European Parliament
2019-2024

TEXTS ADOPTED

P9_TA(2022)0065

Citizenship and residence by investment schemes

European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes (2021/2026(INL))

The European Parliament,

– having regard to Article 225 of Treaty on the Functioning of the European Union,

– having regard to Article 4(3) and Article 49 of the Treaty on European Union,

– having regard to Article 21(1) and (2), Article 77(2), point (a), Article 79(2), and Articles 80, 82, 87, 114, 311, 337 and 352of the Treaty on the Functioning of the European Union,

– having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 7, 8 and 20 thereof,

– having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 8 thereof,

– having regard to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification[1] (the 'Family Reunification Directive'),

– having regard to Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents[2] (the 'Long-Term Residence Directive'),

– having regard to 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[3],

– having regard to 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

1 OJ L 251, 3.10.2003, p. 12.
2 OJ L 16, 23.1.2004, p. 44.
3 OJ L 303, 28.11.2018, p. 39.

2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC[4],

– having regard to the Copenhagen criteria and to the body of Union rules (the *acquis)* that a candidate country must adopt, implement and enforce to be eligible to join the Union, in particular Chapters 23 and 24 thereof,

– having regard to the Commission letters of formal notice of 20 October 2020 to Cyprus and Malta launching infringement procedures with respect to their investor citizenship schemes,

– having regard to the Commission letter to Bulgaria of 20 October 2020 highlighting concerns regarding an investor citizenship scheme and requesting further details,

– having regard to the Commission report of 23 January 2019 entitled 'Investor Citizenship and Residence Schemes in the European Union',

– having regard to the Commission presentation on 20 July 2021 of a package of four legislative proposals to strengthen the EU's anti-money laundering and countering the financing of terrorism rules,

– having regard to its resolution of 16 January 2014 on EU citizenship for sale[5], of 26 March 2019 on financial crimes, tax evasion and tax avoidance[6], of 18 December 2019 on the Rule of Law in Malta following the recent revelations around the murder of Daphne Caruana Galizia[7], of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing - the Commission Action Plan and other recent developments[8], of 17 December 2020 on the EU Security Union Strategy[9] and of 29 April 2021 on the assassination of Daphne Caruana Galizia and the rule of law in Malta[10],

– having regard to the study by the European Parliamentary Research Service of 17 October 2018 entitled 'Citizenship by Investment (CBI) and Residency by Investment (RBI) schemes in the EU',

– having regard to the study by the European Parliamentary Research Service of 22 October 2021 entitled 'Avenues for EU action in citizenship and residence by investment schemes - European added value assessment' (the 'EPRS EAVA Study'),

– having regard to the study by Milieu Ltd of July 2018 for the Commission entitled 'Factual analysis of Member States Investors' Schemes granting citizenship or residence to third-country nationals investing in the said Member State – Study Overview',

– having regard to the activities of the Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG), set up under its Committee on Civil Liberties, Justice and

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4 OJ L 141, 5.6.2015, p. 73.
5 OJ C 482, 23.12.2016, p. 117.
6 OJ C 108, 26.3.2021, p. 8.
7 OJ C 255, 29.6.2021, p. 22.
8 OJ C 371, 15.9.2021, p. 92.
9 OJ C 445, 29.10.2021, p. 140.
10 OJ C 506, 15.12.2021, p. 64.

Home Affairs, on this matter, in particular its exchanges of views with inter alia the Commission, academics, civil society and journalists on 19 December 2019, 11 September 2020 and 4 December 2020, and its visit to Malta on 19 September 2018,

– having regard to Rules 47 and 54 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0028/2022),

A. whereas Commission President von der Leyen, prior to her confirmation by Parliament, pledged in the Political Guidelines for the next European Commission 2019-2024[11] to support a right of initiative for Parliament and committed to respond with a legislative act when Parliament adopts resolutions requesting that the Commission submit legislative proposals;

B. whereas Commission President von der Leyen in her State of the Union address on 16 September 2020 stated "Be it about the primacy of European law, the freedom of the press, the independence of the judiciary or the sale of golden passports, European values are not for sale.";

C. whereas several Member States operate citizenship by investment (CBI) and residence by investment (RBI) schemes that confer citizenship or resident status on third-country nationals in exchange for primarily financial considerations in the form of 'passive' capital investments; whereas such CBI/RBI schemes are characterised by having minimal to no physical presence requirements and offering a 'fast track' to citizenship or resident status in a Member State compared to conventional channels; whereas the time used to process applications varies substantially between Member States[12]; whereas the ease of obtaining citizenship or residence through the use of such schemes contrasts dramatically with the obstacles to seeking international protection, legally migrating or seeking naturalisation through conventional channels;

D. whereas the existence of CBI schemes affects all Member States because a decision by one Member State to grant citizenship for investment automatically confers rights in relation to other Member States, in particular the right to freedom of movement, the right to vote and stand as a candidate in local and European elections, the right to consular protection if unrepresented outside the Union and the rights of access to the internal market to exercise economic activities; whereas CBI and RBI schemes by individual Member States also generate significant externalities on other Member States, such as corruption and money laundering risks; whereas those externalities warrant regulation by the Union;

E. whereas Union citizenship is a unique and fundamental status that is conferred upon citizens of the Union complementary to national citizenship and represents one of the foremost achievements of Union integration, conferring equal rights to citizens across the Union;

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11 'A Union that strives for more - My agenda for Europe - Political Guidelines for the next European Commission 2019-2024' by candidate for President of the European Commission Ursula von der Leyen, https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf.

12 EPRS EAVA Study, table 9, pp. 28-29.

F. whereas conferring national citizenship is the prerogative of the Member States, this prerogative must be exercised in good faith, in a spirit of mutual respect, transparently, in accordance with the principle of sincere cooperation and in full compliance with Union law; whereas the Union has enacted measures to harmonise the pathways for legal migration to the Union and the rights attached to residence, such as the Long-Term Residence Directive;

G. whereas the operation of CBI schemes lead to the commodification of Union citizenship; whereas the commodification of rights violates Union values, in particular equality; whereas pathways for legal migration to the Union and the rights attached to residence are already covered by Union law, such as in the Long-Term Residence Directive;

H. whereas Bulgaria, Cyprus and Malta currently have legislation in place enabling CBI schemes to operate; whereas the Bulgarian government has tabled legislation to end its CBI scheme; whereas the Cypriot government announced on 13 October 2020 that it would suspend its CBI scheme; whereas the Cypriot government has announced the completion of the examination of all pending applications for Cypriot citizenship received before November 2020; whereas some other Member States also reward big investors with citizenship, using extraordinary procedures;

I. whereas Bulgaria, Cyprus, Estonia, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Portugal and Spain currently operate RBI schemes with minimum investment levels ranging from EUR 60 000 (Latvia) to EUR 1 250 000 (the Netherlands); whereas attracting investment is a usual method of maintaining the well-functioning economies of Member States, but should not pose legal and security risks to Union citizens;

J. whereas the EPRS EAVA Study estimates that, from 2011 to 2019, 42 180 applications under CBI/RBI schemes were approved and more than 132 000 persons, including family members of applicants from third countries, obtained residence or citizenship in Member States via CBI/RBI schemes with the total investment estimated at EUR 21,4 billion[13];

K. whereas applications under CBI/RBI schemes are often processed with aid from commercial intermediaries who might receive a percentage of the application fee; whereas in some Member States commercial intermediaries have played a role in developing and promoting the CBI/RBI schemes;

L. whereas the Commission has launched infringement procedures against Cyprus and Malta on the grounds that the granting of Union citizenship for pre-determined payments or investments without any link with the Member States concerned undermines the essence of Union citizenship;

M. whereas CBI and RBI schemes pose risks to different extents, including risks of corruption, money laundering, security threats, tax avoidance, macro-economic imbalances, pressure on the real estate sector, thereby diminishing access to housing, and the erosion of the integrity of the internal market; whereas it is difficult to substantiate the scale of those risks due to limited information and transparency, and those risks are currently not sufficiently managed, resulting in weak vetting and a lack

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13 EPRS EAVA Study.

of due diligence with respect to applicants under CBI/RBI schemes in Member States; whereas all those risks should be properly assessed and transparency with regard to the implementation and consequences of the schemes should be increased;

N. whereas research suggests that Member States with CBI/RBI schemes are more prone to risks related to financial secrecy and corruption than other Member States;

O. whereas existing Union law does not provide for the systematic consultation of the Union large-scale IT systems for background checks on applicants under CBI/RBI schemes; whereas the existing Union and national rules do not require any vetting procedures to be performed before granting citizenship or residency under a CBI/RBI scheme; whereas Member States do not always consult databases, apply thorough procedures or share the results of checks and procedures;

P. whereas the Organisation for Economic Co-operation and Development (OECD) has issued guidelines on limiting the circumvention of the Common Reporting Standard through the abuse of CBI/RBI schemes[14];

Q. whereas the Commission initiative to establish a Group of Experts on Investor Citizenship and Residence Schemes was aimed at Member States' representatives agreeing on a common set of security checks but that group did not propose such a common set of security checks; whereas that group has not met since 2019;

R. whereas some third countries included in Annex II of Regulation (EU) 2018/1806, whose citizens have visa-free access to the Union, operate CBI schemes with low or no residence requirements and weak security checks, particularly with respect to anti-money laundering legislation; whereas such CBI schemes are advertised as 'golden passports' with the express purpose of facilitating visa-free travel to the Union; whereas some candidate countries operate similar schemes with the added expected benefit of future Union membership;

S. whereas the beneficiaries of CBI/RBI schemes, once granted their new status of residency or citizenship, immediately start to enjoy freedom of movement[15] within the Schengen area;

T. whereas the right of third countries to allow their citizens to change their name poses a risk because third-country nationals could acquire citizenship of a third country under a CBI scheme and then change their name and enter the Union under that new name;

U. whereas on 15 October 2021 the Cypriot authorities announced that they would revoke the citizenship of 39 foreign investors and six members of their families who had become Cypriot citizens under a CBI scheme; whereas just over half of the 6 779 passports issued by Cyprus under that scheme between 2007 and 2020 were issued without having carried out sufficient background checks on the applicants[16];

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14 Preventing abuse of residence by investment schemes to circumvent the CRS, OECD, 19 February 2018, and Corruption Risks Associated with Citizen- and Resident-by-Investment Schemes, OECD, 2019.

15 Since Bulgaria, Croatia, Cyprus, Ireland and Romania are not Schengen countries, a third country national holding a residence permit issued by any of those Member States does not automatically enjoy freedom of movement within the Schengen area.

16 https://agenceurope.eu/en/bulletin/article/12814/25.

V. whereas in 2019 the Commission concluded that clear statistics on CBI/RBI applications received, accepted and rejected are missing or insufficient;

W. whereas RBI schemes are highly specific in nature; whereas any changes to Union law introduced for applicants under RBI schemes should target that particular type of residency status and should not adversely affect the rights of applicants for other types of residency statuses, such as students, workers and family members; whereas higher levels of security checks for applicants under RBI schemes should not be applicable to those who apply for residency in the Union under residency schemes already covered by Union law;

X. whereas the Montenegrin government has not decided to discontinue its CBI scheme, although it had signalled the importance of phasing out that CBI scheme fully and effectively as soon as possible; calls upon the Montenegrin government to do so without delay;

1. Considers that schemes granting nationality on the basis of a financial investment (CBI schemes), also known as 'golden passports', are objectionable from an ethical, legal and economic point of view and pose several serious security risks for Union citizens, such as those stemming from money-laundering and corruption; considers that the lack of common standards and harmonised rules governing schemes granting residence on the basis of a financial investment (RBI schemes) may also pose such security risks, affect the free movement of persons within the Schengen area and contribute to undermining the integrity of the Union;

2. Recalls its position that CBI/RBI schemes inherently present a number of serious risks and should be phased out by all Member States[17]; reiterates that ever since its resolution of 16 January 2014 on EU citizenship for sale, insufficient action has been taken by the Commission and the Member States to counter those schemes;

3. Considers that CBI schemes undermine the essence of Union citizenship, which represents one of the foremost achievements of Union integration, granting a unique and fundamental status to Union citizens and including the right to vote in European and local elections;

4. Considers that Union citizenship is not a commodity that can be marketed or sold and has never been conceived as such in the Treaties;

5. Acknowledges that regulating the acquisition of nationality is primarily a Member State competence but stresses that that competence needs to be exercised in good faith, in a spirit of mutual respect, transparently, with due diligence and proper scrutiny, in accordance with the principle of sincere cooperation and in full compliance with Union law[18]; considers that where Member States do not act in full compliance with those

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17 Resolutions of the European Parliament of 18 December 2019 on the Rule of Law in Malta following the recent revelations around the murder of Daphne Caruana Galizia, of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing - the Commission Action Plan and other recent developments, of 17 December 2020 on the EU Security Union Strategy and of 29 April 2021 on the assassination of Daphne Caruana Galizia and the rule of law in Malta.

18 See the reasoning used in the Commission infringement procedures against Malta and Cyprus with respect to their investor citizenship schemes (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925) and the case law of the Court of Justice

standards and principles, a legal ground for Union action arises; considers that a Union competence could arguably also arise on the basis of Article 21(1) of the Treaty on the Functioning of the European Union (TFEU) with respect to certain aspects of Member State nationality law[19];

6. Believes that the advantageous conditions and fast-track procedures set for investors under CBI/RBI schemes, when compared to the conditions and procedures for other third-country nationals wishing to obtain international protection, residence or citizenship, are discriminatory, lack fairness and risk undermining the consistency of the Union asylum and migration *acquis*;

7. Considers that CBI schemes need to be distinguished from RBI schemes because of the difference in the severity of the risks they pose and, hence, necessitate tailored Union legislative and policy approaches; acknowledges the link between RBI schemes and citizenship because acquired residence may ease access to citizenship;

8. Notes that three Member States have legislation in place enabling CBI schemes, namely Bulgaria (although a legislative proposal has been tabled by the Bulgarian government to end its CBI scheme), Cyprus and Malta, and that 12 Member States have RBI schemes, all with diverging amounts and options of investment and with diverging standards of checks and procedures; regrets that that divergence could trigger a competition for applicants among Member States and risks creating a race to the bottom in terms of lowering vetting standards and decreasing due diligence to increase the uptake of the schemes[20];

9. Considers that the role of intermediaries in developing and promoting CBI/RBI schemes, as well as in preparing individual applications, often in the absence of transparency or accountability, represents a conflict of interest prone to abuse, and that a strict and binding regulation of such intermediaries, beyond mere self-regulation and codes of conduct is therefore required; asks for the cessation of the services of intermediaries in the case of CBI schemes;

10. Deplores the lack of comprehensive security checks, vetting procedures and due diligence in Member States that have CBI/RBI schemes in place; notes that Member States do not always consult the available Union databases or exchange information on the outcome of such checks and procedures, allowing for successive applications for CBI/RBI schemes across the Union; calls on the Member States to do so; considers that Member States' authorities must have in place adequate processes for vetting CBI/RBI applicants as granting residency and citizenship rights is the responsibility of the State, and Member States' authorities must not rely on background checks and due diligence

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of the European Union: Judgment of the Court of 7 July 1992, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*, C-369/90, ECLI:EU:C:1992:295; Judgment of the Court of 11 November 1999, *Belgian State v Fatna Mesbah*, C-179/98, ECLI:EU:C:1999:549; Judgment of the Court of 20 February 2001, *The Queen v Secretary of State for the Home Department, ex parte: Manjit Kaur*, C-192/99, ECLI:EU:C:2001:106; Judgment of the Court of 2 March 2010, *Janko Rottman v Freistaat Bayern*, C-135/08, ECLI:EU:C:2010:104; and Judgment of the Court of 12 March 2019, *M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*, C-221/17, ECLI:EU:C:2019:189.

19 EPRS EAVA Study, pp. 43-44.

20 EPRS EAVA Study, p. 57; Preventing abuse of residence by investment schemes to circumvent the CRS, OECD, 19 February 2018.

procedures carried out by intermediaries and other non-state actors, although Member States may use relevant information from independent non-state actors; expresses concern regarding some Member States where applications for citizenship were reported to be accepted even where the applicants did not meet the security requirements;

11. Regrets that the Group of Experts on Investor Citizenship and Residence Schemes, composed of Member State representatives, has not agreed on a common set of security checks as it was mandated to do by the end of 2019; finds that that failure to agree on a common set of security checks shows the limits of adopting an intergovernmental approach as regards the matter and underlines the need for Union action;

12. Deplores the fact that residency requirements to qualify under the RBI/CBI schemes of Member States do not always include continuous and effective physical presence and are difficult to monitor, thereby potentially attracting bad faith applicants who purchase national citizenship purely for the access it grants to the Union territory and its internal market without any attachment to the Member State in question;

13. Calls on the Member States to effectively enforce the necessary physical residence for third-country nationals wishing to obtain long-term residence status under the Long-Term Residence Directive without the five years of continuous and legal residence that is a requirement under that Directive;

14. Welcomes the infringement procedures launched in October 2020 by the Commission against Cyprus and Malta concerning their CBI schemes; calls on the Commission to advance those procedures, as they could further clarify how CBI schemes may be tackled in addition to the legislative action proposed here, and to initiate further infringement procedures against Member States for RBI schemes, where justified; calls on the Commission to carefully monitor, report and take action on all CBI/RBI schemes across the Union;

15. Considers that Union anti-money laundering law is a crucial element in countering the risks posed by CBI/RBI schemes; welcomes the fact that the Commission's package of legislative proposals of 20 July 2021 on anti-money laundering and on countering the financing of terrorism addresses RBI schemes, most notably by promoting the inclusion of intermediaries on the list of obliged entities; considers, however, that gaps will still remain, such as the fact that public entities that process CBI/RBI applications will not be included on the list of obliged entities;

16. Notes that applications under CBI/RBI schemes are particularly difficult to monitor and assess where they concern joint applications that include different family members; notes that under certain national RBI schemes residency rights may be granted based on family, personal or other ties to the main applicants; notes that family reunification rights under the Family Reunification Directive apply after obtaining residency status in a Member State, thus allowing family members to enter the Union without further specific checks normally required under RBI schemes;

17. Notes that a risk stems from third countries that have CBI schemes and that benefit from visa-free travel to the Union[21] because third-country nationals can purchase citizenship of those third countries with the sole purpose of being able to enter the Union without

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21 Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis and Saint Lucia.

any additional screening; stresses that risks are exacerbated for Union candidate countries that have CBI/RBI schemes[22] because the expected benefits of future Union membership and visa-free travel within the Union area may be a factor;

18. Considers that, in light of the particular risks posed by CBI schemes and their inherent incompatibility with the principle of sincere cooperation, as acknowledged by the Commission's ongoing infringement procedures against two Member States, CBI schemes should be phased out fully across the Member States and requests that the Commission submit, before the end of its current mandate, a proposal for an act to that end that could be based on Article 21(2), Article 79(2), Article 114 or Article 352 TFEU;

19. Considers that the phasing out of CBI schemes will require a transitional period and believes that, as CBI/RBI schemes constitute free-riding and produce severe consequences for the Union and the Member States, a financial contribution to the Union budget is warranted for both CBI schemes and RBI schemes, for CBI schemes until they are completely phased out, as a concrete expression of solidarity following from, inter alia, Article 80 TFEU; requests, therefore, that the Commission in 2022, on the basis of Article 311 TFEU, submit a proposal for the establishment of a new category of the Union's own resources, consisting of a 'CBI & RBI Adjustment Mechanism' that would place a levy of a meaningful percentage on the investments made in Member States as part of CBI/RBI schemes, reasonably estimated on the basis of all negative externalities for the Union as a whole identified with respect to the schemes;

20. Considers that the contribution of CBI/RBI schemes to the Member States' real economy is limited in terms of job creation, innovation and growth and that considerable amounts of investment are made directly into the real estate market or into funds; considers that the large investments associated with CBI/RBI schemes could impact financial stability, particularly in small Member States where inflows could represent a large share of GDP or foreign investment[23]; requests that the Commission submit, in 2022, on the basis of Article 79(2) and Articles 80, 82, 87 and 114 TFEU, a proposal for an act that would include Union-level rules on investments under RBI schemes in order to strengthen their added value to the real economy and provide links to the priorities for the economic recovery of the Union;

21. Requests that the Commission submit, before the end of its current mandate, a proposal for a regulation, possibly complemented by other legislative measures where needed, which could be based on Article 79(2) and Articles 80, 82, 87 and 114 TFEU, that would comprehensively regulate various aspects of RBI schemes with the aim of harmonising standards and procedures and strengthening the fight against organised crime, money laundering, corruption and tax evasion, covering, inter alia, the following elements:

    (a) increased due diligence and rigorous background checks of the applicants and, where necessary, their family members, including the sources of their funds, mandatory checks against the Union large-scale justice and home affairs IT systems and vetting procedures in third countries;

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22 Serbia, Albania, Turkey, Montenegro and North Macedonia.

23 EPRS EAVA Study, pp. 36-39.

(b) the regulation, proper certification and scrutiny of intermediaries as well as limitation of their activities and, in the case of CBI schemes, the cessation of their services;

(c) harmonised rules and obligations on Member States to report to the Commission regarding their RBI schemes and applications thereunder;

(d) minimum physical residence requirements and minimum active involvement in the investment, quality of investment, added value and contribution to the economy as conditions for acquiring residence under RBI schemes;

(e) a monitoring mechanism for the *ex post* control of successful applicants' continued compliance with the legal requirements of RBI schemes;

22. Requests the Commission to ensure and uphold the high regulatory standards for both CBI and RBI schemes in case a comprehensive regulation would apply to RBI schemes before the complete phase-out of CBI schemes;

23. Welcomes the commitment announced by the Member States to take measures to limit the sale of citizenship to Russians connected to the Russian government; calls upon all Member States to stop operating their CBI and RBI schemes for all Russian applicants with immediate effect; urges Member States to reassess all approved applications from Russian nationals over the past few years, exploiting all possibilities under national and Union law to ensure that no Russian individual with financial, business or other links to the Putin regime retains his or her citizenship and residency rights or that such individuals are temporarily blocked from exercising those rights; calls on the Commission to verify such reassessments carried out by Member States and to urgently present a legislative proposal to completely ban CBI schemes and to ban RBI schemes for Russian nationals subject to targeted measures;

24. Requests that the Commission include in its proposal targeted revisions of existing Union legal acts that could help to dissuade Member States from establishing harmful RBI schemes by strengthening legal acts in the field of anti-money laundering and by strengthening relevant provisions in the Long-Term Residence Directive;

25. Requests that the Commission exert as much pressure as possible to ensure that third countries that have CBI/RBI schemes in place and that benefit from visa free travel under Annex II to Regulation (EU) 2018/1806 abolish their CBI schemes and reform their RBI schemes to bring them in line with Union law and standards, and that the Commission submit in 2022, on the basis of Article 77(2), point (a), TFEU, a proposal for an act that would amend Regulation (EU) 2018/1806 in that regard; notes that under the revised Union enlargement methodology, issues linked to CBI/RBI schemes are considered to be complex and are dealt with across various negotiating clusters and chapters; underlines the importance of gradual and diligent alignment to Union law of such schemes by candidate and potential candidate countries; proposes that cessation of CBI schemes and regulation of RBI schemes be included in the accession criteria;

26. Reminds the Commission President of her commitment to Parliament's right of initiative and of her pledge to follow Parliament's own-initiative legislative reports up with a legislative act, in line with principles of Union law, contained in the Political Guidelines for the next European Commission 2019-2024; expects, therefore, the Commission to follow this resolution up with concrete legislative proposals;

27. Instructs its President to forward this resolution and the accompanying proposals to the Commission and the Council.

ANNEX TO THE RESOLUTION:
PROPOSALS FOR A COMPREHENSIVE LEGISLATIVE PACKAGE

Proposal 1: a Union-wide gradual phasing out of CBI schemes by 2025

- A Union-wide notification system, with measurable targets, strictly applicable to the existing programmes only and thus not allowing for new programmes to be legitimised by this system, for the maximum number of citizenships to be granted under CBI schemes across the Member States should be established with the number to be gradually lowered each year, reaching zero in 2025, thereby leading to the complete phasing out of CBI schemes. Such a gradual phasing out will allow the Member States that maintains CBI schemes to find alternative means of attracting investment and sustain their public finances. Such a phasing out is in line with the previous position of Parliament expressed in several resolutions and is necessary in light of the profound challenge that CBI schemes pose to the principle of sincere cooperation under the Treaties (Article 4(3) TEU).

- This proposal could be based on Article 21(2), Article 79(2) and, because CBI schemes affect the internal market, Article 114 TFEU.

Proposal 2: a comprehensive regulation covering all RBI schemes in the Union

- To address the specificities and widespread occurrence of RBI schemes across the Member States, a dedicated Union legal framework in the form of a regulation is necessary. Such a regulation will ensure Union harmonisation, limit the risks posed by RBI schemes and make RBI schemes subject to Union monitoring, thereby enhancing transparency and governance. It is also a means to discourage Member States from establishing harmful RBI schemes.

- The regulation should contain Union-level standards and procedures for increased due diligence and rigorous background checks for applicants and for the source of their wealth. In particular, all applicants should be structurally crosschecked against all relevant national, Union and international databases by the Member State authorities while respecting fundamental rights standards. There should be an independent verification of documents submitted, a full background check of all police records and involvement in previous and current civil and criminal litigation, in-person interviews with the applicants and a thorough verification of how the applicant's wealth was accumulated and is related to the reported income. The procedure should allow sufficient time for the proper due diligence process and should foresee the possibility to annul positive decisions retroactively in cases of substantiated misrepresentation or fraud.

- The practice of joint applications, where a main applicant and family members can be part of the same application, should be prohibited: only individual applications subject to individual and rigorous checks should be allowed, while taking into account the links between applicants. Rigorous checks should also apply when residency rights can be pursued by family members of successful applicants under family reunification rules or other similar provisions.

- An important element of the regulation, possibly complemented by other legislative

measures, where needed, should be the regulation of intermediaries. The following should be included:

(a) a Union-level licensing procedure for intermediaries containing a thorough procedure with due diligence and auditing of the intermediary company, its owners and its related companies. The license should be subject to renewal every second year and be featured in a public Union register for intermediaries. Where intermediaries are involved in applications, Member States should be allowed to process such applications only where prepared by Union-licensed intermediaries. Applications for licensing should be made to the Commission, to be supported by the relevant Union bodies, offices and agencies in carrying out the checks and procedure;

(b) specific rules for the activities of intermediaries. Those rules should include detailed rules concerning the background checks, due diligence and security checks that the intermediaries are to carry out on applicants.

(c) a Union-wide prohibition on marketing practices for RBI schemes that use the Union flag or any other Union-related symbols on any materials, website or documents or that associate the RBI schemes to any benefits linked to the Treaties and the *acquis*;

(d) clear rules on transparency of intermediaries and their ownership;

(e) anti-corruption measures and best due diligence practices to be adopted within the intermediary, including on appropriate staff remuneration, the two-person rule (that every step is checked by at least two persons) and provisions for a second opinion when preparing applications and carrying out checks on applications, and a rotation of staff members across the countries of origin of applicants under RBI schemes;

(f) a prohibition on combining the consultation of governments on the establishment and maintenance of RBI schemes with involvement in the preparation of applications. Such a combination creates a conflict of interest and provides the wrong incentives. Furthermore, intermediaries should not be allowed themselves to implement RBI schemes for Member State authorities but should only be allowed to act as intermediaries in individual applications and only when being approached by individual applicants. General public affairs activities of intermediaries should be organisationally separated from their other activities and should comply with all legal requirements and codes of conduct at Union and national level regarding transparency;

(g) a monitoring, investigations and sanctions framework to ensure that intermediaries comply with the regulation. The relevant law enforcement authorities should be able to conduct undercover investigations, including by posing as potential applicants. Sanctions should include dissuasive fines and should, where infringements are established twice, lead to the revocation of the Union license to operate.

- A duty for Member States to report to the Commission regarding their RBI schemes should be introduced. The Member States should submit detailed annual reports to the

Commission on the overall institutional and governance elements of their schemes, as well as on the monitoring mechanisms in place. They should also report on individual applications, including on rejections and approvals of applications, and the reasons for approvals or for rejections, such as non-compliance with anti-money laundering provisions. Statistics should include a breakdown of the applicants by the country of origin and information on family members and dependents who have gained rights via an applicant under a RBI scheme. The Commission should publish those annual reports, where needed redacted in line with data protection regulations and the Charter of Fundamental Rights of the European Union, and should publish alongside those annual reports its assessment of them.

- A system, managed at Union level, for prior notification to and consultation with all other Member States and the Commission, prior to granting residence under an RBI scheme, should be set up. If Member States do not object within 20 days, that should mean that they have no objection to the granting of residence[1]. That would allow all Member States to detect double or subsequent applications and to conduct checks in national databases. Within those 20 days, the Commission should also carry out, in cooperation with the relevant Union bodies, offices and agencies (including through their liaison officers in third countries), Union-level final checks of applications against the relevant Union and international databases and further security and background checks. On that basis, the Commission should issue an opinion to the Member State. The competence to grant residence or not under RBI schemes should remain with the Member States. The Commission should provide any relevant information to help highlight where the same individuals have made several unsuccessful applications.

- Member States should be required to effectively check physical residence, including by using the option of establishing minimum physical presence requirements, on their territory and to keep a record of it, which the Commission and Union agencies can consult. That should include at least biannual in-person reporting appointments and on-site visits to the domicile of the individuals concerned.

- To combat tax avoidance, specific Union measures to prevent and tackle the circumvention of the Common Reporting Standard through RBI schemes, in particular the enhanced exchange of information between tax authorities and Financial Intelligence Units (FIUs), should be introduced[2].

- Rules on the types of investments required under RBI schemes should be introduced. A significant majority of the required investment should consist of productive investments in the real economy, in line with the priority areas of the green and digital economic activity. Investment in real estate, in investment funds or trust funds or in government bonds or as payments directly into the Member State budget should be limited to a minor part of the invested amount. Furthermore, any payments directly into the Member State budget should be limited so as not to create budgetary dependence on this source,

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1 Similar to the system set out in Article 22 of 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).

2 See Preventing abuse of residence by investment schemes to circumvent the CRS, OECD, 19 February 2018; Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

and the Commission should request Member States to assess such payments in the context of the European Semester.

- The regulation could be based on Article 79(2) and Articles 80, 82, 87 and, because RBI schemes affect the internal market, 114 TFEU.

- In case a regulation or any other legislative act concerning RBI schemes comes into force before the complete phase-out of CBI schemes, all rules applicable to RBI schemes should apply to CBI schemes as well in order to avoid less strict controls for CBI schemes than for RBI schemes.

Proposal 3: a new category of the Union's own resources, consisting of a 'CBI and RBI adjustment mechanism'

- As all Member States and the Union institutions are confronted with the risks and costs of the CBI and RBI schemes operated by some Member States, a common mechanism, based on appropriate data and information, to offset the negative consequences of CBI and RBI schemes to the Union as a whole is justified. Moreover, the value of selling Member State citizenship or visas is inherently linked to the Union rights and freedoms that come with it. By establishing a CBI and RBI adjustment mechanism, the negative consequences borne by all Member States are compensated through a fair contribution to the Union budget. It is a matter of solidarity between the Member States operating CBI and RBI schemes and the other Member States and Union institutions. In order for that mechanism to be effective, the levy payable to the Union should be set at a meaningful percentage of the investments made in Member States as part of CBI/RBI schemes, reasonably estimated on the basis of all negative externalities identified in the schemes;

- The mechanism could be established under Article 311 TFEU, which stipulates that "the Union shall provide itself with the means necessary to attain its objectives and carry through its policies", including the possibility to "establish new categories of own resources or abolish an existing category". Further implementing measures could be adopted in the form of a regulation. Something similar was done for the Plastics Own Resource that has been in place since 1 January 2021. That option does involve a rather lengthy process of formal adoption of an own resources decision, linked to the respective national constitutional requirements for approving it. It could be combined with the legal basis of Article 80 TFEU which stipulates "the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States", including in the area of immigration.

Proposal 4: a targeted revision of legal acts in the area of anti-money laundering and countering the financing of terrorism

- The Commission has made a welcome step by including RBI schemes prominently in its package of legislative proposals of 20 July 2021 to revise legal acts in the area of anti-money laundering and countering the financing of terrorism, especially where it concerns intermediaries. Three further elements should be included:

  (a) public authorities engaged in processing applications under RBI schemes to be included on the list of obliged entities under legal acts in the area of anti-money laundering and countering the financing of terrorism, specifically in Article 3,

point (3), of the proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (2021/0239(COD));

(b) a greater exchange of information on applicants under RBI schemes between the Member State authorities under legal acts in the area of anti-money laundering and countering the financing of terrorism, specifically between the FIUs;

(c) enhanced due diligence measures as recommended by the OECD to mitigate the risks posed by RBI schemes to be foreseen for all obliged entities involved in the RBI process.

Proposal 5: a targeted revision of the Long-Term Residence Directive

- The Commission should, when it comes forward with its expected proposals for the revisions of the Long-Term Residence Directive, limit the possibility of third-country nationals who have obtained residence under an RBI scheme benefitting from more favourable treatment under that Directive. That could be achieved by amending Article 13 of the Long-Term Residence Directive to narrow its scope of application by expressly excluding beneficiaries of RBI schemes.

- The Commission should take the steps necessary to ensure that the legal and continuous residence of five years, required by Article 4(1) of the Long-Term Residence Directive, is not circumvented through RBI schemes, including by ensuring that the Member States enforce stronger controls and reporting obligations on applicants under RBI schemes.

Proposal 6: ensuring that third countries do not administer harmful RBI/CBI schemes

- Third-country CBI schemes should be included in Regulation (EU) 2018/1806 as a specific element to take into account when deciding on whether to include a particular third country in the annexes to that Regulation, i.e. as a factor when deciding on the third countries whose nationals are exempt from visa requirements. That element should also be embedded in the visa suspension mechanism set out in Article 8 of that Regulation and in the planned monitoring.

- A new article should be added to 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)[3] on cooperation with third countries on phasing out their CBI schemes and bringing their RBI schemes in line with the new Regulation proposed under proposal 2 above.

- For candidate countries and potential candidate countries, the complete phase-out of CBI schemes and the strict regulation of RBI schemes should be a prominent and integral part of the accession criteria.

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3 OJ L 243, 15.9.2009, p. 1.