

RESPONSE TO EUROPEAN PARLIAMENTARY RESEARCH SERVICE REPORT

“Citizenship by Investment (CBI) and Residency by Investment (RBI) Schemes in the EU”



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By Arton Capital and Future Citizen Institute

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1 In response to the European Parliamentary Research Service report “Citizenship by Investment (CBI) and residency by investment (RBI) schemes in the EU” and advocating for a process of dialogue between the EU, its Member States and the private sector in this matter Artion Capital and Future Citizen Institute wish to offer this reply containing the following observations.

2 While the EPRS casts doubt on the impact of the investments attracted through CBI and RBI programs, there is currently not sufficient data available to thoroughly analyze their economic impact and it is challenging to determine whether the investments would have been attracted without the programs. Consequently, there is a need for improving data collection to allow a more substantive evaluation of the Programs’ impact. Also, in order to mitigate any risks, their economic impacts must be carefully evaluated on a regular basis and, if necessary, the programs must be adapted in order to ensure that their economic benefits are maintained.

3 The EPRS relies heavily on the concept of the “genuine link” in criticizing the relationship between investors and States offering these programs. However, the “genuine link” doctrine has been disputed ever since it was defined by the International Court of Justice in the *Nottebohm* case and it is not considered part of customary international law. Moreover, international law is silent as to the requirements for States to grant naturalization.

4 While “transnational voting rights” can potentially undermine democracy, current State practice goes in the direction of offering migrants franchise in their place of residence at local level, and in their home country at national level. Countries often do not allow non-resident citizens to vote in national elections. Academic commentators therefore expect those who acquire citizenship under a CBI scheme will often remain non-resident and will generally not be politically engaged.

5 Commentators have also claimed that EU law is not (yet) allowed to interfere with the competence of the Member States to determine who are or who are not their nationals. The principle of sincere cooperation, as invoked by the EPRS, is therefore irrelevant in this matter. It is also recalled that the Member States have gone to great lengths to guarantee that nationality remains a national competence and that EU Citizenship is merely a derivative status. This is reflected in Article 20(1) Treaty on the Functioning of the European Union, stating that “citizenship of the Union shall be additional to and not replace national citizenship”.

6 The EPRS states that several investment schemes in EU Member States require none to very low physical presence in the territory. There is certainly some truth to this claim. Nevertheless, it is shown in our response that there are many different categories of presence requirements and that these categories should be duly distinguished.

7 Whether a person is considered a resident of a particular State for tax purposes depends on his or her tax residence status. The mere fact that a person holds the citizenship or a residence permit of a particular State does not necessarily lead to tax residence status in that State. The procedure for the grant of tax residence status differs among States, but is generally determined on the basis of factual circumstances. The starting point is often physical presence.


8 The EPRS argues that CBI and RBI programs offer potentials to circumvent reporting under the Common Reporting Standard, entailing that a person who holds tax residence status in a particular State could falsely claim to be tax resident in a third State. However, the issue described is not exclusively related to CBI and RBI programs, as residence or citizenship statuses could be used for this purpose regardless of the ground of their acquisition. In a world where holding multiple citizenships is increasingly common, this should be considered.

9 The statistical data provided by the EPRS for five European RBI programs show that, taken together, these programs granted less than 6,000 first time residence permits per year on average. To put this into perspective, the EU Member States granted around 3,1 million first time residence permits in 2017 alone. Compared to the vast number of refugees and economic migrants, investment migrants therefore represent a minuscule group.

10 One of the more profound threats to CBI and RBI programs is the security question. It is clear that any

weakness in the due diligence process that is identified must be immediately addressed. However, it is more likely that a malevolent individual would obtain fraudulent travel documents, either through a corrupt government official or forgery, than to go through the lengthy and burdensome process of a CBI/RBI program, provided the program is correctly administered. In recent years, the Caribbean CBI/RBI programs have made impressive progress with security and compliance improvements. Although the level of development is much different, an analogous situation needs to be created among Schengen countries toward the CBI/RBI programs in their region.

11 The EPRS refers on several occasions to the broader refugee problem and, in that connection, the lack of fairness of CBI/RBI programs that are only accessible to wealthy individuals. It is important to distinguish humanitarian migration routes from economic migration routes, however, as both categories operate under an entirely different logic. Economic residence permits are in principle granted on the basis of economic self-interest and are therefore exclusive in nature. Attracting foreign direct investment, generating investment and creating jobs is the purpose of CBI/RBI programs. The refugee problem can only be addressed by improving humanitarian migration routes, not by curtailing economic migration routes. That said, major players in the investment migration field have advocated for several years a “global tax” on CBI/RBI programs, to be used to assist with the growing questions of refugees and migration.



“Citizenship by Investment (CBI) and Residency by Investment (RBI) Schemes in the EU”

1. Introduction

Arton Capital and Future Citizen Institute acknowledge the thoroughness of the EPRS report and the constructive approach taken by its authors. No one working in this area, whether it is a nation-state that benefits economically from these programs or private companies such as ourselves, want to see such programs imperiled by the issues identified in the study.

In section 5.4 of the Report, the authors call for a “clear guidance on how private firms operate in the sector of CBI/RBI schemes”. The authors go on to highlight the importance of avoiding potential conflicts of interest. We have consistently advised the nation-states whom we have worked with that they need to avoid such conflicts of interest and in particular that they need to avoid exclusive contracts that give any single firm control over implementation, promotion, and administration of CBI/RBI programs. Many examples of problems in the study are well known to industry practitioners and correlate strongly with programs where such exclusivity exists. Ensuring

competition among practitioners is one of the keys to creating a more transparent and a more efficient industry. The EU, in collaboration with the EU Member States and the private sector, has an opportunity in our view to not only encourage such reforms within the EU but, in the process, create an industry standard for the world as a whole. Our own view is that public-private partnerships offer the best way forward to ensuring accountability within CBI/RBI programs.

In furtherance of this aim, Arton Capital and Future Citizen Institute are undertaking research and knowledge exchange in order better to regulate the industry, and we welcome the insights outlined in the Report. Going forward, we strongly advocate for a process of dialogue between the EU, the relevant nation-states, and the private sector to address these issues. In advance of such a dialogue, we would like to offer the observations below.

2. Differing Schemes and Differing Economic Impact

In line with the terminology adopted by the EPRS, this response uses the terms Citizenship by Investment (CBI) and Residency by Investment (RBI) in discussing Programs that grant citizenship or residence based on a financial investment. Alternative terms found in the literature are Economic Citizenship Programs (ECPs) and Immigrant Investor Programs (IIPs). It is emphasized at the outset that RBI Programs are found much more frequently than CBI Programs and that both serve different purposes in different countries. Countries are therefore not necessarily competing in the same market.

Although the authors of the EPRS report acknowledge that CBI and RBI Programs can lead to the attraction of new investments, increased revenues and job creation, they mainly focus on potential drawbacks. In short, they cast doubt on the impact of the investments attracted through CBI and RBI Programs, claiming that the spillover effects (tax revenue) are uncertain and that the programs can lead to macro-economic imbalances.

In general, the report fails to acknowledge that there are great diversities among CBI and RBI Programs and their economic impacts should be based on their merits. For example, it has been claimed that the sums raised by small countries with large investor programs can be substantial, while the economic contribution in larger countries has been called modest or disappointing.¹ Programs that require a donation to a government fund (e.g. the Maltese Individual Investor Program) have entirely different dynamics than programs that require investments in real estate, investment

funds or companies. For that reason, an interim evaluation of the Irish Immigrant Investor Program has assessed the economic impact separately for each investment category, showing that the majority of investments are in the enterprise category and are considered to be likely economically beneficial.² The evaluation assesses that the enterprises would probably not have been able to attract funds in other ways.³

Next to that, the context of each CBI and RBI Program should be considered. For example, the investment attracted through United Kingdom's Tier 1 Investor Visa consists mostly of the purchase of government bonds and its economic impact has therefore indeed been considered as limited. Yet, the high investment threshold combined with the substantial presence requirement has resulted in the settlement of a large number of UHNW households in the United Kingdom. Therefore, the indirect economic impact of the Program is arguably more substantial. It should also be considered that CBI and RBI Programs have often been implemented as a response to economic adversity, which means that States were necessitated to increase FDI, but had limited options for doing so.

Both the European Commission and the International Monetary Fund have accredited the added value of investment migration programs in this context. For example, a 2017 Post-Program Surveillance Report from the European Commission's DG on Economic and Financial Affairs on Cyprus states that the Cypriot CBI Program has contributed to the recovery of the real estate market.⁴ In late 2017 the IMF acknowledged that the

Cypriot CBI Program has helped to narrow the country's deficit and has strengthened its economic recovery.⁵ It was concluded that the Cypriot CBI scheme had provided welcome support to the construction sector and the economy more broadly in the aftermath of the 2008 crisis, although the IMF warned that the scheme had achieved its goal and could turn procyclical. While recognizing that the CBI scheme is a general investment scheme, the IMF also concluded that (luxury) real estate is the major beneficiary and suggested to decouple the scheme's eligibility requirements from real estate to avoid excessive concentration of economic activity.⁶ Regarding the Maltese Individual Investor Program, the IMF has acknowledged that the Program has contributed significantly to the reduction of the country's fiscal deficit.⁷

The EPRS report states repeatedly that the economic effects of CBI and RBI Programs are "uncertain". There is often not sufficient data available to thoroughly analyze the economic impact of CBI and RBI Programs and it is challenging to determine whether the investments would have been attracted without the programs. The potential economic benefits of investment migration schemes cannot be discarded on this basis. Rather, it should be regarded as an impetus for improving data collection and more substantive evaluation of their impact.

The EPRS report warns that on a macro-economic level, CBI and RBI Programs can lead to economic imbalances. Indeed, in order to mitigate these risks, the economic impact of the Programs must be carefully evaluated on a regular basis and, if necessary, the Programs must be adapted in order to ensure that their economic benefits are maintained.

1. *Sumption and Hooper*, p. 1.

2. *IGEES Unit*, p. 27.

3. *Ibid.*, p. 28.

4. *European Commission*, p. 14.

5. *IMF, "Cyprus"*, p. 5.

6. *Ibid.*, p. 16-17.

7. *IMF, "Malta"*, p. 7.



3. Citizenship by Investment and the “Genuine Link” Requirement

The EPRS report relies heavily on the concept of the genuine link – a concept disputed ever since it was defined by the International Court of Justice in the *Nottebohm* case.⁸ As noted by Oliver Dörr, “although it has been followed in some cases, the genuine link requirement is not generally accepted and therefore not part of customary international law”.⁹ Albrecht Randelzhofer also strictly limits *Nottebohm* to the problem of diplomatic protection consequent on conferment of nationality by naturalization.¹⁰ Similarly, Audrey Macklin, noting that *Nottebohm* “introduce[d] the ‘genuine link’ test as a supplementary and mandatory prerequisite to recognition of nationality at international law”, is critical of what the judgment has come to stand for.¹¹

It is also noted that international law is silent as to the requirements for naturalization – that is, the granting of citizenship by a public authority to a person, not at birth but later in life. As observed by Dörr, the preconditions that are often required under national law, “such as prolonged lawful residence or knowledge of the language, or indeed any other form of ‘genuine link’, are not requirements of international law”.¹²

It is common knowledge that the nationality laws of the EU Member States are based on *ius sanguinis* rather than *ius soli*,¹³ and that many member states have *ius sanguinis* regimes that allow nationality to be transmitted indefinitely to subsequent generations born outside the EU.¹⁴ Others offer generous routes to long-distance naturalization without

requiring any physical presence on the territory. Referred to as “compensatory citizenship” by some commentators, for many non-EU citizens it makes up “for deficits in the original citizenship in terms of opportunities, security, rights and travel freedom”.¹⁵

Among the many EU Member States that create “external EU citizens” who enter the territory of the EU on the basis of a nationality expressing no real link with a Member State, the cases of Mediterranean as well as Central and Eastern Europe (CEE) are well-known. Moreover, we may think of the descendants of Sephardic Jews who can rather easily obtain Portuguese or – somewhat less easily – Spanish nationality. Some Britons may remain EU citizens after Brexit based on their eligibility for Irish

citizenship or even German citizenship. Under German law the descendants of certain refugees, mostly of Jewish origin, who settled in the UK after fleeing the Nazi regime have a claim to German citizenship. As for Italy, Gallo and Tintori, referring to an assessment by the Italian Ministry of Foreign Affairs that there were 60 million people of Italian descent living around the world in 1994, estimate that at least 30 million of them can prove their Italian descent. Under Italian law they have an Italian nationality which only needs to be “revived” in order to become EU citizens.¹⁶

Acquiring the citizenship of an EU Member State comes with extra-territorial rights based on the derivative status of EU citizenship. The EPRS correctly observes that these additional rights

make that EU countries are ranked high in passport indexes. At the same time, Alexander Aleinikoff reminds us that the grant of extra-territorial rights is by no means limited to the EU.¹⁷ The free movement regimes that have been introduced by certain regional blocs such as ECOWAS, MERCOSUR, the Gulf Cooperation Council or ASEAN have increased the instrumental value of some of these nationalities too – especially given that intraregional movement far exceeds international movement.

8. *Nottebohm*, 6 april 1955, ICJ reports 4.
9. Dörr (“*Nottebohm* case”).

10. Randelzhofer, p. 504.
11. Macklin, p. 493.

12. Dörr (“nationality”).
13. In contrast to the Americas, for example. See Vonk 2014.

14. <http://globalcit.eu/databases/global-birthright-indicators/>.
15. Harpaz, p. 2.

16. Gallo and Tintori, p. 133.
17. Aleinikoff, p. 27.



4. Citizenship by Investment and Voting Rights

Just like citizenship, access to the franchise has been affected by the more porous nature of state boundaries in our age of globalization. The extension of voting rights beyond citizenship (that is, to non-national immigrants) and residence (that is, to expatriates) is referred to as “transnational voting rights”. While it has been speculated that this may undermine democracy, current State practice appears to go in the direction of offering migrants franchise in their place of residence at local level and in their home country at national level.¹⁸

Countries that have CBI Programs will often require factual residence to be able to exercise national voting rights – not just in Europe but also in the Caribbean.¹⁹ Dzankic, quoting Section 8 of the Citizenship Act of St. Kitts and Nevis, shows that “naturalization by investment

does not confer all of the citizenship rights [such as the franchise] to those who have acquired the citizenship of St. Kitts and Nevis but have opted not to reside there”. Similarly, the GLOBALCIT Observatory demonstrates that countries such as Cyprus or Malta do not allow non-resident citizens to vote in national elections.²⁰ Thus, Article 57 of the Maltese Constitution stipulates that a citizen is only entitled to vote in the national elections if (s)he “is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months”.²¹ We therefore join Peter Spiro in expecting that those who acquire citizenship under a CBI scheme will often remain non-resident and will generally not be politically engaged.²²

18. Caramani and Grotz, p. 814.
19. Dzankic 2012, p. 10.

20. See the GLOBALCIT ELECLAW Indicators at <http://globalcit.eu/electoral-law-indicators/>.

21. <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

5. Citizenship by Investment and the EU Principle of Sincere Cooperation

On 15 January 2014, then EU Justice Commissioner Viviane Reding gave a speech containing the following two statements:

Member States should use their prerogatives to award citizenship in a spirit of sincere cooperation with the other Member States, as stipulated by the EU Treaties. In compliance with the criterion used under public international law, Member States should only award citizenship to persons where there is a “genuine link” or “genuine connection to the country in question”.

*It is a fact that the principle of sincere cooperation, which is inscribed in the EU Treaties (Article 4.3 of the Treaty on European Union), should lead Member States to take account of the impact of decisions in the field of nationality on other Member States and the Union as a whole.*²³

As for the first statement, it was already seen above that the scope of the genuine link test that was developed by the ICJ in *Nottebohm* is very much disputed, and that leading commentators have submitted that a genuine link is not a requirement under international law to grant naturalization.

The validity of the second statement is also very questionable. The EPRS refers to Advocate General Maduro’s argument in the *Rottmann* case that the principle of sincere cooperation could be affected if “a Member State were to carry out, without consulting the Commission or its partners, an unjustified mass naturalization of nationals of non-member States”.²⁴ It is clear that at the current pace the naturalizations granted under CBI Programs do not in any way

lead to the mass naturalization of non-EU member state nationals.

It is also unconvincing that the principle of sincere cooperation can limit member state autonomy in nationality matters, especially if one considers that countries have gone to great lengths to make sure that nationality remains a national competence.²⁵ Despite the CJEU’s claim that EU citizenship “is destined to be the fundamental status of the member state nationals”,²⁶ Article 20(1) Treaty on the Functioning of the European Union states that “citizenship of the Union shall be additional to and not replace national citizenship”.

There is no rule of international law that suggests otherwise. According to Hans-Ulrich Jessurun d’Oliveira “inter-

national law is silent about the role of Union law in controlling the competence of member states in matters of nationality”.²⁷ In respect of the EU principle of sincere cooperation he has argued that: “[...] Union law is from my point of view not yet allowed to interfere with the competence of the member states to determine who are or who are not their nationals. There is no competence in the treaties to deal directly with the laws on nationality of the member states. [...] Laws on nationality belong to the identity of the member states and their fundamental constitutional structures to be respected by the EU, according to Art.4 s.2 TEU. Although these have to be interpreted restrictively, they are still in place”.²⁸

22. Spiro (p. 10) in Shachar and Bauböck. See also Harpaz and Mateos (p. 9), who write that “from a dual citizen’s perspective, much of the value of her second citizenship has to do less with social welfare or voting rights and more with securing an advantageous position within a global hierarchy of travel freedom”. A rare example of a case where foreign investors do settle in large numbers in their country of investment can be found in the Pacific. Referring to the “ultimately false assumption that passport purchasers would not settle in the issuing country”, Van Fossen points out that “popular concerns about theft

and improper accounting of proceeds from isolate passport sales programs in Tonga and the Marshall Islands have been overshadowed by the greater local concern with the long-term consequences of large influxes of Chinese passport holders and their quick ascent in local business (particularly retail trade)”. Van Fossen, p. 288.

23. For an analysis of Reding’s speech against the backdrop of the Maltese investment scheme, see Carrera Núñez 2014a, 2014b, and Carrera Núñez and Marrero González.

24. Opinion of AG Maduro in Case C-135/08 *Rottmann* [2010],

par. 30, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62008CC0135&from=NL>.

25. This has been confirmed by the EPRS itself. See Mentzelopoulou and Dumbrava, stating that the “Member States retain full control over who can be recognised as a citizen”.

26. Case C-184/99 *Grzelczyk* [2001], available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:%3A61999CJ0184>.

27. Jessurun d’Oliveira, p. 6.
28. Jessurun d’Oliveira, p. 7.

6. Citizenship and Residence by Investment and Physical Presence Requirements

The EPRS Report states that several investment schemes in EU Member States “[...] require none to very low physical presence on the territory to obtain residency or citizenship status”. There is certainly some truth in this claim. Nevertheless, there are many different categories of presence requirements and these categories should be duly distinguished.

6.1. Citizenship by investment schemes and physical presence

Citizenship by investment schemes offer accelerated routes to citizenship. This means that applicants are often exempted from residence requirements and physical presence requirements. Austria, Cyprus and Malta do not require applicants to be physically present on their territory for a substantial period of time prior to naturalization. Cyprus requires that the applicant obtains a Cypriot residence permit prior to naturalization, but this does not entail that the applicant has to be physically present in Cyprus.²⁹ Malta requires one year of “reinforced residence status” prior to naturalization, but the applicant does not have to be physically present in Malta during that time.³⁰ Instead, the applicant has to prove that (s)he has “some form of genuine links” with Malta. Primarily, the ap-

plicant is required to provide evidence of flight tickets to Malta, hotel bookings and the usage of transportation services on Malta.³¹ In addition to that, the applicant could proof his/her genuine link with Malta through, for example, charitable donations to Maltese organizations or having a Maltese bank account.³² Austria does not require any forms of physical presence prior to naturalization.³³

Two EU Member States have a substantial physical presence requirement in place for CBI applicants. Romania requires four years of residence prior to naturalization.³⁴ The applicant must have been physically present in the country for at least six months per year and have paid taxes in Romania.³⁵ Bulgaria requires one year of permanent residence prior to naturalization, but it is unlikely that physical presence is required during that period.³⁶



6.2. Residence by investment and physical presence requirements

When it comes to residence by investment schemes, four different categories of physical presence requirements can be distinguished:

• Physical presence required for maintaining or extending residence permits

In general, EU Member States do not require a substantial period of physical presence for this purpose. Portugal requires investors to be physically present for two weeks per year (reduced to one week in the first year), but most States do not require investors to be present on their territory at all. Only a small number of EU Member States do require physical presence. The Netherlands, for example, requires the investor to be physically present in the country for at least four months per year.³⁷

• Physical presence required for obtaining permanent residence status

In most EU Member States, investors can only obtain a temporary residence permit through an RBI scheme. If investors wish to obtain a permanent residence permit, they will usually have to follow the ordinary procedure and fulfil all the regular requirements. This means that, in order to be eligible for permanent residence, physical presence can be required. In the United Kingdom, investors who wish to obtain indefinite leave to remain may not be absent for more than 180 days per year.³⁸

• Physical presence required for ob-

taining EU long term residence status

EU long term residence status is a particular form of permanent residence status which enables the holder to settle in other EU Member States. The requirements for obtaining this status have been determined by an EU directive and have subsequently been implemented in national legislation. Art. 4 par. 1 of Council Directive 2003/109/EC states that third country nationals must have resided in the EU Member States “legally and continuously” for a period of at least five years. According to Art. 4 par. 3 of the Directive, absences are only permitted if they are shorter than six consecutive months and do not exceed 10 months in total. It should be emphasized that this norm is only applicable to this particular residence status and does not affect the requirements for other residence permits or citizenship.

• Physical presence required for obtaining citizenship

In most cases, an investor can eventually be eligible for ordinary naturalization as long as (s)he fulfills all the regular requirements for naturalization. All EU Member States require that an applicant for naturalization has resided in the country for a certain period of time (in general, a period of residence around five years is required). This does not necessarily mean that the applicant has to be physically present for the entire duration of that period, as States tend to allow (usually brief) periods of absence. In the United Kingdom, for example, absences are permitted if they amount to no more than 450 days in total during a period of five years and no more than 90 days during the 12 months prior to application.³⁹

29. Part B Decision of the Ministerial Council No. 834 of 16 September 2016 [Αποφάσεις Υπουργικού Συμβουλίου Αριθμός 834 Παρασκευή, 16 Σεπτεμβρίου 2016].

30. O'Riip, Fourth Annual Report on the Individual Investor Program of the Government of Malta, 2017, p. 31.
31. Ibid., p. 32.

32. Ibid.
33. Art. 10 par. 6 Nationality Law 1985 [Staatsbürgerschaftsgesetz 1985] jo. Ministerial Decision on the Grant of Nationality in the Exceptional interest of the Republic No. 39/2014 [Beschluss Verleihung der Staatsbürgerschaft im besonderen Interesse der Republik].

34. Art. 8 par. 2 Nationality Law [Legea cetățeniei].

35. Bauböck, Perchinig and Sievers, p. 186.
36. Art. 14a par. 1 Law on Bulgarian Citizenship [Закон за.

37. Bauböck, Perchinig and Sievers, p. 186.
38. Art. 14a par. 1 Law on Bulgarian Citizenship [Закон за.



6.3. Citizenship and residence by investment and tax residence status

Whether a person is considered a resident of a particular State for tax purposes depends on his or her tax residence status. Contrary to popular belief, the mere fact that a person holds the citizenship, or a residence permit of a particular State does not necessarily lead to tax residence status in that particular State. Theoretically, obtaining citizenship or a residence permit through investor Programs can enable one to be physically present within that country and therefore can be a stepping stone in the process of obtaining tax residence status.

The procedure for the granting of tax residence status differs from State to State but is generally determined on the basis of factual circumstances. The starting point of these procedures is often physical presence. Many States use the so-called “183-day-rule” for this purpose, which entails that tax residence status can in principle be granted if a person has been physically present in the country for at least 183 days per year. However, other circumstances can also be taken into account. In the Maltese case, for example, family ties and business ties related to Malta can also be considered.⁴⁰ In exceptional cases, shorter periods of presence can in

certain States still result in the grant of tax residence status. In Cyprus, for example, persons can obtain tax residence upon at least 60 days of presence in the country per year, as long as they fulfill the further requirements.⁴¹

Earlier this year, the OECD implied that the industry in some way encourages tax evasion. The purpose of these programs in general is to help the State's economic recovery and to create more jobs, not to avoid taxes.⁴² Investors' interests in these programs are not to avoid taxes but to increase their travel mobility.

That said, Arton Capital and Future Citizen Institute are fully supportive of efforts to ensure that the industry complies with all laws and regulations, including the Financial Action Task Force (FATF) “Five Pillars” the foundation for anti-money laundering compliance and the OECD’s “Common Reporting Standards (CRS)”, which is elucidated in Arton Capital’s response to the OECD’s Consultation Document on residence by investment schemes.⁴³

Българското Гражданство].
37. Par. B1/6.2.1 Alien Circular B [Vreemdelingencirculaire B].

38. Paragraph 245AAA Immigration Rules.
39. Par. 6 (1) Schedule 1 (2) a jo. b British Nationality Act 1984

40. OECD, “Malta - Information on Residency for tax purposes” via <http://www.oecd.org>.

41. Persons can obtain tax residence status if they are not a tax resident in any other State, have not resided for more than 183 days in any other State in that particular year, have

other defined ties to Cyprus (e.g. exercise business activity in Cyprus) and own a permanent home in Cyprus. See: Art. 2 Income Tax Law 2002 No. 118(I) of 2002 [Ο περί Φορολογίας του Εισοδήματος Νόμος του 2002 Ν. 118(Ι)/2002] as amended by Law No. 119(I) of 2017.

42.E. Kendall.

43.<http://www.oecd.org/tax/exchange-of-tax-information/public-comments-received-on-misuse-of-residence-by-investment-schemes-to-circumvent-the-common-reporting-standard.htm>



7. Citizenship and Residence by Investment and the Common Reporting Standard

The Common Reporting Standard (CRS) is a system that is coordinated by the OECD and obliges participating States to obtain information from their Financial Institutions and automatically exchange that information with other States where the reported assets could be subjected to taxation.⁴⁴ Financial Institutions in participating States are therefore obliged to investigate the tax residence status of their clients.

The EPRS report argues that CBI and RBI Programs “offer potentials to circumvent reporting under the common report-

ing standard (CRS)”. In a nutshell, this entails that a person who holds tax residence status in a particular State could falsely claim to be tax resident in a third State and provide his Financial Institution with supporting documentary evidence. Documentation of residence status or citizenship status could be (wrongly) regarded as proof of tax residence status by the Financial Institution. In that case, information will only be exchanged with the third State.

From a broader perspective, the issue described here is not exclusively related

to CBI and RBI Programs, as residence or citizenship statuses could be used for this purpose regardless of the ground of their acquisition. In a world where holding multiple citizenships is increasingly common, this should be considered. Moreover, as stated earlier, citizenship or residence status is not enough for obtaining tax residence status. Therefore, this issue should be addressed by ensuring that Financial Institutions properly follow due diligence and KYC procedures in order to determine in which States a client might be considered a tax resident.

8. Citizenship and Residence by Investment and Data Transparency

Throughout the EPRS study, there are calls for greater data transparency, with respect to numbers of applicants, numbers of successful applicants, revenues, and the like. It is indeed profoundly in the industry’s interest that its practices

be transparent. To cite just one example, CBI/RBI programs can provide needed government revenues that can help a country’s development. The EPRS study expresses skepticism on this point. In the absence of hard data, it is not possible to

arrive at a conclusive judgment. Moreover, as the study’s authors state, any lack of transparency, especially on the question of revenues, can undermine public trust in these programs, putting their sustainability at risk.

⁴⁴ <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard>.



9. Citizenship and Residence by Investment and Security



In recent years, international migration has become an ever more important and ever more controversial topic, particularly in developed countries. The numbers tell the story. According to the UNHCR, there were 68.5 million displaced people in the world in 2017, of whom 25.4 million were refugees and another 3.1 million were asylum seekers.⁴⁵ These numbers are dwarfed by those of economic migrants. The International Organization for Migration's 2018 World Migration Report listed 244 million economic migrants globally in 2015, the last year for which there are numbers. That is some 3.3 percent of the world's population. A 2012 survey by Gallup identified 640 million people globally who would like to move, nearly all of those to Europe, North America, or Oceania. It is little wonder that migration has become a hot button political issue in these developed countries. In this vast ocean of humanity, the portion composed of investment migrants is minuscule. The EPRS report provides statistical data for five European RBI programs and together, these five Programs grant less than 6,000 first time residence permits per year on average. To put this into perspective, the EU Member States granted around 3,1 million first time residence permits in 2017 alone.⁴⁶

One of the more profound threats to these programs is the security question. Any weakness in the due diligence process that is identified must be immediately addressed. It seems apparent that the rigid compliance regimes in place in most of the CBI/RBIs act as a deterrent to those with wrong intentions. The program country's law enforcement and intelligence units are usually closely involved in vetting applicants and do so in conjunction with their counterparts from other countries, including, for example the United States with its strong capabilities. And then there is a further level of scrutiny provided by the professional due diligence firms employed by the CBI/RBI programs. That said, the threat exists and must be taken with the utmost seriousness. In reality, however, it is more likely that a malevolent individual would obtain fraudulent travel documents, either through a corrupt government official or forgery, than to go through the lengthy and burdensome process of a CBI/RBI program, provided the program is correctly administered.⁴⁷ In this regard, three things must be stressed in particular: the importance of independent, adequately staffed, citizenship by investment vetting units; the importance of hiring private sector companies that spe-

cialize in due diligence to conduct an independent, second-level of scrutiny; and the importance of coordinating with the law enforcement and intelligence agencies of major countries to further ensure that security is maintained. In the final analysis, the EU or the U.S. have and will take action where problematic individuals receive passports that ease the travel of such individuals to their countries. The restrictions they have imposed in the past and are likely to impose in the future in such a scenario certainly affect the attractiveness of CBI/RBI programs.

In recent years, the Caribbean CBI/RBI programs have made impressive progress with security and compliance improvements, including sharing of information with outside governments and their law enforcement agencies, establishing a regional professional association, and standardizing the vetting process within the region.⁴⁸ These steps have increased confidence within the Caribbean community that successful applicants of the region's CBI/RBI programs have been fully vetted. Although the level of development is much different, an analogous situation needs to be created among Schengen countries toward the CBI/RBI programs in their re-

gion. This is all the more the case, we would argue, as these programs are likely to continue and to grow given the needed revenue they generate for their host economies, many of which are small and have few other revenue options. This in turn creates a need for greater security and compliance standardization based on the Financial Action Task Force (FATF) initiative and its five pillars: a designated AML officer, a thorough training program, written and published policies, annual reviews, and monitoring. The Caribbean States and Malta have largely met these standards, albeit with room for additional transparency, especially with regard to annual reviews.⁴⁹ However, these standards are not yet present in many CBI/RBI programs, including in Europe, where through the Schengen Agreement unfettered movement of peoples is possible. In that regard, it would seem that greater political will on the part of EU member states as well as greater industry awareness indicate that the time for improved compliance has arrived.

45. <https://www.unhcr.org/news/stories/2018/6/5b222c494/forced-displacement-record-685-million.html>.

46. Eurostat, Residence permits statistics October 2018, available at <https://ec.europa.eu>.

47. For example, it has been reported that corrupt government officials have given out hundreds of fraudulent Bulgarian passports to foreign nationals since 2017. See <https://www.dw.com/en/bulgarian-passport-scam-officials-arrested/a-46114772>.

48. IMF, Eastern Caribbean Currency Union, IMF Country Report No. 17/150, p. 45.

49. See Ministry of Finance, Results of the ML/TF National Risk Assessment Republic of Malta 2018, available at <https://mfin.gov.mt> and Caribbean Financial Action Task Force, Mutual Evaluation Reports at <https://www.cfatf-gafic.org>.



10. Citizenship and Residence by Investment and Fairness

The EPRS study refers on several occasions to the broader refugee problem and in that context, the lack of fairness of CBI/RBI programs that are only accessible to wealthy individuals. However, it is important to distinguish humanitarian migration routes from economic migration routes, as both categories operate under an entirely different logic. Economic residence permits (i.e. employment, entrepreneurship and investment) are in principle granted on the basis of economic self-interest and are therefore exclusive in nature. It is therefore important to note that this is not an unanticipated “bug” of the programs. Rather, it is a deliberate feature on the part of nation-states to attract

investment to their countries. This, after all, is the heart of the industry and the countries that have such programs include the U.S., the UK., Canada and other pillars of the international community. Attracting foreign direct investment, generating investment and creating jobs is the purpose of CBI/RBI programs. The refugee problem can only be addressed by improving humanitarian migration routes, not by further curtailing economic migration routes. All that said, major players in the investment migration field have advocated for several years a “global tax” on CBI/RBI programs of one percent of revenue, to be used to assist with the greater, and growing, questions of refugees

and migration more generally. If such a tax would have been imposed at the rate of 1% on the required amount of investment/contribution that qualifying applicants make, it could be estimated that it would have raised \$1billion in the last five years alone. Industry players also advocated for greater involvement of international organizations in the programs and are currently working on a project that will ultimately incentivize high net worth individuals participating in CBI/RBI programs to invest into initiatives which target generating specific and measurable social and environmental benefit in the context of Sustainable Development Goals.

11. Final Notes

Arton Capital and Future Citizen Institute wish to conclude by acknowledging again the thoroughness of the EPRS study, which was triggered by legitimate institutional and public concerns about the CBI and RBI programs that have been implemented by an increasing number of EU Member States in recent years. In this joint response, it has been attempted to nuance some of the arguments brought forward and correct a number of misunderstandings relating to the use and purposes of the programs. The authors would suggest that, in conjunction with the onset of this dialogue, an independent study be commissioned, to be conducted by academics who have studied and developed

expertise in the industry. The objective of such a study would be to build on the EPRS study, the OECD's research, and other such projects and to provide a base-line for dialogue and discussion for all interested parties going forward.

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