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# EUDO CITIZENSHIP OBSERVATORY

## *COUNTRY REPORT ON CITIZENSHIP LAW: MALTA*

Eugène Buttigieg  
Daniela DeBono

Revised and Updated January 2015



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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

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Malta***

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EUDO Citizenship Observatory  
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# Malta

*Eugène Buttigieg and Daniela DeBono<sup>1</sup>*

## 1. Introduction

Malta's legal regime on citizenship is relatively young as it came into being on the day of Malta's acquisition of independence from British rule in 1964. Throughout these years, however, particularly over the past 25 years, it has undergone extensive alterations marking changes in the governing principles. Malta's first citizenship provisions were a combined application of the *ius soli* and *ius sanguinis* principles with a strict prohibition of dual/multiple citizenship and in certain respects manifested a degree of gender inequality. Reforms in 1989, 2000 and 2007 brought about a radical change of policy regarding citizenship by in particular (i) reversing the prohibition against dual/multiple citizenship, in certain instances even retrospectively, and extending dual citizenship not only to those who had been Maltese citizens by birth in Malta and lost this Maltese citizenship on emigrating but also to first, second and subsequent generations of Maltese born outside Malta and living abroad whose Maltese citizenship derived from descent rather than birth in Malta; (ii) shifting to a rule based more on *ius sanguinis* than on *ius soli* and (iii) removing gender inequality. Apart from the existing routes by naturalisation and registration, a more recent reform in 2013 introduced a new route for the acquisition of Maltese citizenship through an investment scheme. This reform took many by surprise, in part because there was no other citizenship-by-investment scheme in existence up until then, but also because, as a policy, it marks a radical shift from the 'protectionist', 'arbitrary' and 'discretionary' policy of citizenship acquisition by naturalisation.<sup>2</sup>

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<sup>1</sup> The authors would like to thank Mr. Joseph Mizzi, Advisor to the Minister of Home Affairs and National Security on citizenship and immigration matters and former Director at the Department for Citizenship and Expatriate Affairs, and Mr. Joseph Treeby Ward, former Director, for valuable information and helpful comments on earlier drafts. The report written by Eugene Buttigieg, was initially published in 2009. Daniela DeBono reviewed and updated the version of the report published in April 2013. The present version has been further revised and updated by Daniela DeBono and covers citizenship-related developments up to January 2015.

<sup>2</sup> DeBono, 'Naturalisation Procedures for Immigrants Malta', EUDO Citizenship Observatory, March 2013

The relevant Maltese legislation uses the terms ‘ċittadin’ (‘citizen’) and ‘ċittadinanza’ (‘citizenship’) rather than ‘nazzjonalità’ (‘nationality’) in describing the bond between Malta and persons of Maltese descent or those who have acquired this bond through registration or naturalisation. Thus, the technical legal term is ‘ċittadinanza’ not ‘nazzjonalità’. However, nowhere in the legislation is there a definition of any of these terms. The main legislation is the Maltese Citizenship Act and it regulates the acquisition, deprivation and renunciation of Maltese ‘ċittadinanza’. Likewise the Constitution of Malta only speaks of the acquisition of ‘ċittadinanza’ and the rights attached to ‘ċittadinanza’. Although the term ‘nazzjonalità’ is also used in the Immigration Act and the Malta Citizenship Act, it is used in a non-technical and generic way to mean the provenance of a person rather than a status that gives specific legal rights.

## **2. Historical background**

### **2.1. From independence to 1989**

Malta was a British colony from 1800 until 21 September 1964 when it acquired independence from British rule. All persons born in Malta during this period were automatically British subjects according to British law. It was thus only on Independence Day, 21 September 1964, that Malta acquired its first provisions conferring and regulating Maltese citizenship. The Constitution of Malta, that entered into force on Independence Day, contained provisions conferring Maltese citizenship that were typical of independence constitutions drafted by the British for their colonies. The Constitution contained a section, chapter III, on citizenship, that conferred Maltese citizenship automatically on all persons who were born in Malta and were citizens of the United Kingdom and Colonies before 21 September 1964, provided that one of the parents was also born in Malta; in other words, this was a combined application of the *ius soli* and *ius sanguinis* principles. This was necessary to avoid imposing Maltese citizenship on children born in Malta to British military personnel families and British nationals stationed in Malta, while Malta was a British colony. Persons born abroad also acquired Maltese citizenship on 21 September 1964 provided the father and a paternal grandparent were both born in Malta.

On the other hand, persons born on or after the date of independence acquired Maltese citizenship by mere birth in Malta irrespective of whether or not any of their parents were born in Malta; in other words on the strength of the *ius soli* principle only. In practice, this meant that children born of foreign parents in Malta acquired Maltese citizenship by birth even if they were not of Maltese descent.

Chapter III of the Constitution also established that a Maltese citizen should have no other citizenship. Adults in possession of another citizenship had to renounce it by 21 September 1967. If a minor who was a Maltese citizen possessed any other citizenship, upon reaching his or her eighteenth birthday, he or she would have had to renounce any other citizenship within a year if he or she wished to retain Maltese citizenship. Moreover, Maltese adults who acquired the citizenship of any other country would have automatically forfeited Maltese citizenship while foreigners who acquired Maltese citizenship by registration or naturalisation would have had to renounce any other citizenship held by them within six months from registration or three months from naturalisation.

Not unlike the general policy worldwide at the time, in the case of children born abroad, the question whether the child would acquire Maltese citizenship or not depended on whether it was the father or the mother who possessed Maltese citizenship at the time of birth. If the father was Maltese (by birth in Malta, by registration, or by naturalisation) though not the mother, the child would acquire Maltese citizenship but if the father was non-Maltese even though the mother was Maltese the child would not acquire Maltese citizenship. Thus, a Maltese mother could not transmit her citizenship to her child born outside Malta unless she was unmarried. Likewise, consistently with the international trend at the time, while the foreign wife of a Maltese citizen was entitled to become a citizen of Malta by registration, a foreign husband of a Maltese citizen was not.

The first law that complemented the Constitution on citizenship matters was the Maltese Citizenship Act (chapter 188 of the Laws of Malta) that was enacted the following year in 1965. This regulated in particular the acquisition of Maltese citizenship by registration and naturalisation. The law was prejudiced in favour of Commonwealth citizens as the latter could acquire Maltese citizenship by registration after five years of residence in Malta, while other foreigners required six years of residence in Malta to acquire Maltese citizenship by naturalisation. The next development in this field was the enactment of the Immigration Act (chapter 217 of the Laws of Malta) in 1970 that laid down rules providing for the control of immigration into Malta.

## 2.2. The 1989 amendments

Although throughout the years various amendments were made to all these laws, necessitated *inter alia* by Malta's transformation into a republic on 13 December 1974, the first major reform in the citizenship laws took place in August 1989 when chapter III of the Constitution, the Maltese Citizenship Act and the Immigration Act (via Acts XXIII, XXIV and XXV of 1989 respectively) were radically amended to indicate a clear change of policy regarding citizenship by (i) making an exception to the prohibition against dual citizenship for emigrants born in Malta and who had spent at least six years abroad;<sup>3</sup> this had significant implications as, especially in the 1950s and 1960s, well over 100,000 Maltese citizens (more than one fourth of the current population) had emigrated to countries such as the United Kingdom, Australia, Canada and the United States to seek employment and thereby obtained a second citizenship;(ii) shifting to a rule based more on *ius sanguinis* than on *ius soli*; (iii) allowing Maltese mothers to transmit their citizenship to their children born abroad; (iv) granting the same rights to foreign husbands of citizens of Malta as foreign wives of citizens of Malta by allowing them to be registered as citizens of Malta; and (v) reintroducing acquisition of citizenship by adoption.

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<sup>3</sup> Hitherto only minors were allowed to have dual citizenship until their nineteenth birthday.

This change in policy was due to the influence of changing international trends favouring *ius sanguinis* over *ius soli* and a greater international acceptance of dual and multiple citizenship as well as the increasing recognition at the international level of the need to safeguard gender equality in the citizenship laws. Malta has always participated actively in international fora and endorsed international instruments in this field and has moulded its policy accordingly. Moreover, the government had been elected in 1987 on the strength of an electoral mandate that included the promise to allow expatriates to regain their lost citizenship retrospectively by acquiring dual citizenship and that citizenship laws would guarantee gender equality. A number of overseas associations representing expatriates also exerted pressure for this concession to expatriates to be extended to further generations.

As a result of these amendments, Maltese emigrants were now allowed to hold dual citizenship. Art. 27(3) of the Constitution was amended to enable Maltese emigrants born in Malta to hold dual citizenship, provided of course that the country of which they were citizens recognised the concept of dual citizenship. This applied retrospectively. A Maltese citizen born in Malta who, as the law stood at the time, had automatically lost his Maltese citizenship upon emigrating and acquiring the citizenship of the country to which he had emigrated, would now be deemed never to have lost his Maltese citizenship, provided he had spent at least six years in that country. Thus, his dual citizenship would be backdated to the date when he acquired the foreign citizenship. This also affected children born of a Maltese emigrant father who had lost his Maltese nationality because he had acquired another nationality. Since the dual nationality would be backdated so that the father is deemed never to have lost his Maltese citizenship, children who were born of fathers who had 'lost' their Maltese citizenship at the time of their birth and who were therefore deemed not to be Maltese citizens, also acquired Maltese citizenship with this amendment, effective from their date of birth, once their fathers were reinstated in their previous status as citizens of Malta.

It should be noted that under the current legislation, only Maltese persons habitually resident in Malta have voting rights in national general elections and voting does not take place abroad in Malta's embassies or consulates. So this extension of citizenship to expatriates does not signify any right to participate in the process of democratic self-determination of the country.

As stated above, under the Constitution, anyone born in Malta automatically became a citizen of Malta by mere birth in the country. However, with the 1989 amendments to the Constitution this has changed, as these amendments limit such acquisition by adding the *ius sanguinis* to the *ius soli* criterion in establishing that, as from the coming into force of these amendments on 1 August 1989, a person born in Malta will acquire Maltese citizenship only if at least one of the parents is a citizen of Malta or was born in Malta and emigrated and enjoys freedom of movement in Malta in terms of art. 44 of the Constitution.

The amendments also removed gender inequality in two respects: (i) in relation to Maltese mothers of children born abroad and (ii) with respect to foreign men married to Maltese women.

Prior to 1989 Maltese citizenship was transmitted to the children only if the father was a Maltese citizen. However, with these amendments it now suffices that either of the parents is a Maltese citizen (by birth in Malta, by registration, or by naturalisation). The Maltese mother, just like the Maltese father, may now transmit citizenship to her children born abroad.

Before the 1989 amendments to the Constitution, while a foreign woman married to a citizen of Malta or to someone who became a citizen of Malta was entitled to acquire Maltese citizenship by registration, a foreign husband of a female Maltese citizen was not. This was therefore discriminatory against foreign husbands as compared to foreign wives. The amendments extended this right to foreign husbands of Maltese citizens so that they are now on a par with foreign wives of Maltese citizens. Moreover, this right now extends even to the widow or widower of a person who was a citizen of Malta at the time of death or would have been on 21 September 1964 had he or she lived till that day. Another significant change in policy is related to the acquisition of citizenship by adoption. Until 1976 it was possible under Maltese law to acquire Maltese citizenship through adoption, i.e. a person lawfully adopted by a citizen of Malta would acquire Maltese citizenship by that adoption. This was no longer possible following a legislative amendment on 1 January 1977. In 1989, the amendments to the Constitution reintroduced this facility for the acquisition of citizenship through adoption, subject to the proviso that the child adopted must be under ten years of age on the date of adoption.

In 1989, the distinction made in the Maltese Citizenship Act between Commonwealth citizens and other foreigners for the acquisition of Maltese citizenship by residence in Malta, a remnant of British influence, was abolished, so now any person may be naturalised as a citizen of Malta if he or she has resided in Malta for at least five years. The 1989 amendments to the Maltese Citizenship Act also extended naturalisation to any person who, being descended from a person born in Malta, is a citizen of a country other than the one in which he or she resides and whose access to the country of which he or she is a citizen is restricted.

### **2.3. The 2000 amendments**

In 2000, further changes were made to the citizenship laws (via Acts III and IV of 2000) building on and fine-tuning the 1989 amendments, in particular by now completing the shift in policy towards dual and multiple citizenship.<sup>4</sup> One major legislative change was designed to dissuade marriages of convenience whereby foreigners were marrying Maltese citizens simply to acquire the benefits of Maltese citizenship since, according to the prevailing law, marriage with a Maltese citizen immediately entitled the foreign spouse to apply for Maltese citizenship.

The detailed provisions on citizenship in chapter III of the Constitution were transferred to the Maltese Citizenship Act that thereby became the main law regulating citizenship while the Constitution now only contains the general principles on citizenship in art. 22.

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<sup>4</sup> These legislative changes were preceded by the White Paper on Proposed Legislation to Amend the Citizenship and Immigration Laws, Office of the Prime Minister (OPM), 10 August 1998 that explained the proposed amendments.



Dual citizenship, that was hitherto permitted only exceptionally in the case of Maltese emigrants, has now become the rule, following the amendments of 2000, as Maltese citizens are now allowed to hold dual or even multiple citizenship.<sup>5</sup> Thus, as from the entry into force of the amendments on 10 February 2000, Maltese citizens who acquire another citizenship do not lose their Maltese citizenship. Moreover, since minors holding another citizenship only lost their Maltese citizenship if they did not renounce the foreign citizenship by their nineteenth birthday, all citizens of Malta having another citizenship who were minors on that date or had not reached their nineteenth birthday by that date were able to retain both citizenships after their nineteenth birthday. Likewise, foreigners who acquire Maltese citizenship by naturalisation or registration are no longer required to renounce their other citizenships.

Not only was there this complete shift in policy in favour of multiple citizenship but these provisions were made applicable retrospectively to persons born in Malta or abroad and who had Maltese citizenship by birth or descent but had lost this citizenship when they acquired another citizenship, provided they had resided outside Malta for an aggregate period of at least six years. In such cases, they would be deemed never to have lost their Maltese citizenship; with this provision they regained their lost citizenship automatically.<sup>6</sup> On the other hand, those who had lost their Maltese citizenship because they had acquired another citizenship before this date but had not resided abroad for such an aggregate period of time or their Maltese citizenship had been acquired by registration or naturalisation not by birth or descent may regain Maltese citizenship only by registration (and so not automatically).<sup>7</sup> Irrespective of where they are currently residing they may submit an application to be registered as citizens of Malta.

Building on the reform of 1989 that had extended citizenship to children born to Maltese mothers abroad, the law was further changed to entitle such children born between 21 September 1964 (date of independence) and 1 August 1989 (date of coming into force of the 1989 amendments) to be registered as Maltese citizens, irrespective of whether or not they reside or resided in Malta while allowing them to retain their other citizenship.

As stated above, with a view to discouraging marriages of convenience, the law was amended to provide that foreigners married to Maltese citizens may apply for Maltese citizenship on the strength of their marriage only if they have been married for at least five years and no longer immediately following the marriage.<sup>8</sup>

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<sup>5</sup> Art. 22 of the Constitution and art. 7 of the Maltese Citizenship Act.

<sup>6</sup> Maltese Citizenship Act, art. 9.

<sup>7</sup> Ibid., art. 8.

<sup>8</sup> Ibid., arts. 4 and 6.

Another legislative change related to the position of foundlings. Until 2000, a new-born infant found abandoned in Malta was deemed to have been born in Malta but could not acquire Maltese citizenship as long as the identity and nationality of the parents remained unknown. As stated above, since 1989 it has become an essential pre-requisite for Maltese citizenship that at least one of the parents is a citizen of Malta. So this meant the child would be stateless. But in 2000 the Maltese Citizenship Act was amended to the effect that, notwithstanding that the nationality of the parents was unknown, such a child would be deemed to be a citizen of Malta until his or her right to any other citizenship is established.<sup>9</sup>

#### **2.4. The 2007 amendments**

Malta's accession to the European Union in 2004 did not necessitate or lead to any changes in the country's laws and policies on citizenship. But in 2007 important amendments to the Maltese Citizenship Act were passed by the House of Representatives (Act X of 2007) bringing three significant changes to Malta's citizenship law.

First, in response to repeated requests by the Maltese diaspora, dual citizenship has been extended to second and subsequent generations of Maltese born outside Malta and living abroad. The 1989 amendments to the Act had introduced dual citizenship for those who had been Maltese citizens by birth in Malta but who had emigrated and given up their Maltese citizenship, in order to enable them to reacquire Maltese citizenship. The 2000 amendments went a step further by extending dual citizenship to those who had been Maltese citizens by descent (i.e. because at least one of their parents was born in Malta) rather than by birth in Malta and who had subsequently lost this citizenship upon acquisition of citizenship in another country. This made it possible for children of Maltese emigrants born abroad to acquire or retain Maltese citizenship provided one of their parents had been born in Malta. However, this still excluded the offspring of these children, i.e. second and subsequent generations, from citizenship, because in their case, neither parent, though Maltese, had been born in Malta. The 2007 amendments extend dual citizenship to these generations, as the *ius soli* requirement was moved even further up the line of ancestry; provided that somewhere along the applicant's direct line of Maltese ancestry there is an ascendant who was born in Malta of a parent likewise born in Malta, applicants would be entitled to Maltese citizenship even though neither of their parents had been born in Malta.

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<sup>9</sup> Ibid., art. 5.

Following the entry into force of the 2007 amendments on 1 August 2007 (LN 178 of 2007), art. 5 of the Citizenship Act now provides that those born outside Malta on or after the date of independence are entitled to apply for registration as citizens of Malta if they prove (through documentary evidence such as birth, marriage and death certificates) that they are the direct descendants of a Maltese ascendant born in Malta of a parent likewise born in Malta. However, if the applicant has parents, grandparents and other ancestors who are still alive and are also direct descendants themselves in this sense, they would also have to apply for Maltese citizenship under the new provision, as otherwise the Maltese citizenship link would have been broken down the line. If any of these ascendants entitled to Maltese citizenship died before 1 August 2007 or if a parent dies within three years from this date without applying for citizenship, he or she would still be deemed to have acquired citizenship for the purposes of this provision and so the line of Maltese citizenship throughout the generations would not be considered broken (i.e. a three-year grace period).

It has been reported that since the 1989 amendments, the Citizenship Department has confirmed the right to dual citizenship for 12,250 applicants, a number that is expected to increase following this 2007 amendment, though not to the same extent, as obviously second-generation and subsequent-generation Maltese are not as attached to Malta as first-generation Maltese.<sup>10</sup>

The second amendment, which came into force on 6 July 2007, makes an exception to the rule that a spouse of a citizen of Malta may acquire citizenship only five years after the marriage. A new provision in art. 10 provides that the Prime Minister may, by means of a notice published in the Government Gazette, authorise the Minister to grant a certificate of naturalisation to the spouse of any citizen of Malta without any residence requirements when either the spouse or the said citizen has rendered exceptional services to Malta or humanity.

A third amendment that entered into force on 1 August 2007 rectified an anomaly in the Act. Hitherto, those who were born outside Malta before the date of independence were deemed to have automatically acquired Maltese citizenship on the date of independence only if they were citizens of the United Kingdom and Colonies up to that date and their father and a paternal grandparent were both born in Malta. Conversely, those with a non-Maltese father whose mother and a maternal grandparent had both been born in Malta could acquire citizenship only by satisfying a five-year residency requirement. The amendments now redress this anomaly by introducing new provisions in art. 3 that remove this residency requirement and entitle such persons irrespective of any residency period to be registered as Maltese citizens because of their mother's and a maternal grandparent's birth in Malta. Moreover, the first amendment concerning dual citizenship for second and subsequent generations described above also benefits those born abroad before the date of independence who can prove that they are descendants in the direct line of an ascendant born in Malta with a parent likewise born in Malta.

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<sup>10</sup> Home Affairs Minister Borg, House of Representatives, sitting of 13 February 2007 and press conference of 15 May 2007. However, for the second and subsequent generation Maltese living in a non-EU country, such as Australia, the US and Canada, and the much smaller communities still living in Egypt and Tunisia, there is the added attraction that Maltese citizenship brings with it the right to travel, study, live and work in any EU country.

Apart from these legislative amendments, a policy decision has recently been taken that benefits a small category of foreigners who, while themselves not qualifying for Maltese citizenship in terms of the Maltese Citizenship Act, have children who are Maltese citizens because they were born in Malta before 1989, when the law as it stood then conferred citizenship on them, notwithstanding that they were not of Maltese descent. Maltese citizenship has been extended on the basis of a policy decision to these parents if they have been residing in Malta for fifteen years.<sup>11</sup>

## 2.5 The 2014 Individual Investor Programme

In 2013, amendments made to the Maltese Citizenship Act through Act XV of 2013, introduced the possibility of granting Maltese citizenship by naturalisation to foreign individuals and their families: ‘who contribute to the economic development of Malta’.<sup>12</sup> These amendments provided the framework for the enactment of another legal notice which introduced further amendments, Legal Notice 47 of 2014, ‘The Individual Investor Programme of the Republic of Malta Regulations’.

The Programme, which is currently capped by law at 1,800 successful applicants excluding their dependants in law,<sup>13</sup> is designed to facilitate the acquisition of Maltese citizenship by naturalisation to non-Maltese nationals and their dependants in return for investment contributing to the economic and social development of Malta.<sup>14</sup> As such, successful applicants enjoy all rights and benefits that other Maltese nationals would enjoy. This includes the right to travel, work, and reside in the European Union, the right to free movement within the Schengen area and the right to vis- free travel to more than 160 countries around the world.

In an unprecedented move since the area of citizenship is generally seen as the exclusive competence of each Member State, the European Commission raised a number of concerns. The Commission argued that changes to citizenship should take into consideration broader EU law and should be conducted in a spirit of genuine cooperation, and the granting of citizenship should be based upon genuine links with the country. Negotiations ended with the Maltese government adding a minimum twelve-month residency requirement before citizenship by naturalisation can be effected, and the European Commission giving its seal of approval to the scheme. The 2014 regulations were issued following negotiations with the European Commission.

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<sup>11</sup> Home Affairs Minister Borg, House of Representatives, sitting of 13 February 2007.

<sup>12</sup> Legal Notice 450 of 2013, Maltese Citizenship Act (Cap. 188), Individual Investor Programme of the Republic of Malta Regulations, 2013, art. 3.

<sup>13</sup> Legal Notice 47 of 2014, Maltese Citizenship Act (Cap. 188), Individual Investor Programme of the Republic of Malta Regulations, 2014, art. 12. Note: The intention to change this capping has already been registered in the Joint Press Release issued on 29 January 2014 by the European Commission and the Government of Malta which states that the government of Malta has informed the Commission of its intention to evaluate whether an increase would need to be made to the current capping of main applicants under the Individual Investor Programme.

<sup>14</sup> Identity Malta Agency, Individual Investor Programme of the Republic of Malta, [http://iip.gov.mt/wp-content/uploads/2014/07/IIP-Brochure-v1.2\\_updated.pdf](http://iip.gov.mt/wp-content/uploads/2014/07/IIP-Brochure-v1.2_updated.pdf)

The introduction of this mode of citizenship acquisition by naturalisation constituted a novel reform of citizenship acquisition and a significant shift in naturalisation policy. Previously, investment schemes were tied to the granting of long-term residency, such as the global residency programme and the defunct permanent residency programme, but never to the actual granting of citizenship. They were broadly addressed to high-income individuals seeking a residency base with an advantageous tax framework.

In contrast to individuals resident in Malta on a long-term residency permit who are excluded from electoral rights, naturalised citizens-by-investment will enjoy all the rights that pertain to Maltese citizens, including electoral rights.<sup>15</sup> Whilst electoral rights are also tied to residency and age,<sup>16</sup> the impact that these new citizens, that is the enfranchisement of new voters through this scheme, might have on the democratic landscape,<sup>17</sup> remains to be seen.

This reform also constituted a complete break from the previous policy of naturalisation.<sup>18</sup> A report penned on naturalisation in Malta in 2013 concludes that: ‘severe restrictions of citizenship acquisition by naturalisation are an accepted political stance’.<sup>19</sup> Apart from the eligibility criteria listed in art. 10 of the Maltese Citizenship Act, citizenship acquisition by naturalisation in Malta up until then had been dependent upon the: ‘singular non-reviewable discretionary power of the Minister’.<sup>20</sup> Applications for citizenship by naturalisation have no right to appeal or to question the reason(s) for refusal.<sup>21</sup> The system lacks ‘transparency’ and raises: ‘grave questions of fairness and justice’.<sup>22</sup>

In sharp contrast with the above, an efficient and professional system has been set up for applicants to the citizens-by-investment naturalisation scheme. The Individual Investor Programme is managed by a government agency ‘Identity Malta’. This agency, established by the Identity Malta Agency (Establishment) Order,<sup>23</sup> falls under the responsibility of the Ministry for Home Affairs and National Security, but has a separate legal personality. Henley & Partners, an international company specialising in citizenship schemes, is the exclusive concessionaire for the Individual Investor Programme and is responsible for the promotion and processing of applications. Due diligence is carried out by independent firms.

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<sup>15</sup> DeBono, Access to Electoral Rights, EUDO Citizenship Observatory, Robert Schuman Centre for Advanced Studies, Florence, June 2013

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> For a full report of naturalisation procedures and policies in Malta, see DeBono, Naturalisation Procedures for Immigrants Malta, EUDO Citizenship Observatory, Robert Schuman Centre for Advanced Studies, Florence, March 2013

<sup>19</sup> Ibid, p. 11

<sup>20</sup> Ibid, p. 6-7. Note: the ‘Minister’ according to the Maltese Citizenship Act refers to: ‘the Minister for the time being responsible for matters relating to Maltese citizenship and, to the extent of the authority given, includes any person authorised by such Minister to act on his behalf’.

<sup>21</sup> Maltese Citizenship Act, art. 19 and DeBono, Naturalisation Procedures for Immigrants Malta, 2013, p. 7

<sup>22</sup> DeBono, Naturalisation Procedures for Immigrants Malta, 2013, p. 10-11

<sup>23</sup> Legal Notice 269 of 2013, Public Administration Act (Cap. 497), Identity Malta Agency (Establishment) Order, 2013

Applicants through this scheme are informed of the progress of their applications at various stages of the process. If the eligibility criteria are fulfilled according to the stipulated regulations they will be granted citizenship. The process cannot be discriminatory. Care is taken to inform the applicant of the progress of their application at every stage of the procedure. Although not enshrined in the Act or the Legal Notice, should there be differing interpretations of their eligibility criteria, the applicants will, as in regular administrative procedures, be able to legally contest the interpretation. Thus, applicants through the citizenship-by-investment scheme are afforded a system which is professional and efficient, non-discriminatory, with a right to contest and, most importantly, without the ministerial discretion that characterises the other mode of naturalisation.

This reform constituted a drastic change in Maltese citizenship policy. Apart from its impact upon the democratic landscape, this reform is certain to have a significant influence upon Maltese citizenship policy. The criterion of investment in the economy of the country as a valid ground for the granting of citizenship introduces a novel, and hitherto unrecognised, value in Maltese citizenship policy. The break with the predominant characteristic of 'protectionism' in naturalisation policy constitutes perhaps the most radical change. Certainly, from a policy point of view, the two modes of naturalisation sit uncomfortably alongside each other. Unfortunately, at this early stage when the first group of applications is still being processed, it is impossible to predict the impact of this policy.

### 3. The current citizenship regime

#### 3.1. Main modes of acquisition and loss of citizenship

##### *Acquisition by ius soli and/or ius sanguinis*<sup>24</sup>

Every person born in Malta before the date of independence (21 September 1964), who until then was a citizen of the United Kingdom and Colonies and either of whose parents was born in Malta, automatically acquired Maltese citizenship on the date of independence. Moreover, even a person born outside Malta before the date of independence automatically acquired Maltese citizenship on the date of independence if he or she was a citizen of the United Kingdom and Colonies until the date of independence and his or her father and a paternal grandparent were both born in Malta.

On the other hand, for those who were born in Malta on or after the date of independence but before 1 August 1989, the mere fact of being born in Malta was enough to entitle that person to automatically acquire Maltese citizenship at birth. The only exception is in the case of someone born in Malta during this period where both parents are non-Maltese with the father enjoying diplomatic immunity. Those born outside Malta during this period acquired citizenship at birth only if at the time of birth the father<sup>25</sup> was a citizen of Malta whether by birth in Malta, by registration or by naturalisation.

However, following the 1989 amendments, for persons born on or after 1 August 1989, birth in Malta no longer sufficed to entitle the person to acquire Maltese citizenship at birth: one of the parents must also have been a citizen of Malta at the time of his or her birth. For those born outside Malta on or after 1 August 1989 citizenship is also acquired automatically at birth if, at the date of birth, one of the parents was a citizen of Malta whether by birth in Malta, by registration or by naturalisation. Thus, the essential requirement now is descent, not birth on Maltese territory.

An exception to this rule is made in the case of new-born infants found abandoned anywhere in Malta who would as a result be stateless. Such infants are deemed to have been born in Malta and are considered citizens of Malta, even though the identity and citizenship of the parents are unknown, until such time as their right to any other citizenship is established.

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<sup>24</sup> Maltese Citizenship Act, arts. 3-5, 17.

<sup>25</sup> Except in the case of illegitimate children where the national status of the mother becomes relevant – *ibid.* art 17.

A person who became a citizen of Malta on 21 September 1964 or at birth but subsequently lost this citizenship, having acquired or retained the citizenship of another country, reacquired citizenship automatically and retrospectively following the entry into force of the amendments of 2000 on 10 February 2000, that removed the prohibition of dual and multiple citizenship for Maltese citizens, if he or she resided outside Malta for an aggregate period of at least six years. By virtue of these amendments they are deemed retrospectively to never have lost their Maltese citizenship.<sup>26</sup>

#### *Acquisition by adoption*<sup>27</sup>

Since 1 August 1989, Maltese citizenship may also be acquired automatically by adoption when a person is lawfully adopted (under Maltese law) on or after this date with one of the adopting parents being a citizen of Malta at the time of adoption, provided that the person adopted is under ten years of age on the date of adoption.

For persons whose adoptions took place prior to this date but after 31 December 1976, adoption did not automatically lead to acquisition of Maltese citizenship even if the adopters were citizens of Malta. This was because during this period adoptions were considered by law as without effect as far as Maltese citizenship is concerned. Persons adopted during these years would have to apply to be naturalised as citizens of Malta, a mode of acquisition that is discussed below. Although the granting of citizenship in these cases is subject to the discretion of the minister responsible for matters related to Maltese citizenship (hereinafter ‘the minister’), it has, since 1987, been generally granted on humanitarian grounds as a matter of policy.

Adoptions that took place before 1 January 1977 did lead to automatic acquisition of Maltese citizenship by the adopted person on adoption but, in the case of a joint adoption, as in the case of any other birth outside Malta at the time, it had to be shown that at least the male adopter was a citizen of Malta. It would not have sufficed if only the female adopter were a citizen of Malta.

#### *Spousal transfer of citizenship*<sup>28</sup>

A non-Maltese person married to a citizen of Malta may, after five years of marriage, acquire Maltese citizenship by applying to be registered as a citizen of Malta, provided the spouses are still married and living together (if the Maltese spouse is still alive) at the time the application for citizenship is made. However, if the couple were to separate *de iure* or *de facto* after five years of marriage the foreign spouse may still apply for Maltese citizenship provided the spouses had lived together during those five years of marriage. Moreover, if the Maltese spouse dies before the fifth year of marriage, the foreign spouse may still apply for Maltese citizenship following the lapse of the fifth year from the date of marriage, provided that up to the time of death the spouses were living together.

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<sup>26</sup> Ibid., art. 9.

<sup>27</sup> Ibid., art. 17.

<sup>28</sup> Ibid., arts. 4 and 6.



Citizenship may also be acquired, if, although at the time of marriage both spouses were non-Maltese, subsequently one of the spouses acquires Maltese citizenship through some other mode of acquisition. The other spouse would now be entitled, subject to the conditions mentioned above, to apply to be registered as a citizen of Malta on the strength of the marriage.

A foreign spouse is entitled to apply to be registered as a citizen of Malta even where the marriage took place before the date of independence so that at the time of marriage neither of the spouses was a citizen of Malta, if on independence the other spouse either (i) became, or would have become were it not for his or her death, a citizen of Malta on the date of independence or (ii) became a citizen of Malta after independence.

*Acquisition by registration*<sup>29</sup>

Apart from the special case of spousal transfer of citizenship, there are other instances where a person may acquire Maltese citizenship by registration.

Former citizens who, having lost their citizenship before 2000 because of the possession or acquisition of another citizenship as prescribed by the law prevailing at the time, fail to qualify for automatic reacquisition of this citizenship either because they had not spent the requisite six years abroad or because they were formerly citizens of Malta by registration or naturalisation and not by birth, may nevertheless apply to be registered as citizens of Malta.

Furthermore, an emigrant who was formerly a citizen of Malta by birth or descent but ceased to be a citizen of Malta after emigrating may also reacquire citizenship by registration if he or she returns to Malta and takes up permanent residence.

Likewise, persons born outside Malta before 1 August 1989 who are not citizens of Malta because their mother rather than their father was a citizen of Malta by birth, registration or naturalisation, may also acquire Maltese citizenship by registration.

Citizenship is acquired by registration only if the applicant takes an oath of allegiance to the country and in some instances, such as in the case of the spousal transfer of citizenship, provided the granting of citizenship to the applicant is not contrary to the public interest. With this mode of acquisition, citizenship takes effect from the date of registration and not retrospectively.

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<sup>29</sup>

Ibid., arts. 8 and 9.

*Acquisition by naturalisation*<sup>30</sup>

Any person, including stateless persons, may apply to acquire Maltese citizenship by naturalisation if he or she has resided in Malta during the year immediately preceding the date of application and for a further aggregate period of at least four years over the past seven years immediately preceding the date of application, provided he or she has an adequate knowledge of the Maltese or English language, is of good character and is deemed to be a suitable citizen of Malta.

In practice, however, unless the applicant is of Maltese descent, as described below, the Department for Citizenship and Expatriate Affairs follows a strict policy of granting naturalisation only where the applicant has resided in Malta for quite a number of years and has children born in Malta. Every case is dealt with on its own merits and the Minister enjoys a non-reviewable discretion as explained below; but while in the past residence alone would not have been a ground for naturalisation, today the general policy is to consider favourably requests for naturalisation by residents who have been residing in Malta for a substantial number of years and have formed a family here. Income and property are not determining factors. Nor is any exception made to this long-term residence rule for labour migrants.

However, no residence conditions apply where the applicant was born abroad of a father that was likewise born abroad but the paternal grandfather and great-grandparent were both born in Malta. In such cases the person born abroad may apply for naturalisation merely on the strength of his or her Maltese descent. It should be noted, though, that the policy is that applications under this category would normally be accepted only if the applicant resides in Malta.

Likewise, no residence conditions apply where the applicant had been a citizen of Malta by birth before he or she emigrated from Malta and ceased to be a citizen of Malta or if he or she had emigrated before the date of independence and failed to obtain Maltese citizenship on independence merely because he or she had ceased to be a citizen of the United Kingdom and Colonies on the date of independence. There have been few applications under this category as most persons that fall under this category already enjoy dual citizenship.

Again no residence conditions apply to persons who prove descent from a person born in Malta and who are citizens of a country other than the country of their residence and who are denied access to the country of which they are citizens. They may apply to acquire Maltese citizenship by naturalisation merely on the strength of their Maltese descent. However, there have been few instances of naturalisation under this category because not many persons would qualify under this category that requires the applicant to produce all the birth and marriage certificates starting from his or her own birth up to the ancestor who was born in Malta. If the link is broken or cannot be proven by documentary evidence or if the birth certificate of the ancestor born in Malta cannot be traced, the application for citizenship would not be successful. Persons in this category are usually persons of Maltese descent residing in North African countries who may generally encounter great difficulties tracing the documents in these countries that would prove this descent.

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<sup>30</sup> Ibid., art. 10.

Special rules apply for those who are and have always been stateless but were born in Malta of parents who are not citizens of Malta. In such cases the person is entitled to naturalisation as a citizen of Malta only if he or she has been ordinarily resident in Malta for a period of five years up to the date of his or her application and has not been convicted in any country of an offence against the security of the state or sentenced to a punishment depriving personal liberty for a term of not less than five years.

If the stateless person was not born in Malta but either of his or her parents was a citizen of Malta at the date of his or her birth, he or she is entitled to naturalisation as citizen of Malta only if he or she has been ordinarily resident in Malta for a period of three years up to the date of his or her application and has not been convicted in any country of an offence against the security of the state. So once again, where Maltese descent can be shown, the conditions for naturalisation are less stringent than where only the connection by birth on Maltese territory can be proved.

As in the case of citizenship by registration, where citizenship is acquired by naturalisation, it takes effect from the date upon which the applicant was naturalised.<sup>31</sup> All applications are made to the Minister and there is no right of appeal against the decision of the Minister on any such application nor is such a decision subject to review in any court.<sup>32</sup> However, in the Cabinet Citizenship Guidelines that were issued in 1987, it is stated that all applications for citizenship by the following persons are given favourable consideration:

- a. former citizens of Malta;
- b. children born abroad of returned migrants;
- c. foreign citizens born in Malta to a parent who is a citizen of Malta;
- d. children born to parents who were non-Maltese but who later acquired Maltese citizenship; and
- e. those born abroad but of Maltese descent.

It is stated that, on the other hand, applications from those who do not fall under any one of these categories will only be given favourable consideration if there are humanitarian grounds.<sup>33</sup>

Since the drawing up of these guidelines in 1987, significant changes have been made to the Maltese Citizenship Act in 1989 and 2000, as shown above. Hence those falling into categories (a) and (b) have practically all been re-instated as Maltese citizens or are now Maltese citizens automatically in view of the dual citizenship amendments to the law. Moreover, following these amendments, persons falling under category (c) may re-acquire Maltese citizenship simply by registration.

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<sup>31</sup> Ibid., art. 12.

<sup>32</sup> Ibid., art. 19.

<sup>33</sup> These guidelines at the time of writing of the first draft of this report appeared on the website of the relevant ministry, the Ministry of Foreign Affairs:  
<http://www.foreign.gov.mt/Library/Citizenship%20Forms%20and%20Templates/CEA3-NAT.pdf>.

Though refugees in Malta are granted some rights they have no right to Maltese citizenship nor are there any provisions in the law that facilitate the granting of citizenship to refugees.<sup>34</sup>

Since, as stated above, the law prescribes that one of the conditions for naturalisation is that there should be evidence of the applicant's good character and suitability for citizenship, apart from being supported by documents attesting to the applicant's place of residence, birth and Maltese descent, the application in question must also be sponsored by persons that are deemed trustworthy (such as lawyers, notaries, magistrates, judges, members of parliament, police officers, medical practitioners, parish priests, etc.) who, having had occasion to assess the applicant in the course of exercising their profession or vocation, are thereby able to vouch for his or her integrity. As in the case of citizenship by registration, the applicant is required to take an oath of allegiance to the country before he or she may be naturalised.

#### *Acquisition through the Individual Investor Programme*<sup>35</sup>

Any person may apply for Maltese citizenship through the citizenship-by-investment scheme as proposed by the Maltese Citizenship Act (cap 188) and Legal Notice 47 of 2014, 'Individual Investor Programme of the Republic of Malta Regulations'. All applicants can extend their application for citizenship to their dependants.

The Programme is primarily intended to attract international investors. Its marketing has taken a broader stance as can be seen in a published interview with the Chief Executive Officer of Identity Malta, who added that the Programme is also in search of 'talent' who can contribute to the country: 'either through foreign direct investment or else by utilising their intellectual skills within Maltese projects'.<sup>36</sup> In addition, measures are put in place to ensure that applicants are of reputable character. Identity Malta is responsible for the proper carrying out of due four-tier diligence tests.<sup>37</sup> The type of checks to be carried out include, but are not limited to, public information tests, background verification reports, and global government agency checks.<sup>38</sup>

In order to achieve this aim, the Legal Notice stipulates general qualifications and requirements that applicants should fulfil in art. 4, more detailed eligibility criteria in art. 5, as well as ineligibility criteria in art. 6. Art. 4 states that

(a) the applicant shall be at least eighteen years of age;

<sup>34</sup> In 2005 a government minister (the then Minister for the Family and Social Solidarity, Dolores Cristina, as reported in *The Times* of 18 June 2005 on p. 19) had announced that the government was considering a change in policy in this regard in favour of granting citizenship to refugees who have been living in Malta for ten years so as to enable them to integrate better into society. So far, however, there has been no official change in policy on these lines.

<sup>35</sup> Amendments made in 2013 to the Maltese Citizenship Act and Legal Notice 47 of 2014, 'Individual Investor Programme of the Republic of Malta Regulations', Maltese Citizenship Act (Cap. 188), 2014

<sup>36</sup> The Report Company, 'Q&A Jonathan Cardona – CEO of Identity Malta', The Report Company, Interview June 16 2014

<sup>37</sup> Identity Malta Agency, 'FAQs – Individual Investment Programme', Ministry for Home Affairs and Security (Malta), p.3 <http://iip.gov.mt/faqs/> (27 Nov 2014)

<sup>38</sup> *Idem*.

- (b) proposes to make a contribution as determined in the Schedule;
- (c) meets the application requirements;
- (d) commits themselves to provide proof of residence in Malta, and to provide proof of title to residential property in Malta in accordance with these regulations;
- (e) commits themselves to invest, amongst others, in stocks, bonds, debentures, special purpose vehicles, or to make other investments as provided from time to time by Identity Malta by means of a notice in the Gazette.<sup>39</sup>

Art. 5 sets out additional minimum eligibility criteria for an application of naturalisation under this Programme submitted by the applicant for themselves and their dependants. They are reproduced hereunder:<sup>40</sup>

- (a) a proper background verification of the applicant and his dependants over the age of twelve years, as the case may be;
- (b) a police certificate issued by the Malta police as well as a police certificate issued by the competent authorities in the country of origin and in the country or countries of residence where the applicant has resided for a period of more than six months during the last ten years, or, in exceptional cases, where it is proved to the satisfaction of Identity Malta that such a certificate is not obtainable, a sworn affidavit made by the applicant and any dependants declaring a clean criminal record;
- (c) the applicant and, or any of their dependants are not individuals indicted before an international criminal court or who appeared at any time before an international criminal court, whether such persons have been found guilty or otherwise by such court;
- (d) the applicant and/ or any of their dependants, shall not be persons listed with the International Criminal Police Organization (INTERPOL) at the time of application;
- (e) the applicant and, or any of their dependants, is not, or may not be, a potential threat to national security, public policy, or public health;
- (f) the applicant and, or any of their dependants, shall not be an individual who, at any time, had pending charges related to crimes of terrorism, money laundering, funding of terrorism, crimes against humanity, war crimes, or crimes that infringe upon such Protection of Human Rights and Fundamental Freedoms as established by the European Convention on Human Rights, or who has been found guilty of any such crimes;
- (g) the applicant and, or any of their dependants, shall not be an individual who has been found guilty or has charges brought against them regarding any of the criminal offences that disturb the good order of the family, which criminal offences include, without limitation, the following:

- (i) paedophilia,
- (ii) defilement of minors,

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<sup>39</sup> Legal Notice 47 of 2014, 'Individual Investor Programme of the Republic of Malta Regulations', Maltese Citizenship Act (Cap. 188), 2014, art. 4.

<sup>40</sup> Ibid, art. 5

- (iii) rape,
- (iv) violent indecent assault,
- (v) inducing persons under age to prostitution, and
- (vi) abduction,

(h) the applicant and, or any of their dependants, shall not be an individual who at any time was found guilty, or, at the time of the application, is being interrogated and suspected, or has criminal charges brought against them for any criminal offence, other than an involuntary offence, punishable with more than one year imprisonment. The applicant shall attach with their application a sworn declaration before a commissioner for oaths, lawyer, or notary public that the said information that they have provided is true and correct;

(i) where a document is required to be produced under these regulations in support of an application:

- (i) such document must be an original document or if not an original, it must be a certified copy; and
- (ii) the person certifying the document shall provide the full name, capacity in which the person is acting, residential or business address, telephone number, and email address.

The Regulations also list the ineligibility criteria, many of which are a repetition of the previous articles. Art. 6 lists that a person is ineligible to apply for naturalisation if they have supplied false information, has a criminal record or is the subject of a criminal investigation, is a potential security threat to Malta, or has been/is likely to be involved in any activity bringing ill-repute to Malta, and has been denied a visa (and did not subsequently obtain it) to a country with which Malta has a visa-free travel arrangement.<sup>41</sup>

With regard to deprivation of citizenship acquired under this Programme, the Legal Notice states that the Minister reserves the right to deprive a person of their Maltese citizenship granted under this Programme for two reasons. The first: if the applicant fails to comply with any requirement to lease, purchase, and retain property in Malta or to make and retain investments in Malta. The second reason: if the applicant becomes a threat to national security or is involved in conduct which is seriously prejudicial to the vital interests of Malta.<sup>42</sup> The procedure to be followed for citizenship deprivation is stipulated in art. 14 of the Maltese Citizenship Act.<sup>43</sup>

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<sup>41</sup> Ibid, art. 6

<sup>42</sup> Ibid, art. 10

<sup>43</sup> Maltese Citizenship Act, art. 14

Due diligence and vetting of applicants is one of the key procedures that will serve to establish this Programme. There are no written procedures on the four-tier system of due diligence referred to by the Maltese authorities. However, a spokesperson for the Office of the Prime Minister outlines to journalists how the vetting will be conducted. First, when the application is submitted, Henley & Partners conduct a preliminary check to verify that the accompanying documents, such as birth certificates or police clearance certificates, are authentic and that the buyer's money comes from legitimate sources. Henley & Partners will use Malta's anti-money laundering legislation as a reference for paperwork requirements. Henley & Partners will further check that the applicant is not blacklisted in United Nations or European Union sanctions. At the second level, Henley & Partners will themselves hire external due diligence specialists to carry out background checks. At the third level, Henley and Partners will assemble information and use in-house staff to draw up the 'risk weighting assessments' which it files to Identity Malta. Identity Malta and its subcontractors will conduct similar checks in parallel with Henley & Partners. At the fourth level, the Maltese authorities, including national security services and the police, will use special resources, such as databases run by the joint police bodies Europol and Interpol. Candidates will only be interviewed should doubts arise, although this is not mandatory by law.<sup>44</sup>

Apart from passing through the four-tier due diligence checks to establish that they meet the qualification and eligibility criteria, the applicant also has to provide proof of other key conditions as part of the application process. No certificate of naturalisation under these regulations shall be issued unless the main applicant provides proof that he has been a resident of Malta for a period of at least twelve months preceding the day of the issuing of the certificate of naturalisation.<sup>45</sup> The certificate of naturalisation shall only become effective and be made available to the applicant after the oath of allegiance has been taken by the applicant. It is at this stage that the applicant may proceed with the application for the passport.<sup>46</sup>

The identities of successful applicants who acquire citizenship through the Programme will be published annually in the Government Gazette together with other individuals who acquire citizenship through naturalisation and registration.<sup>47</sup> The *Times of Malta* reports that although successful applicants will be included in the annual list, the fact that they acquire their citizenship through the Programme will not be.<sup>48</sup>

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<sup>44</sup> Rettman, Andrew, 'Malta's sale of EU passports causes controversy', *EU Observer*, 7 January 2014, <http://euobserver.com/justice/122627> (Accessed on 27 November 2014)

<sup>45</sup> Legal Notice 47 of 2014, Individual Investor Programme of the Republic of Malta Regulations, 2014, Art. 7(12)

<sup>46</sup> Ibid, Art. 7(11)

<sup>47</sup> Ibid, Art. 14 (2)

<sup>48</sup> Macdonald, 'First applicants for Maltese citizenship are approved. Identity Malta considers Henley and Partners 'first among equal' agents', *Times of Malta*, Allied Newspapers Ltd., 16 March 2014

The Malta Individual Investor Programme was specifically designed to attract investment by individuals of high net worth and as a result all applicants under the Programme are required to undertake a number of financial commitments to the Maltese economy. The Maltese government will use the contributions made by successful applicants to build the National Development and Social Fund. As its name suggests, this fund will be used to improve the quality of life in Malta through social and capital projects.<sup>49</sup> The donation of €650,000 paid into the National Development and Social Fund is split up in the following way: €350,000 by way of a property acquisition (or €16,000 annual rent) and €150,000 in government stocks, of which €10,000 will be a non-refundable deposit. Spouses and children below 18 years of age pay €25,000 each, unmarried children between eighteen and 25 and parents above 55 years, €50,000 each. Other fees include due diligence fees of €7,500 for the applicant and €5,000 for the spouse, parent and children over eighteen, €3,000 for children under eighteen and passport fees and bank charges of €500 and €200 per person, respectively. The property and stocks must be retained for a minimum period of five years.<sup>50</sup>

#### *Modes of loss of citizenship*

Acquisition or retention of another citizenship no longer leads to the denial or forfeiture of Maltese citizenship as dual and multiple citizenship is now fully acknowledged by Maltese law.<sup>51</sup> This also means that in the case of mixed marriages, the children can acquire the citizenship of both parents. The only ways in which citizenship may be lost are detailed below.

#### *Renunciation of citizenship*<sup>52</sup>

Any citizen of Malta who is also a national of another country may renounce citizenship by making a declaration to this effect and upon registration of this declaration he or she would cease to be a citizen of Malta. It is a condition for renunciation that the Maltese citizen should also be a national of another country so that acceptance of the renunciation would not lead to the person becoming stateless. Such renunciation may be refused if it is made during any war in which Malta is engaged or if in the opinion of the Minister it would otherwise be contrary to public policy.

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<sup>49</sup> Individual Investor Scheme, Identity Malta Agency, Ministry for Home Affairs and Security (Malta) <http://iip.gov.mt/> (Accessed on 7<sup>th</sup> January 2015)

<sup>50</sup> Legal Notice 47 of 2014, 'Individual Investor Programme of the Republic of Malta Regulations', 2014, Annex B 341.

<sup>51</sup> Maltese Citizenship Act, art. 7 and art. 22(2) of the Constitution.

<sup>52</sup> Maltese Citizenship Act, art. 13.



*Deprivation of citizenship acquired by registration or naturalisation*<sup>53</sup>

A citizen of Malta who acquired his or her citizenship by registration or naturalisation may be deprived of this citizenship by order of the Minister if the Minister is satisfied that:

- a. the registration or naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or
- b. the citizen has shown himself or herself by act or speech to be disloyal or disaffected towards the President or the government of Malta; or
- c. the citizen has, during any war in which Malta was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his or her knowledge carried on in such a manner as to assist an enemy in that war; or
- d. the citizen has within seven years after becoming naturalised or being registered as a citizen of Malta, been sentenced in any country to a punishment depriving personal liberty for a term of not less than twelve months; or
- e. the citizen has been ordinarily resident in foreign countries for a continuous period of seven years and during this time has neither been at any time in the service of Malta or of an international organisation of which the government of Malta was a member nor given notice in writing to the Minister of his or her intention to retain citizenship of Malta.

However, in all of these cases a person shall be deprived of his or her citizenship only if the Minister is satisfied that it is not conducive to the public good that the person should retain his or her citizenship and in the case referred to in (d) above only if it appears to the Minister that that person would not thereupon become stateless.

Before the Minister issues an order depriving a person of his or her citizenship, the person concerned must be given notice in writing informing him or her of the ground on which the order will be issued and of his or her right to an inquiry. If the person requests an inquiry the Minister will have to refer the case to a committee of inquiry appointed by the Minister but presided over by a person with judicial experience.

*Statistical developments*

These legislative amendments, particularly the shift to dual and multiple citizenship, and the 2007 amendments described above (see section 2.4), are reflected in the statistical developments in the period 1991-2013. Statistics from the Department for Citizenship & Expatriate Affairs for the years 1991-2013 show that the number of citizenships acquired by registration rose sharply from the year 2000 onwards (see Table 1 and Figure 1 below, which also shows that the change in policy regarding dual and multiple citizenship in 2000 had a greater effect on registrations than naturalisations).

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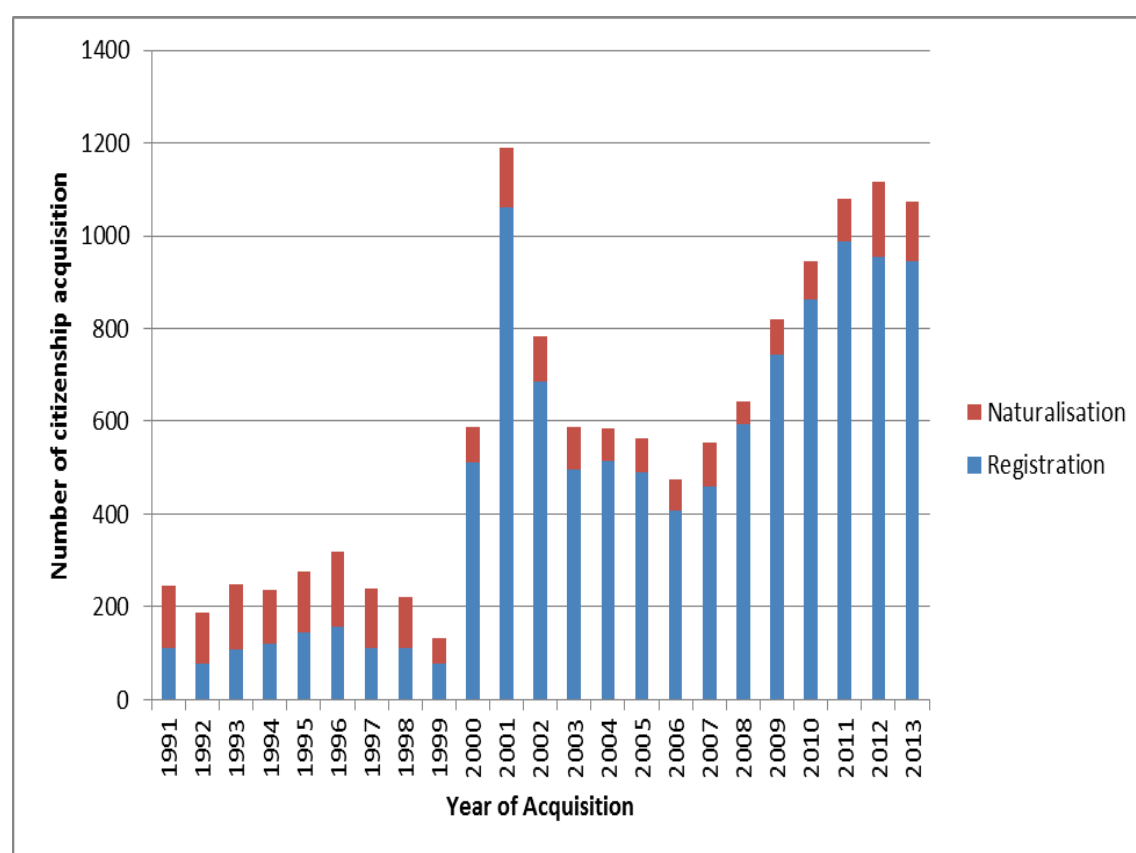
Ibid., art. 14.

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Registration	111	78	108	121	145	158	111	111	79	512	1062	684	496	514	490	406	460	594	745	863	988	954	945
Naturalisation	135	109	141	116	132	160	128	110	54	75	128	99	93	70	72	68	93	50	74	81	92	162	130
Total	246	187	249	237	277	318	239	221	133	587	1190	783	589	584	562	474	553	644	819	944	1080	1116	1075

**Table 1: Number of Registrations and Naturalisations in Malta, 1991-2013**

*Source: Department for Citizenship & Expatriate Affairs (table compiled by author)*

**Figure 1: Number of Registrations and Naturalisations in Malta, 1991-2013**



*Source: Department for Citizenship & Expatriate Affairs (table compiled by author)*

From an annual average of 111 in the 1990s the number of registrations shot up to 512 in 2000 and 1,062 in 2001 and has remained in the region of 500 a year ever since. The figure of 1,062 in 2001 remains the highest figure ever recorded for citizenship registrations in Malta. This increase is attributed by the National Statistics Office (NSO) in the Demographic Review 2001 to the removal of the prohibition against dual and multiple citizenship by the legislative amendments that entered into force in February 2000. The figure remained high in 2002 when 684 registrations were recorded.<sup>54</sup> This might be attributed to the fact that until 2002 Australian law prohibited dual and multiple citizenship<sup>55</sup> and this prevented the many Maltese emigrants residing in Australia from taking advantage of the changes in the Maltese legislation in 2000 and registering for Maltese citizenship. When Australia changed its law on 4 April 2002 and removed the prohibition, this resulted in a surge of registrations in 2002 by persons who were now able to retain both Maltese and Australian citizenship.<sup>56</sup> In 2003 and 2004, the number of registrations decreased to 496 and 514, respectively,<sup>57</sup> and remained at this level up to 2007. The 2007 amendments have again served to trigger a gradual increase in citizenship registrations, and although they affect more remote generations, the number of registrations has risen to 945 in 2013.

There are no statistics available for citizenship by naturalisation awarded under the new Individual Investor Programme since the first group of applicants is still under review.

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<sup>54</sup> Demographic Review 2002, National Statistics Office (NSO) 2003.

<sup>55</sup> Art. 17 of Australia's law on citizenship did not allow dual citizenship so that citizens of Australia would lose citizenship if they acquired another citizenship voluntarily through registration.

<sup>56</sup> Ministry for Justice and Home Affairs, Annual Report 2001-2002.

<sup>57</sup> Demographic Review 2003, NSO 2004.

**Table 2: Acquisition of Maltese nationality by registration for 1998-2013 according to the grounds for registration**

Acquisition by Registration	98	99	00	01	02	03	04	05	06	07	08	09	10	11	12	13
By virtue of marriage via Articles 4 or 6	107	75	162	682	354	240	267	197	197	228	160	241	255	298	537	326
Resettling permanently in Malta after having emigrated and ceased to be citizens of Malta via Article 4(4)	4	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Being children born abroad to female citizens of Malta via Article 5(2)(a)	-	-	173	241	221	192	210	268	180	179	184	153	176	165	85	170
Being former citizens of Malta via Article 8	-	-	177	139	109	64	37	25	29	21	25	13	10	14	15	7
Minor children of Maltese descent	-	-	-	-	-	-	-	-	-	5	62	116	134	179	107	186
Persons of Maltese descent	-	-	-	-	-	-	-	-	-	27	163	222	288	332	200	256
<b>TOTAL</b>	111	79	512	1062	684	496	514	490	406	460	594	745	863	988	<b>954</b>	<b>945</b>

Source: *Department for Citizenship & Expatriate Affairs*

Table 2 gives a breakdown of the figures for acquisition by registration for 1998-2013 according to the grounds for registration and shows that it was mostly (i) foreign spouses; (ii) children born abroad to female citizens of Malta; and (iii) former citizens of Malta who had lost their citizenship because of the possession or acquisition of another citizenship that took advantage of the change in policy regarding dual and multiple citizenship to acquire citizenship by registration. The last two grounds, ‘minor children of Maltese descent’ and ‘persons of Maltese descent’ are the new grounds introduced by the 2007 amendments.

### **3.2 Special rights for former citizens of Malta born in Malta**

Under Article 44 of the Constitution of Malta and Article 4 of the Immigration Act, a person who, having been a citizen of Malta by virtue of his/her birth in Malta, is no longer a citizen of Malta having lost this citizenship on emigrating from Malta, as well as his/her spouse/widow/widower and his/her children under the age of twenty-one enjoy freedom of movement in Malta as any citizen of Malta. ‘Freedom of movement’ comprises the right to move freely throughout Malta, the right to reside in any part of Malta and the right to enter and the right to leave Malta. However, the Minister responsible for matters relating to Maltese citizenship may at any time by order, without assigning any reason, declare that it is contrary to the public interest that such a person’s spouse/widow/widower or child over eighteen years of age be entitled to such freedom of movement. Moreover, this decision of the Minister would be final and not subject to appeal to or review by any court.

#### 4 Current political debates and reform plans

The first reform following the 2007 amendments to the Maltese Citizenship Act was the introduction of the Individual Investor Scheme in 2013-2014. Citizenship was not a policy issue during the 2008, or the 2013 general elections. There are still no local NGOs active in this policy field, although the Individual Investor Programme debate for the first time drew into the fray, apart from the political parties, statements and declarations from several human rights organisations. Citizenship issues had rarely been discussed in the Maltese media prior to the introduction of this scheme, but the ‘citizenship-for-sale’ debate, as it is popularly known, is now a regular feature igniting local, and European, debates.

##### *Genovese v. Malta*

An interesting ‘exception’ to the dearth of debate surrounding citizenship prior to the 2014 Individual Investor Scheme is the European Court of Human Rights judgment of the case *Genovese v. Malta*.<sup>58</sup> This was a case which generated far more international than Maltese debate. The case concerned a complaint by a British citizen who was prevented from obtaining Maltese citizenship by registration because he had been born out of wedlock to a Maltese father and a British mother. The case was initially filed prior to the 2007 amendments when gender discrimination was removed from the Act. Following the 2007 amendments, section 5(2)(b) of the Maltese Citizenship Act provides that a child born to a Maltese father or a Maltese mother acquires Maltese nationality. However section 17(1)(a) still states that a child born out of wedlock to a Maltese father, for the purposes of the Maltese Citizenship Act, will only be considered the child of a Maltese national if he or she has been legitimated.

The Court decreed that this constituted a violation of art. 14 of the Convention, which deals with the prohibition of discrimination, in conjunction with art. 8, the right to family life. This is considered a landmark case because for the first time the Court explicitly ruled that citizenship, formerly seen as outside the scope of protection of the ECHR, fall within the scope of protection as part of a person’s social identity, which in turn is part of that person’s private life. In other words, although citizenship is not a Convention right, there are circumstances under which denial or deprivation of nationality will raise issues under the right to a family life. In a comment on this judgment, Prof. de Groot and Prof. Vonk demonstrate the implications that this judgment has on several other European countries, apart from Malta, whose legislation is based on similar discriminatory criteria: where a difference is made between children born out of wedlock to male nationals, children born within wedlock to male nationals or children born out of wedlock to a female national.<sup>59</sup>

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<sup>58</sup> *European Court of Human Rights*, *Genovese v. Malta*, Application no. 53124/09, Judgment, Strasbourg, 11 October 2011

<sup>59</sup> De Groot, G.R., and Vonk, O., “Non-discriminatory access to the nationality of the father protected by the ECHR: A comment on *Genovese v. Malta* (European Court of Human Rights, 11 October 2011)”. (<http://eudo-citizenship.eu/caselawDB/docs/Case%20Law%20Notes/Genovese%20case%20comment.pdf>)

De Groot and Vonk state that a clear direct outcome of this judgment is the expectation that Malta amends the Maltese Citizenship Act by deleting section 17(1)(a), thereby removing any ambiguity with regards to non-discrimination of children born to a Maltese parent out of wedlock. Malta has not yet made such amendments, and there has been no political debate on the issue which could indicate that such amendments were being considered.

*The newly introduced Individual Investor Programme*

By far the most debated citizenship issue in recent years was the introduction of the Individual Investor Programme. This scheme generated considerable debate, criticism, and controversy on a number of related issues at European<sup>60</sup> and national levels. On 16 January 2014, the European Parliament adopted a non-binding resolution criticising the first amendments made to the Maltese Citizenship Act in 2013 that put: 'EU citizenship for sale'.<sup>61</sup> The resolution was supported by all major political groups and adopted by an overwhelming majority of 560 votes, with 22 parliamentarians voting no and 44 abstaining. A motion to remove explicit references to Malta did not receive enough support. The arguments presented by the European Commission were also resolved, as reported by the Joint Press Release issued on 29 January 2014 by the European Commission and the Maltese authorities.<sup>62</sup> The only change made in practice was the introduction of a residency requirement. In an interview, the Chief Executive Officer of Identity Malta, who was involved in the negotiations with the European Commission on the Individual Investor Programme, claimed that: 'Commission representatives had been misinformed about the Programme'.<sup>63</sup>

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<sup>60</sup> For a presentation and discussion of the Maltese case and its wider implications for the European Union, see S. Carrera, 'How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A Breakthrough for sincere cooperation in citizenship of the union?.' CEPS Paper in [Liberty and Security, ]No. 64, April 2014, and A. Shachar and R. Baübock (eds), *Should Citizenship be for Sale?*, EUI Working Papers, RSCAS 2014/01, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, Florence. The latter publication was presented to Members of the European Parliament prior to the discussion they held on the same topic which resulted in the resolution on 16 January 2014.

<sup>61</sup> European Parliament, 'EU citizenship for sale' European Parliament resolution of 16 January 2014 on EU citizenship for sale (2013/2995(RSP))

<sup>62</sup> Joint Press Statement by the European Commission and the Maltese authorities on Malta's Individual Investor Programme (IIP), Brussels, 29 January 2014

<sup>63</sup> The Report Company, Q&A Jonathan Cardona – CEO of Identity Malta, P. 1-2. HTTP <<http://www.the-report.net/malta/jun2014/914-interview-jonathan-cardona-ceo-of-identity-malta>>

This case brought up several discussion points, two of which will be presented in brief in this section. One of the burning issues discussed was whether the European Commission was justified in interfering in an area of exclusive competence of Member States, such as citizenship.<sup>64</sup> The European Commission argued that, although citizenship is not a European competence, any action in this area had to be made with due regard to wider EU law. The argument was that, since Maltese citizens enjoy European rights such as the right to travel and reside in other Member States and should a due diligence tests of the Maltese Individual Investor Programme be lacking, the latter would put at risk all the other Member States of the European Union. The cases cited by EU officials were the Micheletti case of 1990 and the Rottman case of 2008. In both cases the European Court of Justice ruled that citizenship decisions must be made with due regard to wider EU law. It was also reported that the Justice Commissioner was looking to file potential infringement proceedings on the basis of art. 4.3 of the EU treaty which stipulates that Member States must act: 'pursuant to the principle of sincere co-operation'.<sup>65</sup> This article had been cited in infringement proceedings on tax reform in Hungary. Hungary had changed its regulations, therefore the case never ended up in court. Although this route was not pursued by the Commission, it led to the modification of the Programme. Nevertheless, it can now be argued that a legal precedent has been set for assessing the lawfulness of such schemes in other Member States.<sup>66</sup>

The second point of discussion was the issue of whether 'genuine links' to the home country should be a prerequisite to the granting of citizenship by a state. The original design of the Individual Investor Programme did not list residency as a requirement. This would have made it possible for an individual to obtain Maltese citizenship without actually ever having set foot in the country. The lack of a residency requirement and the six months of 'due diligence' made the Maltese scheme unique when compared to similar schemes run by other Member States. These concerns led to Point F of the European Parliament's resolution:

whereas the Maltese Government, in particular, has recently taken steps to introduce a scheme for the outright sale of Maltese citizenship, which automatically entails the outright sale of EU citizenship as a whole without any residency requirement

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<sup>64</sup> For an in-depth discussion of this, see: J. Shaw (2014), 'Citizenship for sale: Could and Should the EU Intervene?', in A. Shachar and R. Baübock (eds), *Should Citizenship be for Sale?*, EUI Working Papers, RSCAS 2014/01, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, Florence; and S. Carrera, 'How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A Breakthrough for sincere cooperation in citizenship of the union? CEPS Paper in [Liberty and Security,] No. 64, April 2014.

<sup>65</sup> Rettman, Andrew, 'EU commission prepares legal challenge on Malta passport sales' [EU Observer,] 23 January 2014 <http://euobserver.com/justice/122843> (Accessed on 20 November 2013)

<sup>66</sup> S. Carrera, 'How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A Breakthrough for sincere cooperation in citizenship of the union?' CEPS Paper in [Liberty and Security,] No. 64, April 2014, p



In 1955 in the *Nottebohm* case, the International Court of Justice in The Hague ruled that citizenship should only be granted to people who can demonstrate a real bond with their new country, for instance, by living there for a few years before they get their papers. Following negotiations with the European Commission, the Maltese government in Legal Notice 47 of 2014 added an effective residency status of a period of at least twelve months immediately preceding the day of issuance of naturalisation. This was a critical point in obtaining a deal with the European Commission. However, the interpretation and scope of the residency issue remains contentious. Carrera writes that: ‘the exact meaning and scope of residency remains grey and contested and is still subject to a degree of arbitrariness and flexible application with respect to wealthy foreigners’.<sup>67</sup> Clearly, in the Maltese case, with Malta being a member of Schengen and given the agreement of free movement, it will be interesting to see how the Maltese authorities interpret ‘effective residency’ and what proof they will accept in support of their interpretation.

The controversy with the European Commission was resolved. The Joint Press Release of the European Commission and the Maltese authorities ends with the following note:

The Commission's services welcomed the announced amendments concerning the residency requirement – done in good faith and in a spirit of sincere cooperation and both parties express satisfaction about the understanding reached on this issue.<sup>68</sup>

Malta is advertising the Individual Investor Programme as: ‘the first programme of its kind to be recognized by the European Commission’.<sup>69</sup>

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<sup>67</sup> S. Carrera, 'How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A Breakthrough for sincere cooperation in citizenship of the union?' CEPS Paper in [Liberty and Security,] No. 64, April 2014, p.27

<sup>68</sup> [Joint Press Statement] by the European Commission and the Maltese authorities on Malta's Individual Investor Programme (IIP), Brussels, 29 January 2014

<sup>69</sup> The official website of the Individual Investor Programme and all the marketing material produced by Identity Malta begin with this phrase. HTTP: < <http://iip.gov.mt/>>

The issues at European and national levels were very much intertwined and connected. Indeed, members of the Party of European Socialists in the European Parliament (from the Labour Party of Malta in government) and members of the European People's Party of the European Parliament (from the Nationalist Party in opposition) actively participated in the discussions. At a national level, the debate and discussion points were set and steered by the Nationalist Party locally in opposition and through their elected members at the European Parliament. They initially requested that the scheme be withdrawn and echoed arguments also made by the European Parliament. The most hotly contested threat against the scheme made by the Nationalist Party against government was that, if elected, the Party would apply a blanket revocation of citizenship granted through the Individual Investor Programme. Indeed on 27 January 2014 the Nationalist Party filed a judicial protest in the Maltese courts requesting the revocation of Legal Notice 450 of 2013, and calling on the government and Henley & Partners to inform all those buying Maltese nationality that the Nationalist Party would revoke their citizenship when it was next elected. The Attorney General, with reference to the Maltese Citizenship Act, stated that Maltese laws exclude the wholesale deprivation of citizenship to a group of naturalised citizens irrespective of their conduct or individual circumstances. Neither would the Constitution allow for the passing of a law which would permit such wholesale deprivation.<sup>70</sup>

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<sup>70</sup> Attorney General Malta, 'Re: Deprivation of Citizenship', AG 2396/13, Malta, 1<sup>st</sup> November 2013

## 5 Conclusion

The main motive for the acknowledgement of dual and multiple citizenship was to do justice to the thousands of Maltese citizens who had lost their citizenship when, due to economic circumstances, they had been forced to emigrate to seek work overseas and thereby acquired foreign citizenship. By extending citizenship to the third generation, the link to the diaspora has been extended beyond former Maltese citizens. Not only have Maltese diaspora regained their legal ties to their or their ancestors' homeland but, following Malta's accession to the European Union, they may now also partake of the benefits of European citizenship.

Throughout the years, through its participation in international fora debating nationality issues Malta has regularly reviewed and revised its nationality policies in line with evolving concepts so that gender inequalities and other forms of discrimination prevailing in the law have now been mostly redressed bringing the legal regime in line with international trends. However, although Malta has signed, though not yet ratified, the European Convention on Nationality, the Maltese Citizenship Act has yet to fully embrace the principle of non-discrimination between its nationals incorporated in art. 5(2) of the Convention as the provisions on deprivation of citizenship in art. 14(2) of the Act discriminate against persons who acquired citizenship by registration or naturalisation. Maybe this is one reason why Malta has yet to ratify the Convention that it signed on 29 October 2003, though it should be noted that art. 5(2) of the Convention does not have a mandatory effect but only constitutes a 'declaration of intent' by the signatories.<sup>71</sup> This discriminatory issue has not been the subject of any public debate or controversy in Malta.

Another area which has attracted international interest is the aforementioned recent judgment by the European Court of Human Rights of the case of *Genovese v. Malta*. As explained earlier, this judgment shows that Section 17(1) of the Maltese Citizenship Act is in contravention of art. 14 and art. 8 of the European Convention on Human Rights. Although there is an expectation by international bodies that the Act is amended, there are no indications of such amendments being considered nationally.

Following accession to the European Union, although accession itself did not necessitate changes in Maltese citizenship laws as the laws were already in consonance with internationally accepted norms, the fact that Maltese citizenship now automatically confers European citizenship rights on holders of Maltese citizenship means that Maltese authorities must now consider the wider implications of any policy changes relating to the acquisition and loss of citizenship, particularly in relation to its immigration policy.

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<sup>71</sup> Explanatory Report to the European Convention on Nationality, point 45.

The wider implications of Maltese citizenship, following accession to the EU, have been driven poignantly home with the debates surrounding the Individual Investor Programme. Indeed, it could be argued that these implications had already been visible in the statistics of citizenship acquisition by registration. Clearly, the attraction of Maltese citizenship for descendants of Maltese emigrants who live outside Malta can never be simply reduced or explained by ancestral links or ties. In view of the fact that the Maltese diaspora is mainly located in countries outside the EU, particularly Australia, for people claiming links to a Maltese ancestor, Maltese citizenship carries significant additional value as it automatically doubles up as European citizenship. Indeed, it is paradoxical that, whilst there have been significant discussions around whether individuals who acquire citizenship by naturalisation through the Individual Investor Programme hold 'genuine links' to Malta, the same issue never arose with regard to individuals who acquire citizenship by registration as a result of ancestral links, even if such individuals might never have resided or set foot in Malta. The dominant legal approach with regard to the granting of citizenship to the Maltese diaspora remains generally more inclusive and as an issue it has not raised contentions or debates in Maltese or European societies.

At the root of debates raised by developments on citizenship law and policy in Malta, as well as in the European Union, is the question of what legal and political citizenship stands for in this day and age. In an era characterised by increased mobility and greater European integration, such debates should continue.

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