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WORKING DOCUMENT

on the legislative own-initiative report on citizenship and residence by investment schemes (2021/2026(INL))

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Common standards for security checks and diligence, with a particular view to corruption risks and administrative cooperation in the area of freedom, security and justice

I. General overview

The current schemes which grant residency or citizenship by investment do not involve, as a rule, any standardised security checks on the third country national (TCN) concerned or on his or her family members. This is the case both at national level and at Union level. There are, however, some differences between the two types - “residency” and “citizenship” - of scheme. Where national checks do exist, there is little information shared between Member States, including on what kind of checks are undertaken. Which checks to undertake are left to the discretion of the authorities of the Member State concerned.

The situation for residency by investment is generally stricter with some mandatory checks in place in all Member states. Those individuals granted residency are automatically checked when entering the Schengen zone. For citizenship by investment any vetting of the TCN depends entirely on the national rules of the Member State concerned and the due diligence of the authorities involved. For both schemes, however, once granted the new status (residency or citizenship) the person immediately starts to enjoy the freedoms of movement¹ and of establishment within the Schengen zone. Thus, the lack of adequate security screening of the persons benefitting from residency or citizenship by investment could pose a security risk to the internal security of the entire Union.

Most other types of residency permits or citizenship schemes depend on a physical stay on the territory of the Union and on a strong connection between the person concerned and a Member State, for example through the existence of family members, a work contract or research or student engagement. These connections can all be monitored and easily verified. In contrast, residency or citizenship by investment do not allow for precise assessment of the motives and intentions of the applicant. Investing in a country, unlike working, studying or researching, does not always entail residing in that country.

In light of this, the issue to be addressed here is that residency and citizenship by investment has a dual nature: The investment on the one hand and the residency or citizenship on the other should be dealt with as two quasi-independent elements of one relationship and not as one element (investment) leading directly to the second element (residency or citizenship).

The dual nature of these schemes and the fact that residency or citizenship granted in one Member State can affect all other Member States and may impact the internal security of the Union necessitate a coordinated approach at Union level. Developing a list of common standards and introducing mandatory minimum checks of TCNs will help ensure that the Member States will all act with due diligence. Moreover, any Union action in this regard should facilitate the usage of Union databases and other Union mechanisms and tools. This will support the efforts of the national authorities to verify the applicant and his or her motives and background. This will also enhance the mutual trust among the Member States, have a positive impact on the Schengen zone and contribute to making these schemes more secure for the entire Union.

¹ It should be noted that the residence permits issued by Bulgaria, Croatia, Cyprus, Ireland and Romania do not automatically grant freedom of movement to the third country nationals holders of these permits.

The question of minimum security checks should be seen from three angles:

1. Performing checks on the applicant via existing Union databases and channels for exchange of information between Member States;
2. Vetting the applicant for deeds committed in his or her country of origin or residence (in case he or she resides in the territory of a third country that is not the country of his or her nationality);
3. Performing checks on the family members of the applicant, especially those who could benefit from family reunification or the right of free movement under Directive 2004/38/EC of the European Parliament and of the Council² in the case of citizenship.

The existing instruments regarding the area of freedom, security and justice predominantly allow for checks of individuals, meaning that those instruments cannot be used for checks on capital or on financial resources. Such checks should therefore be dealt with separately, for example through legal acts on anti-money laundering or tax evasion.

Cyprus does not have access to some of the justice and home affairs (JHA) databases, and any list of common standards involving checks via the centralized databases such as SIS, VIS, ETIAS and Smart Borders will not be applicable to Cyprus.

II. Security checks via the Union's JHA databases

The Union has at its disposal a wide variety of centralised databases such as SIS, VIS, ETIAS, ECRIS-TCN and EES. The interoperability process could allow for a hit/no hit search in these databases which can be a very useful source of information for the national authorities when performing the checks on applicants. Regarding SIS, for example, checks prior to granting a residence permit are already mandatory under Article 25 of the [Convention](#) implementing the Schengen Agreement³. Following the recent [amendment](#) to the VIS Regulation⁴, VIS includes information not only on short-stay visas, but also on long-stay visas and residence permits. Before issuing such visa or residence permit, the applicants are automatically checked not only in VIS, but also in Eurodac, SIS, ECRIS-TCN and Europol databases to assess whether they could pose a threat to public policy or internal security.

These checks can be done via the European Search Portal, which will allow simultaneous searches in all relevant Union databases via interoperability.

The Common Identity Repository established by the Interoperability Regulation⁵ could also be

² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

³ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

⁴ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

⁵ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

very useful having in mind that it streamlines the access to the information available on TCNs.

Checking the centralised JHA databases of the Union will allow the authorities to identify whether the applicant or his or her family members have travelled to the Union recently, on a regular basis, etc. It will also allow the verification of whether there are specific alerts entered with respect to the person and his or her family members and whether they have been rejected for a visa or an authorisation for visa free travel in the Union. It will also allow checking of whether the applicant has been sentenced in one of the Member States. Such checks will contribute to identifying any possible previous misconduct as well as flagging the potential patterns of behaviour of applicants which may raise alarm.

In addition, TCNs and their family members can be checked via the Europol analysis work files and other information systems. This will allow checking of whether they are subject to any on-going investigations with a cross-border nature or if they are suspects of or in any other way involved with a criminal investigation.

Systematic checks against these databases would necessitate amendments to the respective legal acts establishing the specific databases because most of them have purpose limitations or other limitations concerning the scope of the checks. However, this could be done via very targeted amendments that will be similar in all the acts. The expansion of access rights would have to be evaluated with regard to its necessity and proportionality, and remain very limited.

It will be more difficult to enable a systematic check against Europol databases. Considering that Europol has a supportive role, the Europol Regulation⁶ provides for obligations on the Agency rather than obligations on the Member States. That Regulation can for example provide that Europol shall assist Member States to cross-check third country nationals applying for residence or citizenship by investment but it cannot impose an obligation on Member States to make use of Europol, as national security falls primarily within the Member States' remit. If such possibility should be provided in a legal act, however, its use might be incentivised via soft measures, including through raising awareness and dedicated meetings within Europol focusing on the advantages of such checks.

III. Vetting procedures in third countries

Cross-checking a person against the Union centralised databases is a useful tool but it cannot verify whether the person has a criminal record or is associated to criminal activity outside the Union. For the purposes of vetting the applicant's background outside the Union, the common standards to be listed in a legal act should refer to the systematic use of other tools, including those offered by international organisations such as Interpol.

There are at least three existing mechanisms that can be engaged in vetting of persons applying for residency or citizenship by investment schemes:

- Europol can assist via its liaison officers in third countries and through exchange of personal information with the third countries with which Europol has operational cooperation

⁶ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

agreements. Europol has an agreement for operational cooperation with Interpol which can be a useful source of information on TCNs.

- For third countries where there is no Europol liaison officer stationed and no operational cooperation agreement, some background checks could be assigned to the Union delegations in the third country concerned. That would amount to searches based on open sources but could also entail information obtained via diplomatic channels and established contacts with the local authorities.

Guidelines on the systematic consultation of Interpol databases could be developed for all Member States in order to receive clear and consistent information about applicants, including if there are special notices issued against applicants and/or their family members.

V. Conclusions

Based on the analysis above and depending on the political will of the co-legislators, the following solutions could be proposed to develop better the common standards for security checks and diligence for applicants to residency or citizenship by investment schemes:

- possibility of setting up a requirement of prior consultation of the authorities of other Member States akin to the one provided in Article 22 of the Visa Code⁷ which is an obligation to consult and the provision that silence for seven days means no objections;
- possibility of making obligatory for citizenship by investment schemes the consultation of SIS under Article 27(3) of Regulation (EC) No 1987/2006⁸, Article 34(2) of Regulation (EU) 2018/1861⁹ and Article 44(2) of Regulation (EU) 2018/1862¹⁰;
- explore the possibility of amending, in a very specific and targeted way, the rules for the relevant JHA databases to allow for systematic checks for applicants for residency and citizenship by investment with any amendments having to be made with a narrow purpose limitation and with limited access rights, and after carefully considering the impact of such a measure;
- explore the most efficient way to set up a mechanism for the coordination of information sharing on rejected applicants for residency and citizenship by investment across all Member States.

⁷ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁸ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

⁹ Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

¹⁰ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

In addition to the checks on the individuals themselves, any new rules must be accompanied with new rules on checking the investment of the individuals. Proposals in this area should be made in close coordination with the development of the anti-money laundering legislation. Monitoring of the individuals and of their capital is essential in making residency and citizenship by investment safe from corruption and secure for the entire Union.