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Investment migration

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pieter OMTZIGT, Netherlands, Group of the European People's Party

A. Conclusions of the Committee

1. The Committee on Legal Affairs and Human Rights commends the Committee on Migration, Refugees and Displaced Persons and its Rapporteur, Aleksander Pocij (Poland, EPP/CD) for their important and timely report on a topical issue. It shares the rapporteur's legal approach, stressing the relevance of existing Council of Europe instruments and the need for common standards that must be properly enforced.

2. The committee also agrees with and wishes to further stress the warnings expressed by the Migration committee regarding threats to national security and increased corruption and money-laundering risks associated with so-called "Golden Passport" or "Golden Visa" schemes. In order to further strengthen the draft resolution and recommendation submitted by the Migration committee, the committee suggests some amendments to clarify and complete the text from a legal and human rights perspective, in line with the position of the European Parliament and the European Commission. The acquisition of nationality should continue to be based on the traditional grounds of birth (*ius sanguinis* or *ius soli*) or long-term legal residency. The grant of legal residency status, which over time may or may not evolve into citizenship, could be acceptable in order to allow a person to manage a legitimate business investment in the host country. But a mere financial investment or the acquisition of a residential property alone should not give access to the advantages associated with residency, let alone citizenship of a European country. These should not be up for sale.

3. The committee recalls that after several scandals concerning Malta² and Cyprus³ involving allegedly corrupt practices leading to the grant of citizenship to known criminals, the European Commission on 20 October 2020 launched infringement proceedings against the two countries.⁴ Cyprus announced that its investor citizenship programme would be suspended as of 1 November 2020.⁵ MEPs reiterated their call for the abolition of such schemes in a plenary debate on 22 October 2020.⁶ The committee considers that these recent developments, all of which occurred after the adoption of the Migration committee's report, should give rise to a number of amendments to the draft resolution and recommendation in order to ensure that the Council of Europe and the European Union continue to defend the same positions in the fight against corruption and money-laundering.

1. Reference to committee: [Doc. 14441](#), reference 4382 of 25 June 2018. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See [Doc. 15127](#). Opinion approved by the committee on 9 November 2020.

2. www.euractiv.com/section/justice-home-affairs/news/ex-maltese-pms-chief-of-staff-arrested-in-fraud-probe/.

3. www.theguardian.com/world/2020/oct/13/cyprus-scraps-golden-passport-scheme-after-politicians-caught-in-undercover-sting.

4. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925.

5. www.theguardian.com/world/2020/oct/13/cyprus-scraps-golden-passport-scheme-after-politicians-caught-in-undercover-sting.

6. www.europarl.europa.eu/news/en/agenda/briefing/2020-10-19/16/member-states-selling-eu-passports-debate-in-plenary.



B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 1, replace the words “must respect the legal standards set by the Council of Europe” by the following words:

“must respect relevant international legal standards designed to prevent corruption, money-laundering, terrorism financing, and discrimination, including those developed by the Council of Europe”

Reasons: relevant international standards have also been developed by other international organisations than the Council of Europe, including European Union (EU) bodies (as indicated in the Migration committee’s report) and the OECD,⁷ including international anti-money laundering standards established by its Financial Action Task Force (FATF).

Amendment B (to the draft resolution)

At the end of paragraph 1, add the following sentences:

“The acquisition of nationality should continue to be based on the traditional grounds of birth (ius sanguinis or ius soli) or long-term legal residence. Legal residence status, which over time may evolve into citizenship, could however continue to be granted in order to allow a person to manage a legitimate business investment in the country concerned.”

Reasons: the existing text, whilst explicitly welcoming the European Parliament’s resolution of 26 March 2019, creates the impression that immigration schemes based on pecuniary contributions (“Golden Passports” or “Golden Visas” schemes) may generally be acceptable. However, the European Parliament has called on member States to abandon the practice altogether, on grounds of principle. Only for the time still needed to close down these schemes, the European Parliament recommends some damage limitation measures, to prevent and possibly redress the most obvious abuses, such as those that came to light in the recent scandals (see above paragraph 3 of the Conclusions), those publicised in investigative reports by different anti-corruption bodies (see below the reasons for Amendment C), and by the Assembly itself in its report on “Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges”⁸. As the Assembly’s Rapporteur, I witnessed first-hand how the Maltese “investment migration” scheme (featuring the outsourcing of the marketing of passports to a well-connected private business enterprise) contributed to the general climate of corruption and the failure of the rule of law in this country⁹.

Amendment C (to the draft resolution)

After paragraph 1, insert the following paragraph:

“The Assembly considers that citizenship status should not be for sale. “Golden Passport” schemes have proven to be dangerous gateways for corruption, organised crime, money-laundering, terrorism financing, tax evasion and foreign interference in political and social processes. Sale of citizenship also violates the principle of equality before the law and undermines social cohesion by weakening the traditional link between a person’s citizenship and the rights and duties attached to it. Finally, such schemes have pushed up housing costs for local populations who find themselves priced out of the market by rich, often largely absent newcomers.”

Reasons: Reports by anti-corruption bodies and investigative journalists such as late Daphne Caruana Galizia in Malta have shown beyond doubt that “Golden Passport” or “Golden Visa” schemes are gateways for the entry of corrupt practices and provide a safe haven for suspect individuals from foreign countries. The Organized Crime and Corruption Reporting Project (OCCRP) has documented a number of highly unpleasant cases, also in European countries, including Assad family members, Russian billionaires closely connected to the Kremlin, Venezuelan generals and other drug lords, and more generally ultra-rich members of the ruling families of ultra-poor developing countries.¹⁰ Mr Pocij’s explanatory report for the Migration committee provides itself some excellent examples.¹¹ Providing safe havens for the fortunes amassed by such individuals subverts the efforts made by other European States to support the social and economic

7. See “OECD clamps down on CRS avoidance through residence and citizenship by investment schemes”.

8. Doc. 14906 dated 8 June 2019.

9. Resolution 2293 (2019), paragraph 3.5.

10. See “Gold for Visas”: www.occrp.org/en/goldforvisas/.

development of poor countries and to fight the underlying causes of the recent spike in illegal migration. “Investment migration” of kleptocrats from developing countries is clearly one of the root causes of “poverty migration” of their victims – ordinary people robbed of any future in their own countries. Interestingly, some of the countries that rake in the bulk of the short-term gains from “investment migrants” are also among the most vocal in refusing to take in a fair share of the “poverty migrants”.

As depicted in some detail in the recent Russia report of the United Kingdom Parliament’s Intelligence and Security Committee¹², the influx of rich foreign individuals under “investment migration” schemes also paves the way for foreign interference with political and social processes in the host country. Money buys influence, and a lot of money buys a lot of influence – and mostly not for the public good. If we want to preserve the integrity of the political and social processes in our countries and their sovereignty, we must keep suspect foreign funds out.

In addition, the principle of equality before the law is violated when rich individuals are able to circumvent the normal rules on citizenship and residency against payment of a large sum of money. Such unequal treatment is particularly egregious in the current times of pandemic. Rich individuals from poor countries, who are accustomed to obtaining medical treatment abroad are now prevented from doing so because of world-wide travel restrictions. They are now offered solutions for themselves and their families by advisory firms peddling the “investment migration” schemes of countries with more reliable health systems.¹³ The European Commission has repeatedly criticised Bulgaria, Cyprus, and Malta for their citizenship-by-investment scheme. During a video-hearing of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament, Commissioner Didier Reynders reportedly pointed out that “Together, member States create the conditions to enjoy EU citizenship. The Commission continues to monitor the developments in the three-member states very closely, and it takes this occasion to reiterate that this crisis [the Covid-19 pandemic] and its impact must not be used as a reason to operate risky EU citizenship schemes”.

For these reasons, I have recently tabled a set of parliamentary questions in the Dutch Parliament in which I asked my Government about the “investment migration” scheme in place in the Netherlands and in particular in Curaçao (which allows foreign investors to request Dutch citizenship after 5 years) and whether it fulfils the conditions set by the European Commission.¹⁴

Amendment D (to the draft resolution)

After paragraph 1, insert the following paragraph:

“The Assembly points out that granting citizenship or residency status to persons endangering public order and safety in one European Union member State (in particular, one belonging to the Schengen area of free movement without border checks) also places the interests of all other European States at risk. These have a common interest in the proper functioning of legal instruments designed to prevent corruption, money-laundering and terrorist financing. It therefore calls on the competent European Union bodies to take appropriate measures in order to discourage individual States from continuing to place short-term financial gain for themselves above the interests of all other European States and to undo harm already done, and in particular welcomes the infringement proceedings launched by the European Commission for this purpose.”

Reasons: It is legally correct, as the rapporteur explains in his explanatory memorandum, that the grant or refusal of citizenship or residence status falls within the competence of each State. But States are also legally bound to respect international engagements they have entered. These include the duty of EU member States to give due consideration to the legitimate interests of other EU member States and of the EU as a whole, which are protected by EU legislation in relevant areas. Commissioner Didier Reynders recently¹⁵ recalled that EU citizenship is a collection of shared rights that all member States provide in solidarity. This is the very

11. See AS/Mig(2020)02 dated 28 February 2020, paragraphs 30-32 with references to ultra-rich individuals from Venezuela, Angola, Kosovo, and Chechnya.

12. [Russia Report of the Intelligence and Security Committee](#), dated 21 July 2020.

13. See [“EU Warns Member States: Don’t Exploit the Pandemic to Run Golden Visa Schemes”](#), 30 April 2020 and [“EU repeals citizenship-by-investment schemes”](#), 20 May 2020.

14. Tweede Kamer der Staten-Generaal, vergaderjaar 2020-2021, Vragen, 2020Z19470.

15. See note 7 above, and Vlagyiszlav Makszimov, [“Golden passports still widespread in Europe, study finds”](#), 30 March 2020, citing Commissioner Reynders for considering infringement proceedings against States persisting in the use of “investment migration” schemes.

reason why the citizenship of EU member States is particularly valuable on the “investment migration” market. The infringement proceedings launched by the European Commission in this respect therefore make good sense (see above, Conclusions, paragraph 3).

In addition, States parties to relevant Council of Europe conventions mentioned in the report of the Migration committee must respect the standards laid down in these instruments. The protective purpose of the relevant European instruments includes the interest of all participating States in protecting themselves against corruption, organised crime, money-laundering and terrorist financing as well as undue influence. Abusively granted citizenship of an EU member State therefore also concerns all other European States, not only the member States of the EU.

Amendment E (to the draft resolution)

In paragraph 6, replace the second sentence by the following sentence:

“Member States should ensure that immigration is not based on corrupt practices by domestic administrations and that any conflicts of interests are avoided in the process of recruiting and advising applicants, vetting them and deciding on the grant of residence or citizenship.”

Reasons: The existing text seems to imply that immigration schemes based on pecuniary contributions (“Golden Passport”) are generally acceptable, provided they are not based on corrupt practices by domestic administrations (see above, Amendment B). As regards avoiding conflicts of interests, the practice of outsourcing the “marketing” of passports to private enterprises, as in Malta, was shown to be fertile ground for corruption and abuse¹⁶ and should therefore be strongly discouraged.

Amendment F (to the draft resolution)

Delete paragraph 8.

Reasons: Access to secondary residences during health emergencies is unrelated to the topic of “investment migration”. During the ongoing Covid-19 pandemic, governments have even prevented their own nationals from using secondary residences in their own countries in order to protect local health infrastructures in rural holiday regions from being overwhelmed by city dwellers intent on riding out the lockdown in more comfortable conditions. The extent to which such prohibitions are in conformity with Article 8 of the European Convention on Human Rights (ETS No. 5) is debatable, but this debate belongs in the discussion of the restrictive measures motivated by the Covid-19 pandemic in general, such as those adopted in the reports discussed during the Enlarged Standing Committee meeting in October 2020.¹⁷

Amendment G (to the draft resolution)

Delete paragraph 9.

Reasons: “fantasy passports” or unrecognised nationalities are not related to the specific issue of investment migration.

Amendment H (to the draft resolution)

In paragraph 10, replace the words “to pay greater attention to unlawful investment migration and take concerted action against it.” by the following words:

“which still have ‘investment migration’ schemes to phase them out as soon as possible and in the meantime, to take all necessary precautions in order to prevent the entry of persons posing a threat to public order and to ensure the departure of any such persons who have already entered the country under such schemes.”

Reasons: see those for Amendments B and C.

16. [Resolution 2293 \(2019\)](#), op. cit.

17. See in particular the report by Vladimir Vardanyan (Armenia, EPP/CD) on “The impact of the Covid-19 epidemic on human rights and the rule of law”, [Doc. 15139](#).

Amendment I (to the draft resolution)

Before paragraph 10.1, insert the following paragraph:

“subject applicants to rigorous due diligence checks, avoiding conflicts of interests and opportunities for bribery; ensure complete transparency of the investment migration process, including by publishing the policy and procedure applied, as well as regular, detailed, nominative information on successful applications; and institute effective, independent oversight mechanisms, and robust whistle-blowing mechanisms to report concerns.”

Amendment J (to the draft resolution)

Delete paragraph 11.

Reasons: the purpose of this resolution is to reduce the granting of residence or citizenship by some States to individuals whose presence in the European Union may pose a risk to public order and safety. It is not clear why the accession of the EU as a whole to some of the Conventions mentioned earlier in the resolution would further this purpose.

Amendment K (to the draft recommendation)

In paragraph 1, after the words “the Parliamentary Assembly”, insert the following words:

“invites the Committee of Ministers to engage in co-operation with the European Commission with a view to working with member States concerned in order to phase out the practice of granting residency status or even citizenship in return for the payment or investment of a sum of money; and in the meantime, to take all necessary precautions in order to prevent the entry of persons posing a threat to public order and to ensure the departure of any such persons who have already entered a member State under such schemes; the Assembly further”.

Reasons: this amendment is intended to bring the draft recommendation in line with the spirit of the draft resolution, as amended (see in particular Amendment H).

Amendment L (to the draft recommendation)

Delete paragraph 2.7.

Reasons: the 1957 European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25) is not related to the grant of (long term) residency or citizenship in return for the payment or investment of a sum of money, it is chiefly intended to facilitate visa-free travel for short-term visits.