



INVESTMENT
MIGRATION
COUNCIL

IMC Response to EESC Opinion on EC report *‘Investor Citizenship and Residence Schemes in the EU’* [COM(2019)12 final]

Press Release

Geneva, 29 October 2019

EU must adopt more inclusive approach to avoid legislative “echo chamber” says the IMC

The IMC cautions the EU against the risk of a policy hijack by ill-informed and unaccountable third party organisations ahead of the adoption of a European Economic and Social Committee Opinion on residence and citizenship by investment.

This Opinion is tabled for adoption at the EESC’s plenary session on 30 and 31 October. The IMC believes that it has been heavily influenced by third party organisations that have been given full access to the Committee and have had a significant role in drafting the related documents. What is particularly concerning is that these third party organisations have little or no specialist understanding of the standard industrial processes at the heart of investment migration. This can be seen by the multiple factual errors littered across their previously published work.

In addition, it would appear that these organisations have been given unprecedented privileged access to the Committee, something denied to the official trade association that represents the majority of the investment migration industry - a remarkable situation in such a legally and technically complex industry where it is unlikely that many members of the Committee will have an educated view in advance of the proceedings. Despite making two formal attempts to engage with the EESC, the IMC was not invited to meet with the EESC’s study group. This situation creates a fundamental imbalance and calls into question the neutrality of the entire process.



The IMC has consistently supported calls from the European institutions for increased transparency and higher standards across the industry, and take proactive steps to work with policymakers. “The European policy debate must not be dominated by a limited number of external stakeholders representing one agenda. Best practice governance requires the voice of all parties to be taken into account; especially those of industrial experts, which have been sadly lacking thus far. There is still time to ensure that the voice of an industry which provides millions of euros in FDI and creates significant and verifiable societal value is given the same courtesy as numerous ill-educated and unaccountable third parties. We implore the EU to adopt a more inclusive and, perhaps ironically given the parties involved, a more transparent approach in this process.” said Bruno L’ecuyer, Chief Executive of the IMC.

Notes to Editor

About the Investment Migration Council

The Investment Migration Council (IMC) is the worldwide association for Investment Migration, bringing together the leading stakeholders in the field and giving the industry a voice.

The IMC sets the standards on a global level and interacts with other professional associations, governments and international organisations in relation to investment migration. The IMC helps to improve public understanding of the issues faced by clients and governments in this area and promotes education and high professional standards among its members.

The IMC is constituted as a not-for-profit association under Swiss law. Based in Geneva, it has representative offices in New York, London and the Cayman Islands. Managed by a Secretariat under the direction of a Governing Board, the IMC also has a non-executive Advisory Committee, in which the most important industry stakeholders are represented. The IMC is funded by membership fees, donors and income from activities such as events, education, training, and publications.

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European Economic and Social Committee

SOC/618

Investor Citizenship and Residence Schemes in the EU

OPINION

Section for Employment, Social Affairs and Citizenship

Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union

[COM(2019)12 final]

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Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	15/10/2019
Adopted at plenary	DD/MM/YYYY
Plenary session No	...
Outcome of vote (for/against/abstentions)	.../.../...

1. Conclusions and recommendations

- 1.1 The EESC echoes the European Parliament's call in a recent report¹ to phase out all investor schemes, and urges the Member States to follow this recommendation or provide reasonable arguments and evidence for not doing so.
- 1.2 Until this takes effect, the EESC acknowledges that to address the risks posed by citizenship-by-investment (CBI) and residence-by-investment (RBI) schemes, detailed in chapter 3 below, and to fulfil its primary mandate, the group of Member States' experts set up by the European Commission should focus on:
- i) minimum standards for due diligence and security checks that are adapted to the risk profile of CBI and RBI applicants and that comply with existing EU anti-money-laundering rules;
 - ii) minimum standards for the operational integrity of the scheme, including transparency and governance measures as well as regulatory measures for the industry in accordance with the relevant legal framework; and
 - iii) guidelines and mechanisms for information-sharing between Member States as well as between national competent authorities within the Member States.
- 1.3 These measures must be backed up by close monitoring and enforcement of sanctions by the Commission, where this is permitted under the *Community acquis*.
- 1.4 The EESC recommends that Member States be urged to apply a due diligence process without specific duration restrictions and adapted to the high-risk profile of applicants, i.e. enhanced due diligence standards as detailed in the Fifth Anti-Money Laundering Directive². This should include any benefactor when applicants are given the possibility of relying on third parties to make their investment.
- 1.5 The EESC recommends that the Commission establish a coordination mechanism that allows Member States to exchange information on successful and rejected applications for citizenship and residence permits. This could take the form of interconnected central registers containing information on the due diligence process under which an application has been rejected and the underlying reasons for such a decision, to discourage shopping around between Member States. Publication of the reasons for refusal should take into consideration any concerns that security agencies may have on grounds of public safety or international cooperation between agencies.
- 1.6 The EESC recommends that all agents and intermediaries providing services to applicants be subject to anti-money-laundering rules as set out in the Fifth Anti-Money Laundering Directive.
- 1.7 The EESC further recommends that the EU encourages all agents providing services to applicants to be accredited and subject to a code of conduct establishing minimum criteria and requirements

¹ [http://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV\(2019\)0240.pdf](http://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV(2019)0240.pdf).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>.

harmonised at EU level, so that agents failing to prepare rigorous and reliable documentation for acceptance can be sanctioned and, if they do so more than once, lose their licence/accreditation.

- 1.8 While the EESC recognises that public authorities may need to hire specialist agencies to conduct the necessary checks, it insists that authorities should nevertheless maintain primary responsibility for accepting or rejecting applicants. Authorities must also maintain a set of measures to avoid conflicts of interest or bribery risks. In particular, 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.
- 1.9 It is also critical that any enhanced due diligence report that identifies risks should be discussed with the relevant public agency to ensure that all Member States concerned have a comprehensive picture of the type and level of risk at hand and fully understand how the sources and research techniques applied by the specialist agency adhere to best practice principles. Adequate notes and documents relating to decisions should be kept for as long as the statute of limitations on falsification of documents and bribery offences allows.
- 1.10 Member States should ensure that programmes operate with strong governance and oversight mechanisms and are subject to public scrutiny. Citizens should be informed of the objectives, risks and benefits that come with CBI and RBI schemes. The EESC stresses the importance of CBI and RBI applicants' information being publicly accessible, and calls on the Commission to encourage Member States systematically collect and publish information on the schemes in open-data format, and on a harmonised and comparable basis.
- 1.11 The EESC believes it is important that Member States conduct regular impact assessments and make adjustments as necessary, that they exercise independent oversight over the schemes, and that they conduct regular audits and publish the results in accordance with applicable legislation.
- 1.12 Member States should further provide for robust whistleblowing mechanisms for staff and citizens to report concerns and wrongdoing, and should build in mechanisms for revoking citizenship and residency rights in the event of new evidence of corruption or criminality being uncovered. Any decision concerning deprivation of citizenship should be made in accordance with national and EU legislation.

2. **Background and gist of the Commission report**

- 2.1 Nationality is a bond between a citizen and the state. Citizenship of a country is traditionally based on birthright acquisition, be it by descent (*jus sanguinis*) or by birth in the territory (*jus soli*). States can also grant citizenship to persons fulfilling certain requirements or who can demonstrate a genuine connection to the country (*naturalisation*). This includes the requirement to acquire and maintain a permanent residence in the relevant Member State, as a manifestation of the applicant's intention to transfer some of their interests to the Member State in question.
- 2.2 In recent decades, a large number of EU Member States have set up CBI and RBI schemes which aim to attract investment in exchange for citizenship or residence rights in the country concerned.

- 2.3 In a Resolution of 16 January 2014³, the European Parliament expressed concern that national schemes involving the "direct or indirect outright sale" of EU citizenship undermined the very concept of EU citizenship. In a debate on 30 May 2018, the European Parliament discussed a range of risks associated with CBI and RBI schemes⁴. The issue was further discussed in the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) of the European Parliament. TAX3's final report⁵ sets out a number of key mitigation measures to reduce the risks posed by CBI and RBI schemes, including a call on Member States to phase out all existing schemes as soon as possible. Until the schemes are definitively repealed, the report calls on the Commission to rigorously monitor the implementation of customer due diligence on applicants and to ensure better data collection and coordinate information exchange among Member States.
- 2.4 On 23 January 2019, the Commission issued a report⁶ that examines the relevant national legal frameworks and practices and describes the main risks, challenges and concerns related to these schemes.
- 2.5 The Commission's report explains that the schemes pose risks in respect of security, money laundering, tax evasion and circumvention of EU rules. Those risks, according to the report, are further exacerbated by the lack of transparency in how some of the schemes operate and a lack of cooperation between Member States. The Commission has committed to further monitoring CBI and RBI schemes for their compliance with EU law and to taking action when necessary. With a view to improving this process, and in order to identify specific measures to tackle the challenges stemming from the schemes, the Commission has set up a group of experts that already met twice this year to look at the risks arising from investor citizenship schemes and to define mitigation measures.
- 2.6 Most of these schemes were introduced in the aftermath of the 2007 financial crisis. A number of European countries hit hard by the crisis may have seen it as an opportunity to economic recovery. In the context of competition between countries to attract foreign direct investment, this might have encouraged different standards and requirements.

3. General comments

3.1 Risks and threats for the EU

- 3.1.1 The EESC welcomes the Commission's report, which provides a robust analysis and clear articulation of the different types of risks posed by these schemes for all EU citizens and the EU as a whole. In particular, it shows that CBI and RBI schemes, if not implemented appropriately,

³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0038+0+DOC+XML+V0//EN>.

⁴ http://www.europarl.europa.eu/doceo/document/CRE-8-2018-05-30-ITM-019_EN.html?redirect.

⁵ [http://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV\(2019\)0240.pdf](http://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV(2019)0240.pdf).

⁶ https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf.

may carry inherent corruption, money laundering, security and tax evasion risks, exposing both the individual Member States that operate such programmes and the entire EU to these threats.

3.1.2 The EESC considers that questions might arise about the compliance of some of these schemes with EU principles and objectives, including the principle of sincere cooperation.

3.2 **No distinction between CBI and RBI schemes**

3.2.1 The EESC agrees that no distinction should be made in the way risks posed by CBI and RBI schemes are addressed.

3.2.2 Although the consequences of being granted a passport or a visa differ significantly in terms of the rights they grant, both types of scheme bear the same level of security risk and should therefore be accompanied by mitigation measures of a similarly high standard. This is especially important in order to prevent displacement from citizenship to residency schemes by the riskiest candidates.

3.2.3 While RBI schemes may appear less risky because of their temporary nature, they also work as a gateway to permanent status. In some countries, the people granted investor's residence visas can apply for permanent residence or citizenship after only a few years.

3.3 **Money laundering and corruption risks**

3.3.1 The Commission's report highlights how risk-taking coupled with inadequate security and due diligence checks on applicants could open the EU's door to corrupt individuals.

3.3.2 The Commission's report underpins a number of potential loopholes and grey areas with respect to security and due diligence checks. In particular, it raises concerns related to the processing of citizenship applications by national authorities and the way this interacts with EU rules.

3.3.3 The EESC notes that in general, despite the high risk profile of applicants, enhanced due diligence checks are not systematically applied. Moreover, dependants or third-party sponsors providing funds to support the applicant are not systematically subject to strict due diligence checks and controls.

3.3.4 The EESC understands that one of the main selling points of these programmes is to offer a fast track to citizenship or residence, sometimes within a few months. It is usual to see this explicitly advertised. However, the profile and the origin of applicants will often make it difficult to carry out adequate due diligence and security checks and conduct reliable business intelligence reports within the time limit.

3.3.5 Lack of minimum standards indicate that not all Member States are equally selective, raising doubts about the strictness of checks and controls conducted on them.

3.3.6 Some Member States running RBI schemes do not seem to have a process in place for proactively addressing security concerns, which may only emerge after residence is granted.

3.3.7 The EESC further underlines the significant risk of circumvention of EU anti-money-laundering rules, given that the intermediaries and bodies through which the funds paid by applicants are channelled do not qualify as obliged entities under the Fourth and Fifth Anti-Money Laundering Directives. Moreover, not all Member States require the investment to be made through a national bank subject to EU anti-money-laundering obligations, and in cases where payments are made in cash directly to governmental organisations the transfers are not covered by EU anti-money-laundering legislation either.

3.4 **Governance and transparency gaps**

3.4.1 The EESC is worried that insufficient accountability and limited transparency in CBI and RBI schemes could also give rise to corruption. The lack of transparency and integrity also exposes the state itself and public officials to corruption risks. Structural weaknesses of CBI and RBI schemes may include: high discretionary power in decision-making, a lack of proper independent oversight, and risk of conflict of interests of private agents and intermediaries involved in both the application and due diligence process.

3.4.2 The EESC is particularly concerned that such structural weaknesses and opacity in a sector generating high cash flow and dealing with customers of high net worth risk may expose governments to undue influence, abuse of power, and bribery. In short, these schemes not only create a risk of corrupt individuals entering Member States, but also of authorities themselves becoming corrupted.

3.4.3 The EESC understands that in some jurisdictions public authorities undertake due diligence themselves, while in others they may hire specialist agencies to conduct the checks that will then be factored into the final decision. It further notes that in any case governments must maintain primary responsibility for accepting or rejecting applications, using due diligence findings to inform their decision. In cases where this key step in the application process is handed over to specialist agencies, the EESC warns against possible risks of conflict of interest and bribery and believes that it should not be allowed for such agencies to be contracted by the state to perform due diligence checks on applicants while at the same time providing services and advice to applicants.

3.4.4 The EESC would like to see more official figures available indicating the magnitude of the phenomenon (size of investments, number of applicants, beneficiaries, nationalities, amount and impact of the investment, etc.) and regrets that, despite increasing public interest, even basic information about applicants for CBI and RBI schemes and their investments is still shrouded in secrecy.

3.5 **The EU dimension**

3.5.1 The Commission report highlights the EU dimension of the problem. Not only is the EU used as a key selling point to attract investors, but a decision made by a Member State to grant a passport or a visa may also adversely affect other Member States and the EU as a whole since such a decision grants access to the whole Schengen area and internal market.

- 3.5.2 The EESC agrees that the reputation of EU citizenship, as well as the common body of rights and values, is at risk and reiterates the Parliament's position and the words of a former Commissioner⁷ that "EU citizenship should not be for sale".
- 3.5.3 Consequently, the conferral of citizenship and residency – its benefits, ethical implications and risks – affects all EU citizens. The EESC notes that despite this, EU citizens remain in the dark about how these schemes work, how their national governments may or may not be mitigating the inevitable risks of CBI and RBI schemes, and where the investments made under these schemes are ultimately going.
- 3.5.4 The EESC recognises that the lack of harmonised standards and practices at EU level may encourage a race to the bottom in terms of due diligence standards and transparency, and "passport-shopping" by risky individuals between jurisdictions. The Commission report highlights that this risk is further increased by the current lack of consultation and information exchange between Member States on CBI applicants for investor citizenship. In practice, this means that an application rejected in one Member State on security and money laundering grounds has a chance of succeeding in another Member State. The EESC therefore thinks it would be useful for Member States to introduce a requirement to submit a valid Schengen visa as part of the investor citizenship application.
- 3.5.5 The EESC considers that although the way in which CBI and RBI schemes operate varies from country to country, a case-by-case approach targeted at specific problems identified in individual countries will not suffice and a coordinated approach at EU level is needed to address the issue.

3.6 Tax evasion and other types of risk

- 3.6.1 As the European Parliament⁸ and the Organisation for Economic Co-operation and Development (OECD)⁹ have recently detailed, CBI and RBI schemes could potentially be misused for tax evasion purposes, as they allow investors to remain tax residents in their home jurisdiction while benefiting from the tax advantages of CBI and RBI schemes.
- 3.6.2 The schemes offering access to special tax regimes have been identified as particularly risky and likely to lead to tax evasion. In particular, they make it possible for individuals to circumvent reporting under the Common Reporting Standard (CRS). The OECD has included two EU Member States on its list of jurisdictions offering CBI/RBI schemes that potentially pose a high risk to the integrity of the CRS¹⁰.
- 3.6.3 The European Parliament study referred to in points 2.3 and 3.6.1 above highlights other types of risks posed by CBI and RBI schemes, such as macroeconomic risks due to the volatility of this kind of investment flow, socioeconomic risks resulting from price inflation on the property

⁷ https://europa.eu/rapid/press-release_SPEECH-14-18_en.htm.

⁸ [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627128/EPRS_STU\(2018\)627128_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627128/EPRS_STU(2018)627128_EN.pdf).

⁹ <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment>.

¹⁰ <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment>.

market, or political risks, including the risk of deteriorating trust in EU institutions and damaging the reputation of EU citizenship and thus potentially jeopardising EU citizens' mobility and freedom of movement in the future. It further highlights the risks of increasing discrimination between categories of migrants. It is therefore important that Member States clarify what risks they are prepared to take in light of the expected benefits and impact, and that they perform regular impact assessments to ensure that the benefits outweigh those risks.

4. Specific comments

4.1 Role of the private sector

4.1.1 When assessing the role of private companies in the governance of CBI and RBI the EESC recognises the existence of two distinct types of company. The first are companies contracted by the state to manage the programme, process applications, and screen applicants, and the second are companies that provide services to investors and help them apply for the programme, whether they are accredited or not.

4.1.2 While the EESC recognises that private companies contracted by the state can play a useful role in conducting due diligence on applicants, carrying out necessary background checks and compiling business intelligence reports, it warns against tasking these firms with risk assessment or decision-making. The EESC insists that this responsibility should lie with the relevant public authorities.

4.1.3 The EESC is very worried about the promotion of EU rights and EU citizenship as a product for sale. It is also extremely concerned about the existence of a conflict of interest when firms contracted to screen applicants are also carrying out related commercial activities or providing additional services to potential investors.

4.1.4 Regarding private agents and companies providing services to investors applying for CBI and RBI schemes, the EESC laments the fact that despite the risk profile of their desired clients the firms and individuals who work in the CBI/RBI industry are neither systematically subject to statutory regulation nor considered obliged entities under anti-money-laundering rules.

4.1.5 In addition, the EESC understands that not all Member States providing services to applicants require accreditation and/or licensing of intermediaries, i.e. the obligation to pass a "fit and proper" test and abide by a set of minimum accreditation criteria including confirmation that intermediaries are regulated professionals, disclosure of their beneficial ownership information and a declaration of interests. The EESC would therefore welcome the introduction of an obligatory code of conduct, supervision of regulated professionals by a competent Member State body, and provision of information regarding regulated professionals via a publicly accessible Registry of Service Providers.

4.2 The external dimension

4.2.1 The EESC is concerned about the risks posed to the EU by CBI and RBI schemes put in place by third countries with which the EU has visa-free agreements, such as the accession countries,

Eastern Partnership countries and Caribbean and Pacific countries. We support the Commission's recommendation to make the granting of visa-free status to third countries conditional on the highest possible standards of implementation of CBI and RBI schemes and to review existing visa-free regimes in light of such standards.

4.2.2 The EESC recommends that while working towards a phase-out of existing schemes in the EU, accession countries should not be allowed to run CBI or RBI schemes when they join, so that no new schemes are added to the ones currently in place.

Brussels, 15 October 2019

Christa Schweng

The president of the Section for Employment, Social Affairs and Citizenship

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N.B.: Appendix overleaf

APPENDIX to the OPINION
of the
European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected in the course of the debate (Rule 43 (2) of the Rules of Procedure):

Point 1.1

Amend as follows:

1.1 The EESC notes ~~echoes~~ the European Parliament's call in a recent report¹¹ to phase out all investor schemes, and urges the Member States to reflect on ~~follow~~ this recommendation on the basis of ~~or provide reasonable~~ arguments and evidence in compliance with EU law and the laws of each Member State, for not doing so whilst recognising the sovereignty of each Member State and the application of the EU principle of subsidiarity.

Reason

To be given orally.

Outcome of the vote:

In favour: 17

Against: 45

Abstentions: 5

¹¹ [http://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV\(2019\)0240.pdf](http://www.europarl.europa.eu/cmsdata/162244/P8_TA-PROV(2019)0240.pdf).