Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes

Since 2014, the European Parliament and European Commission have been calling on Member States not to grant citizenship in return for investment in the country concerned. Following the invasion of Ukraine by Russian military forces, these calls have intensified, with Member States now being urged to withdraw such citizenship when it has been granted to Russian or Belarusian nationals who are on the sanctions list or support the invasion.

Russian nationals and citizenship or residence by investment schemes

Three Member States (Bulgaria, Cyprus and Malta) currently offer schemes granting nationality on the basis of a financial investment (citizenship by investment (CBI) schemes – or ‘golden passports’). Twelve Member States (Cyprus, Estonia, Greece, Spain, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands and Portugal) offer schemes granting residence permits on the basis of investments (residence by investment (RBI) schemes – or ‘golden visas’).

An October 2021 EPRS study estimated that, between 2011 and 2019, over 132 000 people secured residence or citizenship in EU Member States by means of CBI or RBI schemes. However, for many schemes it is unclear who the beneficiaries are. While Russian nationals are not the biggest group on the global citizenship market, this is different in Cyprus and Malta, where they account for over 50 and 40 %, respectively, of naturalisations granted on the basis of CBI schemes.

In contrast to the above, in the EU – as far as information is available – there has generally been little take-up of RBI schemes by Russian nationals. The exception is Latvia, where the vast majority of approvals originate from Russia. This particular programme has, however, seen a steep decline in admissions since 2014. Most RBI scheme approvals nowadays occur in Greece, Portugal and Spain, where the percentages of Russian applications are lower.

Rethinking policy on golden passports and visas

In a joint statement of 26 February 2022, the European Commission, France, Germany, Italy, the United Kingdom, Canada and the United States, committed, not least, to take ‘measures to limit the sale of citizenship – so called golden passports – that let wealthy Russians connected to the Russian government become citizens of our countries and gain access to our financial systems’.

On 2 March 2022, Malta announced that it had suspended, until further notice, the processing of applications from nationals of the Russian Federation and Belarus. Similarly on 24 March 2022, the Bulgarian Parliament adopted amendments to the Bulgarian Citizenship Act, abolishing the citizenship by investment scheme and requiring a review of previous naturalisations granted.

In a resolution of 9 March 2022, calling on the Commission to make specific legislative proposals on citizenship and residence by investment schemes (2021/2026(INL)), the European Parliament welcomed the commitment announced by the Member States to take measures to limit the sale of citizenship to Russian nationals connected to the Russian government. Nevertheless, Parliament called upon all Member States to stop operating their CBI and RBI schemes for all Russian applicants with immediate effect. It also urged Member States to: reassess all applications from Russian nationals approved over the past few years; exploit all possibilities under national and EU law to ensure that no Russian individual with financial, business or other links to the Putin regime retains their citizenship and residency rights; and temporarily block such individuals from exercising those rights. Parliament also called on the Commission to verify any such reassessments carried out by Member States and to present, as a matter of urgency, a legislative proposal to ban CBI schemes completely and to ban RBI schemes for Russian nationals who are subject to targeted measures.
On 28 March 2022, the European Commission issued a recommendation urging Member States to immediately repeal any existing investor citizenship schemes and to ensure strong checks are in place to address the risks posed by investor residence schemes.

The Commission also recommended that where a person concerned:

- is or becomes subject to EU restrictive measures, or
- where it is otherwise determined that the person concerned significantly supports, by any means, the war in Ukraine or other related activities of the Russian government or the Lukashenko regime that breach international law,

the Member State concerned should immediately assess, in accordance with the principles resulting from the case law of the Court of Justice of the European Union (C-135/08 Rottmann, C-221/17 Tjebbes), including the principle of proportionality and the protection of fundamental rights, whether naturalisation should be withdrawn from these individuals.

Equally, where such a person had acquired a residence permit on the basis of an RBI scheme, the Commission recommended that such a residence permit should be withdrawn or not renewed.

Member States were also asked to report on the implementation of the recommendation by the end of May, and to keep the Commission informed on a regular basis from May onwards.

On 6 April 2022, the European Commission sent a reasoned opinion to Malta (INFR(2020)2301) regarding its investor citizenship scheme. This is the final stage before the infringement procedure would be referred to the Court of Justice. The Commission considered that the granting of EU citizenship in return for pre-determined payments or investments, without any ‘genuine link’ to the Member State concerned, was in breach of EU law.

On 7 April 2022, after Ukrainian President Volodymyr Zelenskyy had addressed the Cypriot Parliament calling for an end to the sale of citizenship to Russian nationals, the Cypriot President, Nicos Anastasiades, told reporters that instructions had been given for the revocation of four passports of Russians on the EU’s sanctions list.

Rules applicable to the withdrawal of nationality

According to the case law of the Court of Justice of the European Union, when a Member State withdraws its nationality from a person, and as a result EU citizenship, it must make an individual assessment as to the consequences of this loss and the proportionality of the measure. Furthermore, such a withdrawal must – in principle – not lead to statelessness. This rule is laid down in international conventions, for instance under Article 7 of the European Convention on Nationality.

The same Article 7 also sets out the cases in which nationality may be withdrawn, by operation of law or at the initiative of a state party. These include:

- ‘b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
- c) voluntary service in a foreign military force;
- d) conduct seriously prejudicial to the vital interests of the State Party;’

These same grounds have been invoked in recent years for the withdrawal of nationality from terrorists, where the requirement of preventing statelessness resulted in the provisions targeting dual nationals, making the citizenship of dual citizens less secure than that of single-nationality citizens and raising questions about citizenship equality. Similarly, distinguishing between naturalised citizens and native citizens for the purpose of citizenship deprivation leads to the creation of different classes of citizens.