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"Is the practice of Investment Citizenship Scheme, that enables the granting of citizenship, and by extension, of EU Citizenship by one Member State through payment of a pre-determined amount compatible with EU law?"

Abstract

This dissertation examines whether the Investor Citizenship Schemes ('ICS') known as "golden passports" are compatible with the European Union ('EU') law by asserting different Member States' schemes, in particular of Malta, Cyprus and Bulgaria.

Firstly, this dissertation analyses the concept of the EU citizenship and its relations with the nationality of Member States. It also discusses the restrictions imposed on Member States regarding the acquisition and loss of nationality from the EU perspective. Furthermore, it presents the different modes of acquisition citizenship. This dissertation analyses the historical evolution of conditions required by the three Member States (Malta, Cyprus and Bulgaria), to award EU citizenship.

Finally, this dissertation examines the violations that took place through the operation of the ICS. Particular emphasis will be placed on the naturalisation of investors under the Cypriot ICS. It also presents the position of the European Commission and in particular, the way reacted to violations. This dissertation highlights the importance of the introduction of rigorous checks on applicants by the Member States to ensure that the schemes operate with the highest standard of transparency and integrity and that the principle of sincere cooperation as stated in Article 4(3) of the Treaty on European Union, is fully respected.

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Chapter I- Introduction

Investor Citizenship Schemes ('ICS') also known as golden passports, are dated back to the early 1980s[1] and were initially adopted by countries worldwide with small developing economies which were dealing with economic difficulties.[2] However, in recent years, ICS have increasingly emerged in various countries that may not necessarily struggle with severe economic difficulties, but simply seek to maximise their national economic growth. The ICS were mainly introduced to attract high net-worth foreigners who are willing to invest a substantial sum of money in the economy of a country such as in real estate, in exchange of acquiring citizenship.[3]

ICS have become a subject of criticism because through the acquisition of the citizenship of one Member State, the investors automatically acquire the European Union ('EU') citizenship. The procedure can take place in a relatively short period of time once investors pay a considerable amount of money. Thus, through the application of ICS, EU Member States, hereafter 'Member States', practically waive or significantly reduce the governments' official naturalisation conditions, which may require the establishment of a 'genuine connection' between the host Member State and the individual. In particular, such conditions usually include residing in a Member State for a certain period, and passing a language test and/or a test on the knowledge of the country. In this regard, the investment is considered by the host

[1] Hartwing –Peillon. R (2021), "*Citizenship and Residency by Investment in the EU*", Policy Paper, Available at: https://www.europeum.org/data/articles/policy-paper-rhp.pdf (Accessed: October 2021).
[2] The ICS have been first launched in 1984 by S. Kitts and Nevis, in 1990 by Dominica in 1996 by Grenada. Global Investor Immigration Council (GIIC), Available at: http://www.giic.uk/investor-immigration/history/ (Accessed: October 2021).
[3] R. Bauböck (ed.), Debating Transformations of National Citizenship, (Springer: 2018): "*The Maltese Falcon or: my Porsche for a Passport!*" at page. 34.

Member State as a sufficient commitment for granting national citizenship that subsequently leads to EU citizenship.

EU citizenship does not replace national citizenship but comes in addition to it.[4] A person holding EU citizenship cannot be called EU citizen without first being a national or a citizen of one of the 27 Member States. Thus, EU citizenship is not a standalone privilege. Consequently, any third country citizen who holds the nationality of a Member State automatically enjoys a new set of rights and privileges associated with the status of the EU citizenship.[5] In the eyes of the investors, such national schemes are attractive because of the promising benefits acquired through the status of EU citizenship. In particular, the access to the EU market, the right to move, reside and work freely in any Member State of their choice. Therefore, the effects of ICS are not limited to the Member State that naturalises an investor, but also extend throughout the EU, in all Member States. This is because they have the unconditional obligation under the EU Treaties to recognise the national citizenship of each other, irrespective of the means of acquisition.[6] However, this obligation could only be exempt when the acquisition of citizenship has been held in contravention of EU law, including the case where citizenship is acquired through illegality.

The naturalisation conditions imposed on individuals to acquire the nationality of a Member State are regulated through national law. Even though EU Citizenship depends on the sole prerogative of each Member State, the laws enacted for the acquisition and loss of nationality must be compatible with the principles of EU law.[7] While formally Member States have an exclusive competence with regard to issues pertaining to the acquisition and loss of nationality,

[4] Article 9 TEU and Article 20(1) TFEU.
[5] Article 20 TFEU.
[6] Principle of recognition; Court of Justice, Judgment of 7 July 1992, Case C-369/90, *Micheletti and Others v. Delegacion del Gobierno en Cantabria.*
[7] *Micheletti* (n.6) at paragraph 10; Judgment of 20 February 2001, C-192/99, *Kaur*, at paragraph 106; Judgment of November 1999, C-179/98, *Belgian State v Mesbah,* at paragraph 29.

settled case law of the European Court of Justice ('ECJ') illustrated that the EU can pose some level of control on nationality matters by intervening and imposing some limitations.

In this dissertation, the ICSs are examined for three Member States, namely Bulgaria, Malta and Cyprus. At the time of writing, Cyprus has terminated its ICS because of evidence that the country had engulfed in serious scandals.[8] The ICS of the three aforementioned Member States raised particular concerns to both the European Commission and the European Parliament.[9] This is due to the lenient conditions under which the granting of citizenship became possible as compared to ordinary naturalisation regimes.[10] Furthermore, the ICS led to numerous concerns regarding their compatibility with EU law.

1. *Research Question and Structure*

This dissertation seeks to examine the adoption of the ICS from a legal perspective. It addresses the question of whether or not the practice of ICS' (alternatively referred as the granting of 'golden passports') – that enables the granting of citizenship (and by extension of EU Citizenship) by one Member State through payment of a pre-determined amount - is compatible with EU law".

This dissertation is structured in five Chapters:

Chapter I (Introduction) provides a brief overview of the content and structure of the dissertation paper.

[8] Cyprus Investment Programme was abolished on 1/11/2020 by the decision of Council of Ministers dated 13/10/2020; Al Jeera (2020), "*Cyprus Officials implicated in Plan to Sell passport to Criminals*", Available at: https://www.aljazeera.com/news/2020/10/12/cypriot-politicians-implicated-in-plan-to-sell-criminals-passport (Accessed: October 2021).

[9] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "*Investor Citizenship and Residence Schemes in the European Union"* {SWD (2019) 5 Final}, COM (2019) 12 final

[10] *Ibid*, at page.1; European Parliament, Resolution on "*EU Citizenship for Sale*", 2013/2995 (RSP), 16 January 2014, [2016] OJC 482/117.

Chapter II (National Sovereignty and its Limitations over Nationality Matters) addresses the relationship between the EU citizenship and nationality of Member States and discusses the restrictions imposed on Member States regarding the acquisition and loss of nationality from the EU perspective. The restrictions on Member States, which are sovereign on nationality matters, are illustrated through an extended analysis of the ECJ settled case law.

Chapter III (Modes of Acquisition of Citizenship) discusses the procedures of ordinary naturalisation (i.e. through residence, descent and place of birth) and the circumstances under which a Member State bestows citizenship through a facilitated naturalisation. This chapter also explains how the ICS are operated by the three Member States (Bulgaria, Malta and Cyprus). Particular emphasis is placed on the naturalisation of investors under the Cypriot ICS. Finally, the chapter discusses the scandal that occurred in Cyprus in 2020 that led to the final termination of the scheme.

Chapter IV (Investor Citizenship Schemes: Are they in breach of EU law?) examines the violations that took place through the operation of the ICS due to their incompatibility with EU law. In particular, this chapter looks into the implications of the acquisition and loss of EU citizenship through the ICS, particularly on free movement of capital. Finally, the chapter proceeds to evaluate the reaction of the European Institutions towards ICS by taking into consideration the European Commission Report published in 2019.

Chapter V (Conclusion) summarises the conclusions drawn from the analysis in the main chapters and concludes that that the imposition of certain conditions in the ICS may lead to the failure of ensuring legality in the light of EU law.

Chapter II- National Sovereignty and its Limitations over Nationality Matters

An international organisation, such as the EU, can only act within the competence conferred upon it by the Member States in the Treaties to attain the objectives set out therein.[11] To put it differently, Member States sovereignty is limited only in areas where they decided to transfer on the exclusive competence of the EU. Although the EU and the Member States share competences in most areas,[12] there are some other areas that remain in the exclusive competence of the Member States. A prime example of Member States' exclusive competence is nationality, an area that, as per the Treaties, no competence has been conferred to the EU.

1. The concept of EU citizenship and its relation to nationality of Member States

The starting point of the status of Union Citizenship is the Maastricht Treaty, which came into force in 1993 and amended the Treaty of the European Community ('EC').[13] The status of Union Citizenship is enshrined in Article 20 of the Treaty of the European Union ('TEU'), which provides that a Union citizen is every person who holds the nationality of a Member State. The status provides Member State nationals with a number of rights such as political, economic and social rights.

Despite the fact that EU citizenship has a fundamental and an independent status,[14] it is largely dependent on the laws on nationality of a Member State. This is due to the replacement of its 'complementary nature' with 'being additional' to national citizenship. This makes it clear that

[11] Article 5(2) TFEU.
[12] Article 4 TFEU.
[13] The Treaty of Maastricht was signed in 1992 and it entered into force in November 1993.
[14] Kochenov. D (2009), "*Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship Between Status and Rights*", Columbia Journal of European Law Volume 15, number 2.

EU citizenship cannot be seen as independent from the national citizenship.[15] As such, both the citizenship of the EU and the nationality of the Member States are closely connected. Individuals acquire EU citizenship through the acquisition of the citizenship of a Member State. Likewise, EU citizenship is lost by the loss of the citizenship of a Member State. In essence, the question whether an individual holds the nationality of a Member State is settled solely by reference to the national law of the host Member State.[16] Thus, by implementing their nationality laws, Member States function as gatekeepers of EU citizenship.

In the light of the above observations, EU citizenship has been considered to have a 'paradoxical nature'. This is because EU citizenship depends on the nationality of a Member State as a 'connecting factor'[17] or 'gateway'[18] to EU membership.[19] Therefore, the impression might exist that EU citizenship is secondary to the national citizenship of a Member State, or that EU citizens are primarily citizens of their respective Member States while their EU citizenship comes in the second place.[20] However, the ECJ, in its rulings has kept highlighting that Union Citizenship is "*destined*" or "*intended*" to be the fundamental status of nationals of the Member State.[21]

[15] Weingerl.P & Tratnik.M (2019), "*Citizenship by Investment Programs from the Perspective of International and EU Law*" Lexonomica, Volume 11, Number 2, at page. 112.
[16] Declaration (No 2) on Nationality of a Member State, annexed to the Treaty on European Union, [1992] OJ C191/98.
[17] Hans Ulrich Jessurun d'Oliveira (2018), "*Union citizenship and Beyond*" EUI Working Paper Law 2018/15 8.
[18] Shaw.J (2018), "*EU citizenship: still a fundamental status?*" EUI Working Paper RSCAS 2018/14 at page. 1.
[19] Tratnik.M and Weingerl.P (2019), "Investment Migration and State Autonomy: A Quest for the Relevant Link" Investment Migration Working Papers IMC-RP 2019/4, at page.21.
[20] Tratnik. M, "*Limitations of National Autonomy in Matters of Nationality in International and EU Law*" Kraljić. S & Klojčnik.J (eds.) (University of Maribor Press 2019) at page.521.
[21] Case C-184/99, *Grzelczyk v Centre Public d'Aide Sociale d'Ottignies Louvain la Nueve* [2001] ECR I-06193, at paragraph 31 ; Case C-291/05, *Minister voor Vreemdelingenzaken en Integratie v. R. N. G. Eind*, ECLI :EU :C :2007 :771, para 32 ; Case C-50/06 *Commission v. the Netherlands*, ECLI:EU:C:2007 :325, at paragraph 32; Court of Justice, Judgment of 2 March 2010, Case C-135/08, *Janko Rottmann v. Freistaat Bayern,* at paragraph.43.

2. Curtailing Member State's National Sovereignty

Despite the cautious wording used in the Treaties which shield Member States autonomy over the nationality matters, the link between EU citizenship and the nationality of Member States has been characterised as "*a voyage into unchartered waters*".[22] Furthermore, the rules enacted by the Member States on the acquisition and loss of nationality must have due regard to EU law. More specifically, Member States must observe the principle of sincere cooperation as stated in Article 4(3) TEU and also respect the Union's fundamental values as stated in Article 2 TEU. Thus, Member States sovereignty over nationality matters is not unfettered, as they are not allowed to frame their nationalities the way they consider fit. The rules enacted in relation to nationality matters should not restrict the scope of EU law beyond its confines. In this respect, one might conclude that the sovereignty of Member States over EU nationality can only be considered as a relative concept, in which each Member State is allowed to "*shape the contours*" of its national identity within a legal framework defined by EU law.[23] Hence, it might be argued that due to the creation of EU citizenship, the bastion of sovereignty of Member States is under siege.[24] Furthermore, the Member States' sovereign has been restricted by the ECJ's evolving case law, which is mostly concentrated on the adverse effects provoked by the actions of the Member States, on the rights derived from the status of EU citizenship. The ECJ case law has strived to achieve a balance between the promotion of the effectiveness of EU law and Member States' autonomy when dealing with nationality matters.[25]

[22] Weingerl.P & Tratnik.M (n.15), at page. 112.
[23] Wanger.L (2021), "*Member State Nationality under EU Law – To Be or Not to Be a Union Citizen?*" Maastricht Journal of European and Comparative Law Volume 28, Number 3, at page. 314.
[24] Brink.M, *A qualified Defence of the Primacy of Nationality over European Union Citizenship*, (Cambridge University Press:2019).
[25] Sarmiento.D (2019), "EU Competence and the Attribution of Nationality in Member States" Investment Migration Working Papers IMC-RP 2019/2, at page. 15.

An early example of the ECJ which required national competence in matters of nationality recognition to be exercised, in accordance with the principles of EU law is the *Micheletti* case.[26] This case was decided in early 1990s, prior to the introduction of the status of EU citizenship introduced by the Maastricht Treaty. Regarding the facts of the case, Mr Micheletti was an Italian-Argentine, dual national born in Argentina. The Italian nationality had been acquired due to his Italian father. Mr Micheletti immigrated to Spain and wanted to establish himself there, invoking his freedom of establishment under Article 50 TFEU (ex Article 44 Treaty Establishing the European Community 'TEC'), as being national of a Member State, namely Italy. The Spanish authorities, however, refused to recognise his Italian nationality. According to Spanish authorities, to properly attribute and recognise the nationality of the individual concerned, he must have previously resided in the Member State of the claimed nationality.[27] As such, Spanish authorities denied his permanent residency in Spain and treated Mr Micheletti as an Argentinian citizen. This is because prior to his establishment in Spain, the country of his habitual residence had been Argentina and not Italy.

The reasoning of *Micheletti* case can be considered as a leading case in several ways. The ECJ ruled out Spain's arguments and held that the Member States are not permitted to impose additional burden to the recognition of a nationality granted by another Member State. In this respect, the ECJ argued that the recognition of EU citizenship could not be conditional on unilateral conditions such as the habitual residence, or the provision of evidence of any other kind of 'genuine connection' of the individual concerned and the Member State of the claimed nationality.[28] Otherwise, if the conditions were to differ from one Member State to another,

[26] *Micheletti* (n.6).
[27] Article 9 of the Spanish Civil Code.
[28] Micheletti (n.6) at paragraph 10-11.

individuals could not exercise effectively their fundamental freedoms such as, the right to move and reside freely within the territory of the Member State of their preference. This case is of particular importance, since it practically illustrates that EU law imposes certain limitations on national law when it undermines the fundamental freedoms enriched in the EU Treaties.[29] Furthermore, in a recently decided case, *Lounes*, it was affirmed that EU law does not allow the restriction of the rights that follow from possessing the nationality of another Member State, in particular the citizen's right to move freely within the EU.[30]

The point of view expressed by the Spanish authorities was in line with the *Nottebohm*[31] case. In this case, the International Court of Justice ('ICJ') decided that for purposes of diplomatic protection, the second nationality granted to individuals did not need to be recognised by another state. The ICJ pointed out in its ruling that nationality must reflect a 'genuine connection' between the individuals concerned and the country of which they hold the nationality.[32] In accordance with the ICJ, the term 'genuine connection' is explained as a reciprocal relationship based on mutual interests, feelings, and rights.[33] The decision in *Nottebohm* provoked different reactions between academics. Some authors were influenced by its ruling and supported that the criterion of attributing nationality should be mainly based on the 'genuine connection' between the individuals concerned and the country, otherwise the customary international law would be in breach.[34] On the other side, some authors rightly pointed out that the ruling went too far by overstretching the scope of EU law.[35]

[29] Sarmiento. D (n.25), at page. 17.
[30] Court of Justice, Judgment of 17 November 2017, Case C-165/16, *Toufik Lounes v. Secretary of State for the Home Department*, at paragraph 55.
[31] International Court of Justice of 6 April 1995, Nottebohm Case, (*Liechtenstein* v. *Guatemala*) [1955] ICJ.
[32] Sarmiento. D (n.25), at page. 4.
[33] Nottebohm Case, (*Liechtenstein* v. *Guatemala*) (n.31).
[34] Gerard-René de Groot and Olivier Willem Vonk, *International Standards on Nationality Law* (Wolf Legal Publishers: 2015) at 35.
[35] Hans Ulrich Jessurun d' Oliveira (n.17), at pages 1-8.

In the light of the above, the argument of 'genuine connection' presented in *Nottebohm* case comes in direct conflict with the judgment in *Micheletti*. Assuming that the ruling of *Nottebohm* case applies to the facts of the *Micheletti* case, his Italian nationality should not have been recognised and thus not been effective against the other Member States. This is because under the international law, Mr Micheletti had no 'genuine connection' with Italy. As such, the denial to exercise his rights derived through his EU status would have amounted to a breach of core principles of EU law due to discrimination on nationality. However, from the rulings of the ECJ it seems that the 'genuine connection' test did not transpose to the EU legal order. In fact, none of the significant rulings from international tribunals applied the rationale of *Nottebohm* case. Thus, the ruling of *Nottebohm* has been characterised as "*dead on arrival*".[36] Also, as Advocate Tesauro mentioned in his opinion in the case of *Micheletti*, the concept of 'genuine connection' lies in the romantic period of international law.[37]

The line of reasoning followed by the ECJ in the *Micheletti* case was further expanded in the cases of *Garcia Avello*[38] and *Chen*[39]. In these two cases, the conditions imposed by the Member States to grant nationality have been questioned due to their restricting effects on the free movement rights of EU citizens. More specifically, in the former case, the registration of a child with dual nationality was not feasible under the conditions applicable to the Member State concerned. The ECJ referred to the *Micheletti* judgment and concluded that such conditions restrict the freedom of movement of persons and thus shall not be deemed acceptable.[40] In the latter case, a child born in a Member State acquired nationality and automatically became an EU citizen. However, the Member State concerned denied granting

[36] Peter J. Spiro (2019), "*Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion*" Investment Migration Working Papers IMC-PR 2019/1.
[37] Opinion of Advocate General Tesauro delivered on 30 January 1992, at paragraph 5.
[38] Court of Justice, Judgment of 2 October 2003, Case C-148/02, *Carlos Garcia Avello v. État belge.*
[39] Court of Justice, Judgment of 19 October 2004, Case C-200/02, *Kunqian Catherine Zhu, Man Lavette Chen*.
[40] Case C-148/02, *Carlos Garcia Avello v. État belge*, at paragraph 28.

residence rights to the parents of the child who were non-citizens. The ECJ ruled against the restrictive approach of the Member State whereas at the same time, recognised the sovereign right of each Member State to determine whether to grant nationality.[41]

Similarly, in reverse situations such as the withdrawal of nationality, national measures applied are also under scrutiny. In fact, EU should assume more responsibility for cases of deprivation of nationality because such decisions not only affect the individuals concerned but also the citizens of an entire nation. As such, measures should be formed in a manner that has due regard to the principles of EU law. In a landmark case of *Rottmann*,[42] the applicant moved from Austria to Germany and acquired German citizenship on the grounds of false statements since he did not notify the German authorities that criminal proceedings may be pending against him in Austria. Once Mr. Rottmann acquired German citizenship, he automatically forfeited his Austrian citizenship pursuant to the operation of Austrian law.[43] Following Mr. Rottmann's naturalisation in Germany, German authorities had been notified by Austrian authorities about the criminal proceedings against him. Thus, the German authorities withdrew Mr Rottmann's German citizenship by relying on his failure to disclose, during the naturalisation procedure, that criminal proceedings were pending against him in Austria.[44] Consequently, Mr. Rottmann not only became stateless but he also lost the EU citizenship as an immediate effect of the deprivation of his German nationality.

[41] Case C-200/02, *Kunqian Catherine Zhu, Man Lavette Chen*, at paragraph 37-41; Tryfonidou.A (2005), "*Further Cracks in the "Great Wall" of the EU?*" European Public Law, Volume 11, Issue 4, pp. 527-541.
[42] Court of Justice, Judgment of 2 March 2010, Case C-135/08, *Janko Rottmann v. Freistaat Bayern*.
[43] Article 27(1) of the Austrian law on nationality provides: "*Any person who acquires foreign nationality at his own request, or by reason of a declaration made by him or with his express consent, shall lose his Austrian nationality unless he has expressly been given the right to retain [it*]" (Translating) staatsborgerschaftsgesetz (BGBI. 1985,31).
[44] Rottmann (n.21), at paragraph 28.

In its ruling, the ECJ confirmed that when a Member State decides on matters related to the withdrawal of the nationality, it must ensure that the decision is compatible with the principles of EU law and take account of the proportionality. The ECJ relied on the international law principles and concluded that withdrawal is allowed - even if the individual becomes stateless - if the nationality was granted by means of a fraudulent act.[45] Consequently, the ECJ took into consideration the facts of the case and decided that whereas the deprivation of his nationality constitutes a restriction to the rights enshrined in Article 20 TFEU, such restriction was justified and proportionate.[46]

Following the judgment in *Rottmann*, it may be assumed that the impact on the deprivation of nationality is significantly more severe on EU rights than in instances of the imposition of additional burdens to the attribution of nationality.[47] Thus, to guarantee that the rights enshrined by the EU status are fully respected, the ECJ appears eager to examine more strictly the actions of Member States regarding the withdrawal of nationality. Another milestone case that elaborates further on the reasoning of *Rottmann* is the case of *Ruiz Zambrano*.[48] In this case, Belgian authorities decided to withdraw both the residency and working rights from Mr. Zambrano. Mr Zambrano was a Colombian citizen and a parent of two minor infants who were born in Belgium.[49] As such, the children did not only possess Belgian nationality but they also possessed EU citizenship.

[45] *Ibid*, at paragraph 57; Article 8(2) 1961 Convention on the Reduction of Statelessness, conducted at New York on 30 August 1961, entry into force 13 December 1975, *UNTS* Vol. 989, No.14458, p.175.
[46] Rottmann (n.21), at paragraph 57.
[47] Sarmiento. D (n.25), at pages.18-19.
[48] Court of Justice, Judgment of 8 March 2011, Case C-34/09 *Gerardo Ruiz Zambrano, v Office national de l'emploi (ONEm)*.
[49] *Ibid*, at paragraphs 14-16.

The ECJ supported that if one of the parents with parental responsibility was forced to be expelled from the territory of EU, this would result in the deprivation "*of the genuine enjoyment of the substance of [the child's] rights*".[50] In other words, if the parents did not have the permission to stay in the EU, the children would also not be able to stay within the EU and thus not able to enjoy the rights conferred by their EU status. The conclusion that can be drawn by the ruling of the ECJ in this particular case is that EU citizens are entitled to a wide range of rights that cannot be revoked unilaterally by any Member State.

In the recent case of *Tjebbes,*[51] the reasoning of the ECJ builds on the settled cases that redefined the relationship between EU citizenship and the nationality of a Member State. In this particular case, the ECJ was asked to answer whether the automatic loss of Dutch nationality and hence EU citizenship of individuals, by operation of Dutch law, is compatible with the EU citizenship Treaty provisions. Furthermore, according to Dutch law, minors also share the automatic loss as a consequence of their parent's deprivation of Dutch nationality.[52] According to Article 15(1)(c) of the Dutch Nationality Act 1983, Dutch nationality could be revoked in cases where the applicant's habitual residence was outside of the EU for more than ten years. The applicants of this case had possessed the nationality of a third country and had a permanent residence outside the EU territory for more than ten years.

[50] *Ibid*, at paragraph 40-44.
[51] Court of Justice, Judgment of 12 March 2019, Case C-221/17 *M.G. Tjebbes, G.J.M. Koopman, E. Saleh Abady, L. Duboux v. Minister van Buitenlandse Zaken.* ('Tjebbes case').
[52] Article 16 (1)(d) Dutch Nationality Act.

The ECJ recognised the requirement of habitual residence outside the EU territory as a legitimate state interest justifying the deprivation of national citizenship and the loss of EU citizenship, even for children.[53] However, the ECJ emphasised the need to ensure that the rules of nationality deprivation are enacted by respecting the principle of proportionality. In addition, to ensure that the rules enacted by Member States are compatible with EU law, individual assessments should be carried out to measure the consequences that the loss of a national citizenship brings.[54] Nevertheless, the ECJ, in its judgment, did not specify the precise parameters which must be taken into consideration by a Member State for examining and evaluating the potential loss.[55]

3. Concluding Remarks

In light of the above, it may be considered that the rulings of the ECJ cases already discussed, provide better clarity on the actual relationship between the EU citizenship and the nationality of Member States. Through the examination of the judgments, two significant conclusions can be drawn which provide guidance in the evaluation of the ICS on whether or not the conditions imposed for the acquisition and loss are compatible with EU law. Firstly, the nationality acquired by one Member State must be recognised and fully respected by all other Member States, irrespective of the means of acquisition, given that the way of acquisition is not contrary to the principles of EU law. Secondly, although EU citizenship by its nature is not questioned, the importance of maintaining its unique status and shielding the effective promotion of EU citizens' rights leads to the imposition of certain restrictions on Member States' competence on nationality matters. In other words, the ECJ operate as a backstop once the measures adopted by the Member States undermine the effectiveness of the exercise of the EU rights and render

[53] Tjebbes (n.51), at paragraph. 36-39.
[54] *Ibid*, at paragraph 44-47.
[55] *Ibid*, at paragraph 44.

them impossible. The limitations laid down in the cases so far are not related to the acquisition of citizenship but rather its recognition and loss. Decisions on the acquisition of citizenship still remain in the absolute discretion of each Member State. However, this might be changed in the upcoming case of *JY v Wiener Landesregierung*,[56] where the ECJ has been called to rule on the acquisition of nationality in light of EU citizenship.

[56] Court of Justice, Case C-118/20, *JY v Wiener Landesregierung,* still pending.

Chapter III- Modes of Acquisition of Citizenship

Citizenship refers to the person's legal status as a legal member of a sovereign State, which can be obtained through numerous ways.[57] The process of acquiring national citizenship of a Member State that subsequently opens the road to EU citizenship can be either automatic or non-automatic. More specifically, if the acquisition is automatic the naturalisation may become effective, *inter alia*, by birth, descend and marriage. On the other hand, if the acquisition is non-automatic, nationality can be granted once the non-citizen fulfils all the conditions required by the host Member State.

1. *Ordinary and Privileged Naturalisation*

The traditional means of acquiring nationality are either by birth ('*ius soli'*) or by parentage ('*ius sanguinis'*). Everyone born within the territory of a country which applies the *ius soli* rule acquires nationality automatically. Whereas, if a child born in a country that follows the rule of *ius sanguinis*, the nationality of a child based upon the parents' nationality(ies) regardless of its place of birth.[58] The vast majority of Member States bestow citizenship by using the latter.[59] According to Bauböck, naturalisation has been defined as "*any acquisition after birth of a citizenship not previously held by the person concerned that requires an application to public authorities and a decision by these*".[60] After birth, the acquisition of citizenship can take place either on the grounds of residing in the country for a certain period of time, or on the basis of other considerations such as family ties or special contributions.

[57] Bauböck, R., Ersbøll, E., Groenendijk, K., & Waldrauch, H. (2006), "*Acquisition and Loss of Nationality" Volume 1: Comparative Analyses: Policies and Trends in 15 European Countries* (Amsterdam University Press), at page. 15.
[58] Staples.H, "*The Legal Status of Third Country Nationals Resident in the European Union*", (Kluwer, 1999) at page.74.
[59] Briefing European Parliament (2018), "*Acquisition and Loss of Citizenship in EU Member States*" Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI(2018)625116_EN.pdf (Accessed: October 2021);
[60] Bauböck.R and Wallace Goodman.S (2011), "Naturalisation", EUDO Citizenship Policy Brief No.2, Robert Schuman Centre, European Union Democracy Observatory on Citizenship, at page.1.

The naturalisation procedure based upon residence is the most common among EU Member States ('ordinary' naturalisation procedure). However, each Member State sets its own conditions concerning the exact criteria that need to be fulfilled, such as the required period of lawful effective residence on its territory along with the successful completion of language and/or knowledge test based on various aspects of the respective country. The minimum period of residence required for naturalisation in a Member State varies between three to ten years, but it is most commonly set to five years.[61] For instance, Cyprus requires applicants who have no familial connection in Cyprus and seek their naturalisation by residency, to complete a period of seven years of legal residence on its territory before applying for citizenship.[62] Meeting the requirements of ordinary naturalisation is time-consuming and involves heavy bureaucracy. During the period of physical presence in the territory of a host country, applicants have the opportunity to create 'genuine connections' and develop a deeper integration in the country, including by learning its language and customs.[63]

In almost all Member States, there are provisions that facilitate the naturalisation of foreign nationals, in exceptional circumstances, and provide easier access to citizenship than to others. For example, the facilitated naturalisation is mainly available to married people, whose spouse is already a citizen of a Member State and to minor children. It can also be available to descendants of former citizens, or due to a former colonial relation and a shared language, or even due to membership in a political union.[64] In addition, foreign nationals who contribute to

[61] *Ibid*, at page. 2; Albercht.C, Giesing.Y and Schaller.D (2020), "*How to Become an EU Citizen: The Acquisition of Citizenship via Naturalisation*" CESifo Forum 4/2020 Volume 21, at page. 43.
[62] Republic of Cyprus, Civil Registry and Migration Department, "*Citizenship- Naturalisation (Type M127)*", Available at: http://www.moi.gov.cy/moi/crmd/crmd.nsf/All/F03BEB8DF3591BC1C2257D2C00453383?OpenDocument (Accessed: October 2021).
[63] R. Bauböck (n.2) at page.33.
[64] Džankić.J, Psaila.E, Leigh.V and Rojo.A (2018), "*Factual Analysis of Member States Investors' Schemes Granting Citizenship Residence to Third Country Nationals Investing in the Said Member State*", Study Overview, at page. 6.

the country's society through their outstanding achievements, for example in the fields of economy, sports, culture, art and research and technology, can acquire citizenship through facilitated naturalisation.[65] As such, these foreign nationals fall within the category of 'special contribution' and thus, Member States award citizenship on the grounds of 'national interest'. Unfortunately, in the absence of a definition of what national interest constitutes, certain Member States tend to equalise it with their economic interest and set also the ICS in the category of a 'special contribution'.

Moreover, one could argue that the equalisation of national interest with the economic interest might raise some concerns. In the former case, the decision to award nationality is based on the high quality of personal skills. This is because individuals offer particular skills, capacities, or distinctive characteristics that distinguish them from others. In other words, talented individuals are able to perform certain tasks, in a certain way as to be beneficial for the Member State concerned, and those tasks cannot be reproduced by another individual.

On the other hand, the one-off contribution through the payment of a pre-detriment amount does not indicate the individual's personal abilities, nor does it reflect the individual's ability to contribute to the society on a long-term basis. In reality, the economic capacity of the individuals is not necessarily associated with their skills. Thus, as rightly pointed out by the author Prats, the meaning of 'special contribution' is undermined.[66] This is because the new entry citizens receive the message that the most significant way of contribution is the financial one without focusing on the numerous means of the personal contribution of individuals to

[65] Dzankic J (2012), "*The pros and cons of ius pecuniae: Investor Citizenship in Comparative Perspective*", EUI Working Papers, RSCAS 2012/14, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, at page. 7.
[66] Prats. E (2019), "*Citizenship by Investment Programmes: Express Naturalisation for Bulky Wallets. An Arbitrary De Jure Stratification*?" Revista De Derecho Politico Number 106, at page. 373.

society.[67] Furthermore, it may be argued that the preference over the financial contribution being justifiable in the name of national interest is in contrast with the concept of equality as it discriminates between the wealthy and poor applicants.[68]

In cases of citizens who made a special contribution to their host country, certain or entire naturalisation conditions may be waived. Such conditions may include the passing of a language test, the fulfilment of the requirement on the residence period prior to naturalisation, or even the obligation to renounce their birth citizenship in order to acquire a new one. The practice of not obliging the renunciation of the original citizenship applies even in Member States that forbid dual citizenship. According to Articles 14 and 15 of the European Convention on Nationality, it is up to the discretion of Member States to decide whether they will accept or prohibit dual citizenship during the naturalisation procedure. However, they are obliged to accept dual citizenship once a citizenship has been acquired at birth. An example of a Member State which does not permit dual citizenship and thus, requires the renunciation of nationality during the ordinary naturalisation procedure is Bulgaria.[69] However, while applicants under the ordinary naturalisation process in this country may not be allowed to keep their original nationality, applicants under the extraordinary naturalisation process of ICS would be allowed to keep it.[70]

[67] *Ibid.*
[68] Andriopoulou. A (2020), "*The ius pecuniae: The Prize of Citizenship*" Bridge Working Paper 4, at page.8
[69] Bauböck.R and Wallace Goodman.S (n.60), at page 3.
[70] Dzankic J (n.65), at pages 7 and 11.

2. Citizenship by Investment

Acquiring national citizenship by investment has been characterised as a 'passive investment program'. This is because the only obligation attached to the applicant is to simply "*park money in the country*" by investing through different means such as real estate, bank deposits and government bonds.[71]

In some case, the introduction of ICS by several Member States was conceived as a response to their financial difficulties caused by economic crisis. The interest of small national economies such as Bulgaria, Malta and Cyprus in those schemes was notable. This strengthens the argument that countries that are willing to grant citizenship to foreign investors are countries facing economic challenges. Thus, they try to reinforce their economic position by offering attractive schemes that generate an influx of funds from foreigners.[72] Without the existence of the ICS, the above national economies would not have any specific interest in the investors. Therefore, these Member States used these schemes as a tool to tackle the financial constraints related to the economic crisis, including the recovery of the industrial sector which was affected particularly hard. [73]

Furthermore, as the conditions and terms for the naturalisation of non-citizens are based on the discretion of the Member States,[74] the conditions imposed to investors under the different ICS also differ between them. Under the ICS, the conditions are related to: (i) the amount of

[71] Surak.K (2020), "*Who Wants to Buy a Visa? Comparing the Uptake of Residence by Investment Programs in the European Union*", Journal of Contemporary European Studies, at page.2
[72] Deloitte (2020), "*Farewell to the island of Aphrodite: Is the end of Cyprus Citizenship Programs?*" Available at: https://www2.deloitte.com/ua/en/pages/press-room/deloitte-press/2020/cyprus-citizenship-programs.html (Accessed: October 2021).
[73] Casolari. F (2015), "*EU Citizenship and Money: A Liaison Dangeureuse? International and EU Legal Issues Concerning the Sale of EU Citizenship*" Biblioteca Della Liberta, No.212, at page. 48-49.
[74] Joppke.C (2012), "*Citizenship and Immigration"* 12 Ethnicities, at page. 16.

investment, (ii) the sector that the money should be invested in, and (iii) the duration of the mandatory period that investors are obliged to reside in the Member State of investment.

2.1. Bulgaria

The Bulgarian ICS was adopted in early 2013 (as in the cases of Malta and Cyprus) through amendments to both the Foreigners Act ('FA') and the Citizenship Act ('CA') of the Republic of Bulgaria. Following the publication of a European Commission's report in 2019, the Bulgarian government originally announced the cancellation of the entire scheme, not only due to the severe criticism faced by the European Commission in this report but also due to the lack of the scheme's success.[75] The failure of the scheme was mainly due to lack of interest from the potential investors. Despite the announcement however, in the end the Bulgarian authorities decided to retain the scheme and proceeded to several amendments, by setting conditions to comply with the recommendations of the European Commission. [76] As a result, in February 2021 the FA was finally amended by setting out new conditions for potential investors.

There are two pathways through which a foreign investor may obtain Bulgarian citizenship by investment.[77] Firstly, the applicant must obtain a permanent residence permit that is subject to an approved investment of a minimum 1,000,000 BGN (€512,000). According to Article 25(1) of the FA, a variety of options is offered to an applicant to invest and subsequently acquire permanent residence. Following a period of one year after receiving the permanent residency card, the applicant should make an additional investment of 1,000,000 BGN (€512,000).[78] In

[75] Investment Immigration (2019), "*Bulgaria Set to Terminate Controversial Citizenship by Investment Program,*" Available at: https://www.investmentimmigration.com/bulgaria-set-to-terminate-controversial-citizenship-by-investment-program/ (Accessed: October 2021).
[76] Commission Report (2019) (n.9).
[77] The general criteria for naturalisation of Third Country Nationals are found in Article 12 of the Citizenship Act.
[78] Article 14a of the Citizenship Act.

case the applicant does not want to make this additional investment, the applicant should wait for the naturalisation following a period of five years after acquiring permanent residency.[79]

Prior to the amendment of the FA in 2021, Bulgaria had proceeded with an amendment of its ICS in 2019 following a series of scandals. More specifically, incidents were reported of individuals who had been under investigation or convicted criminals in their home country that were holders of Bulgarian citizenship.[80] As a result of these scandals, since 2019 the Bulgarian authorities have required from all applicants to present a clean criminal record issued by all countries in which they had resided permanently, including their home country.

2.2. Malta

In 2013, the Maltese Citizenship Act[81] was revised, introducing an Individual Investor Programme ('IIP'), which encompassed the purchase of Maltese nationality without ever setting a foot on the country. This amounted to the 'sale' of not only Maltese nationality but also the supranational status enshrined in the citizenship of the Union.[82] Even though the Maltese programme was not unique in the EU, it was severely criticised by the European Institutions.[83] More specifically, the European Parliament took a clear stance towards the IIP, and warned the Maltese authorities that this way of obtaining Maltese citizenship compromise the very concept of EU citizenship.[84] The issue was, however, resolved once the Maltese Government reached an agreement with the European Commission that involved an

[79] Article 12a of the Citizenship Act.
[80] Dimitroc. M, '*Commission Spies Downsides of Bulgaria's 'Golden' Passport Schemes*' (BalkanInsight: January 2019). Available at: https://balkaninsight.com/2019/01/23/european-commission-bashes-bulgaria-for-lax-golden-passports-scheme-01-23-2019/ (Accessed: October 2021).
[81] Maltese Citizenship Act 2013, Chapter 188.
[82] Carrera.S (2014), "*How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?*" CEPS Paper in Liberty and Security in Europe, at page.1.
[83] European Parliament resolution on EU Citizenship for Sale, 2013/2995 (RSP) (n.10) 16 January 2014.
[84] *Ibid.*

amendment regarding the residence requirement. Under this amendment, a one-year effective residence requirement was a pre-condition for an investor to obtain naturalisation.[85]

In November 2020, newly adopted regulations on the 'Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment' were published by virtue of Legal Notice (LN) 437 of 2020 in terms of the Maltese Citizenship Act. In the amended regulation, Malta reviewed its legislation on the naturalization of foreign investors by adding tighter economic criteria and due diligence procedures to potential Maltese citizens.

According to the new regulations, foreign investors are eligible for Maltese nationality by naturalisation if they meet certain economic criteria. The two options which lead to the naturalisation of the principal applicant include: either a three-year effective residence in Malta prior to the investment and a contribution of €600,000, or a one-year effective residence prior to the investment and a contribution of €750,000. For every person who is dependent upon the principal applicant (i.e. financially dependents, spouse and adult children up to 28 years old mainly supported by the principal applicant), an extra contribution of €50,000 must be made. Investors eligible for Maltese citizenship must purchase immovable property at a minimum value of €700,000 or more and maintain ownership for a minimum of five years or rental of property at €16,000 per annum. In addition, there is a mandatory contribution of €10,000 as a philanthropic donation.

[85] Joint Press Statement by the European Commission and the Maltese Authorities on Malta's Individual Investor Programme ('IIP'), Available at: https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_14_70 (Accessed: October 2021).

Furthermore, the Maltese authorities do not require this category of potential applicants for the Maltese citizenship to pass any language or civic knowledge tests. However, as stated above, no certificate of naturalisation is issued unless the applicants prove that they have resided in Malta for at least one year. The Maltese government specified that the residency period does not strictly mean 365 days. Boarding passes of travelling to Malta, receipt of donations made to charitable organisations in Malta and payment of income tax to the Maltese Inland Revenue Department constitute a sufficient proof that the applicant has stayed in Malta and established a 'genuine connection' with the country.[86] The fact that the duration of residence does not have to be continuous, produced doubts as to whether the Commission's expectations would be fulfilled.

Recent revelations showed that high net-worth applicants acquire Maltese citizenship and thereby EU citizenship, without establishing a 'genuine connection', as required, with the country since they only spend a couple of weeks in Malta.[87] The revelations which were based on leaking papers from Henley and Partners data exposed that several individuals met the condition of a one-year residence by renting apartments to claim that they were residents but then leaving them empty.[88] According to those leaking papers, the applicants usually stay in Malta for approximately 16 days, during the compulsory one-year residency period, before acquiring Maltese citizenship.[89] In fact, the papers demonstrate that the requirement to establish a 'genuine connection' with the country is undermined.

[86] Commission Report (2019) (n.9), at page 6.
[87] BBC News (2021), "*Malta Golden Passports: 'Loopholes' Found in Citizenship Scheme*" Available at: https://www.bbc.com/news/world-europe-56843409#:~:text=Wealthy%20non%2DEU%20nationals%20received,requirement%20by%20renting%20empty%20properties. (Accessed: October 2021).
[88] Guardian News Paper (2021), "*Malta Still Selling Golden Passports to Rich Stay-Away 'Residents'; Undercover Investigation Finds Evidence that Cash-For-Passports Practices Revealed in Henley & Partners Leak Continue*", Available at: https://www.theguardian.com/world/2021/apr/23/malta-still-selling-golden-passports-to-rich-stay-away-residents (Accessed: October 2021).
[89] BBC News (n.87).

2.3. Cyprus

The Cypriot scheme for naturalisation of investors was first introduced in mid-2013. It was then amended several times before reaching its final form in 2020 [90] and it was finally terminated in November of 2020. It is worth noting that despite its termination, the foreigners who acquired citizenship through the scheme are still bound by its ICS conditions. In other words, naturalised citizens must follow the conditions of the ICS to retain Cypriot citizenship. The ICS was first introduced in Cypriot legislation two months after the bail-in deal of 10 billion euros by the Euro group, European Commission ('EC'), European Central Bank ('ECB') and International Monetary Fund ('IMF'). [91] The bail-in deal aimed to resolve the Cypriot banking sector's crisis. However, following the bail-in deal, one of the largest and most troubled financial institutions in Cyprus, namely, Laiki Bank, collapsed.[92] In addition to the closure of Laiki Bank, there was a massive 'haircut' of the depositors who held more than €100,000 in the biggest bank of Cyprus, namely, Bank of Cyprus.

As a consequence of the severe economic crisis, many depositors, including, foreign investors in Cyprus incurred considerable losses. As such, Cyprus was in a difficult position and an urgent solution was necessary. To revive the Cyprus business climate and 'reimburse' foreign clients, the Cypriot government decided to revise the ICS and ease citizenship rules.[93] Prior to the economic crisis, Cypriot law had contained an extraordinary – and thus discouraging- requirement whereby applicants were required to invest €10,000,000 for acquiring citizenship.

[90] Scheme for Naturalisation of Investors in Cyprus by Exception on the Basis of Subsection (2) of Section 111A of the Civil Registry Laws 2002-2020, Council of Ministers Decision dated 18/8/2020 (www.moi.gov.cy). Available at: http://www.cylaw.org/KDP/data/2020_1_379.pdf (Accessed: October 2021).
[91] Dijssebloem. J, "*Cyprus agrees deal on €10 bn bailout*" (Financial Times: 25 March 2013), Available at: https://www.ft.com/content/03c5e484-94ff-11e2-b822-00144feabdc0 (Accessed: October 2021).
[92] For further details: International Monetary Fund, Letter of Intent of the Government of Cyprus (29 April 2013). Available at: https://www.imf.org/external/np/loi/2013/cyp/082913.pdf (Accessed: October 2021).
[93] Staff. R, "*Cyprus to Ease Citizenship Requirements, Attacks EU 'Hypocrisy'* " (14 April 2013), Available at: https://www.reuters.com/article/us-cyprus-president-russia-idUSBRE93D09720130414 (Accessed: October 2021).

In 2013, the Cypriot government lowered the required investment to €2,000,000. Following criticism, the criteria for applicants were revised in 2020 and the required investment was increased to €2,500,000. The investment had to be made as follows: by participating in a Cypriot company, which had to be retained for at least three years and which employed at least nine EU employees, or by investing in real estate, land development and infrastructure projects or in alternative investment funds or financial assets in Cypriot companies or organisations. Alternatively, the investor could choose a combination of the aforementioned investment options, provided that the total amount of the investment was at least €2,000,000. In addition to that investment, the applicant would have to purchase a permanent residential property, provided that the property had a minimum of €500.000, excluding VAT in value. To be eligible for citizenship, an applicant would also have to proceed to a donation of €200,000 - of which €100,000 were to be donated to the Cyprus Land Development Corporation and the remaining €100,000 to a variety of sectors.[94]

As for the purchase of the residential property, this would need to be held indefinitely.[95] Resale of such property would be permitted only when followed by the purchase of another residential property in the Republic for the applicant's personal use. In this respect, the retainment of Cypriot citizenship, and by extension of the EU citizenship, would be conditional upon the obligation of keeping the ownership of the investment within the borders of the Republic.[96] Otherwise, the applicant would face the revocation of the naturalization. This obligation could be considered problematic from the perspective of EU law, as it restricts not only the

[94] The applicant must have donated to one of the following sectors: The Research and Innovation Foundation; or The Industry and Technology Service; or The Fund for Renewable Energy Sources and Conservation of Energy; or the National Solidarity Fund.
[95] Scheme for Naturalisation of Investors in Cyprus by Exception on the Basis of Subsection (2) of Section 111A of the Civil Registry Laws 2002-2020.
[96] Kudryashova.S (2018), "*The Sale of Conditional EU Citizenship: The Cyprus Investment Programme Under the Lens of EU Law*" European Papers Volume 3, Number. 3, at page.1271.

fundamental rights enjoyed under Article 21 Treaty on the Functioning of the European Union ('TFEU'), the right of free movement and residence, but also the free movement of capital according to Article 63 TFEU.[97] The following chapter examines these issues in more detail. It is worth mentioning that whereas ownership of a private residence in Cyprus is mandatory, there is no explicit requirement for the applicant to reside at that address for any particular period of time.[98] The Cypriot authorities considered the investment itself as creating a sufficient bond between the applicant and the country. In other words, the investment criterion had replaced the residence criterion which was required under the ordinary naturalisation procedure.[99]

Except for the main economic criteria of the program, additional criteria were imposed including due diligence checks. In particular, applicants had to possess a clean criminal record and should not have been included in the list of persons whose assets were frozen within the EU as a result of sanctions, pursuant to the EU Directive on the confiscation of criminal assets.[100] Under the pressure exercised by the European Commission, the Cypriot authorities introduced rigorous checks on applicants to ensure that the scheme has been operated with high standards of transparency and integrity.[101] Furthermore, investors were eligible to apply for a Cypriot passport for their entire family, in particular, for family members who were financially dependent, including adult children up to 28 years old who were students and for the investors' parents.[102] All adult members of the family were under the obligation to be compliant with the due diligence checks.

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[97] *Ibid*.
[98] Surak. K (2016), "*Global Citizenship 2.0, The Growth of Citizenship by Investment Programs*" Investment Immigration Working Papers IMC-PR 2016/3, at page. 16.
[99] Commission Report (2019) (no.10), at page. 4.
[100] Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union.
[101] Scheme for Naturalisation of Investors in Cyprus by Exception on the Basis of Subsection (2) of Section 111A of the Civil Registry Laws 2002-2020.
[102] *Ibid*.

The Cypriot Investment Programme did not last long. After the Cyprus Papers scandal as revealed by the uncover investigation of Al Jazeera's reporters erupted, the Cyprus government officially declared the termination of its ICS with effect from November 1st 2020. Through Al Jazeera's investigation, it was revealed that more than half of Cypriot passports for naturalised citizens were unlawfully issued.[103] The most unexpected news exposed in the undercover investigation was that some of the country's high-ranking officials, such as lawmakers, lawyers and real estate developers, were involved in illegality. Specifically, these officials who had been informed that a dubious applicant had no clean criminal records, promised to provide the applicant with the blueprint on how to bypass the rules and obtain citizenship.[104]

Following Al Jazeera's revelations, Cyprus authorities have appointed an inquiry committee to evaluate whether citizenships granted until 2020 through the ICS were in compliance with all the laws, conditions and criteria in force at that time.[105] The committee was comprised by four members, namely Myron Nicolatos (former supreme court president), Costas Pambalis (former supreme court judge), Kyriacos Kyriakou (Deputy Auditor General) and Pavlos Ioannou (Financial Ombudsman). In April 2021, the inquiry committee produced an interim report which indicated that more than half (51.81%) of the exceptional naturalisations were done unlawfully.[106] The inquiry committee, however, authority has no authority to start any criminal

[103] Al Jazeera (2021), "*Most Cyprus Passports Issued in Investment Scheme were 'Illegal'* " Available at: https://www.aljazeera.com/news/2021/4/16/half-of-cyprus-passports-in-cash-scheme-were-illegal-inquiry#:~:text=Most%20Cyprus%20passports%20issued%20in%20investment%20scheme%20were%20'illegal',-Between%202013%20and&text=More%20than%203%2C000%20foreign%20investors,%2C%20Ukrainians%2C%20Chinese%20and%20Cambodians (Accessed: October 2021).

[104] YouTube (2020), "*The Cyprus Papers Undercover | Al Jazeera Investigations*" Available at: https://www.youtube.com/watch?v=Oj18cya_gvw&ab_channel=AlJazeeraEnglish (Accessed: October 2021).

[105] In- Cyprus (2021), "*Inquiry Committee on Citizenship by Investment Hand Over Interim Report to Attorney General*" Available at: https://in-cyprus.philenews.com/inquiry-committee-on-citizenship-by-investment-to-hand-over-interim-report-to-attorney-general/ (Accessed: October 2021).

[106] StockWatch (2021), "*Interim Report of Inquiry Committee on Citizenship by Investment Programme*" Available at: https://www.stockwatch.com.cy/en/article/oikonomia/interim-report-inquiry-committee-citizenship-investment-programme (Accessed: October 2021).

proceedings since it only has the right to produce conclusions and recommendations. As such, the inquiry committee suggested the deprivation of the investors and their family members who acquired citizenship through unlawful proceedings. Concerning the responsibilities of the individuals involved in the scandal, Attorney General instructed the Police to start an investigation based on the conclusion of the inquiry committee. Yet, it remains up to the discretion of the Attorney General to decide whether he will start criminal proceedings against the individuals involved in unlawful practices.[107]

3. Concluding Remarks

Comparing the ways of acquiring citizenship, such as through the ordinary naturalisation or through ICS, it may be concluded that the ordinary naturalisation focuses on both the need of integration and '*guarantee of belonging'* [108] to the country, while ICS fulfil purely the economic needs of the country concerned. The difference between the two lies in the way of establishing the status of citizenship. Contrary to the ICS, which requires simply the economic capacity of the applicant, acquiring citizenship through ordinary naturalisation demands the fulfilment of burdensome conditions. As discussed in the previous chapter, the status of EU citizenship provides to its citizens certain rights and freedoms as indicated in Articles 20 and 21 TFEU, respectively. Member States including Bulgaria, Malta and Cyprus, established the ICS by promoting the acquisition of EU citizenship as a 'fishhook' to attract wealthy foreigners to invest in their country. By analysing the conditions required by the above-named countries, it may be concluded that some of the conditions raise concerns for not fully respecting the principles of EU law. The criticism that these countries received for the application of their ICS led to several amendments of the schemes.

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[107] Philenews (2021), «*Προς ολοκλήρωση έρευνες για Al Jazeera – Ογκωδέστατο Υλικό*» Available at: https://www.philenews.com/koinonia/eidiseis/article/1346846/pros-oloklirosi-erevnes-ga-al-jazeera-oggodestato-yliko (Accessed: December 2021).

[108] Andriopoulou. A (n.68) page.8.

Chapter IV- Investor Citizenship Schemes: Are they in breach of EU law?

The adoption of ICS is not an uncommon practice in the Member States and these schemes on their whole do not necessarily violate the principles of EU law. However, the criteria imposed on the acquisition and loss of citizenship can cause violations of the principles of EU law since they could restrict the effective exercise of the rights and freedoms derived by the status of EU citizenship. Based on the reasoning of author Kudryashova, the free movement of capital is considerably affected by the conditions imposed on the citizenship by investment scheme in Cyprus.[109] To draw that conclusion, this dissertation analyses the basic principles on the free movement of capital, its restrictions and under which circumstances such restrictions could be justified. Finally, it outlines the approach of EU institutions towards the ICS and its possible violations, by taking into account the first detailed report which was published by the European Commission in 2019.[110]

1. The Free Movement of Capital, its Restrictions and Justifications

The concept of the internal market according to Article 26(2) TFEU is the creation of an area in which the four freedoms of movement[111] i.e. of goods, persons, services and capital, shall be ensured in accordance with the Treaty provisions without internal barriers. As it is set out in Article 63 TFEU, restrictions on the free movement of capital between the Member States and between the Union and non-member countries are prohibited. The absence of a definition on the capital movement in the Treaties led to the adoption of an EU Directive on the implementation of the Directive 88/361.[112]This Directive does not provide an exhaustive list but rather an adequate explanation to help determine what might be considered as capital

[109] Kudryashova.S (n.96).
[110] Commission Report (2019) (n.9).
[111]The free movement provisions are: Articles 34 and 35 TFEU (goods); Article 45 TFEU (workers); Article 49 TFEU (establishment); Article 56 TFEU (services); Article 63 TFEU (capital); Article 21 TFEU (free movement of persons).
[112] Directive 88/361/EEC of the Council of 24 July 1988 for the implementation of Article 67 of the Treaty.

movement.[113] An example of capital movement is the 'investment in real estate' which is relevant for the purposes of this dissertation. According to the explanatory notes provided in the Directive 88/361, the term of *Investment in Real Estate* is defined as purchasing buildings and land for personal use.[114]

In several cases, the ECJ has been asked to clarify the nature of the restriction prohibited under Article 63 TFEU. On these occasions, the non-exhaustive list of Directive 88/361 has served as a point of reference for the ECJ, especially to conclude whether a condition imposed by a Member State constitutes a restriction upon the movement of capital. Discrimination in the cross-border movement was the first restriction that has been identified.[115] However, the ECJ did not just stand there but broadened the protective nature of the freedom by extending the concept of non-discrimination**.** This is illustrated by the ruling of the ECJ in the case of *Commission v. France,* where it was highlighted that the prohibition on the capital movement restrictions "[..] *goes beyond the mere elimination of unequal treatment* [..]".[116] In several cases, the ECJ established that any national measures which discourage individuals from obtaining loans or making an investment in another Member State could impede capital movement and thus, constitute a restriction under Article 63.[117] Other examples of national measures in settled case law, ruling that the measures constituted restrictions upon the movement of capital include the requirement of prior authorisation for the acquisition and

[113] *Ibid*, Article 1, paragraph 1, Annex I
[114] Directive 88/361/EEC, explanatory notes.
[115] Hindelang. S, *Free movement of Capital and Foreign Direct Investment* (Oxford 2009).
[116] Court of Justice, Judgment of 4 June 2002, Case C-483/99, *Commission v. France*, at paragraph 40.
[117] Court of Justice, Judgment of 26 September 2000, Case-478/78, *Commission v. Belgium*, at paragraph 18; Court of Justice, Judgment of 23 February 2003, Case C-513/03, *Heirs of M.E.A. van Hilten-van der Heijden v Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen*, at paragraph 44

disposal of property[118] and also the maintenance of special rights allocated in connection with privileged ('golden') shares.[119]

Even though Article 63 TFEU prohibits all the national measures which impede the free movement of capital, in several cases, the prohibition is not absolute, similarly to the cases of the other freedoms.[120] A national measure indistinctly applicable to a Member State may not be prohibited if it is based on a legitimate interest such as the public interest or in any other derogation that falls under Article 65 TFEU. Furthermore, the national measure may not be prohibited, given that the Member States ensure that the means used to achieve the aim are in accordance with the general principles of EU law and particularly with the principle of proportionality.[121] An example where the ECJ allowed the restrictive national measure to be applied, is the case of *Commission v. Netherlands*. [122] In this case, the ECJ ruled that the provision of services such as the universal postal service could amount to an overriding reason based on the public interest and thus, the barriers to the free movement of capital could be justified. Furthermore, it is well established through the ECJ's settled case law that restrictive national measures based on Member States' purely economic interests are precluded as justifications for placing obstacles to the movement of capital.[123] For instance, the free movement of capital could not be restricted if the Member State seemed to be motivated by

[118] Court of Justice, Judgment of 5 July 2005, Case C-376/03, *D. v Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen*.
[119] Court of Justice, Judgment of 10 November 2011, Case C-212/09, *Commission v. Portugal*.
[120] Horsley. T (2012), "*The Concept of an Obstacle to Intra-EU Capital Movement in EU Law*", at page. 161.
[121] *Ibid*, at paragraphs 32 and 33.
[122] Court of Justice, Judgment of 28 September 2006, joined cases C-282/04 and C-283/04, *Commission v. Netherlands*, at paragraphs 38 and 39.
[123] Court of Justice, Judgment of 6 June 2000, Case C-35/98, *Staatssecretaris van Financiën and B.G.M. Verkooijen*, at paragraph 48; Court of Judgment of 28 April 1998, Case C-120/95, *Nicolas Decker and Caisse de Maladie des Employés Privés*, at paragraph 39.

financial considerations such as the reinforcement of market structure[124] or the achievement of budgetary goals.[125]

Having presented the basic principles of free movement of capital and thus concluded that the Member States are not allowed to restrict this right without a legitimate reason, it is essential to evaluate whether the Cyprus ICS was operating within the legal framework. More specifically, to examine whether the conditions imposed under the ICS were in breach of Article 63 TFEU. As stated in the previous chapter, for the foreign investors to be eligible for applying for a Cypriot passport, they should have purchased, among others, a residential property that should have been retained indefinitely in the Republic, otherwise they would lose their citizenship. It should be noted that this condition did not apply to other citizens who naturalised in Cyprus through other means rather than ICS. In light of the above, one could argue that the implementation of this condition constitutes a restriction on the free movement of capital and thus the violation of Article 63 TFEU.[126] In line with the aforementioned argument, is the ruling of *Verkooijen.*[127] In this case, a national measure restricted individuals who were receiving dividends from a corporation, the headquarters of which were located in another Member State rather than Netherlands, to receive tax exemptions. Such a measure was deemed as a restriction of free movement of capital because it has as an effect the discouragement of individuals who reside in Netherlands to invest abroad.[128]

[124] *Commission v. Portugal* (n.119), at paragraph 52.
[125] Court of Justice, Judgment of 7 February 1984, Case C-238/82, *Duphar BV and others v The Netherlands State*, at paragraph 23.
[126] Kudryashova.S (n.96).
[127] Court of Justice, Judgment of 6 June 2000, Case C-35/98, *Staatssecretaris van Financiën and B.G.M. Verkooijen*, at paragraph 34-35.
[128] *Ibid.*

Similarly, the measure imposed by Cypriot authorities of maintaining their investments indefinitely and thus locking it in the Republic, constitutes an obstacle to individuals to invest capital freely outside of the borders of the Republic. Assuming that this measure amounts to a restriction of free movement of capital, it is necessary to examine whether it could be justified on the ground of public interest or any other derogation listed in Article 65 TFEU. Given that the Cypriot ICS was launched to facilitate the economy of the country, one could conclude that its real objectives were purely economic. As already mentioned, the ECJ is reluctant to allow the application of a national restrictive measure on free movement which is based on economic justifications. Having concluded that this condition amounts to a direct restriction on capital movement, it could be argued that it is not compatible with the goal of eliminating all obstacles to free movement within the EU, which is an essential requirement for the functioning of the Internal Market.[129]

Furthermore, in the cases of *Rottmann* and *Tjebbes*, the ECJ left unanswered the question of whether a withdrawal of nationality of an individual by a Member State would ever be found so significant for the EU citizenship that would render the withdrawal illegal.[130] However, what is safe to be claimed is that the ECJ would not allow a Member State to revoke the citizenship of the individuals who are simply exercising their free movement rights as per the relevant provisions of EU law. Thus, the restrictive measure imposed by Cyprus authorities could not survive the scrutiny of the ECJ.

[129] Article 26(2) TFEU.
[130] Worster.T.W(2020), "*European Union Citizenship and the Unlawful Denial of Member State Nationality*" Fordham International Law Journal, Volume 43, number 3, at page. 776.

2. 'Genuine Connection' as A Pre-Condition for the Acquisition of Citizenship

On 23 January 2019, the European Commission released its first detailed report on the ICS, namely 'Report on Investor Citizenship and Residence Schemes in the EU'. Through its report, the European Commission was mainly criticising the practice of some Member States for bestowing nationality to wealthy foreigners, in exchange of pre-detriment payments or investments, without requiring a 'genuine connection' with the Member State concerned.[131] According to the report, the principle of 'genuine connection' means that the individual must have a sufficiently close relationship with the Member State concerned, over a certain period before acquiring citizenship.[132] The European Commission claimed that the absence of a 'genuine connection' between an individual and a Member State, as a pre-condition for the acquisition of citizenship, could allegedly infringe the principle of sincere cooperation as provided in Article 4(3) TFEU.[133] The principle of sincere cooperation has been interpreted in several ways, but it mainly entails an obligation to comply with EU law and an obligation not to conduct any actions that would be contrary to the objectives of the EU.[134] As it has been highlighted by the ECJ's case law the duty of genuine cooperation applies irrespective of whether the competence of Community is exclusive or whether a Member State has a right to enter into obligations towards third countries.[135] The infringement of the principle of sincere cooperation undermines the essence of EU citizenship. However, it remains unclear on what grounds naturalisation rules, that do not include the establishment of a 'genuine connection' as a pre-condition, infringe the essence of EU citizenship.

[131] Commission Report (n.9).
[132] *Ibid*, at page 5.
[133] *Ibid*, at page. 6.
[134] Klamert. M, *The Principle of Loyalty in EU Law* (First edition, Oxford University Press 2014).
[135] Court of Justice, Judgment of 14 July 2005, Case C- 433/03, *Commission v Germany*, at paragraph 64; Court of Justice, Judgment of 2 June 2005, Case C-266/03, *Commission v Luxembourg*, at paragraph 58.

The argument put forward by the European Commission that 'genuine connection' must be introduced by each Member State which operates ICS cannot stand for several reasons. Firstly, there are already other modes for naturalisation of individuals except through the ICS in which a 'genuine connection' is absent, and EU institutions have not raised any concerns. For instance, a child from the United States whose great-great-grandfather was a Greek national could acquire Greek citizenship and, by extension, EU citizenship without ever having resided or visited the country. Therefore, if residence constitutes an essential factor for the acquisition of citizenship, it means that kin naturalisation should be prohibited, giving millions of EU citizens the status of foreigners.[136]

Secondly, the suggestion provided by the European Commission is in absolute contrast with the ECJ's settled case law of the last decade. More specifically, the view of the European Commission was supported by referring to the ruling of *Nottebohm*, which is unquestionably bad law. As examined in the first chapter, the ECJ has expressly prohibited the Member States from relying on the *Nottebohm* ruling and especially on 'genuine connection' in cases concerned with the treatment of nationals of another Member State.[137] As such, it seems that the European Commission is now trying to turn the prohibition into an implied obligation.[138] Furthermore, the insistence of the European Commission on making the attribution of citizenship conditional on the presence of 'genuine connection' by invoking the outdated ruling of *Nottebohm* has been criticised as a starting of a dangerous path.[139] Not only because it would undermine decades of essential developments in the field of EU citizenship,[140] but it would

[136] Kochenov.D (2020), "*Commission Would Likely Be 'Humiliated' if CIP- Matter Goes to Court Over 'Genuine Links*'", Investment Migration on Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3718328 (Accessed: November 2021), at page. 4.
[137] Kochenov. D (2020), "*Genuine Purity of Blood: The 2019 Report on Investor Citizenship and Residence in the European Union and Its Litigious Progeny*" LEQS Paper No.164/2020, at page. 22
[138] *Ibid.*
[139] Hans Ulrich Jessurun d'Oliveira (n.17), at page. 8
[140] Sarmietno.D (n.25), at page.27.

also open up a Pandora's box of ethnic nationalism. [141] As rightly pointed out, insisting on the need for 'genuine connection' is like "[..] *playing with the fire to inflate the flat criterion of nationality* [..]".[142] Thirdly, based on Article 20 TFEU and the declarations attached to the Treaties, there is no trace of doubt that the national rules concerning the acquisition of nationality that are not conditioned on 'genuine connection' are in full compliance with the essence of EU citizenship.

It is also worth mentioning that in *Nottebohm* case, the ICJ has been called upon to deal simply with the recognition and not with the acquisition of nationality. It has been argued that the question of whether the principle of 'genuine connection' applies for the recognition is completely different from whether it applies to the acquisition of nationality.[143] Furthermore, in *Nottebohm* case, the ICS supported that the acquisition of nationality is a matter which falls within the States' sovereignty to lay down their own rules.[144]As such, it is illustrated that the ICS did not support in any way the view that the acquisition of citizenship must be conditioned upon the existence of a 'genuine connection'. Therefore, one might assume that the European Commission confounded these two questions. On the other side, it could be claimed that it is not completely correct to draw the conclusion that the acquisition of nationality should not be conditioned upon the principle of 'genuine connection' simply because the ruling of the specific case is referring to recognition only.

[141] Hans Ulrich Jessurun d'Oliveira (n.17), at page. 8.
[142] Carrera.S and Groot.G, *European Citizenship at the Crossroads*, at pages. 251-256.
[143] Brink. M (2020), "*Revising Citizenship in the European Union: Is a Genuine Link Requirement the Way Forward?*" Robert Schuman Centre for Advanced Studies Global Governance Programme-418 GLOBALCIT RSCAS 2020/76, at page. 4.
[144] Nottebohm Case, (*Liechtenstein* v. *Guatemala*) (n. 31), at page. 20.

In light of the above, the principle of sincere cooperation as invoked by the European Commission is irrelevant in the matter of 'genuine connection'. In this case, one might argue that the absence of 'genuine connection' from the ICS does not violate the principles of EU law. Nevertheless, the ICS could lead to significant abuses that adversely affect not only some Member States but the EU as a whole. In particular, the fact that ICS structurally facilitate money laundering, corruption, tax evasion and other criminal offences could indeed undermine the EU's objectives and thus, the principle of sincere cooperation.[145] It is, however, certain that the absence of a 'genuine connection' does not cause neither corruption nor money laundering. Therefore, the aim of the European Commission should be to tackle those malpractices by improving the naturalisation procedure and ensuring that the rules applied by Member States' governments are subject to a high standard of transparency and integrity.

3. The Background to The Infringement Procedure and The Way Forward

In April 2020, following the publication of the report, the European Commission remained active by sending a letter to Malta and Cyprus. The letter set out the concerns of the European Commission about the ICS and requested further information about the operation of such schemes.[146] In that period, European Commission was preparing a formal letter for Bulgaria to express its concerns concerning the Bulgarian ICS.[147] Two months later, in a resolution adopted on the 10th of July 2020, the European Parliament repeated its earlier calls that all existing ICS should be phased out the soonest possible.[148] In October 2020, the European Commission announced the commencement of infringement procedures against Cyprus and Malta. In the

[145] Brink. M (n.143), at page. 16.
[146] Press Release (2020) "*Investor Citizenship Schemes: European Commission Opens Infringement against Cyprus and Malta for "Selling EU Citizenship*", Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925 (Accessed: October 2021).
[147] *Ibid.*
[148] European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing – the Commission's Action Plan and other recent developments (2020/2686(RSP)).

published press release, the European Commission stated as a reason that ICS breached EU law on several counts, including the principle of sincere cooperation as provided for in Article 4(3).[149] In general, the infringement procedure is lengthy and it consists of an exchange of information between the European Commission and the countries concerned (i.e Malta and Cyprus). Malta and Cyprus have been given two months to reply to the formal letters received by the European Commission notifying them that infringement proceedings have been launched.[150] If the responses were unsatisfactory, the European Commission would possibly proceed with the issuance of Reasoned Opinion, which is a formal request for compliance. In case Malta and Cyprus refused to comply, the European Commission could raise the matter to the ECJ and request the imposition of financial penalties. [151]

In response to the infringement proceedings, Cyprus terminated its ICS and officially stopped receiving applications from the 1st of November 2020, whereas continued processing the pending applications. Likewise, Malta expressed its intention to terminate the IIP. Nevertheless, in November 2020, Malta announced the adoption of completely new regulations, as outlined in the previous chapter, for the acquisition of citizenship through investment. In June 2021, the infringement proceedings launched by the European Commission moved to the second stage by issuing a Reasoned Opinion against Cyprus.[152] Concerning Malta, the European Commission sent an additional letter of formal notice and expressed its concerns about the newly adopted ICS. Despite the actions taken by Cyprus and Malta to address the concerns raised by the European Commission in its initial formal notice, the continuation of the infringement proceedings indicates that European Commission has not been

[149] Press Release (n.146).
[150] New York Times (2020), "*Cyprus and Malta Face EU Punishment Over 'Golden Passports'*"
[151] *Ibid.*
[152] Cyprus Mail (2021), "*EC Confirms Cyprus Has Responded on Golden Passports*" Available at: https://cyprus-mail.com/2021/10/26/ec-confirms-cyprus-has-responded-on-golden-passports/ (Accessed: November 2021).

satisfied.[153] Finally, it might be argued that when the European Commission will appear in front of the ECJ might face difficulties, due to lack of competence on matters related to nationality and flawed arguments.

[153] Jurist (2021), "*EU Commission Advances Legal Action Against Malta and Cyprus Over Passport For Investment Scheme*" Available at: https://www.jurist.org/news/2021/06/eu-commission-advances-legal-action-against-malta-and-cyprus-over-passport-for-investment-scheme/ (Accessed: November 2021).

Chapter V – Conclusion

It follows from the foregoing that Member States have the exclusive competence not only to decide who is granted the national rights attached to their legal system but also to determine who the other Member States will grant the rights derived by the EU status. According to the Treaties, EU citizenship does not exist on its own, it depends on the existence of nationality of a Member State. The autonomy of Member States on matters of acquisition and loss of nationality is subject to limitations especially when the effective exercise of the rights derived by the EU status is restricted. In general, Member States are required to adhere EU principles, including the principle of proportionality and the principle of sincere cooperation. As the ECJ has repeatedly underlined in several cases that Member States' decisions about acquisition and loss of nationality must be exercised in "due regard of Union law"[154]. This is mainly the argument used by the Commission in order to interfere.

As to the compatibility of the three ICS discussed, it might be concluded that amendments and improvements are required to ensure compatibility with the principle of EU law. The ICS on their whole are not contrary to EU law but some of the conditions imposed through the ICS are. The Cyprus ICS was of particular importance because one of the imposed conditions which had been effective after the acquisition of citizenship was contrary to the objective of the Treaties. More specifically, the acquisition of citizenship by newly-naturalised citizens is conditional upon the requirement of their retaining residential property indefinitely in the Republic, causing serious violations on the exercise of the right to move freely their capital within the EU. As examined, this condition could not be justified as it is based on purely economic reasons and thus it clearly violates Article 63 TFEU. Despite that the ICS of Cyprus has been terminated, it is of particular importance to be mentioned because the conditions are

[154] *Micheletti* (n.6).

still bound to those who acquired citizenship through the scheme. A valid suggestion would be to replace the condition of requiring the newly naturalised citizens to retain the residential property indefinitely in the Republic with an obligation of paying annual contributions to the government or any other sectors.

Concerning the argument of the European Commission that these schemes violate EU law and specifically the provision of Article 4(3) TFEU, one might conclude that it could not stand. Indeed, Member States are under an obligation to comply with the principle of sincere cooperation, however, the absence of 'genuine connection' from the naturalisation rules could not violate such principle. The malpractices that arose through the ICS such as corruption, money laundering tax evasion and other criminal offences are in fact contrary to EU law. Yet, such offences do not seem to arise due to the absence of 'genuine connection' between the individuals and the Member State concerned. To tackle these offences European Commission must focus on the transparency of naturalisation rules and put pressure to Member States to apply more rigorous due diligence checks. As it has been examined, the problem of corruption in these schemes is systematic, thus the EU institutions need to start paying attention to the warning signs and act immediately. Yesterday was Malta, today is Cyprus and tomorrow it will be another Member State's ICS in the spotlight.[155] Therefore, European Commission should produce a solid legislative proposal on how these schemes can be regulated in accordance with EU law, instead of threatening Member States with infringement procedures for not implementing 'genuine connection' to their naturalisation rules.

[155] States New Services (2020), "*Cyprus Axes Corruption-Plagued Golden Passports Scheme*", Available at: https://go-gale-com.libproxy.ucl.ac.uk/ps/i.do?p=AONE&u=ucl_ttda&id=GALE|A638246891&v=2.1&it=r (Accessed: December 2021).

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