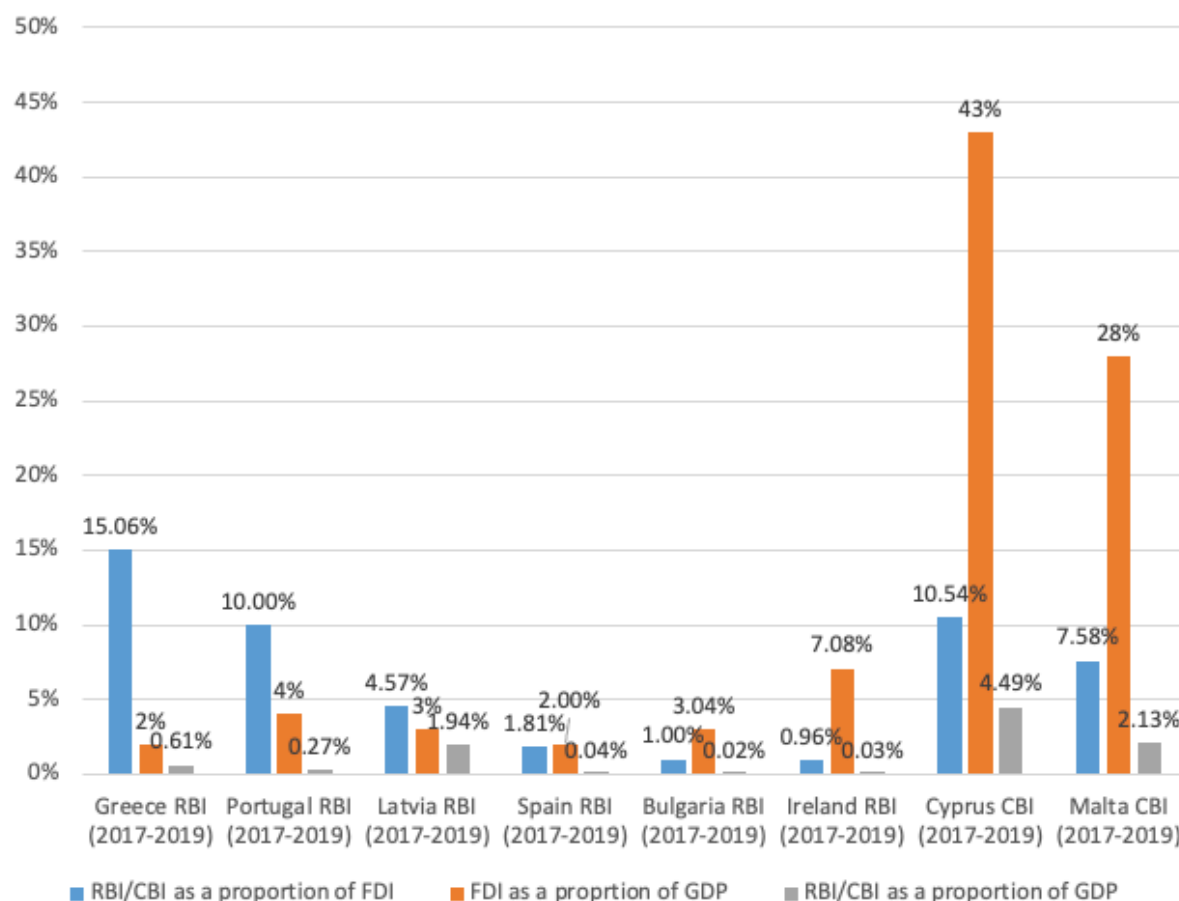
<sup>115</sup> K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?' See also K. Surak, 'Who Wants to Buy a Visa?'

<sup>116</sup> The RBI programmes in Bulgaria and Luxembourg are partial exceptions, as they allow local banks to loan a portion of the funds used for the qualifying investment.

<sup>117</sup> A. Scherrer and E. Thirion, 'CBI and RBI Schemes in the EU'.

<sup>118</sup> The exceptions are BG and CY which offer permanent residence.

Figure 12: RBI and CBI investments as a proportion of FDI and GDP



Source: Author's data collection

Note: Data were obtained through information requests, publicly available reports, and major national newspapers. Actual investment data is used for CY, MT, and PT with one exception: the investment amount for Cyprus in 2019 is estimated by multiplying the number of approved applications by the minimum qualifying investment amount in that year. Estimates derived by multiplying the number of approved applications by the minimum qualifying investment amount in the given year are used for BG, EL, ES, IE, and LV. In the case of multiple investment categories with different minimum investment levels, the single cheapest option was used. For example, if a programme had an option to qualify by investing €250 000 in real estate or depositing €500 000 in a bank, the cheapest option – here €250 000 – was used.

The case is different for **CBI programmes**, where the national-level economic impact is positive and significant. In MT and CY, programme receipts account for between 2.1 % and 4.5 % of GDP and supply a notable amount of FDI-like investment in countries with high rates of FDI. In MT, the CBI programme has been credited as becoming one of the four key contributors to economic growth.<sup>119</sup> It has also driven the emergence of the first government budget surplus since the 1980s.<sup>120</sup> In CY, the CBI programme is credited with rescuing the real estate and construction sector – 17 percent of

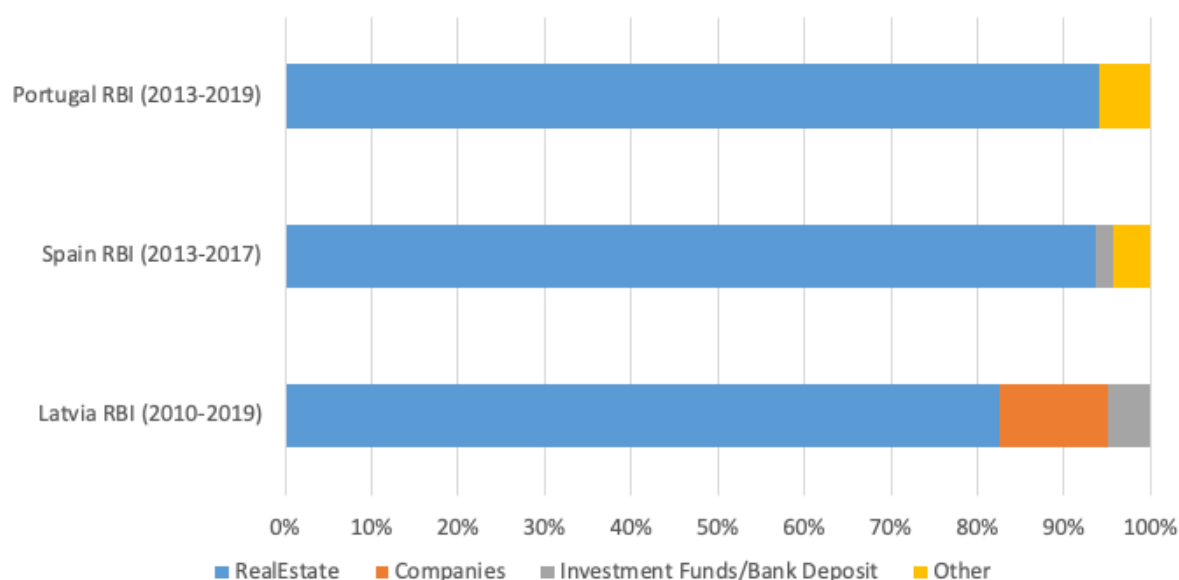
<sup>119</sup> [Malta Budget 2020](#), Deloitte, October 2019; See also [Malta – Concluding Statement of the 2019 Article IV Mission](#), IMF, January 2019; [Malta – 2020 Article IV Consultation-Press Release and Staff Report](#), IMF, April 2020.

<sup>120</sup> See also [Malta – Concluding Statement of the 2019 Article IV Mission](#), IMF, January 2019; [Malta – 2020 Article IV Consultation-Press Release and Staff Report](#), IMF, April 2020.

the economy – following the 2008 global economic crisis and the Euro crisis.<sup>121</sup> As the CBI programmes, small in scale but large in investment size, has had considerable positive economic impact in these two small states.

How do the investments impact specific sectors? Of the RBI programmes, only LV, PT, and ES offer breakdowns of investment types selected, but these programmes account for over 60 % of approvals in the EU. Furthermore, government officials in EL state that real estate investments account for the vast majority of cases.<sup>122</sup> Comparing the investment options selected shows that real estate, if available, is the most popular option by far, accounting for around 90 % of cases (Figure 13).

Figure 13: RBI: Investment Type Selected



Source: Author's data collection

Note: Data was obtained through publicly available reports

How significant are these investments to the property sector? Some research has proposed that the programmes may destabilize the real estate market and even price locals out of housing.<sup>123</sup> A full assessment of the impact of the programmes on the housing market would require neighborhood-level data, which are unavailable. However, a sense of the risk can be ascertained from the proportion of foreign investment in the real estate market and the proportion of RBI investment within that amount (Table 1). If one examines the largest RBI programmes, the threat of destabilization appears to be minor in most cases: RBI transactions represent usually less than 5 % of transactions. Indeed, a much larger proportion of foreign property investors are from within the EU, which may bring a greater threat of real estate bubbles or property price destabilization than the investment migration programmes. For example, in PT property purchases by French nationals alone account for nearly 30 % of real estate purchases by foreigners and 4 % of the total real estate

<sup>121</sup> [Cyprus Real Estate Market Report – The Insights \(11th edition\)](#), KPMG, July 2020.

<sup>122</sup> K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

<sup>123</sup> A. Scherrer and E. Thirion, 'CBI and RBI Schemes in the EU'.

market.<sup>124</sup> The sole exception is EL, where destabilization through RBI investment may be a risk. In 2018, the RBI programme constituted around one-third of total real estate transactions. However, it is also important to contextualize this shift. The residential property market had been in decline since 2008 and shifted to positive growth only in 2018, and the RBI programme may have contributed to this transformation.<sup>125</sup>

Table 1: Significance of RBI Investment Within the Real Estate Market

Country	Proportion of foreign transactions within real estate market	Proportion of RBI transactions within foreign transactions	Proportion of RBI transactions within total real estate transactions
Portugal (2018)	13%	22.4%	2.9%
Spain (2013-2017)	13-15%	1.5%	0.2%
Greece (2018)	50%	71.8%	35.9%
Latvia (2014-2015)	10-15%	16%-44%	1.7%-6.7%

Source: K. Surak and Y. Tsuzuki, *Are Golden Visas a Golden Opportunity?*

In CY, as noted above, the CBI programme has been credited with rescuing the ailing real estate and construction sector. Studies have shown that the programme has not had a negative impact on standard residential housing: investment has instead spurred a growing luxury segment in coastal areas and the spillover to other property segments is limited.<sup>126</sup> According to the IMF, the rise in rental prices – sometimes associated with the CBI and RBI programmes – has been largely driven by foreign students rather than the investment migration programmes.<sup>127</sup>

In assessing the economic benefits of real estate investment, it is important to keep in mind the risk that low-quality, over-priced, or unneeded infrastructure may be developed through the programmes. Because real estate must be sold at a minimum price to become a qualifying investment, it carries the risk that it might be over-valued. If €500 000 is the minimum investment amount to qualify for a program, a condo might be built at a cost of €300 000 and valued at €350 000, but sold at €500 000. The result produces profits for the migration industry, but may not add as much value as promised to the built environment.<sup>128</sup> This risk can be mitigated by requiring

<sup>124</sup> See K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?' See also I. Lestegás, R. Lois-González and J. Seixas, 'The Global Rent Gap of Lisbon's Historic Centre', *International Journal of Sustainable Development Planning* 13(4), 2018, pp. 683-94, whose qualitative interviews also suggest that intra-EU migrants, and the French in particular, are the more significant source rent gaps in the specific case of Lisbon.

<sup>125</sup> [Percentage change on residential property prices in Greece](#), Statista.

<sup>126</sup> [Cyprus – 2019 Article IV Consultation-Press Release and Staff Report](#), IMF, December 2019; See also [Cyprus Real Estate Market Report – The Insights \(11th edition\)](#), KPMG, July 2020.

<sup>127</sup> [Cyprus – 2019 Article IV Consultation-Press Release and Staff Report](#), IMF, December 2019..

<sup>128</sup> See, for example, [Police claimed that Portugal's golden visa programme may be rotten](#), The Economist article.

independent assessments of the value of the qualifying property to be submitted with the application.

## 2.4 Benefits for the EU are limited

For most people participating in CBI programmes globally, a key draw is not only the benefits that citizenship secures within the granting state, but also those it brings outside it, in other states, which are typically secured by treaties.<sup>129</sup>

In the case of EU CBI programmes, the naturalized investor also becomes an EU citizen, which carries with it extensive rights in other Member States that approximate those of full citizens. For example, Maltese citizenship brings with it the right to move to Paris and establish a business in Germany, in addition to the extra-EU benefit of entering the US visa-free. Qualitative research shows that benefits gained outside the country granting citizenship are an important motive for CBI programme participants.<sup>130</sup>

In the case of EU RBI programmes, participants also secure benefits outside the granting state, but these are more limited in comparison to those secured by citizenship, and in-country benefits, such as the opportunity to purchase a home or a second home, diversify one's investment portfolio, or hold assets in stable currencies, gain more relative weight. However, investors in programmes that are members of the Schengen Area do acquire the right to enter other Schengen Area members visa-free for 90 days within a 180-day period, which can be an important motive for investors.

In the case of the EU, membership brings benefits across the Union. Although these EU-level benefits add important value to CBI programmes and some value to RBI programmes, the EU itself does not benefit directly in a significant manner from the schemes. The resulting configuration bears some likenesses to a free-rider problem. That is, the main investment benefits accrue to the Member State. To the extent that EU-mobility is an allure, the countries that an individual travels to or spends time in will benefit indirectly through their spending. However, the EU itself – which secures the desired extra-territorial privileges – benefits only indirectly through any increased contributions that Member States transfer to the EU as a result of an increase in GNI driven by the investment migration program.

## 2.5 Human capital not harnessed

The EU's legislative framework on labor migration is in principal designed to attract human capital. This typically takes the form of skilled labor, as is the aim of the EU's Blue Card scheme, or unskilled labor, as is, for example, common with programmes to bring in agricultural workers on a temporary basis. Investment migration, however, differs from this standard policy logic by screening migrants based on their contributions of economic capital alone – not human capital.<sup>131</sup> The result is that the country granting citizenship or residence may see largely short-term benefits from the initial injection of funds. If investors spend little time in the country or move few businesses to it, then their contribution to the economy may be minimal in the long term.

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<sup>129</sup> K. Surak, 'Marketizing Sovereign Prerogatives'. See also K. Surak, 'Global Citizenship 2.0' and Džankić, *The Global Market for Investor Citizenship*.

<sup>130</sup> K. Surak, 'Millionaire Mobility and the Sale of Citizenship'.

<sup>131</sup> K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

It is not clear what proportion of investors continue to contribute to the economy in a substantial way beyond their qualifying investment, and the economic scale of the contributions of those who do so is also not clear. Some investors move to their new country or spend significant time there, and some move additional business interests into the country as well, generating economic benefits beyond those resulting from the initial investment.<sup>132</sup> Yet others do not, and because the investment is passive rather than active, there is no expectation that they contribute their skills to the economy, and many countries do not have strict physical presence requirements.<sup>133</sup> As such, there is a potential loss of unharnessed skills.

## 2.6 Tax evasion and avoidance

Previous reports have noted that investment migration programmes may bring a risk of tax evasion or tax avoidance.<sup>134</sup> The assessment of tax implications for investment migration programmes is challenging due to the number of different taxes that are potentially involved, as well as the variety of tax regimes in different countries that may be relevant. At the most basic level, an individual's tax residence is determined by physical presence and not citizenship or legal residence. In the first instance, individuals will become tax resident in any country where they spend more than 183 days annually. If they do not meet this threshold in any country, then commonly a series of 'tests' that examine, for example, the location of their homes, the location of their families, and their 'center of vital interests', is applied to determine their country of tax residence. In the EU, a minimum physical presence is required to qualify as a tax resident in a Member State if a person does not meet the 183-day threshold in any single country. In CY, for example, one must be physically present in the country for at least 60 days to become a tax resident. As such, there is an inverse relationship between the speculative problems sometimes raised about a population of 'absent citizens' or 'absent residents' and a population 'tax avoiders'.

The EPRS has noted that investment migration programmes do not provide a solution to reporting requirements under the Common Reporting Standard (CRS), but they offer a possibility that individuals may try to use to make false statements about their tax residence.<sup>135</sup> Effectively, CRS places the onus on banks to ascertain whether individuals have declared all of their citizenships. However, a person with multiple citizenships – acquired through any means – may attempt to hide a citizenship in order to avoid reporting to one of their countries of citizenship.<sup>136</sup>

One may note that people participating in CBI programmes in particular often come from countries that have lower top income tax rates than those in Europe or are inefficient in collecting taxes. In Russia, for example, the highest income tax rate is only 15 %, which is substantially lower than in most EU countries.<sup>137</sup> Very wealthy people are also often 'structured'. That is, they receive income

<sup>132</sup> See K. Surak, 'Millionaire Mobility and the Sale of Citizenship'; K. Surak, *Citizenship 4 Sale: Millionaires, Microstates, and Mobility*. Harvard University Press 2022..

<sup>133</sup> No data are available on the actual number of days that investors are physically present.

<sup>134</sup> See A. Scherrer and E. Thirion, 'CBI and RBI Schemes in the EU'; Transparency International and Global Witness, *European Getaway*. Typically tax avoidance is defined as lowering one's tax burden using legal measures and tax evasion as doing the same with illegal measures.

<sup>135</sup> Scherrer A. and Thirion E., 'CBI and RBI Schemes in the EU'; [Corruption Risks Associated with Citizen- and Resident-by-Investment Schemes](#), OECD Anti-Corruption and Integrity Forum.

<sup>136</sup> This, for example, occurred in Hong Kong in 2015 after China signed onto CRS. In a 'CRS rush', some individuals looked to investment migration options elsewhere as a workaround to CRS. By 2017, however, this had died down and it was clear that Hong Kong banks, backed by their legal and compliance departments, were requiring the declaration of all citizenships.

<sup>137</sup> US citizens and permanent residents participating on the programmes would also not accrue tax benefits as the US taxes its citizens and residents on their global income no matter where the individual is located.



not as pay checks but as capital gains or loans, which are typically subject to much lower tax rates, if taxed at all. By one estimate, wealthy Americans, for example, pay only 3.5 % in taxes annually, even though the top income tax bracket is 37 %.<sup>138</sup> Though countries with investment migration programmes may host beneficial tax regimes that cover investor migrants as well or are even tooled to attract them, the vast majority of wealth structuring to avoid taxes goes on outside such programmes, and qualitative research shows that tax avoidance is not a driving motive.<sup>139</sup> Indeed, if investment migration programmes offered an easy 'solution' to tax, the uptake of the programmes would likely be much higher.<sup>140</sup> However, as discussed above, the qualifying investments themselves will always have tax implications – for example, the taxes involved in purchasing real estate – and investors will, *ceteris paribus*, select options that lower their tax burden.

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<sup>138</sup> [How the wealthiest Americans get away with paying no tax](#), Financial Times.

<sup>139</sup> K. Surak, primary interviews.

<sup>140</sup> K. Surak, 'Millionaire Mobility and the Sale of Citizenship'.

### 3. Policy options, impacts, and unintended consequences

In preparing the report, a list of policy options was presented by EPRS. These were further refined in this report and subsequently assessed. Please note that the legal aspects are elaborated by EPRS and not in this report.

#### 3.1 Policy option 1: Ban CBI and RBI schemes

##### **Sub-option 1a: Ban CBI schemes**

##### **Sub-option 1b: Ban RBI schemes**

The first policy option would be to ban CBI and RBI programmes. Given the different legal bases, as well as the difference in status secured, this takes the form of two sub-options: a ban on CBI schemes and a ban on RBI schemes.

#### 3.1.1 Impact and unintended consequences

##### 3.1.1.1. National Economy

Banning CBI programmes would have a notable negative economic impact in MT, and if CY retained a program, a ban would also have a notable negative economic impact.

The MT's CBI programme makes a substantial contribution to its economy. It constitutes about 2.1 % of GDP and brought in €1.2 billion between 2014 and 2019. According to research by Deloitte, the CBI programme has been one of the four key contributors to economic growth since 2013.<sup>141</sup> Of the donation component of the required investment, 70 % goes into the National Development and Social Fund (NDSF), a sovereign wealth fund, and 30 % goes into the Consolidated Fund, which is merged into the wider government budget. From 2016 to 2018, MT posted a budget surplus, due largely to receipts from the CBI program. Because of the volatility of programme receipts, the government has aimed to achieve a budget surplus excluding programme receipts, and in 2017 succeeded in doing so. However, the trend has not been sustainable.<sup>142</sup> Thus banning CBI programmes may push the country into a budget deficit. The IMF has predicted that ending the programme would, in addition, slow the reduction of the national debt.<sup>143</sup> Before the Covid pandemic, MT's economy was in a more stable position to deal with the economic consequences of a ban; at present, the post-pandemic economic situation remains unclear.

In addition, the MT government would lose significant revenue for funding social projects. The NDSF has to date disbursed €66 million for building social housing units, €10 million for upgrading over 50 health clinics, and €33 million to support voluntary organizations.<sup>144</sup> Banning the programmes would eliminate the surplus funding that supports these development programmes unless the government is able to reallocate funding from elsewhere.

<sup>141</sup> [Malta Budget 2020](#), Deloitte, October 2019;

See also [Malta – Concluding Statement of the 2019 Article IV Mission](#), IMF, January 2019; [Malta – 2020 Article IV Consultation-Press Release and Staff Report](#), IMF, April 2020.

<sup>142</sup> [Malta – Concluding Statement of the 2019 Article IV Mission](#), IMF, January 2019;

[Malta – 2020 Article IV Consultation-Press Release and Staff Report](#), IMF, April 2020. As is typical with sovereign wealth funds, most of the monies remain in the fund's investments.

<sup>143</sup> [Malta – Concluding Statement of the 2019 Article IV Mission](#), IMF, January 2019

<sup>144</sup> [Malta NDSF Annual Report 2020](#), NDSF, December 2020.

In CY, the CBI programme contributed positively to GDP growth and employment over its duration. It has been credited with rescuing real estate and construction following a significant decline after the 2008 global economic crisis.<sup>145</sup> Its loss will likely deal a substantial blow to this sector, which constitutes 17% of the country's economy.<sup>146</sup> The IMF has predicted that the program's end will result in a permanent reduction of real estate and construction sector's contributions to the economy. In 2021, the IMF also noted that CY is 'particularly vulnerable' to the negative economic consequences of Covid-19, and that the termination of the CBI programme has contributed to its present downturn.<sup>147</sup> As such, the end of the programme comes at a particularly challenging time, and a ban on all future programmes would remove what had been a successful tool for economic growth at a time when such a tool may be needed.

Banning RBI programmes would have little economic impact in countries where uptake has been insignificant in recent years (BG, EE, IT, LV, LX, NE). It is unlikely to have a substantial macroeconomic impact on countries with larger or more significant programmes (EL, ES, IE, PT), but it may adversely affect specific areas. The end of the programmes would substantially reduce a source of funding similar to FDI in IE and PT (the programme in LV, once very large, has seen numbers significantly reduced since 2015). IE has used its RBI programme to fund some social welfare projects through public-private partnerships, which would lose their funding source. PT has employed its programme as a means to incentivize investors to renovate older buildings, which would also end.<sup>148</sup>

In EL, the jump in the RBI program's proportion of real estate transactions in 2019 suggests that the country may have been moving closer to dependence on RBI monies to support this ailing market. Given the disruption to RBI application processing in 2020, it difficult to assess where this trend was going, if it will continue, and if it would possibly destabilize the real estate market.<sup>149</sup> However, the RBI programme likely made a contribution to the recovery of this market before the Covid pandemic.

### 3.1.1.2. Rerouting

If the programmes were banned, individuals interested in gaining a residence visa or citizenship in the EU may turn to other options. The most popular would likely be entrepreneurial or business investor schemes, particularly those that are more 'passive' in orientation.

Individuals may also seek out naturalization options in third countries that secure some similar benefits. As noted above, Roman Abramovic naturalized in Israel when the UK did not renew his RBI visa, and thereby secured similar privileges. A ban may also bring increased interest in ancestral options for naturalization by individuals using forged documents. There is already a small industry of service providers that offer forged documents for naturalizing in EU countries based on ancestry, and demand may increase for such illicit services in the absence of legal options.<sup>150</sup> Extraordinarily wealthy individuals are likely to pursue discretionary routes of the sort used by Evan Spiegel, discussed above.

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<sup>145</sup> [Cyprus Real Estate Market Report – The Insights \(11th edition\)](#), KPMG, July 2020.

<sup>146</sup> [Cyprus Real Estate Market Report – The Insights \(11th edition\)](#), KPMG, July 2020.

<sup>147</sup> [Cyprus – 2021 Article IV Consultation-Press Release and Staff Report](#), IMF, June 2021.

<sup>148</sup> The PT government incentivized these options by lowering the minimum investment amount for real estate in rural areas and in older buildings in need of refurbishment, and in the latter, requiring refurbishment of the buildings.

<sup>149</sup> [Percentage change on residential property prices in Greece](#), Statista.

<sup>150</sup> K. Surak, primary interviews. See also [Romania Has Allegedly Allowed Russians and Ukrainians to Buy EU Passports](#), Vice News.

Due to rerouting, some of the potential problems in the status quo discussed in Section 3 may not be entirely eliminated by a ban. For example, weak vetting could continue in other channels and possibilities for corruption or fraud may simply be shifted as well. A ban would also prevent the possibility that the EU would benefit from the programmes or harness human capital.

## 3.2 Policy option 2: EU Tax on CBI and RBI schemes

A second option would be for the EU to tax the programmes, which could ensure that the programmes bring economic benefits to the EU itself. One way this could be structured would be as a 100 % tax, with all monies going to the EU. Alternatively, a lesser tax – 20 %, for example – could be imposed on the monetary amount of the qualifying investment.<sup>151</sup>

### 3.2.1 Impact and unintended consequences

Taxing the programmes is likely to bring about, broadly, two different sets of impacts depending on the amount of the tax. A 100 % tax is likely to result in an end to the programmes as the issuing country would lose the financial benefits associated with investment migration. Thus the impact and unintended consequences are likely to be the same as under Policy Option 1 (Section 3.1), a de facto ban.

A lesser tax is likely to keep the programmes desirable to countries and viable to operate while also bringing some economic benefits to the EU itself. Such a tax could be imposed on the total investment amount or added as a flat fee to each application, the cost of which would be passed on to the investor. A tax on the total investment amount may encourage some countries to increase their minimum investment amount in order to maintain previous revenue outcomes. Whether and how such increases in costs impact the number of applicants for programmes is likely to be country-specific, and it is not necessarily the case that greater costs lead to a drop in numbers. For example, when Ireland doubled its minimum investment amount in 2016 from €500 000 to €1 million, it saw applications increase substantially, which is likely due to the increased promotion of the programme by service providers in China.<sup>152</sup>

## 3.3 Policy option 3: Regulate conditions, guarantees and safeguards of investment migration schemes

### **Sub-option 3a: Regulate CBI schemes**

### **Sub-option 3b: Regulate RBI schemes**

A third option would be to regulate CBI and RBI programmes regarding (a) approvals and approval procedures, (b) investment and approval of monies, and (c) the investment migration industry.

### 3.3.1 Regulating approvals and approval procedures

#### 3.3.1.1. Caps

Member States could limit programme size by imposing caps on the number of approvals annually, as well as on the number of approvals for the entire duration of the program, after which the

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<sup>151</sup> As the fees are generally nominal in comparison to the investment amount, a tax on the fees would bring in little revenue and have little impact.

<sup>152</sup> K. Surak, 'Who Wants to Buy a Visa?' If raising the minimum investment amount generates higher commissions for service providers, they may more likely to promote the option to clients.

programme would end or need to be renewed to continue. In comparison to a ban, caps would diminish the extent that individuals may seek more inappropriate alternatives, while allowing for greater regulation. The cap could take the form of number of applications approved or the total visas or citizenships issued (main applicants plus family members). MT, for example, placed a total cap of 1 800 on the number of applications that could be approved over the course of its original CBI program. CY introduced an annual cap of 700 approved applications on its CBI program.

### 3.3.1.2. Approval process

To ensure that the approval process is objective and transparent, it could be carried out by multiple civil servants in the relevant branches of government – usually the Ministry of Interior and Ministry of Finance. The division of labor could include a system of checks to ensure that the approval process is objective and systematically applied. The review of evidence (Section 3) finds that approval processes that follow this approach are more robust. To limit opportunities for corruption, stipulations could be made to eliminate the possibility that the country's executive authority can make discretionary exceptions to the decisions made in formalized vetting process.

To address concerns about the mobility options secured within the EU, applicants to both CBI and RBI programmes could be required to present evidence that they already possess a visa for the Schengen area. By doing so, applicants would not be using the programmes to circumvent possible entry visa rejections by other member states.

Annual audits by an independent ombudsperson, could be implemented to supply external oversight, ensure the correct operation of the program, and facilitate improvements where necessary.

### 3.3.1.3 Due diligence

Due diligence checks are a sub-section of the approval process, but an important one that merits separate attention. The due diligence checks of RBI programmes could be strengthened beyond the currently predominant standard vetting procedures that are used for most third country migrants applying for visas. Given the greater commitment of citizenship, the due diligence checks for CBI programmes could be made stronger than those for RBI programmes, including more extensive investigations, as discussed at the end of this section.

Basic background check requirements could be set at the EU level, leading to greater harmonization across the EU. These can include ensuring that applicants do not have a criminal record, are not associated with terrorist activities, and that they report all previous citizenships, as well as other points of interest. Individuals who are PEPs could undergo enhanced due diligence checks. Countries could ask for and investigate all citizenships that applicants have held, past and present, in order to ensure that individuals with multiple citizenships, and possibly 'serial investor migrants',<sup>153</sup> do not use complicated documentary backgrounds to obscure their biographies, stymieing due diligence searches.

Due diligence checks could be applied not only to the person making the investment (the 'main applicant'), but also all family members securing visas or citizenship together with them. An average of 1.61 family members joins each RBI application in the EU<sup>154</sup>; applying due diligence checks on all family members on the application can ensure that a 'family work-around' (see Section 3.1) is not employed.

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<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

A longer due diligence process could lessen the likelihood that individuals who have recently committed a crime or who are about to commit a crime seek out investment migration options before the crime appears on their record. In Canada and the US, for example, the application process for RBI programmes has traditionally been slow, often taking more than a year, a time lag that allows more recent criminal activities to surface.

Due diligence background checks are stronger if they include non-open source databases, such as Interpol, Europol, and others, which cannot be whitewashed for a fee. Image-management companies offer services for sanitizing an individual's appearance on standard internet search engines, and non-open source databases are not subject to such curating attempts.

Countries could strengthen their due diligence resources by appointing professional due diligence companies to carry out background checks on the applicants. This cost can be borne by the applicant, as was the case with MT's CBI program. The strongest background checks are those including 'boots on the ground' investigations in the countries of origin that assess an individual's record by, for example, making inquiries with the local media and checking local court records. The results of these investigations can be added to a 'risk matrix' that weights the riskiness of a particular applicant based on several criteria including the source of wealth, court records, and database check results. Given the greater commitment that citizenship carries, these stronger checks may be appropriate for CBI programmes.

It is always possible that a due diligence check returns a 'false positive', as can be the case if an individual has a common name. For this reason – and to ensure the integrity of the programmes through periodic audits discussed above – due diligence checks would ideally be well documented and auditable.

### 3.3.2 Regulating investments and approval of monies

#### 3.3.2.1 Investments

To ensure that the programmes build economies in the most effective way, the EU could regulate the investment amounts and types. If given the option, investors overwhelmingly prefer to invest in real estate.<sup>155</sup> Absent this possibility, they would be more likely to place their money in other areas targeted by governments. Common alternative investment options include donations to the government, donations to specified social causes or charitable projects, bank deposits, government bonds, and investments in businesses or financial instruments. Regulations could be introduced that more carefully tool programmes to support specific economic needs, which may include subdividing the qualifying investment. For example, investors could be required to donate 50 % of the minimum qualifying amount to charitable causes chosen by the government and invest 50 % in a green business. Donations to the government budget may be an effective way for states to directly channel investment monies in economically productive ways. Depending on the size of the program, they could be divided between contributions to the government budget and contributions to a sovereign wealth fund, as was the case with MT's CBI scheme.

Governments can also regulate the liquidity of the investment by specifying how long it must be held. Countries with CBI programmes and those granting permanent residence by investment have typically allowed for divestment after a specific period of time – often five years – whereas countries with RBI programmes that grant only temporary residence require the investment to be maintained for the visa to be renewed. For RBI programmes issuing permanent residence by investment (currently in BG and CY), the length of time the investment must be held could be extended or made

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<sup>155</sup> See K. Surak and Y. Tsuzuki, 'Are Golden Visas a Golden Opportunity?'

indefinite. Countries can also require periodic assessments of whether the investment is maintained, and stipulate that investors submit evidence of its continuation at regular intervals.

To protect against the possibility that real estate is sold above market value, which – if greatly inflated – can pose the risk that the additional money is used for kickbacks, an independent assessment of the value of the property can be required. This strategy, which the Turkish government employs for its CBI program, can also help ensure that investors are getting value for money.

Finally, a requirement could be made that all investments should be in businesses only, stipulating the extent of ‘active’ or ‘passive’ involvement. This would effectively transform the programmes into business investor schemes and may enable countries to capture more human capital.

### 3.3.2.2 Due diligence on monies

In addition to vetting all individuals on the application, due diligence checks could also be applied to the money involved. The most stringent option would be to include checks not only on the ‘source of funds’ used to make the qualifying investment (as is currently standard), but also the ‘source of wealth’ of all individuals gaining visas or citizenship, including family members. In either case, the checks could trace the sources over a substantial period of time – at least one year and as many as ten years or even the adult life of the applicant. As with the due diligence on the individuals, the due diligence on the money could be closely documented, traceable, and auditable in case false positives arise. The country’s Financial Intelligence Unit could also be involved in the vetting process in order to ensure that EU-wide AML regulations are implemented.

### 3.3.3 Regulating the investment migration industry

The EU could also investigate avenues to regulate the migration industry of private actors that facilitate investment migration. MT and CY required service providers submitting applications to their CBI programmes to be licensed, as do countries outside the EU, such as Antigua and Grenada, and this option could be extended to RBI programmes as well. Approved service providers may also undergo periodic review. Those that fail review – by, for example, engaging in improper business transactions or submitting applications from individuals with criminal backgrounds – could be subject to fines or have their licenses suspended or revoked. To ensure high standards of professionalism, the licensed firms could be limited to only accredited law firms or accredited accountancies that are also regulated by entities such as bar associations and chartered accountant associations.

The EU could also establish guidelines for Member States to develop codes of conduct for investment migration industry service providers.<sup>156</sup> A code of conduct could include basic ethical practice, matters producing conflicts of interest, issues of regulatory compliance, and disciplinary rules and procedures. For example, the code can stipulate the sorts of business transactions that service providers are able to engage in, such as whether they can hold stakes in any of the investment options offered. A code of conduct could be most effective if made mandatory. Approved service providers could also be required to pay a deposit to the government, which could be lost if they violate the code of conduct.

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<sup>156</sup> The Investment Migration Council, a professional organization for the investment migration industry, requires its members to adhere to a code of conduct tailored for concerns that can arise in investment migration, which may serve as a model. However, it lacks the capacity to license and therefore to effectively censure any violators.



### 3.3.4 Impact and unintended consequences

#### 3.3.4.1 Regulating approvals and approval procedures

##### 3.3.4.1.1 Caps

Caps could limit the overall size of programmes, which may facilitate oversight and correct operation and possibly increase the selectivity of those approved. Caps could also result in a decline in annual revenue. As discussed above, these could be annual caps, with the possible inclusion of an overall cap after which the programme must be renewed to continue. Annual caps, if set low, could produce large backlogs, as has been seen in the US case. If only an overall cap is established, then it is possible that the annual rejection rates may reflect not the quality of the applicants, but the management of the program's termination and timing of possible renewal. Including an overall cap facilitates the possibility of programme review and the option of renewal, revision, or termination based on performance and contribution, which could assist in fine-tuning the programmes and decrease risks of producing path-dependent suboptimal outcomes, such as continuing to offer investment options in areas no longer in economic need.

##### 3.3.4.1.2 Approval process

Strengthening the approval process would likely lead to greater transparency and integrity of the programmes, reducing any issues that might exist concerning weak vetting, corruption, or fraud. It is unlikely that strengthening the approval process will significantly diminish demand for the programmes given the general profile of investors discussed above.

##### 3.3.4.1.3 Due diligence

If due diligence checks are strengthened, the result may be greater integrity among applicants and a reduction in issues around weak vetting, including the possibility that individuals with high security risk profiles employ the programmes. However, if due diligence is strengthened for investment migration programmes, rerouting could result: individuals who suspect that they will not pass the tougher standards may look for other options, such as less regulated business investor visas.

It is important to note that professional due diligence companies offer different packages, and as such, merely their appointment may not supply the deepest background check. As noted above, 'boots on the ground' checks, which include investigations and inquiries in the country of origin, are the most thorough, but also the most expensive.

The possibility exists that individuals will be rejected for the wrong reasons, as noted above. If the stakes of rejection are very high (e.g. if application rejection results in the inability to apply for other investment migration or immigration options), this could result in acceptable individuals losing access to the EU through the programmes. This risk can be diminished by instituting an appeals processing and ensuring that due diligence procedures are well documented.

#### 3.3.4.2 Regulating investments and approval of monies

##### 3.3.4.2.1 Investment

Regulating investment types and amounts may offer greater control over the monies and help ensure that they are being channelled in the most effective way to build the economy. Generally, investors prefer to invest in real estate options, but if this is not an area of economic need, eliminating them could enable governments to channel investments into other sectors. Such a move, however, may bring the risk of rerouting. For example, if ES were to remove real estate as a potential investment, demand may shift to PT where the option remains. Furthermore, eliminating

real estate options also diminishes the incentive to spend time in the country as an additional residence solution must be found, and thus it may also bring a decrease in secondary spending.

Because investors often prefer 'passive' over 'active' options, the requirements concerning active or passive investment options need to be closely specified if active investments involving substantial human capital are desired. These can include requiring evidence of a relevant track record in business for approval to be granted, the submission of a viable business plan, and annual proof of continuing involvement in building or maintaining the business. If such requirements are not carefully delimited, then human capital may not be effectively attracted and captured, as is the case with 'passive' business investment options. If only active business investments are allowed and implemented in practice, then the investment migration schemes become, effectively, business investor schemes.

Raising the minimum investment amount substantially – from, for example, €250 000 to €1 million for an RBI programme – may diminish interest, but not necessarily reduce it greatly. If higher prices lead to larger commissions for service providers, they may more eagerly promote the programmes. Higher costs, however, mean that applicants will have greater expendable wealth and also, following on the complexities of wealth, more complicated backgrounds to investigate in due diligence checks.

#### 3.3.4.2.2. Due diligence on monies

Due diligence on the source of wealth rather than merely the source of funds could help ensure that the financial backgrounds of the applicants are of the highest integrity and that individuals with suspect sources of wealth are not admitted.

However, source of wealth checks, depending on how specified, may be challenging or impossible to fulfil for individuals from developing countries. This can be due to the culture of business transactions. For example, cash transactions may be standard business practice in some fields, such as high-end medical care, that could be seen as suspect in the West. It can also be due to the nature of the state's bureaucratic capacity. For example, supplying ten years' worth of tax evidence may not be possible for individuals from states in civil war, 'failed states', or states with weak bureaucratic infrastructures.

#### 3.3.4.3 Regulating the investment migration industry

Regulating the investment migration industry may bring greater integrity to the programmes and reduce the risk of fraud by ensuring that the service providers who submit the applications adhere to the highest standards. Regulation can also incentivize them to turn away risky clients and thus could contribute to improved vetting. In such cases, a drop in rejections might be read as a success rather than failure of due diligence as the riskiest applicants would have been declined before beginning the application process. Furthermore, regulating all service providers submitting applications reduces the risk that individuals who do not pass the vetting procedures of one service provider 'shop around' for another that carries out weaker or no vetting.

The firm submitting the application is often only the final point of a longer chain of migration industry actors, as described in Section 1.5.2. Given the transnational and cross-jurisdiction nature of the industry, it is typically difficult for CBI or RBI countries to regulate every link in the chain. However, licensing – and the threat of revocation or fines – can place the onus on the final actor submitting the application within the issuing country to ensure that the preceding links in the chain are functioning in a way that ensures the integrity of the programmes.

### 3.4 Policy option 4: Stricter residence requirements

A fourth option would be to implement stricter residence requirements by, for example, requiring applicants to be physically present in the country for a set period for their visa to be renewed or for citizenship to be granted. The UK, for example, requires the main applicants in its RBI programme to be physically present in the country for six out of twelve months each year. Stricter residence requirements could improve the economic benefits brought in by the programmes through increased secondary spending.

#### 3.4.1 Impact and unintended consequences

Assessing physical presence in individual countries within the Schengen Zone is challenging and therefore it may be difficult to evaluate whether an individual is indeed physically present within a single EU country for a given period. For example, a participant in PT's RBI programme could easily reside in ES or IT undetected. Proxies such as utility bills are imperfect indicators of physical presence which is best assessed by monitoring border-crossing. Given these challenges, it may be possible to monitor at least entry and exit from the Schengen Zone.

Adding stricter physical presence requirements may bring some economic benefits in the form of increased secondary spending. Requirements for physical presence in a country for more than 183 days per year would ensure that an investor becomes a tax resident of the country. For some populations, such as British nationals who purchase second homes in the EU through RBI programmes, an increased physical presence requirement may encourage them to increase their time in the RBI country. It may also further incentivize the selection of real estate options to qualify for programmes.

However, stricter physical presence requirements may discourage professionals and businesspeople with international jobs or business interests from applying to the programmes as their work obligations may not enable them to fulfil substantial physical presence requirements. In response, they may seek other options, such as business investor or entrepreneurial channels, that do not have physical presence requirements.

An increased physical presence requirement may bring some social changes as well. It may, for example, encourage some investors to place their children in local public or private schools. Because most participants in investment migration programmes are from outside the West and many are non-white, their increased presence may also amplify the expression of xenophobia, racism, and other forms of hate and intolerance. It may also contribute to a more multicultural Europe.

### 3.5 Policy option 5: Regulate access to the EU

#### **Sub-option 5a: Regulate access to the EU by participants in the CBI and RBI programmes in countries in the accession process**

#### **Sub-option 5b: Regulate access to the EU by participants in CBI programmes in other third countries with visa-free agreements with the EU**

A fifth policy option would be to regulate access to the EU by participants in CBI and RBI programmes in third countries. Such a policy measure could be directed toward participants in investment migration programmes in countries in the accession process or participants in CBI programmes in other third countries with visa-free agreements with the EU. This policy option would only apply if the third country has weaker vetting relative to the vetting employed within the EU. It could take the form of additional checks placed on participants in these programmes before allowing them to enter the EU. The EU could also revoke visa-free access for citizens of countries

with CBI programmes that have weak vetting procedures. Furthermore, the EU could request that countries in the accession process end RBI or CBI programmes with weak vetting procedures as a prerequisite to joining the EU.

### 3.5.1 Impact and unintended consequences

Increased regulations for participants in investment migration programmes outside the EU that have weaker standards of vetting may serve as a guard against individuals who pose a high security risk from gaining access to the EU through programmes in third countries. It is important to note, however, that some third countries have stronger due diligence procedures than those applied by EU Member States, as discussed in Section 3.1. For example, a number of countries in the Caribbean with CBI programmes use international due diligence firms to screen all applicants and work with the US government to ensure that applicants are sufficiently vetted. In such cases, regulating access to the EU is likely to bring no improvement to vetting concerns.

Adding extra regulations to participants in investment migration programmes outside the EU may impact demand for these programmes. For countries with visa-free access to the EU, increased regulation and screening may negatively affect the desirability of the programmes as discussed below.

#### 3.5.1.1 Sub-option 5a: Regulate access to the EU by participants in the CBI and RBI programmes in countries in the accession process

At present, no accession country is economically dependent on CBI programmes, and none operate notable RBI programmes. CBI programmes can be found in the candidate countries of Montenegro, North Macedonia, and Turkey. Of these, the first two are of negligible size and impact. The programme in Montenegro opened in 2020 and is slated to end in December 2021. The programme in North Macedonia has strict business success requirements and sees little uptake.<sup>157</sup> Turkey presents a different case. Currently it hosts the most popular CBI programme in the world and accounts for nearly half of all approvals globally.<sup>158</sup> However, demand is not driven by the promise of EU citizenship because the accession process is perceived as stalled. Rather, benefits within Turkey and those secured through trade agreements for Turkish citizens, like the US's E2 Investor Treaty, are the main allure.<sup>159</sup> As such, EU pressure is likely to have little impact on the policy. If the programme were closed, it is also likely to have negligible impact on the economy despite the high approval numbers. This is due to the overall size of the Turkish economy and the relative newness of the program.

#### 3.5.1.1 Sub-option 5b: Regulate access to the EU by participants in the CBI in other third countries with visa-free agreements with the EU

Several third countries with visa-free agreements with the EU are dependent on CBI programmes for their economic stability. Visa-free access to the EU is a strong draw of these programmes; its revocation would lead to a decrease in the desirability of these options and a deal a significant blow to the economy of these countries, potentially destabilizing them. The loss of such revenue would be extraordinarily detrimental to tourism-dependent economies already struggling in the wake of the Covid-19 pandemic. Saint Kitts, for example, gained 35 % to 40 % of its GDP through its CBI programme before the pandemic, and other countries in the Caribbean the rate is around 15 % to 20 % of GDP. The IMF has credited Saint Kitts with prudent management of CBI revenue and notes

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<sup>157</sup> See K. Surak, *Citizenship 4 Sale*; K. Surak, primary interviews.

<sup>158</sup> K. Surak, 'Empirical Developments in Investment Migration'.

<sup>159</sup> K. Surak, primary interviews.

that the pandemic has had a 'severe' impact on its economy.<sup>160</sup> Eliminating visa-free travel to the EU may greatly diminish an historically important revenue stream when needed most, possibly resulting in long-term economic and social problems.<sup>161</sup> Other countries at possible economic risk include Antigua, Dominica, Grenada, and Saint Lucia.<sup>162</sup> Due to the severity of the potential consequences on entire societies, any revocation of visa-free access would ideally not be carried out in blanket manner across all third countries with CBI programmes, but only after making individual assessments of integrity of the programmes and the vetting processes in each country.

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<sup>160</sup> [St. Kitts and Nevis: Staff Concluding Statement of the 2021 Article IV Mission](#), IMF, July 2021.

<sup>161</sup> Ibid.

<sup>162</sup> Vanuatu also offers CBI options, but the importance of its programmes to the country's economic health is unclear.

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Citizenship and residence by investment schemes allow third-country nationals to obtain residence or citizenship in a host country in exchange for a financial contribution. In the European Union (EU), at least 130 000 persons have taken advantage of such schemes, which have generated over €21.8 billion in revenue for the countries concerned. This European added value assessment (EAVA) reviews the key issues raised by investment schemes and the possible legal bases on which the EU could act to address them. Several policy options are put forward that could be implemented through amendments to existing EU legislation or by introducing new legislation. The policy options include: (1) Phasing out investment schemes in the EU; (2) Applying an EU-level tax on investment schemes; and (3) Regulating investment schemes. In addition, the assessment considers the introduction of minimum physical presence requirements on residence by investment schemes and regulating access to the EU for investor migrants from third countries. The policy options are assessed in terms of their potential consequences and impacts, subsidiarity, proportionality and the overall added value the EU might gain.

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