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Third countries: the link between citizen by investment (CBI) schemes and visa free travel to the Union

Background

- Concerns have been raised over the past years regarding the link between CBI schemes run by third countries and visa free travel to the Union. Where third-country nationals acquire the nationality of another third country that has obtained visa free travel to the Union for its citizens, those third country nationals can subsequently benefit from that visa free travel. Several media reports have highlighted that this is not a theoretical issue, as indeed such practices have been established[1].

- Annex II to Regulation (EU) 2018/1806 of the European Parliament and of the Council[2] lists **third countries with which the Union has concluded visa free travel agreements**. This implies that nationals from those third countries are exempt from the requirement to be in possession of a visa when crossing the external borders of the Member States for stays of no more than 90 days in any 180 day period. While many third countries have facilitated naturalisation procedures with lower residence requirements for investors, only a few states have 'pure' investment schemes (investment schemes with no residence requirement). Of these **St Kitts and Nevis, Saint Lucia, the Commonwealth of Dominica, Antigua and Barbuda, Grenada and Vanuatu** have visa free travel agreements with the Union. The sale of citizenship represents a considerable share of GDP and of the national budget for some of these countries.[3]

- From online adverts for the third-country CBI schemes it is clear that visa free access to the Union is exactly the unique selling point that is being marketed. **The visa free access to the EU** is not perceived as a random extra, rather it is **central to the monetary value of the nationality that can be acquired through these third-country CBI schemes.** Consequently, applicants often acquire such nationality with the only or primary reason being to be able to enter the Union unfettered. This suggests that there is a high risk of abuse of such CBI schemes.

- In the future, expectedly by 2022, nationals of the above-mentioned third countries will have the obligation to complete an online application to the European Travel Information and Authorisation System (**ETIAS**)[4] which will cross check the applicant against Union information systems (SIS, VIS, EUROPOL data, EURODAC and EES), Interpol databases (SLTD and TDAWN), and a dedicated ETIAS watch list. The **Entry/Exit System** will also become operational in 2022.

[1] See e.g. https://www.theguardian.com/world/2019/may/24/calls-for-europe-to-review-border-controls-after-blacklisted-russian-visits-70-times

[2] Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).

[3] According to a report in some cases this could reach as much as 25% of GDP: Transparency International, Inside the Murky World of Golden Visas, 2018, p. 21.

[4] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

- **Some third countries included in Annex II to Regulation (EU) 2018/1806 have low or no residence requirements and weak checks for security or anti-money laundering** for CBI schemes. Some 'pure investment schemes' do not demand any residence requirement and, thus, do not prescribe any particular link between the applicant under a CBI scheme and the country. In some countries, it is not even required to pick up the acquired passport in person[5]. In addition, processing time is often quite short. It is exactly this type of scheme that would attract third country nationals wanting to gain access to the Union, as the costs are relatively low and there are no residence requirement, and the benefits are considerable (visa free access to the Union).

- In 2017, **Canada cancelled visa free travel** for nationals of Antigua and Barbuda, citing concerns over lacking residence requirements, as it had done in 2014 for St Kitts and Nevis.[6]

Issues and possible avenues for Union action

- **The Union should reinforce its criteria for the inclusion of a third country in Annex II to Regulation 2018/1806**. The Commission should not shy away from demanding specific legislative changes to CBI schemes as a pre-condition for the inclusion of third countries in Annex II. Such changes should cover rigorous security checks, due diligence, the publication of the names of those acquiring citizenship to ensure transparency, and meaningful residency requirements.

- **The Commission should ensure the rigorous, independent, and on the ground monitoring of the practical implementation and enforcement of the legal framework covering third-country CBI schemes**. The Commission should move as much as possible from a paper 'tick-box' exercise to the effective monitoring of the schemes on the ground.

- **A more effective option would be to completely bar third countries that run CBI schemes from benefiting from being included in Annex II to Regulation 2018/1806.** A ban would have to be targeted to those third countries that run CBI schemes that provide for relatively unrestricted access to the nationality of that third country, that is 'pure' investment schemes' without residency requirements and with low levels of security checks. As many third countries around the world run some sort of facilitated naturalisation procedures, a blanket ban would be difficult to define and implement. It appears that visa free travel does equip the Union with leverage sufficiently significant to successfully demand the discontinuation of such 'pure' investment schemes' as a pre-condition for being included in Annex II to Regulation 2018/1806. This would not be unprecedented either: As mentioned above, Canada has previously barred some Caribbean nations from benefiting from its visa free travel programme, citing concerns over the CBI schemes.

- **On the basis of Article 9 of Directive (EU) 2015/849 of the European Parliament**

[5] Transparency International, Inside the Murky World of Golden Visas, 2018, p. 21.
[6] Transparency International, Inside the Murky World of Golden Visas, 2018, p. 21.

and of the Council[7], the Commission takes action to identify high-risk third countries due to deficiencies in their anti-money laundering regime. The existence of a CBI scheme is one of the elements that the Commission could take into account.

- A specific challenge concerns the **possibility of name change of third-country nationals, something that is a sovereign right of third countries**. Under that possibility, third-country nationals could acquire the citizenship of a third country, change their name, and subsequently enter the Union under this new name. That would risk them not being identified through checks against national and Union databases when entering the Union. The Commission has acknowledged that risk and has indicated that it has put forward recommendations to third countries in that area in order to reinforce checks. According to the Commission, several third countries have subsequently adopted laws that restrict the possibilities for name changes[8]. The Commission should closely follow up and monitor that issue and possible abuse connected thereto.

- Although **enhanced monitoring of entry to the Union of third country nationals having recently acquired their nationality could be considered**, **it is unlikely to be effective**. **In the context of ETIAS** it seems technically difficult and ethically or legally problematic to flag specifically those third-country nationals that have recently acquired nationality through a CBI scheme in a third country. If the third-country national would feature in one of the Union or international databases, there would of course be a flag for that individual, as for any such individual.

[7] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).
[8] Commission, Answer to Written Question E-006711/2020, 8 March 2021.