"Golden Passports and Silver Linings: A Comparative Analysis of Citizenship by Investment Programmes within the EU Legal Framework"

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Abstract

Citizenship is widely accepted as a fundamental human right across the international community. The fact that nations sometimes strip individuals of their otherwise available citizenship rights has generated extensive academic and judicial attention in recent years. Notable examples include countries revoking citizenship for undesirable persons, such as terrorists or other serious criminal actors. This dissertation considers the equally provocative but less understood issues surrounding the ways that states offer desirable individuals 'citizenship by investment' (CBI) and associated 'golden passport' rights. Since 2013, the Republic of Malta has emulated the approaches taken by other states (often developing world nations) to offer citizenship based on foreign individuals committing to making a significant personal investment in Malta. Austria is the only other European Union (EU) member that sanctions this pathway to citizenship (under much more restrictive terms than its Maltese counterpart). The current *European Commission (EC) v Republic of Malta* European Court of Justice (ECJ) proceedings have prompted renewed 'golden passport' attention. The EC argues that Malta's citizenship program violates European treaty provisions because Maltese law permits the naturalisation of foreign individuals through financial investment without these people having a establish a genuine link to the country. Malta asserts that its programme is consistent with international law, namely the sovereign right of all states to control their borders and citizenship entitlements. Chapter 1 outlines how CBI programmes are typically structured, with their core principles and central objectives identified and explained. Chapter 2 provides an in-depth review of the current Maltese programme and its specific features. Comparisons are made here between the respective CBI regimes of Malta, Austria, and Türkiye (an adjacent non-EU state). Chapter 3 focuses on the proceedings and legality of *EC v Malta*. This analysis provides the basis for the Chapter 4 prediction: how Malta will successfully defend its CBI programme.

Keywords (5)

Citizenship / 'Golden Passports' / Naturalisation / Investment / Sovereignty

Table of Contents

Tables of Statutes, Judgements and Treaties

Legislation

Bulgarian Citizenship Act, SG N. 136, 1998

Consolidated version of the Treaty on the Functioning of the European Union 2009

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (Money laundering)

Maltese Citizenship Act as amended by the Maltese Citizenship (Amendment No. 2) Act, 2020

Treaty on European Union 2009

Treaty on European Union (TEU) / Maastricht Treaty 1992

Vienna Convention on the law of treaties 1969 (UN)

Cases

Case C-135/08 Janko Rottmann v Freistaat Bayern / AG Opinion (2009) Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CJ0135> accessed 25 June 2024

Commission v Sweden ("PFOS"), C-246/07, EU:C:2010:203 (2011, ECJ)

European Commission v Republic of Malta (Case C-181/23) (ECJ)

Flegenheimer (U.S. v. Italy), 14 UNRIAA 327, 375, 376 (1958) (Arbitration)

Handyside v United Kingdom (5493/72) (1976, ECtHR)

JY v Wiener Landesregierung, 18 January 2022, C-118/20 (ECJ)

Moustaquim v. Belgium, (Appl. No. 12313/86) (1991) (ECtHR)

Nottebohm Case (Liechtenstein v Guatemala) (Merits) [1955] ICJ Rep 4, 23 (ICJ)

Tunis and Morocco Nationality Decrees Case (Advisory Opinion) (1923), p.23-24 (Permanent Court of International Justice)

Introduction

A Brief Overview of the Republic of Malta

The Republic of Malta gained admission to the European Union (EU) in 2004. Less than 550,000 people reside on this tiny island (one of the smallest geographical countries in the world). Recent

EU studies confirm that, notwithstanding its size, Malta's economy has performed reasonably well since 2020, with overall economic growth higher (measured by gross domestic product), and with inflation rates generally lower than the EU average.[1] Malta is recognised as a place with strong political stability and adherence to democratic values are accepted national realities.[2] Reading the various third-party reports cited in this introduction, Malta has every appearance of being an EU 'good citizen' – an unlikely challenger to the accepted order provided by the EU treaty system (TFEU).[3]

A closer examination of EU–Maltese relations in recent years reveals several increasingly serious strains; these issues are directly linked to immigration, citizenship, and related sovereign state controls asserted over national borders.[4] The first pressure point concerns irregular migration, an unsurprising development given Malta's island nature and proximity to northern Africa and its migrant populations.[5] Malta has long argued that EU member states where irregular migrants make their first contact with the EU should not be forced to bear the costs associated with honouring EU immigration rules (notably those endorsed through the European Commission (EC) framework).[6]

To what extent EU–Maltese relations will be negatively impacted by irregular migration is beyond the present dissertation scope, but these migration disputes provide a useful backdrop for the suggested second EU–Maltese strain – the current Maltese citizenship law ('the 2020 Act'),[7] and its associated 'golden passport' programme that will be given a more detailed analysis in the following chapters.[8]

The controversial 'golden passport'

This evocative term is used across the international scholarship community to describe national immigration laws, whereby, foreign nationals can secure naturalisation and a passport (national citizenship) by making specified investments in the relevant member state.[9] The EC defines these

[1] European Commission 'Country report: Malta' (2024). Available at: <https://economy-finance.ec.europa.eu/document/download/50f0b280-0035-4f28-8c35-f2d6db911cca_en?filename=ip242_en.pdf> accessed 24 June 2024, 3-5.
[2] World Data 'Malta' (2024). Available at: < https://www.worlddata.info/europe/malta/index.php#:~:tex> accessed 24 June 2024.
[3] Consolidated version of the Treaty on the Functioning of the European Union 2009 (TFEU), Article 20; see also Treaty on European Union (TEU), Article 4.
[4] Daniel Mainwaring, 'On the rocks: Malta-EU relations in times of crisis' (2021) *European Council of Foreign Relations.* Available at: <https://ecfr.eu/article/on-the-rocks-malta-eu-relations-in-times-of-crisis/> accessed 24 June 2024.
[5] Ibid, see also Roderick Pace, 'Malta: A Janus Faced Migration and Integration Policy' In: Joensen, T., Taylor, I. (eds) *Small States and the European Migrant Crisis*. Palgrave Macmillan, Cham. Available at: <https://doi.org/10.1007/978-3-030-66203-5_7> accessed 24 June 2024, 133, 163.
[6] European Commission 'Migration and Home Affairs' (March 2024). Available at: <https://home-affairs.ec.europa.eu/.../irregular-migration-and-return_en> accessed 24 June 2024.
[7] Maltese Citizenship Act as amended by the Maltese Citizenship (Amendment No. 2) Act, 2020, cited as the '2020 Act', see full text at Appendix I.
[8] European Commission, 'Golden passport' schemes: Commission proceeds with infringement case against Malta' (2022). Available at: <https://malta.representation.ec.europa.eu/news/golden-passport-sc…> accessed 24 June 2024.
[9] Of numerous examples, see Jose Villarino, 'If Mr. Nottebohm Had a Golden Passport: A Study of the Obligations for Third Countries under International Law Regarding Citizenships-For-Sale' (2019) 9(1) *Cambridge International Law Journal*, 76–95. Available at: < http://dx.doi.org/10.2139/ssrn.4212421> accessed 25 June 2024.

schemes (referred to as citizenship by investment (CBI) programmes), as any EU member state "… legislative, policy or administrative initiative aiming systematically to attract investment by allowing investors to acquire citizenship of the Member State concerned…"[10] It is noted that CBI programmes are distinct from 'residence by investment' programmes. In these circumstances, the foreign national's investment secures residency, but citizenship is not automatic. Another distinction is that a residency visa does not allow the holder any rights to reside in any other member state.[11]

As a general international law proposition, citizenship is a right that is acquired in one of the following ways: (1) birth (including inheritable citizenship rights); (2) continuous residency based on permission to remain in the relevant state; or (3), where the relevant national laws establish citizenship pathways, such as those granting citizenship to individuals based on their parent's nationality, or spousal status.[12]

In this respect, obtaining a golden passport is a fourth pathway currently permitted by approximately 15 nations worldwide.[13] A few of the countries that offer CBI programmes are five countries in the Caribbean, along with other European countries such as Austria and Malta. Depending upon one's point of view (for present purposes, the EC and Malta viewpoints are treated as being diametrically opposed in legal positions), this pathway invites the following characterisations. Its opponents argue that 'purchasing' citizenship is fundamentally immoral because it allows persons with financial means to acquire citizenship rights (including associated mobility, taxation, inheritable rights, and related benefits) without having any meaningful connection to the issuing jurisdiction.[14] If this characterisation is correct, CBI regimes promote two-tiered citizenship and encourage wealthy individuals to dispassionately 'shop for a new home country.'[15]

Golden passport proponents offer the following rebuttal: golden passport regimes are aligned with well-entrenched international law rights of a state to assert sovereign control over their borders and consequently, granting citizenship is a sovereignty subset.[16] These are the battlelines drawn between the EC and Malta in the current ECJ proceedings further scrutinised below.[17]

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[10] 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' COM(2019) 12 final, p.3. Available at: <https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf> accessed 25 June 2024.
[11] Ibid.
[12] See e.g., UK Government 'Check if you can become a British citizen' (2024). Available at: <https://www.gov.uk/british-citizenship> accessed 23 June 2024.
[13] Villarino, 77, 78.
[14] Ibid.
[15] Ibid.
[16] Dimitry Kochenov and Kristin Surak, 'Learning from Investment Migration' (2022) *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*. Available at: <https://ssrn.com/abstract=4033542> accessed 24 June 2024, 2-4.
[17] *European Commission v Republic of Malta* (Case C-181/23) (ECJ' cited as *EC v Malta*.

Dissertation outline

The following four chapters are intended to flow outwards from this introduction. Chapter 1 provides a CBI pathway overview. This chapter also includes a brief critical discussion concerning why this pathway has proven controversial across the international community[18] – a lead into Chapter 2 on Malta's CBI programme. The economic implications stemming from this CBI regime are considered in Chapter 2 and include host country objectives, centred on increased investment, economic growth, and job creation.

The current Maltese laws are also compared with the relevant TFEU Articles 18–23 and various TEU articles (notably Articles 2, 3, 7, and 9–12 (collectively described as the EU treaty frameworks' freedom of movement, non-discrimination, and citizenship rights principles).[19] These EU enactments directly contribute to how the *European Commission v Republic of Malta (EC v Malta)* (C-181/23) will be analysed in Chapter 3. A core EC concern that is often highlighted (one regularly echoed in the wider academic commentaries) is whether CBI economic benefits are worth the risk that inherent EU citizenship values will be undermined. In other words, should Malta's citizenship commodification have a legal status in the EU?[20] This dissertation serves as a legal analysis and will offer a variety of academic perspectives and present case law to support these claims. But as this is an ongoing legal matter, it is impossible to offer a concrete conclusion as to how the case will be decided.

The secondary legal implications are included in the Chapter 3 *EC v Malta* review. These are the ways that CBI programmes potentially heighten national security and money laundering risks, with attention paid to individual privacy rights and state sovereignty. The predictions made in Chapter 4 concerning Malta's CBI programme have an inherently speculative quality – the *EC v Malta* decision is not expected until 2025.[21] The legal winds appear to favour Malta, and it seems likely that Malta's leadership will continue to push this citizenship envelope outwards beyond the strict TFEU–TEU definitional confines. This prediction implies that sovereign State decision-making autonomy may rule the day.[22]

Research methodologies

As one would logically assume from the dissertation topic and its parameters as introduced here, both legal doctrine (especially the legal principles governing citizenship rights) and comparative

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[18] Kochenov and Surak, 2, 4.
[19] TFEU Article 20; TEU Article 4.
[20] Whizy Kim, 'The ultimate score for rich people? "Golden" passports' (2023) *Vox.*
Available at: <https://www.vox.com/money/23762537/golden-passports-wealthy-expl> accessed 25 June 2024.
[21] Kris Scicluna, 'EU vs Malta Citizenship by Investment Programme: Court Hearing' (June 2024). Available at: <https://aelegal.com.mt/eu-vs-malta-citizenship-by-investment-progr…> accessed 25 June 2024.
[22] A point taken from reading George Pavlidis, 'A case of insufficient safeguards or state-enabled money laundering? 'Golden Passport' and 'Golden Visa' investment schemes in Europe' (2022) 22(2) *Journal of Investment Compliance* 170, 179.
Available at: < https://www.researchgate.net/publication/353899758> accessed 25 June 2024.

jurisdiction research play important roles in this dissertation.[23] International law concepts, as well as TFEU Article 20 and TEU Article 4 have individually and collectively generated significant case law and supporting scholarship. It would prove impossible to properly advance this dissertation without delving deeply into these doctrine-driven sources.

Comparative jurisdiction research methodologies as adopted here include reviewing how other EU member states deal with CBI programmes and related residency programmes. These methodological approaches also permit careful consideration of other CBI programmes and their potential impacts on fundamental EU values (including equality, human dignity, and the rule of law). Malta, Austria, and Türkiye CBI regimes are excellent comparators for two reasons. Austria's CBI laws have never been challenged by the EC; they are much more restrictive than their Maltese counterpart, thus, perhaps posing less of a perceived threat to TFEU Article 20–TEU Article 4 than Maltese law.[24]

Secondly, Türkiye has sought EU membership since 1987 under the then-European Economic Commission. Additionally, it has long held 'High Contracting Party' status with the European Convention on Human Rights 1950 (ECHR).[25] Examining its golden passport programme provides a comparison of presumptively similar human rights values, both endorsed by Malta and Austria. This analysis provides a basis for what is at stake when CBI pros and cons are comparatively assessed. Core CBI concepts will additionally be considered with these methodologies in this dissertation.

Chapter 1: 'Citizenship by Investment' (CBI) – Core Principles, Objectives, and Rationales

Overview

In a conflicted world where geopolitical divisions and persistent tensions seemingly define contemporary international community relationships, national strategies have acquired even greater complexity that were devised to build greater economic development. When the EU's European Common Market predecessor was established in the early 1950s, its original members were committed to the notion that a harmonised approach to trade could provide the foundation for increased European prosperity.[26] The European Community evolution and the modern-day

[23] See: (i) John Creswell and David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th edn, Sage, 2018), 10, 21-25, 40, 50; (ii) Tom Tyler 'Methodology in legal research' (2017) 13 *Utrecht Law Review* 130, 133-135.
[24] TFEU Article 20; TEU Article 4.
[25] Council of Europe 'European Convention on Human Rights' (2024). Available at: <https://www.coe.int/en/web/human-rights-convention> accessed 25 June 2024.
[26] Laurent Pech, 'The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox' (March 2020) *RECONNECT*. Available at: <http://dx.doi.org/10.2139/ssrn.3608661> accessed 25 June 2024, 2-3.

EU treaty system (TFEU and TEU) have acquired a breadth and depth that might have been unimaginable 75 years ago.[27]

The EU is now an economic, social, and political construct with remarkable complexity. Three treaty features merit specific attention in this CBI–golden passport overview: (i) the notion that citizenship concepts and all related rights must be defined, understood, and applied consistently across the entire bloc; (ii) the economic policies of EU member states must be significantly, if not absolutely harmonised; and (iii), EU human rights enforcement, as anchored by the ECHR and the EU Charter of Fundamental Rights 2000 (EUCFR), must have universal application.[28] These features are subject to defined exceptions and the well-known 'margin of appreciation' doctrine.[29]

These three EU treaty system features provide preliminary support for the following proposition, one that informs this entire project: the topic of how CBI programmes are closely defined and with generally limited exceptions. Given this approach, a reasonable EU legal observer would assume how Malta or any other EU member state defines citizenship, and all associated individual rights or freedoms, would be treated the same as those sanctioned by the domestic laws enacted by the 26 other member states.[30] The key TFEU, TEU, ECHR, and EUCFR provisions that provide the foundation for all EU citizenship laws are examined below.

TFEU Article 20 and TEU Articles 2, 3, 7, and 9–12

It is useful to consider these two provisions jointly, given that this approach (discussed in greater detail below) has been adopted in the *EC v Malta* proceedings by both parties and the European Court of Justice (ECJ).[31] The combined effects of TFEU Article 20 and TEU Article 9 are readily stated as: (i) every person holding a member state nationality is an EU citizen; (ii) member state domestic laws define what constitutes nationality; (iii) EU citizenship "is complementary to, but does not replace, national citizenship…".[32] At its heart, all citizenship concepts recognised under international law contribute to understanding the relationships that exist between the EU and its citizens, ones defined by "… rights, duties and political participation."[33] As the EU's executive

[27] Of numerous examples, see Thomas Streinz, 'The Evolution of European Data Law' , in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (3rd edn OUP, 2021), 902-936.
[28] European Commission, 'EU Charter of Fundamental Rights 2000' (2024). Available at: <https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en> accessed 25 June 2024.
[29] Andrew Legg, 'The Margin of Appreciation in International Human Rights Law: Deference and Proportionality,' Oxford Monographs in International Law (Oxford, 2012; online edn, Oxford Academic, 20 Sept. 2012). Available at: <https://doi.org/10.1093/acprof:oso/9780199650453.001.0001> Accessed 26 June 2024, citing *Handyside v United Kingdom* (5493/72) (1976, ECtHR).
[30] Mariolina Eliantonio and Annalisa Volpato, 'The European System of Harmonised Standards' *Legal Opinion for ECOS* (2022). Available at: <http://dx.doi.org/10.2139/ssrn.4055292> accessed 24 June 2024, 3-4.
[31] Court of Justice (ECJ) 'Documents' (2024). Available at: <https://curia.europa.eu/juris/document/document_print.jsf?docid=273…> accessed 25 June 2024.
[32] See: (i) TFEU Article 20; (ii) TEU Article 9; (iii) European Commission, 'Citizenship Fact Sheet' (2024). Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens> accessed 24 June 2024.
[33] Ibid.

arm, the EC has consistently sought to seek a workable balance between two potentially competing objectives: EU citizenship rights that are recognised in all member states versus the traditional sovereignty that member states use to define fundamental rights are the fulfilment of duties owed to the State, and the process of democratic participation.[34]

The 2008 Advocate General ('AG') Poiares Maduro rendered an opinion in *Rottmann v Freistaat Bayern* that provides excellent guidance regarding how EU citizenship law and its member states' counterparts are properly differentiated.[35] There are two opinion passages that have particular relevance to Malta's CBI programme and the *EC v Malta* proceedings. The first is captured in the following AG philosophical summary: EU citizenship principles are rooted in EU member states "… mutual commitment to open their respective bodies politic to other European citizens and to construct a new form of civic and political allegiance on a European scale…"[36] A seamless EU treaty system that provides the same rights and freedoms to all EU citizens depends entirely upon all member states treating citizenship in similar ways.[37]

AG Poiares Maduro also observed that what might appear to be contradictory EU member state citizenship concepts are resolved on a closer, logic-based analysis. AG Poiares Maduro accepted that EU citizenship is dependent upon individuals possessing a member state nationality.[38] However, EU citizenship concepts now anchor "… a new political area from which rights and duties emerge," ones that are defined and regulated by EU law.[39] For these reasons, member state nationality is an EU citizenship precondition, but at the same time, EU citizenship rights and obligations "cannot be limited in an unjustified manner" by member state domestic laws.[40]

As a result, the opinion rendered by AG Poiares Maduro unintentionally anticipated the EC position later advanced in *EC v Malta*. AG Poiares Maduro asserted that true "EU ideals" that stress economic, political, and social cohesion cannot be achieved until EU citizenship concepts are commonly and uniformly applied across all member states.[41]

It is also noted that the *Rottmann* case involved entirely different citizenship rights considerations than those at stake in *EC v Malta*. The Austrian applicant had secured German citizenship through fraud, and consequently, had his German citizenship stripped.[42] This action by the German government left Rottmann stateless, as the result of losing both of his citizenships. The ECJ ruling confirms that the court has "definitive competence … to exercise judicial review of any EU member states' decisions that have any direct impact on nationality, on

[34] Ibid.
[35] Case C-135/08 *Janko Rottmann v Freistaat Bayern / AG Opinion* (2009). Available at: < https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CJ0135> accessed 25 June 2024.
[36] Ibid, [23].
[37] European Commission, 'Citizenship Fact Sheet' (2024).
[38] *Rottmann*, [23].
[39] Ibid.
[40] Ibid.
[41] See also Dimitry Kochenov, 'Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of 2 March 2010 (Grand Chamber)' (2010) 47(6) *Common Market Law Review*, 1831, 1846. Available at: <https://ssrn.com/abstract=1702474> accessed 25 June 2024.
[42] *Rottmann*, [4] – [11].

the basis of the now … entirely conventional supremacy of EU citizenship and rights."[43] If this commentary is taken to its own logical conclusion, one must accept that if Malta's CBI regime conflicts with or otherwise operates inconsistently regarding EU citizenship law, the ECJ could declare the CBI programme unlawful. This point and its intriguing implications are given fuller examination in Chapters 2 and 3.

TFEU Article 20 citizenship rights – key points

The rights afforded under TFEU Article 20 (as supplemented by other EU treaty system elements) are enumerated in ways that directly reinforce the AG opinion philosophies highlighted above. All EU citizens have rights that include: (i) freedom of movement and residence for themselves and their family members anywhere within the Union;[44] (ii) voting and political candidacy rights; (iii) diplomatic (consulate) protection from any EU member state when their home state does not have a consular presence in a non-EU state; (iv) procedural rights regarding claims involving EU institutions;[45] and (v) European Parliament, Council, and Commission rights of access to documents.[46] There is no doubt that when the treaty provisions are collectively assessed, EU citizenship rights appear comprehensive and cohesive. The corresponding European human rights frameworks will now be reviewed, along with the favourable TFEU citizenship rights in place.[47]

TEU Articles 3 and 4

Article 3(3) provides that the EU will establish an internal market, pursue European-wide sustainable economic development, strive for balanced economic growth and consumer price stability, promote a competitive social market economy wherever possible (with dual full employment and social progress objectives) while maintaining high-level environmental protection and improvement.[48] One might convincingly argue that Article 3(3) might be the single most sweepingly ambitious legal provision imaginable; it appears this legislative language commits the EU membership to seeking a modern-day utopia.[49]

Article 4(3) provides that all EU member states owe a duty of loyalty to the Union and its institutions. This duty has been variously framed as including "full mutual respect" and working

[43] Paraphrasing Kochenov, 1841.
[44] TFEU Articles 20, 21.
[45] Ibid, and Articles 227, 228.
[46] Ibid, Article 15(3).
[47] See Oddný Arnardóttir and Dora Guðmundsdóttir, 'Speaking the Same Language? Comparing Judicial Restraint at the ECtHR and the ECJ' (2016) Shifting Centres of Gravity in Human Rights Protection, Rethinking relations between the ECHR, EU, and national legal orders, 2016. Available at: <https://ssrn.com/abstract=3083973> accessed 25 June 2024.
[48] TEU Article 3(3).
[49] Ibid, and see Timothy Roes, 'Limits to Loyalty: The Relevance of Article 4(3) TEU' (2015). Available at: <https://www.academia.edu/29731377/Limits_to_Loyalty_the_Relevance_of_Article_4_3_TEU_Cahiers_de_droit_europ%C3%A9en_2016_1_253_283> accessed 25 June 2024, citing *Commission v Sweden* ("PFOS"), C-246/07, EU:C:2010:203 (2011, ECJ).

together in “sincere cooperation” towards the overarching EU objectives of “economic, social and territorial cohesion, and solidarity among Member States.”[50] One can appreciate how a CBI programme designed to attract more investment to a member state might undermine these EU objectives. If any other EU member states resist the recommendations of the EC, this could prove to be another contentious *EC v Malta* issue that will be further explored below.[51]

When its entire text is collectively appraised, TEU Article 4(3) can be understood as imposing a dual obligation on all EU member states. They each assume a positive obligation to take all reasonable steps that will facilitate achieving the previously mentioned Union objectives of TEU Article 3(3). Similarly, member states must discharge a negative obligation and refrain from any domestic lawmaking that might jeopardise attaining these objectives.[52]

ECHR and EUCFR citizenship rights' protections

It is remembered that while the Council of Europe is the legal institution that has ultimate responsibility for ECHR membership, the EU mandates its member states to adopt the Convention and implement its terms into all domestic human rights frameworks.[53] Similarly, other EU treaty provisions (notably TEU Article 6) made the EUCFR a Union-wide rights obligation.[54] TEU Article 6(3) endorses the doctrine of fundamental rights as a general EU law principle, whereby “Fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.”[55] As a general proposition, citizenship rights are synonymous with the definition of a ‘fundamental right’.[56]

The European Court of Human Rights (ECtHR) case law has consistently reinforced this position. Since its earlier groundbreaking cases such as *Moustaquim*, the ECtHR has endorsed the notion that ECHR contracting states enjoy “a matter of well-established international law and subject to their treaty obligations [the right] to control the entry, residence and expulsion of aliens”.[57] In the simplest restatement, each EU member state can control who becomes a citizen as a matter of sovereignty, which is subject to their: (i) international treaty obligations (including TFEU), and (ii) upholding human rights.[58]

[50] Roes, 255, 256.
[51] European Commission, ‘Golden passport' schemes‘ (2022).
[52] Roes, 255, 256.
[53] Rafal Manko ‘EU accession to the ECHR (EPRS Briefing)’ (2017). Available at: <https://www.europarl.europa.eu/RegData/etudes/BRIE/2017> accessed 24 June 2024, citing the Treaty on European Union (TEU)/Maastricht Treaty 1992, Article 6.
[54] TEU Article 6.
[55] Ibid, Article 6(3).
[56] Daniel Thym, ‘Residence as De Facto Citizenship? Protection of Long-Term Residence Under Article 8 ECHR’, in Ruth Rubio-Marin (ed.): *Human Rights and Immigration* (OUP, 2014), pp. 106–44., Available at: <https://ssrn.com/abstract=2758636> accessed 25 June 2024.
[57] *Moustaquim v. Belgium*, (Appl. No. 12313/86) (1991) (ECtHR), [43].
[58] Vienna Convention on the Law of Treaties 1969, Articles 23-30.

This statement prompts a preliminary observation of CBI programmes. A reasonable person would logically assume that, so long as EU member state law did not reduce or otherwise restrict available citizenship rights and freedoms, such states could exercise their sovereign powers to expand upon citizenship availability.[59] Such expansions could presumably be justified in the name of economic development, social cohesion, or improving the international reputation of a host state. Conversely, one might also readily imagine that if EU member states were actively competing for wealthy new "citizens," the EU treaty objectives could be significantly undermined.[60]

The CBI definitions set out above do not seemingly impair any existing rights of EU or Maltese citizens. They rather extend such rights to individuals who satisfy all golden passport requirements (residency and minimum investment commitments).[61] The following two chapters will analyse and confirm that this reasonable assumption contributes to the controversies that have surrounded Malta's CBI regime since its inception.

Chapter 2: The Malta CBI Regime

A 2020 Act summary

The Malta CBI legislation promotes the same overall objectives as all other current international CBI programmes. This CBI programme provides a passport via an alternate pathway for wealthy individuals seeking to establish a genuine link to Malta for the purpose of citizenship or permanent residence status.[62] The CBI pathway requires a prospective new citizen to contribute at least €600,000 (three-year option) or as much as €750,000 (one-year option) to a government-approved national fund. The amount invested will determine when Malta finalises the applicant's citizenship application. If an applicant decides to apply for the more expensive option, full citizenship will be granted in approximately one year. The permanent residence programme is another option that allows qualified individuals to secure Maltese residency for life after the foreign national's visa is processed.[63]

In this respect, CBI is a significant departure from typical EU member states' citizenship pathways and their timelines from an initial application to receiving their passport. For example, to secure French citizenship, an applicant must satisfy the following conditions: (i) reside legally in France for an uninterrupted period of (minimum) five years; (ii) the residency condition may be reduced to two years where the applicant completed (a) two years' study at a French college

[59] Kristin Surak, *The Golden Passport: Global Mobility for Millionaires* (Harvard University Press, 2023), 62, 92, re EU citizenship.
[60] Hans D'Oliveira, 'Golden passports: European Commission and European Parliament reports built on quicksand' (2023) *COMPAS*. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/WP-2023-162-Golden-Passports.pdf> accessed 25 June 2024.
[61] Surak, 62, 92.
[62] 2020 Act, as summarised by Marko Planojevic, 'A thorough understanding of the June 2020 amendments of the Malta Citizenship Act (Chapter 188)' (Bachelor's dissertation). Available at: <https://www.um.edu.mt/library/oar/handle/123456789/106025> accessed 25 June 2024.
[63] Ibid.

or university, or (b) they have given ‘significant service’ to French society.[64] Malta’s CBI programme is clearly a much faster citizenship pathway than the conventional processes in most other European countries. It should be noted, though, that obtaining Maltese citizenship through other avenues, such as naturalisation, is a laborious process and can take upwards of 18 years or more. The specific 2020 Act provisions are now considered with these general observations in mind.

Key Malta CBI and golden passport components

The 2020 Act creates an umbrella provision that has obvious similarities to the French ‘significant services’ pathway outlined above. ‘Maltese Citizenship for Exceptional Services to Malta’ provides that “scientists, researchers, athletes, sports people, artists, cultural performers, investors and entrepreneurs” are individuals that can secure Maltese citizenship if they have provided ‘exceptional services’ to the Republic.[65] The Act also provides citizenship where an individual’s naturalisation “is of exceptional interest to the Republic.”[66]

The Act defines ‘exceptional’ as meaning “manifestly superior,” a phrase that might support a variety of subjective interpretations concerning what constitutes an exceptional contribution to Malta’s betterment.[67] One can imagine that a Chinese scientist who won a Nobel prize based on years of research conducted in Malta has made an exceptional contribution to the nation. Similarly, a wealthy foreign national who commits to investing €10 million to the government fund in a nation with less than 550,000 people might receive a similarly positive response to their Maltese citizenship application.[68]

It is interesting to note that the 2020 Act amendments removed the words "individual investor programme" – a well-known CBI synonym. The new provisions use the phrase "process for the granting of citizenship by naturalisation."[69] Viewed from a literal meaning perspective, it might appear that Malta is creating a naturalisation scheme based on exceptionality, an interpretation that could be expressed as “Malta welcomes exceptional people to become contributing citizens in our country.”

By contrast, modern statutory interpretation rules (including those employed in international law contexts), tend to emphasise a purposive approach: legislative language should be interpreted in accordance with the relevant measure’s “purpose or intent, as derived from the context and

[64] Service Public (Fr) ‘How to obtain French nationality?’ (2024). Available at: <https://www.service-public.fr/particuliers/vosdroits/F34717?lang=en> accessed 1 July 2024.
[65] 2020 Act, Article 10(9).
[66] Ibid.
[67] Ibid.
[68] Pace, 133, 163.
[69] 2020 Act, Article 24(1).

background of the legislation" (the 'purposive approach').[70] The overall purpose of the 2020 Act is clearly aligned with CBI-based citizenship. It is useful to consider how two other regional countries and their respective CBI programmes compare to that of Malta. These two countries are Austria and Türkiye; both offer quite different CBI conditions to their own approaches to CBI programmes.

Austria and Türkiye – comparative CBI jurisdictions

Austria

As noted in the introduction, fellow EU member state Austria has an active CBI regime. In general terms, the current 'Austrian Citizenship by Exceptional Achievement' has several apparent similarities with its Maltese counterpart. Foreign nationals can obtain Austrian citizenship where they have made a "… significant financial commitment to the country."[71] The Austrian Citizenship Act of 1985 (Staatsbürgerschaftsgesetz), Article 10(6) provides (among other requirements) that "…. foreigners who have contributed and are expected to contribute outstanding achievements in the interests of the Republic of Austria."[72]

However, the Austrian government makes an extensive effort in its explanatory materials to distinguish the 1985 Act Article 10(6) from other CBI regimes, such as the Malta 2020 Act CBI definitions. The Government makes the following claim:

> "In contrast to information available from the Internet perhaps suggesting otherwise, (Article)147 is the basis of citizenship acquisition defined in Art. 10 para 6 of the Citizenship Act of 1985 is not related to an official "citizenship by investment" programme of the sort offered by other European countries [such as Malta]. Rather, it is a case of matching business and economic interests with the 'special interests' of … Austria."[73]

There is at least some merit in the proposition that this Austrian governmental claim is not mere wordsmithing, nor an effort to disguise its CBI programme in more attractive clothing. Two specific points provide support for how Austria characterises its 'Austrian Citizenship by Exceptional Achievement'.[74] The first is the mandatory minimum investment – a range of €4-5 million, a significantly greater commitment than required under Maltese law (€600,000).[75] Common sense alone dictates that where €600,000 is a sizeable contribution to Malta's national

[70] Of numerous sources, see Koen Lenaerts and José Gutiérrez-Fons, 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice' (2014). Available at: <https://cadmus.eui.eu/bitstream/handle/1814/28339/AEL_2…> accessed 26 June 2024.
[71] European Migration Network (EMN), 'Pathways to Citizenship for Foreigners in Austria' (2020). Available at: <https://home-affairs.ec.europa.eu/system/files/2020-08/01> accessed 24 June 2024, citing citizenship Act 1985.
[72] 1985 Act, article 10(6).
[73] EMN, 59.
[74] European Commission, 'COM(2019) 12 final, 3.
[75] D'Oliveira, 5-7.

fund, the Austrian programme would naturally be much more restrictive. The main difference between these two CBI programmes is that while Austria allows for an investment, the money required for the Malta programme is considered a donation and not recoupable in the future. There are no restrictions on an individual to maintain their investment in Austria once they have acquired citizenship. This investment pathway is further discussed below.

Secondly, the EC concluded that the Austrian law *when viewed in its entirety* does not violate the TFEU or TEU provisions highlighted above.[76] When the other 'Exceptional Achievement' criteria are carefully reviewed, this EC conclusion gains additional persuasive power. The official government materials provide a broadly framed 'exceptional scientific achievements' definition. These outcomes are set out in non-exclusive list form, including: (i) scientific research in a newly developed field; (ii) individuals who have attained a "high reputation in the international scientific community;" or (iii) persons working in a high-level Austrian university research or teaching position.[77] Individuals who have acquired an international reputation in the arts or cultural pursuits are also potentially eligible under this 'achievements' pathway.

A foreign athlete seeking Austrian citizenship must satisfy the government that their 'extraordinary sporting achievements' are ones not currently won or otherwise possessed by current Austrian athletes.[78] The government usually applies the following selection criteria: the relevant achievements must have resulted in Austria over a minimum one-year period, with the applicant's active sporting career continuing over a longer period.[79]

Investment as proof of 'exceptional economic performance'

On its initial reading, this investment-related Austrian citizenship pathway appears to have the closest similarities to Malta's CBI programme. A closer reading confirms that the differences between the two are actually quite significant.[80] The general Austrian rule is clear. A foreign national can secure Austrian citizenship if they satisfy the following requirements. They must be active in a business enterprise as its owner or working as a senior executive exerting "significant influence" over company operations.[81] Their company must also achieve a high level of economic performance, create jobs within Austria, oversee projects involving Austrian investments, or where the company has gained an international reputation (thus promoting "Austria's foreign relations in the economic sector").[82]

[76] See e.g., TFEU Article 20; TEU Article 4.
[77] Alexander Raidl, 'Award of Austrian citizenship through exceptional performance' (May 2021). Available at: <https://www.rechtsanwalt-raidl.at/en/award-of-austrian-citizenship-on-the-basis-of-exceptional-performance/> accessed 29 June 2024.
[78] Ibid.
[79] Ibid.
[80] Stefan Pasher, 'Navigating Austria's Merit-Based Citizenship (Investment Migration Council) (March 2024). Available at: <https://investmentmigration.org/articles/navigating-austrias-merit...> accessed 28 June 2024.
[81] Raidl, (May 2021).
[82] Ibid.

For these reasons, Stefan Pasher accurately describes the Austrian program as "a merit-based route to citizenship through exceptional achievements," an approach that distinguishes Austrian citizenship laws from more "traditional citizenship-by-investment pathways" like Malta's 2020 Act.[83] It is evident that money or personal wealth alone is not sufficient to satisfy all of the 1985 Act, Article 10(6) requirements. The Austrian 'Exceptional Achievement' programme features provide helpful context for the following analysis of the Türkiye CBI programme.

Türkiye

The national law related to Türkiye's CBI rules are straightforward, much like their Maltese counterparts. Governed by the 'Turkish Nationality by Investment Program,' a successful applicant must fulfil one of the following investment conditions: (i) acquire a minimum Turkish real estate investment of $400,000; (ii) make a minimum of $500,000 fixed capital contribution investment (such as a business acquisition); or (iii) make a minimum $500,000 deposit (or equivalent foreign currency deposit) into a Turkish bank account.[84] The applicant must be at least 18 years old with a clean criminal record.[85]

The following features arguably make the Turkish program even easier to secure citizenship than under Malta's CBI programme. In addition to not requiring physical residency (a 2020 Act commonality), a Turkish CBI citizen will not pay income tax or capital gains realised on their worldwide income or asset dispositions.[86] The Turkish application is usually processed within six months. Further, these individuals are not required to renounce any other existing citizenships.[87] One may readily appreciate why the Austrian program is characterised as merit-based, whereas Malta, Türkiye, and similar CBI programmes are primarily based on how much money or capital an individual is prepared to inject into the national economy.[88]

This current CBI reality is also indirectly reinforced by the numerous global wealth management consultancy services that have emerged over the past 10 years.[89] One business style is especially evocative – 'the Nomad Capitalist'.[90] The word 'nomad' prompts mental images of a willing wanderer, someone who deliberately does not maintain any longer-term connection with a place or community. These are individuals who will move to suit their self-interests, with no apparent

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[83] Pasher, (March 2024).
[84] As summarised by Ayla Deniz and Sibel Çetinkaya 'Citizenship by investment in Türkiye: Who buys citizenship and why?' (2023) *Journal of Southeast European and Black Sea Studies* 1, 3.
[85] Savory & Partners, 'Turkish Citizenship by Investment Program' (2024). Available at: <https://www.savoryandpartners.com/progra> accessed 27 June 2024.
[86] Ibid.
[87] Ibid.
[88] Deniz and Çetinkaya, 4.
[89] SchengenVisa 'Turkey Citizenship by Investment - Turkey Golden Visa' (2024). Available at: <https://www.schengenvisainfo.com/turkey-golden-visa> accessed 27 June 2024.
[90] Nomad Capitalist 'Should You Invest in a Golden Visa? Pros and Cons' (2024). Available at: <https://nomadcapitalist.com> accessed 27 June 2024.

desire to patriotically embrace a nation as their own.[91] These CBI enterprises regularly advise their clientele regarding how to exploit the paths of least resistance, in order to obtain an additional residency and/or passport.[92] The concerns of the EC that have been expressed about these types of CBI programmes are widely known and provide an excellent contrast to the established CBI programmes that seek to distance themselves from these lower-tier 'golden passport' schemes.

Pre EC v Malta 2020 Act controversies

EC concerns regarding CBI programs generally

A report from 2019 by the EC provides an excellent source of background information to the controversies that were triggered by the 2020 Act. In 2019, the Commission expressed concerns that CBI programmes were largely inconsistent with EU treaty requirements regarding citizenship and the desire of Union leadership for uniform citizenship eligibility treatment across the entire bloc. As of 2019, the EC observed that Bulgaria (2005), Cyprus (2007), and Malta (2013) had introduced "investor citizenship schemes".[93] Other EU states had made amendments to their citizenship eligibility laws whereby the state created potential citizenship status being conferred on individuals who made investments in the country, with citizenship becoming a discretionary state decision.[94]

The common thread linking all CBI programmes was the state reserving a right to waive some, or even all, the usual naturalisation requirements. For example, in the Bulgarian model studied by EC policymakers (similar to the French rules cited above), a successful citizenship application required the applicant to satisfy the following conditions: (i) a minimum age of 18; (ii) having resided continuously in Bulgaria for at least five years; (iii) not facing prosecution, or having been sentenced in a Bulgarian criminal court for an offence (subject to their 'rehabilitation'); (iv) means to support themselves in Bulgaria; (v) an ability to speak Bulgarian; and (vi), relinquishing any prior citizenship granted in another State.[95] On their literal reading, these are quite detailed and relatively onerous preconditions to acquiring Bulgarian citizenship.

The EC noted that under Bulgaria's CBI programme (also known as its fast-track investors' scheme),[96] significant departures from these usual citizenship requirements were made, based on state discretion (as exercised by its Ministry of Justice). These were; (i) one year's residency in Bulgaria; (ii) €1 million Bulgarian investment; and (iii) no Bulgarian occupation or income requirements.[97] There is no question that for a person of means who sought CBI approval, the EC

[91] Ibid.
[92] Ibid.
[93] European Commission, 'COM(2019) 12 final, 7, 8.
[94] Ibid.
[95] Ibid, footnote 8, citing Bulgarian Citizenship Act, SG N. 136, 1998.
[96] Ibid, Act, Article 14a.
[97] Ibid.

perceived that an individual could buy their Bulgarian, Cypriot, or Maltese passport with relative ease, based upon the following interconnected problems assuming heightened importance: criminals securing citizenship (public safety and national security risks); money laundering (funds paid into CBI programmes); and a general lack of transparency regarding who successfully obtained citizenship through these programmes.[98]

EC concerns – a commentary

The 2019 report does not include a definitive EC pronouncement made regarding overall CBI legitimacy within the larger EU treaty frameworks. The above-cited TFEU and TEU articles pertaining to Union citizenship are not mentioned anywhere in the text of the report. However, the overall tone of the report is strongly suggestive of the Commission doubting that CBI schemes have any EU treaty provisions legitimacy. “These CBI pathways should be discouraged” is the implicit report message, a conclusion that was reinforced by the negative EC responses expressed when Malta enacted its expanded CBI programme through the provisions of its 2020 Act.[99]

Post 2019 Report commentaries

It is emphasised that the EC position discouraging EU member states from implementing CBI programmes was not an isolated attack on golden passports. Various commentators (including Konrad and Rees) analysed CBI programmes from an economic efficiency perspective.[100] Their analyses do not emphasise TFEU or TEU ‘citizenship rules uniformity,’ or other similar EU treaty objectives that are inextricably linked to EU-wide economic, political, and social cohesion.[101] Instead, these scholars approached CBI programmes from a narrower economic perspective (‘club of goods’ theory),[102] where the EU is treated as constituting a ‘club of nations’.[103] Every EU member state is a club that is (presumably) afforded the exclusive right to “… govern the admission of new individual members into its own club, and new members automatically benefit from the EU-wide meta-club good.”[104]

CBI programmes confirm this ‘club of goods’ theory and its practical effects. Anyone possessing a ‘golden passport’ also acquires EU citizenship via TFEU Article 20.[105] These passport holders become automatically entitled to benefit from all EU rights provided to all citizens of the issuing

[98] Ibid, 11, citing Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (Money laundering).
[99] Kai Konrad and Ray Rees, ‘Passports for Sale: The Political Economy of Conflict and Cooperation in a Meta-Club’ IZA Discussion Paper No. 12696. Available at: <http://dx.doi.org/10.2139/ssrn.3475802> accessed 25 June 2024, 3-6.
[100] Ibid.
[101] *Rottmann*, [23].
[102] See e.g., James Buchanan ‘An Economic Theory of Clubs’ (1965) 32(125) *Economica, New Series* 1, 14.
[103] Konrad and Rees, 2.
[104] Ibid.
[105] Ibid, citing TFEU article 20.

member state. Under the EU freedom of movement principles, these passport holders can also "… freely choose their place of residence within the EU".[106]

For a deeper reason, it is important to further read the Konrad–Rees CBI programme economic analysis. The authors carefully exclude the 2019 EC report concerns expressed about CBI scheme risks posed to EU security (such as non-EU organised crime groups infiltrating EU states), as well as those associated with "money laundering, corruption and tax evasion".[107] Konrad and Rees note that while the EC declared its intention to monitor how individual EU member states devise and implement citizen admission practices (i.e.: *EC v Malta*), their club theory analysis yields some interesting findings.[108] The following 'Back Door' problem is perhaps the most controversial argument for present Chapter 2 purposes.

The 'Back Door'

The CBI programme initiated in Malta, or any other country within the 'club' selling new memberships (citizenship rights) to prospective investors faces a possible problem. These new "citizen–club members" then consume the services made available through club membership that is also made available by large clubs (the EU as the 'club of clubs', and the other 26 member states): residency/mobility rights, health care, education, and other available social services and rights accessible under TFEU Article 20 guarantees.[109] The small club members are therefore imposing costs on the larger clubs when these members utilise their citizenship benefits.[110]

Konrad and Rees argue that small clubs will generate larger profits by selling a larger number of new memberships "… when buyers [new citizens] do not use their services, so to not increase their costs that partly offset the revenue gains…"[111] In effect, 'small club' countries like Malta are strongly incentivised to sell citizenship via their CBI programme. Furthermore, where small clubs determine that selling citizenships is a profitable enterprise, large EU clubs pay a disproportionate share cost (the possible drain on their services) than that of new small club members can use as a right.[112]

If the Konrad–Rees thesis is correct, one can appreciate the EC would resist any CBI programme expansion on the grounds that overall EU economic action can have a negative effect across the bloc; in addition to the possibility of money laundering and other financial crime risks that the

[106] Ibid, 2.
[107] Ibid, 11, citing Peter Spiro, 'Cash-for-passport and the end of citizenship' in:
Ayelet Shachar and Rainer Bauboeck (eds.), *Should Citizenship be for Sale?,* EUI Working Papers, RSCAS 2014/1 (2014).
[108] Konrad and Rees, 12.
[109] Ibid, and see TFEU Article 20.
[110] Konrad and Rees, 12.
[111] Ibid, 13 citing Richard Levitan and Martin Shubik, 'Price duopoly and capacity constraints' (1972) 13(1) *International Economic Review* 111, 122.
[112] Kristin Surak, 'Do Passports Pay off? Assessing the Economic Outcomes of Citizenship by Investment Programs' (2024) *Journal of Ethnic and Migration Studies* 1, 22. Available at: <https://www.tandfonline.com/doi/full/10.1080/1369183X.2024.2332825> accessed 30 June 2024.

Commission attributes to 'golden passports.'[113] In her recent analysis, Kristin Surak poses a simple, two-pronged question that addresses the Konrad–Rees findings (notwithstanding that Surak did not cite the Konrad–Rees article): "What are the economic benefits and risks of the programs? Does the sale of citizenship pay off?"[114] This question remains open to debate after reading Surak's detailed study. For now, she notes that the CBI scholarship continues to expand and evolve, thus leaving an unanswered conclusion to the questions that she proposes.

However, Surak does raise two points that appear to play directly in Malta's favour as the *EC v Malta* dispute continues to unfold. The first point is supported through Surak's 2021 CBI review, work that was included in the 2021 European Parliamentary Research Service Report.[115] The report concluded that both the CBI programmes of Cyprus and Malta's economic impacts resulted in a "…positive and significant impact on the macroeconomy of those countries, contributing 2.1 per cent to Malta's GDP and 4.5 per cent to Cyprus's GDP."[116]

It is evident that these positive CBI outcomes for these EU members do not contradict the Konrad–Rees proposition: small 'clubs' benefitting from CBI programmes to the detriment of larger clubs and the EU 'club of clubs.'[117] However, if Malta or other CBI countries could prove that its macroeconomic benefits were greater than the negative impacts experienced elsewhere due to CBI citizens utilising EU citizenship benefits, CBI programmes logically could gain greater economic legitimacy.[118] Surak is careful to qualify her analysis, as this scholarship is still of an evolving nature, as highlighted above.

The second point Surak makes in her 2024 research contributes to how the *EC v Malta* dispute draws battlelines in practical terms, as the ECJ considers the parties' respective positions going forward to its anticipated 2025 judgment. Surak notes that in the current CBI literature, greater academic attention has been directed at "the social, political, and ethical issues that emerge when political membership is commodified" (paraphrased as 'selling citizenship').[119] Scholars writing in these contexts have posed crucial theoretical questions regarding how CBI programmes necessarily impact issues such as "democracy, inequality, civic engagement, and [wealth] redistribution."[120] These questions themselves raise other intriguing issues, including whether those individuals who acquire citizenship through investment can ever be said to have their

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[113] European Commission, COM(2019) 12 final, 7, 8.
[114] Surak (May 2024), 1.
[115] Kirsten Surak, 'Appendix: Citizenship and Residence by Investment Schemes: State of Play and Avenues for EU Action.' European Added Value Assessment, European Parliamentary Research Service. Brussels: European Union. Available at: <https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)694217> accessed 28 June 2024.
[116] Ibid.
[117] Konrad and Rees, 12.
[118] Surak (May 2024), citing Christian Joppke, 'Citizenship by Investment: A Case of Instrumental Citizenship' In *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*, edited by D. Kochenov, and K. Surak, (2023) Cambridge: Cambridge University Press, pp.240–258.
[119] Surak (May 2024), 2.
[120] Ibid.

adopted nation's best interests at heart (a traditional view of what citizenship and its associated nationalism–patriotism should mean to all citizens).[121]

Surak also observes that for other, equally respected international law commentators, "…citizenship is already treated as commodity in many arenas."[122] This constituency regards current citizenship laws enacted in the EU as unequal, where the laws tend to reinforce "… inequalities even without [CBI] programs."[123] A well-known EU and broader international sport example underscores these observations. States have sometimes paid large sums to an accomplished athlete's home country's sport federation for the purposes of enabling these individuals to immediately participate in international competitions representing their new country: "reverse golden passports."[124] Unlike the Austrian model explained above (merit-based golden passports secured by the applicant), these sporting cases involve a state seeking to obtain the athlete's services for its perceived needs (promoting the state).[125]

Such circumstances contribute to why pro-CBI scholars disagree with the EC position. They argue that simply because citizenships are commodified in the Malta CBI programme, their purported 'corrosive effects' (such as money laundering risks) do not necessarily follow.[126] How Surak has framed the CBI debate provides an excellent and objective vantage point for observing all *EC v Malta* dispute developments.

An OECD concern

A 2018 Organization for Economic Cooperation and Development (OECD) report lends additional support to the EC CBI programme concerns highlighted above.[127] The authors of the report considered over one hundred residences and CBI schemes. They concluded that where CBI programmes provide these citizens with unrestricted access to European citizenship rights, they also facilitate income tax sheltering that is often associated with income tax evasion.[128] The report draws clear links between CBI programmes and the OECD 'blacklist' of countries whose liberal laws and lax financial institutions practices have labelled them 'tax haven countries.'[129] The OECD placed Malta on this list in 2013.[130]

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[121] See also Peter Spiro, 'Investment Citizenship and the Long Leash of International Law' (2022)
In *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*, edited by D. Kochenov, and K. Surak, (2023) Cambridge: Cambridge University Press, pp.137-160.
[122] Surak (May 2024), 2, citing Joppke, 240.
[123] Ibid.
[124] See Robert Siekmann, *Introduction to International and European Sports Law* (*ASSER* 2012), 241, 268.
[125] Ibid.
[126] Surak (2024), citing Kochenov and Surak, 2, 4.
[127] OECD 'Residence/Citizenship by investment' (2018). Available at: <https://www.oecd.org/.../residence-citizenship-by-investment> accessed 28 June 2024.
[128] Ibid.
[129] Ibid.
[130] Ibid.

The OECD does not claim that all CBI programmes of creating an environment of "high-risk tax evasion" or other financial crime facilitation. However, the OECD sets out this general test when assessing whether a given CBI programme enactment is problematic. CBI schemes are potentially high-risk if the following conditions exist: (i) taxpayers can access a low personal income tax rate (below 10 per cent) applicable to all offshore financial assets; (ii) taxpayers are not required to maintain a "significant physical presence of at least 90 days" in the country. By the OECD's definition, Malta's CBI programme clearly falls within this 'high-risk' definition.

It should be remembered that this non-governmental organisation (among its other objectives) is committed to enhancing cooperation between all national tax authorities to bring "… national tax administration in line with the globalised economy."[131] As a result, the OECD accepts that 'nomad' investors are a reality of the international community of 2024 and beyond. For the OECD, it is imperative that this reality does not undermine or otherwise create imbalances across global economic networks. These sentiments acquire even greater importance when Chapter 3 examines the *EC v Malta* dispute in greater detail.

Chapter 3: The European Commission's Direct Attack on 'Citizenship by Investment' – *EC v Malta*

The ECJ proceedings run-up

The 2019 EC report that considered overall CBI programme legality within the EU treaty system remains an appropriate commencement point for assessing the legal 'state of play' existing when the Commission commenced its *EC v Malta* proceedings under enforcement action envisaged in TFEU Article 258.[132] As outlined in Chapter 2, the core EC concerns expressed regarding CBI programmes worldwide were the inherent risks concerning national security, money laundering, tax evasion, and general financial system corruption.[133]

There have been various published commentaries addressing several aspects of Malta's 2020 Act and its CBI programme before the commencement of the *EC v Malta* 2023 proceedings. Three leading sources are highlighted here: (i) Financial Action Task Force (FATF) research;[134] (ii) Van Der Baaren (May 2023) analysis;[135] and (iii) D'Oliveira (January 2023).

[131] Ibid.
[132] European Commission, COM(2019) 12 final, 7, 8.
[133] Ibid.
[134] FATF, 'Misuse of Citizenship and Residency by Investment' (2022). Available at: <https://www.fatf-gafi.org/en/publications/Methodsandtrends/misuse> accessed 28 June 2024.
[135] Luuk Van Der Baaren 'Investor Citizenship and State Sovereignty in International Law' in *Mapping Investment Migration Law and Practice* (Dimitry Kochenov and Kristin Surak, eds), Cambridge University Press, 2023, pp.109, 136.

FATF and Malta

The Financial Action Task Force (FATF) research and its recommendations regarding how CBI programmes elevate financial crime risks are not unsurprising when one understands the FATF's history and mandate.[136] The FATF is self-described as leading all global action "to tackle money laundering, terrorist and proliferation financing."[137] This body is supported by major central banks and it works with national governments (including the EU) to provide ongoing research regarding how money laundering and terrorism activity is funded ('AML/CTF'). The FATF also promotes adherence to harmonised global standards to mitigate these financial crime risks, while providing in-depth country assessments concerning whether these standards are being upheld.[138]

One might assume that Malta would be an obvious FATF compliance target, given the 2019 EC report findings. In June 2022, the FATF removed Malta from its 'watch list' of countries where AML/CTF risks were labelled as high. This FATF decision fell almost two years after the 2020 Act CBI measures became national law in Malta.[139] Among various positive comments made about Malta's approach to AML/CTF enforcement, the FATF noted that Malta's "significant progress" included: (i) commitments made to eliminate "strategic deficiencies" related to detecting inaccurate company ownership, and (ii) more aggressively "tax-based money laundering cases utilising financial intelligence."[140]

These FATF monitoring results were unexpected, given what the EC reported in 2019. Malta's policymakers could now convincingly argue that, based upon the FATF findings, it would be possible to operate a CBI programme to the country's economic advantage, while also avoiding the risks associated with foreign nationals holding 'golden passports.'[141]

Van Der Baaren

This Copenhagen-based scholar acknowledges that the risks associated with CBI programmes across the international citizenship–investment law are real. Van Der Baaren does not employ the following specific phrases in his work, but the message conveyed is clear: unrestricted or even less regulated CBI programmes could seriously destabilise how EU treaty-based citizenship rules are applied by EU member states.[142] State discretion regarding who can become a citizen is a core feature of the Malta CBI programme. By its nature, the approval process has subjective, and thus, potentially arbitrary aspects.[143] These points collectively suggest that CBI programmes are

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136 FATF (2022).
137 FATF 'What we do' (2024). Available at: < https://www.fatf-gafi.org/en/the-fatf/what-we-do.html#:~:te> accessed 1 July 2024.
138 Ibid.
139 FATF (2022).
140 Ibid.
141 Ibid, and see Pavlidis, 170, 179.
142 Van Der Baaren, 130, 131.
143 Ibid, and see Luuk van der Baaren and Martin Vink, 'Modes of Acquisition and Loss of Citizenship Around the World - Comparative Typology and Main Patterns in 2020' (2021). Available at: <http://dx.doi.org/10.2139/ssrn.3979808> accessed 29 June 2024, 29.

unlikely to become harmonised, given that sovereign nations like Malta endeavour to tailor their CBI programmes to achieve specific results and promote their national interests.

At the same time, Van Der Baaren does not contest the notion that under international law principles, where Malta or other states decide that investment or donation is a permitted basis for acquiring citizenship, such choices are legitimate.[144] It is suggested that on its face (literal meaning), TFEU Article 20 and TEU Article 4 do not prohibit such CBI programmes.[145] A narrower issue is thus revealed, one going directly to the heart of the *EC v Malta* dispute: should the ECJ interpretation of EU treaty obligations, such as collectively prohibiting any CBI programmes, on the basis that their identified risks (money laundering and related activities), combined with potentially reduced EU-wide social cohesion, outweigh the rewards Malta secures by attracting eligible CBI applicants?[146]

D'Oliveira

This Amsterdam-based academic leaves nothing to his reader's imagination regarding where his sentiments stand related to CBI programmes. D'Oliveira contends that the EC legal position challenging CBI scheme legitimacy is built on 'quicksand,' and thus, the author anticipates the ECJ will rule in Malta's favour when *EC v Malta* is ultimately decided.[147] An initial observation frames the following commentary developed from reading D'Oliveira's analysis. A reasonably well-informed EU citizenship law observer may disagree with D'Oliveira regarding the 2020 Act effects on EU citizenship concepts. This notional commentator remains concerned that CBI programmes generally carry significant potential for disrupting the EU treaty frameworks highlighted above.[148] It is noted that EC leaders have equated CBI programmes and golden passports with attacking EU treaty values. The Commission argues that (amongst other standards linked to EU citizenship), both "the rule of law and the integrity of our European institutions" must not be compromised, and "… European values are not for sale."[149] D'Oliveira accurately characterises these phrases as a "compelling and stirring slogan," an emotional battle cry that might conceivably rally the EU against Malta and any other member states pursuing investment-based citizenship.[150]

However, D'Oliveira's core proposition requires a different consideration, one that engages more dispassionately with the relevant legal principles than the EC's declaration. D'Oliveira concludes that the EC's legal 'quicksand' foundational arguments made against Malta have two fatal flaws: (i) the EC's reliance on 'genuine link' theory (by extension, successful CBI applicants have a

[144] Van Der Baaren, 130, 131.
[145] TFEU Article 20; TEU Article 4.
[146] Ibid, and see Petra Weingerl and Matjaz Tratnik, 'Citizenship by Investment Programs from the Perspective of International and EU Law' (2020) 11(2) *Lexonomica* 95, 116. Available at: <https://www.researchgate.net/publication/338730062_> accessed 29 June 2024.
[147] D'Oliveira, 1.
[148] E.g., TFEU Article 20, TEU Articles 4, 9.
[149] EC, 'State of the Union Address by President von der Leyen' (2022). Available at: <https://ec.europa.eu/commission/presscorner/detail/en/speech_22_5493/smo> accessed 6 July 2024.
[150] Ibid.

financial–investment link that some scholars discredited as ‘not genuine’ citizenship);[151] and (ii), that the 2020 Act measures are contrary to “the obligation for genuine cooperation by the Member States” concerning citizenship laws.[152] Each of D’Oliveira’s challenges directed at the EC will be examined in turn.

Genuine link theory

D’Oliveira asserts that the EC’s concerted efforts are made to define ‘investment naturalisations’ (CBI programmes) as a novel and anomalous form of securing citizenship are inherently misdirected.[153] For the Commission, CBI programmes have acquired a type of ‘bogeyman status’ – exceptional, legally untenable schemes that require elimination wherever they are found in the EU.[154]

D’Oliveira correctly notes that ‘ordinary naturalisation’ schemes as implemented across the EU membership are themselves diverse. [155] The 1998 European Convention on Nationality (ECN) preamble provides D’Oliveira with further legal ammunition on this point.[156] The Convention states that when citizenship laws are crafted, the legislation should take into account “… both of the legitimate interests of States and those of individuals.”[157] The Convention does not provide an elaboration concerning how citizenship should be defined, except to assert that this status represents “a legal bond between a person and a State.”[158]

A second D’Oliveira point reinforces why the EC claims made concerning citizenship being dependent upon a ‘genuine link’ are vulnerable to his challenge. The European Parliament (EP) report (2021) includes this passage:

> “… Since 2014, Parliament has been calling for a ban of CBI/RBI schemes, but so far, the Commission has not put forward any proposals. Although the Commission claims it has no legal basis for legislative action, it did launch infringement proceedings against Cyprus and Malta in October 2020.”[159]

The parliamentary report also indicates that since 2019, an EP-appointed group of experts had convened on various occasions without reaching a consensus regarding the legality of CBI

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[151] See: (i) *Nottebohm Case (Liechtenstein v Guatemala)* (Merits) [1955] ICJ Rep 4, 23 (ICJI; (ii) D’Oliveira, 23, and William Worster, ‘Reining in the Nottebohm Case’ (2022) 41 *Boston University International Law Journal*. Available at: <http://dx.doi.org/10.2139/ssrn.4148804> accessed 4 July 2024.
[152] D’Oliveira, 15.
[153] Ibid.
[154] Ibid, 6.
[155] Ibid.
[156] European Convention on Nationality 1998, preamble.
[157] Ibid.
[158] Ibid, Article 2(a).
[159] European Parliament Committee on Civil Liberties, Justice and Home Affairs, ‘REPORT with proposals to the Commission on citizenship and residence by investment schemes’ (2022). Available at: <https://www.europarl.europa.eu/doceo/document/A-9-2022-0028_EN.html> accessed 7 July 2024, 18.

programmes. D'Oliveira observes that this lack of unanimity included the failure of the experts to agree on how these programmes could be vetted (related to national security–money laundering issues). Crucially, the EP report accepts that "… granting citizenship as such is an exclusive national competence," but when EU law and values are damaged, the EU must act accordingly. For the EP, "…. Union citizenship and residence are not a commodity. We all have a duty to protect it."[160]

Paraphrasing D'Oliveira, the EP report is full of high-sounding citizenship law rhetoric, but it does not provide a principled argument for CBI prohibitions through EU law.[161] The EP report urges the implementation of mechanisms (through a comprehensive legislative package), whereby member states would: (i) be prevented from introducing any new CBI programmes, and (ii) member states would phase out their existing investment programs by 2025. The EP relies on TEU Article 4(3) (the 'sincere cooperation' argument given further subsection 2 consideration below), but as discussed in Chapter 1, there is doubt expressed by various scholars that this treaty provision can legally be enforced to create a comprehensive CBI programme ban.[162]

It is also noted that the EC published its 2022 Recommendation to underscore this broadly expressed EP–EU commitment to eliminate CBI programmes.[163] The recommendation is not law, but such instruments are treated within the EU legal frameworks as a suggestion that EU member states should follow.[164] The Commission stated that member states that had implemented CBI programmes must "… ensure compliance with its obligations pursuant to these Treaty provisions by repealing it immediately."[165] This recommendation does not deal with how, or to what extent CBI programmes directly infringe upon specific TFEU and TEU measures. D'Oliveira implicitly suggests that if the EC position is correct, a reasonable observer is left assuming that the treaty framework must apply because the Commission and the EP simply say it does; a classic circular argument.[166]

A final point extracted from D'Oliveira convincingly rebuts the notion that the 2020 Act or any other similar CBI programmes contravenes the citizenship status 'genuine link' requirement. D'Oliveira recalls the ECN, and its Article 21(2) language that provides "discrimination on the grounds of nationality is prohibited."[167] CBI programmes that reference the protection of

[160] Ibid.
[161] D'Oliveira
[162] See also Petra Weingerl and Matjaž Tratnik, 'Relevant Links: Investment Migration as an Expression of National Autonomy in Matters of Nationality' in Dimitry Kochenov and Kristin Surak (eds) *Citizenship and Residence Sales* (Cambridge University Press, 2023).
[163] EC 'Recommendation of 28 March 2022' C (2022) 2028 final.
[164] EU, 'Recommendations' (2024). Available at: < https://eur-lex.europa.eu/EN/legal-content/glossary/recommendation.html#:~> accessed 6 July 2024, citing TFEU Article 288.
[165] Ibid.
[166] D'Oliveira, 7, 8.
[167] ECN Article 21(2).

fundamental rights when naturalisation decisions are made would appear to align with the 'European values' that the EP and EC are committed to upholding.[168]

The emphasis placed by the EC on earlier international–citizenship law precedents, such as *Nottebohm*, is given separate consideration below (as connected to the *EC v Malta* legal issues).[169] The second 'sincere cooperation' basis for attacking CBIs will now be considered.

'Sincere cooperation' obligations

Prior to commencing *EC v Malta*, the Commission presented TEU Article 4(3) 'sincere cooperation' principles as the primary legal barrier for CBI programmes.[170] If one accepts the EC 'sincere cooperation' conceptual interpretation, one might assume that when drafting their citizenship laws, all EU member states must provide for a general obligation to "have due regard to the whole bulk of Union laws and principles."[171] This obligation appears to have dimensions that go significantly beyond what the ECJ has explained in proportionality terms through its prior TFEU–TEU interpretations.[172] The 'whole bulk' language leads to a logical, but absurd conclusion: this phrase is impossible to accurately define, thus leaving the EC in a position to arbitrarily decide whether a given law (like Malta's 2020 CBI enactments) reflects the 'whole bulk'.[173]

D'Oliveira offers other compelling support for his 'sincere cooperation' rebuttal that is aligned with his 'genuine link' companion analysis. The first is derived from the Council of Europe (CoE) materials and how the CoE has understood the connections existing between the European Convention (ECHR) and citizenship rights.[174] The CoE declared that "… it proved politically unfeasible to require States to forgo their sovereignty in the realm of nationality law," when considering whether, or to what extent the ECHR should expressly protect citizenship rights.[175]

For this reason, the ECHR exists beyond its own parameters.[176] Furthermore, the EU Charter of Fundamental Rights does not mention nationality or citizenship, except to underscore that no one may be discriminated against by an EU or member state institution, based upon nationality grounds.[177] When the 'sincere cooperation' requirements are viewed from D'Oliveira's perspective, one can fairly conclude that this principle is arbitrarily vague when seeking to

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168 Ibid, and see European Parliament, 'Parliamentary question | Granting of European citizenship in exchange for investment ('European golden passports')' (2022). Available at: <https://www.europarl.europa.eu/doceo/document/E-9-2022-000554_EN.h…> accessed 6 July 2024.
169 See: (i) *Nottebohm*, 1955; (ii) D'Oliveira, 8, citing *Tunis and Morocco Nationality Decrees Case* (Advisory Opinion) (1923), p.23-24 (Permanent Court of International Justice).
170 EU, 'Recommendations' (2024).
171 D'Oliveira, 15, 16.
172 Ibid.
173 Ibid, and see *JY v Wiener Landesregierung,* 18 January 2022, C-118/20 (ECJ), [58].
174 D'Oliveira, 21, and Gerard De Groot and Olivier Vonk, *International Standards on Nationality Law*, (Wolf Legal 2015) 41.
175 Ibid.
176 Ibid.
177 As summarised by the EC, 'EU Charter of Fundamental Rights' (2024). Available at: <https://commission.europa.eu/.../eu-charter-fundamental-rights_en> accessed 6 July 2024.

usefully define what EU member states must do when devising and implementing their citizenship laws.[178] A pro-Malta practitioner commentary completes this discussion of the *EC v Malta* summary.

What did Malta say?

A bluntly worded opinion article authored by Bruno L'ecuyer (non-government organisation (NGO) Investment Migration Council co-founder) captures how Malta would ultimately defend its 2020 Act and CBI programme against the EC.[179] For L'ecuyer, the above-cited EP and EC materials collectively create an unjustified and highly undesirable "atmosphere of condemnation," one that has also prompted the "astonishment of leading European scholars."[180] L'ecuyer speaks in practical, but logically attractive terms. He accuses the EC of serious overreach in its claims that Malta's 2020 law can be regulated by the Commission on any realistic basis of 'preserving EU values'.[181] For L'ecuyer, the EU treaty system confirms that any legislative competencies not conferred on the Union necessarily remain within the jurisdiction of each EU member state.[182] If the EC is allowed to determine "what it means to be a Maltese [or any other EU nationality] – a competence not conferred on the Union – Pandora's box will be opened…"[183] In effect, the EC could override the lawful operation of any member state's citizenship legislation, thus bypassing the competency rule prescribed under TEU Article 4(1).[184]

L'ecuyer also relies on TEU Article 9 (as discussed in Chapter 1), with its provisions that EU citizenship is in addition to, and not a replacement for national citizenship.[185] EU treaty conferral principles lead to only one conclusion: the EU, through its EC executive arm, shall act only within the competency limits of the Treaties to attain all treaty objectives; thus contributing to the 'overreach' characterisation employed above.[186] L'ecuyer offers an equally forceful conclusion: that the efforts made by the EC to frame EU citizenship as excluding CBI programmes and golden passports directly conflicts with founding values, most notably those which promote "non-discrimination on the basis of nationality, democracy and the respect of the constitutional identity of the Member States."[187]

If L'ecuyer, D'Oliveira, and the other cited commentators here in Chapter 3 are correct, the ECJ would presumably have little difficulty in dismissing the EC claims made against Malta. The

[178] D'Oliveira, 22.
[179] Bruno L'ecuyer, 'The European Commission's case against Malta' (November 2022) *Malta Business Week*. Available at: < https://maltabusinessweekly.com/the-european-commissions-case-against-malta/21069/> accessed 6 July 2024.
[180] Ibid, citing Costanza Margiotta, 'Rich and poor to the test of European citizenship: Notes on the 'Report on Investor Citizenship and Residence Schemes' in the European Union' (2022). Available at: <https://www.rivisteweb.it/doi/10.1415/98605> accessed 2 July 2024.
[181] L'ecuyer, (November 2022).
[182] Ibid, citing TEU Article 4(1).
[183] Ibid.
[184] Ibid.
[185] TEU Article 9.
[186] L'ecuyer, (November 2022).
[187] Ibid.

specific legal pleadings filed by the EC that frame the issues will now be considered using these commentaries as context.[188]

EC v Malta - Current state of play

The ECJ 'Curia' portal provides access to the official EC claim summary – a reasonable commencement point from which to assess how the parties' respective *EC v Malta* positions might be considered by the Court in its anticipated early 2025 decision.[189] The EC claims that as the Malta's 2020 Act CBI regime offers individuals "… naturalisation in the absence of a genuine link of [these] the applicants with the country, in exchange for pre-determined payments or investments," that Malta has failed to discharge in its assumed TFEU Article 20 and TEU Article 4(3) legal obligations.[190] The Commission also claims its legal costs associated with this proceeding.[191]

In the Curia 'Main Argument' summary, the EC claims that EU law precludes CBI programmes which allow for any member states that might systematically grant nationality to anyone "in exchange for pre-determined payments or investments" without such person establishing that they have a "genuine link" between the member state and themselves.[192] The EC alleges that Maltese law undermines and compromises all EU citizenship law "essence and integrity" (TFEU Article 20), while also violating 'sincere cooperation' principles outlined in TEU Article 4(3).[193]

These arguments have been deconstructed and discussed above, with a further point which requires further attention. The EC has placed special emphasis and implication on the 1955 *Nottebohm* decision and its widely accepted, but increasingly controversial international law precedent status.[194] In the following section, the terms 'citizenship' and 'nationality' are used interchangeably (their technical definition differences aside), except where EU citizenship concepts are relevant.[195]

Nottebohm and international law precedent

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[188] See also Michael Krakat 'The Case for Citizenship by Investment Is Never Stronger Than During Times of Crisis' (September 2020) *Investment Migration Insider*. Available at: <https://www.researchgate.net/publication/348735901_The_Case_For_Citizenship_by_Investment_Is_Never_Stronger_Than_During_Times_of_Crisis_> accessed 6 July 2024.
[189] EU Curia 'Action brought on 21 March 2023 – European Commission v Republic of Malta (Case C-181/23)' (2023). Available at: < https://curia.europa.eu/juris/document/document_print.jsf?docid=273734&doclang=EN> accessed 7 July 2024.
[190] Ibid.
[191] Ibid.
[192] Ibid.
[193] Ibid.
[194] As outlined in Javier Olmedo 'In Fairness to Nottebohm: Nationality in an Age of Globalization' (2024) *Asian Journal of International Law*. Available at: <https://api.semanticscholar.org/CorpusID:269399912> accessed 6 July 2024.
[195] The Economist, 'What is the difference between nationality and citizenship?' (July 2017). Available at: <https://www.economist.com/the-economist-explains/2017/07/09/what-is...> accessed 7 July 2024.

It is doubtful that any other single citizenship law case has attracted more concerted academic and judicial attention than this ICJ (International Court of Justice) authority. As the scholar William Worster states, *Nottebohm* has taken on a legal life of its own.[196] The substantive issues that *Nottebohm* has generated in various CBI contexts are outlined below. There is specific scholarly controversy generated by the twin facts that: (i) the ICJ decided this case almost 70 years ago, and (ii) its interpretations–judicial application have been expanded beyond its facts.[197] The following sources have considered what the ICJ decided spans articles written shortly after the Court issued its ruling to early 2024 commentaries.[198]

The Nottebohm facts

The central *Nottebohm* dispute concerned a German national (N) with extensive Guatemalan business interests who sought Liechtenstein citizenship in 1939. N had previously established permanent Guatemalan residency. As he was visiting Liechtenstein when the German military invaded Poland, N's Liechtenstein naturalisation application followed immediately after war was officially declared. Under then-current Liechtenstein law, all prospective citizens were required to: (i) reside in Liechtenstein for a minimum of three years; (ii) renounce any prior nationalities; but (iii) Liechtenstein authorities could waive conditions (i) and (ii) (national discretion like that is explained in the Chapter 2 comparative jurisdiction discussion.[199] N complied with all Liechtenstein conditions and received his new nationality in due course.[200]

When N sought to return to Guatemala (as he had planned to live there as he had done prior to renouncing his German citizenship), he took the necessary steps to have Guatemala recognise his new nationality. Notwithstanding these efforts, Guatemalan authorities arrested N as an enemy alien, liquidated both his real estate and business holdings, and then transferred him into the custody of the United States. Guatemala declared that it could treat N as a German national.[201] N's various legal claims were rejected by the U.S. national courts. The ultimate ICJ proceedings thus pitted Liechtenstein (N's state of nationality) against Guatemala.[202]

How does dual nationality relate to CBI?

The *Nottebohm* facts immediately raise a provocative question, one paraphrased here as "How can this dual nationality dispute reasonably influence whether, or to what extent, a CBI regime is

[196] Worcester, 303.
[197] *Nottebohm*, 1 through 17.
[198] See: (i) Mervyn Jones 'The Nottebohm Case' (1956) 5 *International and Comparative Law Quarterly* 230, 244' (ii) Cornel Marian 'Who is Afraid of Nottebohm?: Reconciling the ICSID Nationality Requirement for Natural Persons with Nottebohm's 'Effective Nationality' Test' (2011) 28(4) *Journal of International Arbitration*
313, 326; (iii), the above cited Olmedo (2024), Villarino (2019), Worster (2022), Spiro (2022).
[199] *Nottebohm*, 14.
[200] Ibid.
[201] Ibid, 9, 19.
[202] Ibid.

lawful under EU treaty provisions?"[203] There is no simple answer to this legitimate query. It is noted that the ICJ ruled in Guatemala's favour. Guatemala was not bound by any legal requirements to recognise N's Liechtenstein nationality.[204] The Court expressly concluded that it would not provide any guidance regarding the applicable law that went "… beyond the limited scope of the question [raised in the dispute], namely whether the nationality conferred on Nottebohm can be relied upon as against Guatemala in justification of the proceedings instituted before the Court."[205]

It is what the ICJ stated in its analysis to reach the above conclusion that has given *Nottebohm* its current appeal or notoriety (depending upon how one views the *EC v Malta* issues summarised in Curia form above). The Court agreed that all states possess an inherent discretionary power to grant an individual's nationality in accordance with its own national laws.[206] The *Nottebohm* minority reasons confirm the proposition that as the dispute concerned whether N could prove his Liechtenstein naturalisation process was valid, N's new nationality was clearly established (for example, N had not committed fraud to secure his new citizenship).[207] With the obvious benefit of hindsight and numerous academic commentaries, it is apparent that N validly held his Liechtenstein nationality and the Court considered its legal effects.[208]

The key ICJ reasoning that links *Nottebohm* to *EC v Malta* and CBI programmes in the following passage that concerns the international law rules governing "genuine connection." The Court characterised these rules as the mechanisms that allowed it to determine whether N (or any other similarly placed individual) was "… more closely connected with the population of the State conferring nationality than with that of any other State."[209] The Court went on to describe nationality as a bond status grounded in the:

> "…social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties… [the individual] … is in fact more closely connected with the population of the State conferring nationality than with that of any other State…"[210]

When scrutinised using a present-day legal analysis, *Nottebohm* includes a glaring contradiction in terms. On one hand, international law affords significant discretion to all states regarding whom they will accept as naturalised citizens – the fundamental concept of sovereignty–control of territorial integrity outlined in Chapter 1.[211] One would logically assume that this legal

[203] A point taken from reading Worster (2022), and C.J.R. Dugard and Annemarieke Vermeer, 'The protection of individuals by means of diplomatic protection. Diplomatic protection as a human rights instrument' (2003). Available at: <https://api.semanticscholar.org/> accessed 5 July 2024.
[204] *Nottebohm*, 26.
[205] Ibid.
[206] Ibid, 17.
[207] Ibid.
[208] Ibid.
[209] Ibid, 23.
[210] Ibid.
[211] Kochenov and Surak, 'Learning from Investment Migration' (2022).

principle would preclude a court from declaring a specific state discretionary decision as contrary to international law. Conversely, as a matter of fundamental international law comity, it is remarkable that the ICJ could say (in effect) "We have no evidence that N broke any rules regarding his Liechtenstein citizenship application, but we cannot stop Guatemala from arbitrarily deciding that it would treat N as an enemy alien, strip him of his rights, and seize his property."[212]

The problem with Nottebohm in a CBI context

It is suggested that the decision by Guatemala to move against N must be understood in the context of the times. The Court expressed concern that N's 1939 actions might have been a thinly disguised attempt to "evade designation as German, i.e., an enemy national."[213] It is an indictment on the Court's analysis that 16 years later, the Court was prepared to speculate regarding N's motives to seek Liechtenstein citizenship. This is, at best, a tenuous, unsubstantiated argument motive. The minority reasons confirm that in 1939, no rule of international law nor Guatemalan laws existed that prohibited N from pursuing naturalisation in Liechtenstein.[214]

This point also invites a brief reconsideration of what comity must mean in any ICJ dispute context. Comity is an umbrella term used to describe encompassing informal, non-mandatory practices accepted across the international community's members and their domestic courts where legislative, executive, and judicial acts are afforded mutual recognition. Under comity, the courts in one jurisdiction will recognise the authority of a foreign judicial system counterpart when determining questions where the law or foreign national interests are involved.[215] In these important respects, comity concepts are inextricably tied to the notion that all states enjoy sovereign equality, a situation where reciprocal recognition of sovereignty being exercised is expected.[216] The term comity does not appear anywhere in the ICJ reasons, nor is the concept given extensive attention in the *Nottebohm* literature. This is an odd development, if one accepts the above comity definition as accurate.

These comity–sovereign discretionary power comments aside, the ICJ expressly concluded that no pre-existing connection existed between N and Liechtenstein.[217] It is useful to extract the entire relevant *Nottebohm* passage to ensure a clearer understanding of how the above-identified

[212] A proposition taken from reading Robert Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 *Harvard International Law Journal* 1, 4. Available at: <https://scholarship.law.bu.edu/faculty_scholarship/489> accessed 25 June 2024.
[213] Worster, 309.
[214] *Nottebohm*, 42, 49.
[215] Joel Paul, 'The Transformation of International Comity' (2008) 71(3) *Law and Contemporary Problems* 19, 20.
[216] Ibid.
[217] *Nottebohm*, 26

EC v Malta issues will likely be resolved at the ECJ (with further emphasis attached to the italicised terms). The majority found that:

> "…These facts clearly establish, on the one hand, the ***absence of any bond of attachment*** between Nottebohm and Liechtenstein and, on the other hand, the existence of a long-standing and close connection between him and Guatemala, a link which his naturalization in no way weakened. That naturalization was not based on any ***real prior connection*** with Liechtenstein, nor did it in any way alter the manner of life of the person upon whom it was conferred in **exceptional circumstances of speed and accommodation**…"[218]

In essence, the Court majority was prepared to tell Liechtenstein that its otherwise uncontroverted sovereign power to make any citizenship laws, as it deems best suited to advance and protect national interests, is subordinate to ICJ oversight. This is a point of contention that has no legal merit, given the sources cited in Chapters 1 and 2.[219] The combined effect of N not having any prior 'attachment' to Liechtenstein and the suspicious speed with which N's application was approved give this ICJ intervention additional justification, even though N complied with national law.[220]

Is Nottebohm still good law in 2024?

One can reasonably argue that the ICJ decision has never been good law. The Court majority reasons are indicative of poor legal analysis and conjecture (as outlined above). At best, the ICJ analysis should be specifically limited to diplomatic protection contexts only.[221] The Court has a legitimate interest in making certain that individuals possessing multiple nationalities do not abuse their available citizenship rights. A 1956 tribunal decision remains persuasive today, but significant doubt exists around *Nottebohm*. Through this decision, the ICJ intended to establish a rule of general international law–international community application "that there must exist as an effective link between the person and the State, in order that the latter may exercise its right of diplomatic protection on behalf of the former."[222]

The 'genuine connection' criterion identified using *Nottebohm* in subsequent cases and commentaries presents further conceptual problems for anyone taking the Commission side in *EC v Malta*. Worster and other scholars (as cited in Chapters 1 and 2) have tended to focus their *Nottebohm* criticisms as follows: (i) states have frequently given individuals citizenship status that is based on largely discretionary 'national interest' criteria (the Austrian laws highlighted in Chapter 1 serve as an example); (ii) 'tradition' (as opposed to international legal principles)

[218] Ibid, 23, 24
[219] Ibid; Kochenov and Surak, 'Learning from Investment Migration' (2022).
[220] Ibid.
[221] Worster, 311.
[222] *Flegenheimer (U.S. v. Italy)*, 14 UNRIAA 327, 375, 376 (1958) (Arbitration).

limited these naturalisation processes to individual achievements that were directly linked to "culture, science or sports, or economic or commercial interest"; but (iii), so-called 'mere' investments made by applicants to secure a passport were deemed insufficient.[223] It is illogical to permit EU member states the freedom to determine that applicants whose backgrounds included a state 'connection' through culture, science, or sports were validly naturalised in accordance with the so-called *Nottebohm* 'genuine connection' citizenship standards.[224]

It is also noted that the EC has not argued from its 2019 report onwards that other member states may permissibly "disregard such grants of nationality."[225] The Commission has determined that, notwithstanding *Nottebohm*'s dubious credentials as a seminal 'citizenship' decision, any deviation from the 'genuine connection' concepts constitutes a violation of EU law.[226] The Commission thus commits itself to treating *Nottebohm* as its putative point of the spear in *EC v Malta.* However, the cited critical commentaries rightly take the following expressed position: EC reliance on *Nottebohm* "significantly expands its impact well beyond the ICJ's stated intentions."[227] The commentary found in Chapter 4 builds upon these scholarly sentiments.

Commentary

The overall tone of the critical scrutiny directed at *Nottebohm* aligns with the D'Oliveira 'case erected on quicksand' views cited above.[228] The EC position is inconsistent, at best, while appearing arbitrary and unprincipled at worst. Macklin gives this position an excellent summation in this 2017 critique: the *Nottebohm* legal standard for nationality "has only grown more dysfunctional over time," and efforts made to confine the 'genuine connection' theory of nationality to diplomatic protection are logically sound.[229] Anticipating the Chapter 4 discussions undertaken to predict where *EC v Malta* may lead, the Commission's position might seem doomed.

This tentative conclusion must not be taken in isolation from the harms that are attributable to unregulated CBI programmes. No matter how flawed the *Nottebohm* reasoning may appear when it is applied beyond its narrow dual nationality factual confines, the points made by the EC and EP in their respective reports, concerning CBI threats posed to national security, and related protection from money laundering or other financial crimes attributable to investment cannot be easily dismissed.

[223] European Commission, 'COM(2019) 12 final', 3.
[224] Worster, 311.
[225]European Commission, 'COM(2019) 12 final', 5.
[226] Ibid.
[227] Worster, 313.
[228] D'Oliveira (2023).
[229] Audrey Macklin, 'Is It Time to Retire Nottebohm?' (2017) 111 *American Journal of International Law* (Unbound) 492, 487. Available at: <https://doi.org/10.1017/aju.2018.5> accessed 4 July 2024.

For example, if the EC were to adopt the following position, it seems likely that the ECJ might look favourably upon EC oversight regarding CBI programmes, while preserving the fundamental state sovereign power to enact citizenship laws and naturalisation rules of their choosing.[230] It was open to the Commission to propose: (i) all CBI programmes are lawful as long as they are in accordance with accepted international law principles (states control who may have their citizenship); but (ii), there must additionally be compliance with EU-wide national security and financial crime prevention standards; and (iii), that member states must commit to revoking ‘golden passports’ in certain (emergency) situations as determined by EC officials.[231]

The EC could potentially enforce rules that require member states with CBI programmes to comply with all FATF recommendations and submit to the monitoring reviews of the FATF.[232] It is suggested that this approach would strike a reasonable balance between EU interests (uniformed, harmonised approaches to TFEU Article 20 and TEU Article 4 interpretations), and a member state’s ability to legislate in their sovereign interests. EU law scholar Georgios Pavlidis endorsed a similar approach in his detailed 2021 analysis.[233]

Pavlidis suggested (among his other cogent observations made regarding FATF and its generally constructive AML/CTF work), that specific due diligence standards concerning who could secure a ‘golden passport’ was both essential and entirely achievable.[234] He noted that the 2020 Cyprus CBI regime was exposed as badly flawed. Cypriot policymakers had set up application rules that allowed “several foreign politically exposed persons (PEPs) and their families” to receive citizenship with little attention paid to due diligence. PEPs are universally acknowledged as individuals who are more likely involved in bribery, corruption, or other financial crimes than any other foreign nationals.[235]

Pavlidis does not employ the following words in his analysis, but the meaning understood from his analysis is clear: the Cyprus CBI programme deficiencies should not be taken as proof that CBI programmes are so inherently flawed that they must be prohibited everywhere in the EU. Instead, Cyprus is a cautionary tale that reinforces why CBI standards should be implemented EU-wide.[236]

Recent events suggest that this compromise arrangement would likely be embraced by EU members considering ‘golden passport’ implementation. It should be remembered that the FATF upgraded Malta from its watch list to regular FATF-compliance status; a significant collaborative effect that serves as evidence that a member state can offer a CBI programme to foreign

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[230] Transparency International and Global Witness, ‘European Getaway: Inside the Murky World of Golden Visas’ (2018) 62, 64. Available at: <https://www.transparency.org/whatwedo/publication/golden_visas> accessed 4 July 2024.
[231] Ibid.
[232] European Commission, ‘COM(2019) 12 final’, 5.
[233] Pavlidis, 70, 79.
[234] Ibid, citing Lawrence Menkhoff, ’Tax Evasion in New Disguise? Examining Tax Havens’ International Bank Deposits’ (2020) 176 *Journal of Public Economics* 53, 78.
[235] Ibid.
[236] Ibid.

nationals while remaining its good standing with FATF, and by extension, the international community.[237] One might reasonably conclude that having regained trust from the FATF, Malta would be keen to stay on their good side. A good FATF standards compliance reputation pays dividends when states seek to promote themselves as having sound AML/CFT frameworks. FATF compliance sends a message that this jurisdiction is committed to enhancing its ability to detect, prevent, and deter financial crimes.[238] It is difficult for the EC to persuasively assert before the ECJ that all CBI programmes carry a money laundering or related risk of financial crimes, when Malta has made positive strides with the world's best-recognised authority on AML/CFT measures implementation and compliance.[239]

Emergency revocations

This third suggested EC approach to approving CBI programmes is also linked to recent developments.[240] In March 2022, Malta agreed to suspend CBI naturalisation that had been secured by Russian and Belarusian nationals. Malta accepted the fact that with the Russian invasion of Ukraine and as the war was intensifying, it was no longer possible to conduct proper due diligence on these two types of foreign nationals.[241] It is acknowledged that Malta only took this action after being strongly pressured by US and EU leaders. However, in an EC–approved CBI oversight framework, circumstances such as a war potentially impacting EU interests, this could legitimately engage EC oversight to the limited and exceptional extent.[242]

A final word

The above proposals have not been adopted by EC policymakers – nor is it likely that such initiatives will be undertaken in the foreseeable future. The Commission seems intent on the *EC v Malta* proceedings playing out, and then perhaps reassessing what future directions such programs might take. It is suggested that an EC defeat might spur deeper consideration of workable alternatives like this three-pronged CBI programme oversight.[243]

A 2012 CBI study has not lost its probative force in the intervening 12 years.[244] Dzankic concluded that different CBI programmes reveal a "normative tension" between states that are

[237] FATF, 'Misuse of Citizenship and Residency by Investment' (2022).
[238] Ibid, and see Financial Crime Academy 'Unlocking Compliance Excellence: The Ultimate FATF Recommendations Summary' (July 2024). Available at: <https://financialcrimeacademy.org/fatf-recommendations-summary> accessed 3 July 2024.
[239] FATF, 'Misuse of Citizenship and Residency by Investment' (2022).
[240] Times Malta 'Malta suspends golden passport scheme for Russia, Belarus applicants' (March 2022). Available at: < https://timesofmalta.com/article/malta-suspends-golden-passport-scheme-for-russia-belarus-applicants.938229> accessed 4 July 2024.
[241] Ibid.
[242] Ibid.
[243] FATF, 'Misuse of Citizenship and Residency by Investment' (2022).
[244] Jelena Dzankic 'The Pros and Cons of Ius Pecuniae: Investor citizenship in comparative perspective' (2012) *Cadmus.* Available at: <https://www.academia.edu/2231487/The_Pros_and_Cons_of_Ius_Pecuniae_Investor_citizenship_in_comparative_perspective> accessed 3 July 2024.

seeking to leverage CBI as pathways to "maximize their economic utility," versus those that demand that citizenship is predicated on upholding "genuine ties with the polity as the core of citizenship by retaining them."[245] Dzankic does not dispute the notion that States might legitimately see 'genuine ties' in terms of either residence, language, or a foreign national's reasonable grasp of their desired new state's history. This suggests that any social tensions that might be attributed to new citizens will likely lessen if the newcomer commits to taking certain steps that integrate them into the social fabric.[246]

Dzankic sets out several factors that can be readily repurposed into a legal EU standard, one that contributed to the balancing of interests, as highlighted above. If these factors were treated as legitimacy pre-conditions of a CBI programme, the problems that the EC claims flow from the Malta 2020 Act would be significantly reduced. The factors are summarised as: (i) is there objective evidence that, if approved, these newly naturalised individuals have established (or will establish) "genuine ties with their new state"?; (ii) where the investment component is equalised with reputational gains, does the CBI regime "violate the sphere boundary of money"?; (iii) does the CBI programme have any negative impacts on the principle of equality between naturalised investors, existing citizens, and other applicants who seek citizenship under ordinary naturalisation procedures?[247] The factors serve as suggestions that the EC could implement without much resistance from any particular member state and would serve as a safeguard against future accusations of unregulated CBI programmes. Furthermore, the EC would be likely to win any legal resistance from member states; this is not an argument of prohibiting CBI programmes, but providing legal framework for the requirements that member states must follow in order to offer such a programme.

The key point taken from Dzankic is what must be meant by 'equality.' A country, such as Malta, must have the sovereign right to decide what it requires for the investment of foreign nationals in its CBI programme as creating a 'genuine link' with the country. The following example provides the Malta position with further support. In 2008, Michigan, US-born professional basketball player Chris Kaman was recruited by the German national team to play in the Olympic qualifying events. Kaman did not speak German; he had never previously lived in Germany; his only tie to Germany was through to be his great-grandmother.[248] He was quickly granted German citizenship on the grounds of sports–cultural achievement, much like those found in the Austrian laws discussed in Chapter 1.[249]

It seems odd, to the point of conceptual incoherence, that Kaman can be granted German citizenship as a sporting mercenary, but the EC trains its legal guns on Malta and its CBI

[245] Ibid, 3.
[246] Ibid, 5.
[247] Ibid.
[248] World Politics Review 'A New German? Olympian Chris Kaman and German Nationality' (2008). Available at: <https://www.worldpoliticsreview.com/a-new-german-olympian-chris-kam…> accessed 5 July 2024.
[249] European Migration Network (EMN), 'Pathways to Citizenship for Foreigners in Austria' (2020).

programme that injects money and economic growth directly into the national economy and, ultimately, into the EU internal market. The likely outcome of the *EC v Malta* proceedings will be given a more detailed analysis in Chapter 4.

Chapter 4: A Path Forward for Malta and EU CBI Programmes

The EC Arguments

As a matter of standard ECJ procedure, the Advocate General is charged with providing a formal opinion regarding the merits of the respective EC and Malta positions presented to the Court through the pleadings process.[250] Advocates General are members of the ECJ, enjoying similar privileges, which includes immunity from prosecution or civil legal actions.[251] The main function of the Advocate General is to deliver non-binding opinions that serve as a suggestion to the ECJ in their rulings.

Given the many discussion points developed in the preceding chapters concerning EU citizenship and golden passports, one might reasonably imagine that *EC v Malta* represents an ideal opportunity for the Advocate General to make a decisive case for a more coherent EU-wide approach to CBI programmes.

This contention assumes even greater importance when the arguments made by each side at the recent ECJ proceedings on 17 June 2024 are carefully considered.[252] The following italicised sub-headings assist in appreciating the general directions taken by the parties in their ECJ submissions, as well as allows for a brief accompanying independent commentary.

Economic Advantages (Malta's argument) versus security concerns (EC counterpoint): This issue squarely pits EC reliance on possible CBI concerns as a security risk (including crime and the heightened ability of criminal organisations to infiltrate EU member states through investments, versus Malta being able to cite its actual successes in countering such risks (the FATF reports, and previously cited materials in past chapters). If Malta can persuade the ECJ that they have created a 'win-win' scenario by providing economic growth, but remain committed to rigorous foreign national applicant screening, the odds are that Malta will prevail on this legal matter against the Commission and possibly even at the ECJ level.

The summaries of the 17 June proceedings also stress the importance that EC advocates placed on the negative impacts of the 2020 Act linked to the alleged erosion of EU citizenship value.[253]

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[250] European Parliament 'Role of Advocates General at the CJEU' (2024). Available at: <www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)642237> accessed 7 July 2024.
[251] Ibid.
[252] As summarised by Yuri Tananev 'Malta Vs EU: A Closer Look at the Recent Citizenship Dispute Hearing' (2 July 2024). Available at: <https://ae.com.mt/malta-vs-eu-a-closer-look-at-the-recent-citizenship-dispute-hearing> accessed 6 July 2024.
[253] Ibid.

This argument is difficult to follow if one analyses the point from a first principles perspective under TFEU Article 20 and TEU Article 4. It should be remembered that as a clear matter of international law, citizenship laws and their composition is a power reserved for a sovereign state. Furthermore, the sources cited throughout this dissertation emphatically confirm that under the EU treaty system, member states have not given away this power or not have otherwise permitted any encroachment upon it by EU institutions.

When this reasoning is taken at its own logical conclusion, the EC position is untenable. Member states control their own citizenship rules. If an individual secures citizenship from one EU member state, they can then enforce certain rights that flow from this status – including EU citizenship (the 'club of clubs' theory outlined in Chapter 2).[254] The EC arguments made concerning 'protecting' EU citizenship would lead to the EC controlling how member states enact, implement, and enforce their own laws. This is akin to a form of an EC stealth attack on an irrefutably clear right preserved at the member-state level.[255] Once again, the weight of current authority (including the previously cited 2008 *Rottmann v Freistaat Bayern* case, which provides guidance differentiating between EU citizenship and its member states' counterparts) appears to favour Malta.[256]

National Sovereignty (Malta's argument) versus EU Integration (the EC position): Malta advanced the legal arguments outlined in Chapters 1 and 2; that sovereign state power to define citizenship laws align with national interests. The EC is seeking Court approval of a harmonised citizenship approach, but it does not favour the proposed solution set out in Chapter 3. In effect, the Commission's 'harmonisation' would be a complete ban on CBI programmes. Once again, it is doubtful that the EC has a principled basis for this position, if citizenship is a state competency, pursuant to TFEU Article 20 and its related provisions.[257]

Implications for Other Member States: This issue is likely the only area where the parties and the Court will agree. There is no doubt that how the ECJ will decide this case will permanently influence how Malta and other similarly inclined EU member states, and would allow the EC to craft future CBI programme policies.[258] It is this final issue that invites reconsideration of whether a so-called 'mere' investment creates a less genuine or compelling connection to a nation than conventional forms of attaining citizenship: birth, familial relationships, long-term

[254] Konrad and Rees, 12.
[255] Christina Georgaki, 'Lessons from the EU and Malta's 'citizenship by investment' dispute' (July 2024). Available at: <https://www.eureporter.co/world/malta/2024/06/27/lessons-from-the-eu-and-maltas-citizenship-by-investment-dispute/> accessed 8 July 2024.
[256] Case C-135/08 *Janko Rottmann v Freistaat Bayern / AG Opinion* (2009). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CJ0135> accessed 25 June 2024.
[257] Tananev 'Malta Vs EU: A Closer Look At The Recent Citizenship Dispute Hearing' (2 July 2024)
[258] Ibid.

residence, language, education in a national higher education facility, or the myriad 'achievements' that states define as supporting naturalisation.[259]

The EC case has a strangely paternalistic feel when it is dissected into the subheadings mentioned above. The EC does not like the possibility that multiple EU member states might be given ECJ encouragement to build out their own CBI programmes in the future if Malta is allowed to continue their current programme. However, the weight of European and global citizenship law authority seems against the EC position. No matter how cleverly the arguments might be constructed, EU policy and regulatory enforcement from the EC cannot avoid the immovable rights confirmed through citizenship. This is covered under state sovereignty first principles. If the EC makes the argument, "We do not like CBI programmes because we believe they erode the value of EU citizenship," this is not an argument likely to carry any legal weight.

End game?

Any predictions made concerning a legal dispute adjudication outcome carry their own risks. The following *EC v Malta* comments are made in a similar spirit.

There is one argument that was not given extensive attention in the currently available *EC v Malta* summaries that might emerge in either the Advocate General's Opinion or the ECJ ruling proper. These entities might reach the conclusion that the harmonised EU treaty system is potentially compromised if foreign national citizenship applications are solely, or primarily decided by investment size alone (the cited Chapter 2 Türkiye law).[260] The term 'floodgate problem' is the description often given to any laws that carry possible consequences that overwhelm the system. The following scenario illustrates how a 'floodgate' issue might trouble the ECJ as it considers the otherwise strong Malta position.

Hypothetically, let us suppose that Malta succeeds in its CBI defence before the ECJ. Other EU member states decide they would like to also compete for high-net-worth investors by creating their own CBI programmes. Let us suppose that four other member states bring in similar CBI programmes to those defined in the 2020 Act, but in each case the investment requirements are reduced to €300,000. Member states would now be competing for foreign nationals' citizenship attention and it could potentially create a 'race-to-the-bottom' scenario, thus degrading the requirements. This would drastically affect EU harmonisation in several areas during the process.

This scenario thus prompts a key question – is this 'problem' sufficiently large enough that the ECJ might concede the position of the EC? The short answer is 'probably not.' However, the ECJ

[259] Ibid, and see Matjaž Tratnik 'Citizenship by Investment Programs from the Perspective of International and EU Law' (2019). Available at: <https://www.academia.edu/68487373/Citizenship_by_Investment_Programs_from_the_Perspective_of_International_and_EU_Law> accessed 5 July 2024.

[260] Çetinkaya 'Citizenship by investment in Türkiye: Who buys citizenship and why?' (2023).

ruling that will likely favour Malta might provide the EC with a strong incentive to draft a regulation, whereby something akin if the proposals in Chapter 3 were to become EU law. If the EC is prepared to concede that EU member states ultimately control their own citizenship laws by virtue of State competency in this area, where the EC restricts itself to oversight concerning states conducting their own foreign national application due diligence, such a law would likely see Malta or other similarly inclined member states bring about legal challenges to the legality of such a regulation.

Conclusions

There is no doubt that CBI programmes potentially represent economic development opportunities for any country willing to embrace this particular form of citizenship law liberalisation. It is also recognised that for many EU treaty system traditionalists, citizenship should be tied to values that directly link a prospective citizen to their new country. Matters such as familial roots, cultural appreciation, and residency commitments are values that still retain their appeal in 2024.

However, as the various laws cited in the comparisons between Malta, Austria, and Türkiye presented in Chapter 2 confirm, there are numerous exceptional paths that prospective citizens can currently take that are equally disconnected from these traditional citizenship markers. On this basis alone, the *EC v Malta* case seemingly favours CBI programmes. The EC cannot convincingly claim that something it describes as "EU values" are undermined by the Malta programme, when so many other pathways have been utilised for many years without significant controversy. An investor donating €600,000 (or more) into a national fund (and satisfying all other mandated conditions) in a small EU state like Malta is depicted by the EC as representing a threat to national security and related state issues. But an athlete or other 'accomplished individual' with no other traditional ties to the state can effectively receive a free pass if their contributions are deemed worthy enough? This presents a wild form of hypocrisy and inconsistency if the ECJ were to side with the Commission in this case.

It is acknowledged throughout this dissertation that a poorly devised or inadequately supervised CBI programme carries huge downside risks. The cited Cypriot programme and its failure to have full due diligence conducted on both PEP and CBI applicants is an excellent example of what EU member states must avoid when implementing such a programme. However, it is disingenuous for the EC to argue that CBI programmes are theoretically risk-laden and thus must be prohibited under the framework of the TFEU and TEU, when the current Malta programme is apparently satisfying these risk concerns in practice. Logic alone dictates that if the 2020 Act framework is mitigating the risks that compromised the Cyprus regime, neither the EC nor the ECJ should intervene.

A final conclusion that at least partially aligns with the EC position presented to the ECJ is also supported here. If the EC were to ultimately win in court with a positive ECJ ruling, Malta would be bound and have no choice but to comply and dissolve its CBI programme. But given the arguments of the EC, that seems like a highly unlikely outcome. Pavlidis and the other scholars cited in Chapters 2 and 3 argue that the FATF standards that assist countries in identifying and mitigating money-laundering risks that are possibly associated with CBI programmes serve as a useful blueprint for Commission regulators. It is up to the EC to mandate a high level of due diligence and CBI applicant eligibility rules or put into place other control mechanisms that will contribute to greater EU-wide 'golden passport' consistency. This must be accomplished without the Commission edging into the sovereignty of clearly defined laws that are delegated to EU member states.

Appendix I

Malta Laws Governing Naturalization

CITIZENSHIP BY NATURALISATION

10. (1) An alien or a stateless person, being a person of full age and capacity, on making application therefor to the Minister in the prescribed manner, may be granted a certificate of naturalisation as a citizen of Malta if he satisfies the Minister -

(a) that he has resided in Malta throughout the period of twelve months immediately preceding the date of application; and

(b) that, during the six years immediately preceding the said period of twelve months, he has resided in Malta for periods amounting in the aggregate to not less than four years; and

(c) that he has an adequate knowledge of the Maltese or the English language; and

(d) that he is of good character; and

(e) that he would be a suitable citizen of Malta:

Provided that the Minister may, if he so thinks fit in the special circumstances of any particular case, allow periods of residence earlier than seven years before the date of application to be reckoned in computing the aggregate mentioned in paragraph(b).

(2) Any person of full age and capacity born outside Malta may, on making application therefor to the Minister in the prescribed manner, be granted a certificate of naturalisation as a citizen of Malta -

(a) if his father, or in the case of a person born on or after the 1st August, 1989, if either of his parents became, or would but for his death have become, a citizen of Malta by virtue of article 3(2), or

(b) if his father, or in the case of a person born on or after the 1st August, 1989, if either of his parents, at the time of that person's birth, was, or would but for his death have been, a citizen of Malta by virtue of article 5(2).

(3) Any person of full age and capacity who -

(a) has emigrated from Malta (whether before, on or after the 21st September, 1964) and, having been a citizen of Malta by virtue of article 3(1) or article 5(1), has ceased to be such a citizen; or

(b) emigrated from Malta before the 21st September, 1964 and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of article 3(1), may, on making application therefor to the Minister in the prescribed manner, be granted a certificate of naturalisation as a citizen of Malta.

Bibliography

Secondary sources

Texts and journals

Baaren, L 'Investor Citizenship and State Sovereignty in International Law' in *Mapping Investment Migration Law and Practice* (Dimitry Kochenov and Kristin Surak, eds), Cambridge University Press, 2023

Buchanan, J 'An Economic Theory of Clubs' (1965) 32(125) *Economica, New Series* 1

Krakat, M 'The Case For Citizenship by Investment Is Never Stronger Than During Times of Crisis' (September 2020) *Investment Migration Insider.* Available at: <https://www.researchgate.net/publication/348735901_The_Case_For_Citizenship_by_Investment_Is_Never_Stronger_Than_During_Times_of_Crisis_> accessed 6 July 2024

Creswell, J and Creswell, D *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (5th edn, Sage, 2018)

De Groot, G and Vonk, O *International Standards on Nationality Law*, (Wolf Legal 2015)

Deniz, A and Çetinkaya, S 'Citizenship by investment in Türkiye: Who buys citizenship and why?' (2023) *Journal of Southeast European and Black Sea Studies* 1

Jones, M 'The Nottebohm Case' (1956) 5 *International and Comparative Law Quarterly* 230, 244' (ii) Cornel Marian 'Who is Afraid of Nottebohm?: Reconciling the ICSID Nationality Requirement for Natural Persons with Nottebohm's 'Effective Nationality' Test' (2011) 28(4) *Journal of International Arbitration* 313

Joppke, C 'Citizenship by Investment: A Case of Instrumental Citizenship' In *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*, edited by D. Kochenov, and K. Surak, (2023) Cambridge: Cambridge University Press, pp.240–258

Kochenov, D and Surak, K 'Learning from Investment Migration' (2022) *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*. Available at: <https://ssrn.com/abstract=4033542> accessed 24 June 2024

Kochenov, D 'Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of 2 March 2010 (Grand Chamber)' (2010) 47(6) *Common Market Law Review* 1831. Available at: <https://ssrn.com/abstract=1702474> accessed 25 June 2024

Legg, A ‘The Margin of Appreciation in International Human Rights Law: Deference and Proportionality,’ *Oxford Monographs in International Law* (Oxford, 2012; online edn, Oxford Academic, 20 Sept. 2012). Available at: <https://doi.org/10.1093/acprof:oso/9780199650453.001.0001> Accessed 26 June 2024

Levitan, R and Shubik, M ‘Price duopoly and capacity constraints’ (1972) 13(1) *International Economic Review* 111

Macklin, A ‘Is It Time to Retire Nottebohm?’ (2017) 111 *American Journal of International Law* (Unbound) 492, 487. Available at: <https://doi.org/10.1017/aju.2018.5> accessed 4 July 2024

Menkhoff, L ’Tax Evasion in New Disguise? Examining Tax Havens’ International Bank Deposits’ (2020) 176 *Journal of Public Economics* 53

Olmedo, J ‘In Fairness to Nottebohm: Nationality in an Age of Globalization’ (2024) *Asian Journal of International Law.* Available at: <https://api.semanticscholar.org/CorpusID:269399912> accessed 6 July 2024

Pace, R ‘Malta: A Janus Faced Migration and Integration Policy’ In: Joensen, T., Taylor, I. (eds) *Small States and the European Migrant Crisis*. Palgrave Macmillan, Cham. Available at: <https://doi.org/10.1007/978-3-030-66203-5_7> accessed 24 June 2024

Paul, J ‘The Transformation of International Comity’ (2008) 71(3) Law *and Contemporary Problems* 19

Pavlidis, G ‘A case of insufficient safeguards or state-enabled money laundering? ‘Golden Passport’ and ‘Golden Visa’ investment schemes in Europe’ (2022) 22(2) *Journal of Investment Compliance* 170. Available at: <https://www.researchgate.net/publication/353899758> accessed 25 June 2024

Siekmann, R *Introduction to International and European Sports Law* (*ASSER* 2012)

Sloane, R ‘Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality’ (2009) 50 *Harvard International Law Journal* 1. Available at: <https://scholarship.law.bu.edu/faculty_scholarship/489> accessed 5 June 2024

Spiro, P ‘Cash-for-passport and the end of citizenship’ in: Shachar, A and Bauboeck, R (eds.), *Should Citizenship be for Sale?,* EUI Working Papers, RSCAS 2014/1 (2014)

Spiro, P ‘Investment Citizenship and the Long Leash of International Law’ (2022) In *Citizenship and Residence Sales: Rethinking the Boundaries of Belonging*, edited by D. Kochenov, and K. Surak, (2023) Cambridge: Cambridge University Press, pp.137-160

Streinz, T ‘The Evolution of European Data Law’, in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (3rd edn OUP, 2021)

Surak, K *The Golden Passport: Global Mobility for Millionaires* (Harvard University Press, 2023)

Surak, K 'Do Passports Pay off? Assessing the Economic Outcomes of Citizenship by Investment Programs' (2024) *Journal of Ethnic and Migration Studies* 1, 22. Available at: <https://www.tandfonline.com/doi/full/10.1080/1369183X.2024.2332825> accessed 30 June 2024.

Surak, K 'Appendix: Citizenship and Residence by Investment Schemes: State of Play and Avenues for EU Action.' European Added Value Assessment, European Parliamentary Research Service. Brussels: European Union. Available at: <https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)694217> accessed 28 June 2024

Thym, D 'Residence as De Facto Citizenship? Protection of Long-Term Residence Under Article 8 ECHR', in Ruth Rubio-Marin (ed.): *Human Rights and Immigration* (OUP, 2014), pp. 106–44., Available at: <https://ssrn.com/abstract=2758636> accessed 25 June 2024

Tyler, T 'Methodology in legal research' (2017) 13 *Utrecht Law Review* 130

Villarino, J 'If Mr Nottebohm Had a Golden Passport: A Study of the Obligations for Third Countries under International Law Regarding Citizenships-For-Sale' (2019) 9(1) *Cambridge International Law Journal* 76. Available at: < http://dx.doi.org/10.2139/ssrn.4212421> accessed 25 June 2024.

Weingerl, P and Tratnik, M 'Citizenship by Investment Programs from the Perspective of International and EU Law' (2020) 11(2) *Lexonomica* 95. Available at: <https://www.researchgate.net/publication/338730062_> accessed 29 June 2024

Worster, W 'Reining in the Nottebohm Case' (2022) 41 *Boston University International Law Journal*. Available at: <http://dx.doi.org/10.2139/ssrn.4148804> accessed 4 July 2024

Other sources

Arnardóttir, O and Guðmundsdóttir, D 'Speaking the Same Language? Comparing Judicial Restraint at the ECtHR and the ECJ' (2016) Shifting Centres of Gravity in Human Rights Protection, Rethinking relations between the ECHR, EU, and national legal orders, 2016. Available at: <https://ssrn.com/abstract=3083973> accessed 25 June 2024

Baaren, L and Vink, M 'Modes of Acquisition and Loss of Citizenship Around the World - Comparative Typology and Main Patterns in 2020' (2021). Available at: <http://dx.doi.org/10.2139/ssrn.3979808> accessed 29 June 2024

Clément-Wilz, L ‘The Advocate General: A Key Actor of the Court of Justice of the European Union’ (2012) 14 *Cambridge Yearbook of European Legal Studies,* 587. Available at: <https://doi.org/10.5235/152888712805580435> accessed 6 July 2024

Council of Europe ‘European Convention on Human Rights’ (2024). Available at: <https://www.coe.int/en/web/human-rights-convention> accessed 25 June 2024

Court of Justice (ECJ) ‘Documents’ (2024). Available at: <https://curia.europa.eu/juris/document/document_print.jsf?docid=273…> accessed 25 June 2024

D’Oliveira, H ‘Golden passports: European Commission and European Parliament reports built on quicksand’ (2023) *COMPAS.* Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/WP-2023-162-Golden-Passports.pdf> accessed 25 June 2024

Dugard, C and Vermeer, A ‘The protection of individuals by means of diplomatic protection. Diplomatic protection as a human rights instrument’ (2003). Available at: <https://api.semanticscholar.org/> accessed 5 July 2024

Dzankic, J ‘The Pros and Cons of Ius Pecuniae: Investor citizenship in comparative perspective’ (2012) *Cadmus.* Available at: <https://www.academia.edu/2231487/The_Pros_and_Cons_of_Ius_Pecuniae_Investor_citizenship_in_comparative_perspective> accessed 3 July 2024

Eliantonio, M and Volpato, A ‘The European System of Harmonised Standards’ *Legal Opinion for ECOS* (2022). Available at: <http://dx.doi.org/10.2139/ssrn.4055292> accessed 24 June 2024

European Commission, ‘Citizenship Fact Sheet’ (2024). Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/145/the-citizens> accessed 24 June 2024

European Commission ‘Country report: Malta’ (2024). Available at: <https://economy-finance.ec.europa.eu/document/download/50f0b280-0035-4f28-8c35-f2d6db911cca_en?filename=ip242_en.pdf> accessed 24 June 2024

European Commission ‘Migration and Home Affairs’ (March 2024). Available at: <https://home-affairs.ec.europa.eu/.../irregular-migration-and-return_en> accessed 24 June 2024

European Commission, ‘Golden passport' schemes: Commission proceeds with infringement case against Malta (2022). Available at: <https://malta.representation.ec.europa.eu/news/golden-passport-sc…> accessed 24 June 2024

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’ COM (2019) 12 final, p. 3.

Available at: <https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf> accessed 25 June 2024

Economist, 'What is the difference between nationality and citizenship?' (July 2017). Available at: <https://www.economist.com/the-economist-explains/2017/07/09/what-is...> accessed 7 July 2024

European Commission, 'EU Charter of Fundamental Rights 2000' (2024). Available at: <https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en> accessed 25 June 2024

EC, 'EU Charter of Fundamental Rights' (2024). Available at: <https://commission.europa.eu/.../eu-charter-fundamental-rights_en> accessed 6 July 2024

EC, 'State of the Union Address by President von der Leyen' (2022). Available at: <https://ec.europa.eu/commission/presscorner/detail/en/speech_22_5493/smo> accessed 6 July 2024

EU Curia 'Action brought on 21 March 2023 – European Commission v Republic of Malta (Case C-181/23)' (2023). Available at: <https://curia.europa.eu/juris/document/document_print.jsf?docid=273734&doclang=EN> accessed 7 July 2024

European Parliament 'Role of Advocates General at the CJEU' (2024). Available at: <www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)642237> accessed 7 July 2024

European Parliament, 'Parliamentary question | Granting of European citizenship in exchange for investment ('European golden passports')' (2022). Available at: <https://www.europarl.europa.eu/doceo/document/E-9-2022-000554_EN.h…> accessed 6 July 2024

European Parliament Committee on Civil Liberties, Justice and Home Affairs, 'REPORT with proposals to the Commission on citizenship and residence by investment schemes' (2022). Available at: <https://www.europarl.europa.eu/doceo/document/A-9-2022-0028_EN.html> accessed 7 July 2024

EU, 'Recommendations' (2024). Available at: < https://eur-lex.europa.eu/EN/legal-content/glossary/recommendation.html#:~> accessed 6 July 2024

European Migration Network (EMN), 'Pathways To Citizenship For Foreigners In Austria' (2020). Available at: <https://home-affairs.ec.europa.eu/system/files/2020-08/01> accessed 24 June 2024, citing Citizenship Act 1985 (Aus)

FATF, ‘Misuse of Citizenship and Residency by Investment’ (2022). Available at: < https://www.fatf-gafi.org/en/publications/Methodsandtrends/misuse> accessed 28 June 2024

FATF ‘What we do’ (2024). Available at: < https://www.fatf-gafi.org/en/the-fatf/what-we-do.html#:~:te> accessed 1 July 2024

Financial Crime Academy ‘Unlocking Compliance Excellence: The Ultimate FATF Recommendations Summary’ (July 2023). Available at: <https://financialcrimeacademy.org/fatf-recommendations-summary> accessed 3 July 2024

Georgaki, C ‘Lessons from the EU and Malta’s ‘citizenship by investment’ dispute’ (July 2024). Available at: < https://www.eureporter.co/world/malta/2024/06/27/lessons-from-the-eu-and-maltas-citizenship-by-investment-dispute/> accessed 8 July 2024

Kim, W ‘The ultimate score for rich people? “Golden” passports’ (2023) *Vox.* Available at: <https://www.vox.com/money/23762537/golden-passports-wealthy-expl> accessed 25 June 2024.

L’ecuyer, B ‘The European Commission’s case against Malta’ (November 2022) *Malta Business Week*. Available at: < https://maltabusinessweekly.com/the-european-commissions-case-against-malta/21069/> accessed 6 July 2024

Lenaerts, K and Gutiérrez-Fons, J ‘To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice’ (2014). Available at: <https://cadmus.eui.eu/bitstream/handle/1814/28339/AEL_2…> accessed 26 June 2024

Konrad, K and Rees, R ‘Passports for Sale: The Political Economy of Conflict and Cooperation in a Meta-Club’ IZA Discussion Paper No. 12696. Available at: <http://dx.doi.org/10.2139/ssrn.3475802> accessed 25 June 2024

Mainwaring, D ‘On the rocks: Malta-EU relations in times of crisis’ (2021) *European Council of Foreign Relations.* Available at: <https://ecfr.eu/article/on-the-rocks-malta-eu-relations-in-times-of-crisis/> accessed 24 June 2024

Manko, R ‘EU accession to the ECHR (EPRS Briefing)’ (2017). Available at: <https://www.europarl.europa.eu/RegData/etudes/BRIE/2017> accessed 24 June 2024

Margiotta, C ‘Rich and poor to the test of European citizenship: Notes on the ‘Report on Investor Citizenship and Residence Schemes’ in the European Union’ (2022). Available at: <https://www.rivisteweb.it/doi/10.1415/98605> accessed 2 July 2024

Nomad Capitalist ‘Should You Invest in a Golden Visa? Pros and Cons’ (2024). Available at: <https://nomadcapitalist.com/> accessed 27 June 2024

OECD ‘Residence/Citizenship by investment’ (2018). Available at: <https://www.oecd.org/.../residence-citizenship-by-investment> accessed 28 June 2024

Pasher, S ‘Navigating Austria’s Merit-Based Citizenship (Investment Migration Council) (March 2024). Available at: <https://investmentmigration.org/articles/navigating-austrias-merit...> accessed 28 June 2024

Pech, L ‘The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox’ (March 2020) *RECONNECT*. Available at: <http://dx.doi.org/10.2139/ssrn.3608661> accessed 25 June 2024

Planojevic, M ‘A thorough understanding of the June 2020 amendments of the Malta Citizenship Act (Chapter 188)’ (Bachelor's dissertation). Available at: <https://www.um.edu.mt/library/oar/handle/123456789/106025> accessed 25 June 2024

Raidl, A ‘Award of Austrian citizenship through exceptional performance’ (May 2021). Available at: <https://www.rechtsanwalt-raidl.at/en/award-of-austrian-citizenship-on-the-basis-of-exceptional-performance/> accessed 29 June 2024

Roes, T ‘Limits to Loyalty: the Relevance of Article 4(3) TEU’ (2015). Available at: <https://www.academia.edu/29731377/Limits_to_Loyalty_the_Relevance_of_Article_4_3_TEU_Cahiers_de_droit_europ%C3%A9en_2016_1_253_283> accessed 25 June 2024

Savory & Partners, ‘Turkish Citizenship By Investment Program’ (2024). Available at: <https://www.savoryandpartners.com/progra> accessed 27 June 2024

Schengen Visa ‘Turkey Citizenship by Investment - Turkey Golden Visa’ (2024). Available at: <https://www.schengenvisainfo.com/turkey-golden-visa> accessed 27 June 2024

Scicluna, K ‘EU vs Malta Citizenship by Investment Programme: Court Hearing’ (June 2024). Available at: <https://aelegal.com.mt/eu-vs-malta-citizenship-by-investment-progr…> accessed 25 June 2024

Service Public (Fr) ‘How to obtain French nationality?’ (2024). Available at: <https://www.service-public.fr/particuliers/vosdroits/F34717?lang=en> accessed 1 July 2024

Tananev, Y ‘Malta Vs EU: A Closer Look At The Recent Citizenship Dispute Hearing’ (2 July 2024). Available at: < https://ae.com.mt/malta-vs-eu-a-closer-look-at-the-recent-citizenship-dispute-hearing> accessed 6 July 2024

Times of Malta ‘Malta suspends golden passport scheme for Russia, Belarus applicants’ (March 2022). Available at: < https://timesofmalta.com/article/malta-suspends-golden-passport-scheme-for-russia-belarus-applicants.938229> accessed 4 July 2024

Tratnik, M ‘Citizenship by Investment Programs from the Perspective of International and EU Law’ (2019). Available at: <https://www.academia.edu/68487373/Citizenship_by_Investment_Programs_from_the_Perspective_of_International_and_EU_Law> accessed 5 July 2024

Transparency International and Global Witness, ‘European Getaway: Inside the Murky World of Golden Visas’ (2018) 62, 64. Available at: <https://www.transparency.org/whatwedo/publication/golden_visas> accessed 4 July 2024

UK Government ‘Check if you can become a British citizen’ (2024). Available at: <https://www.gov.uk/british-citizenship> accessed 23 June 2024

World Data ‘Malta’ (2024). Available at: <https://www.worlddata.info/europe/malta/index.php#:~:tex> accessed 24 June 2024

Weingerl, P and Tratnik, M ‘Relevant Links: Investment Migration as an Expression of National Autonomy in Matters of Nationality’ in Dimitry Kochenov and Kristin Surak (eds) *Citizenship and Residence Sales* (Cambridge University Press, 2023)

World Politics Review ‘A New German? Olympian Chris Kaman and German Nationality’ (2008). Available at: <https://www.worldpoliticsreview.com/a-new-german-olympian-chris-kam…> accessed 5 July 2024