



Provisional version

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Investment migration

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

As a reaction to the Covid 19 pandemic, all member States introduced travel bans across national borders, but in a globalised world, where the movement of persons has been made easier, new national rules might be needed and existing international standards should be upheld. In this context, several Council of Europe conventions are relevant and important.

National programmes of member States for the award of citizenship, residence permits and tax domiciles to foreign investors must respect the legal standards set by the Council of Europe. Fugitive criminals, beneficiaries of financial proceeds from crime and individuals seeking to evade their tax obligations should not be allowed to benefit from immigration schemes which otherwise lawfully attract foreign investors. Member States should in particular refrain from awarding citizenship or residence permits to foreign investors, where such investment is effectuated in objects or funds with little or no transparency.

¹ Reference to committee: Doc. 14441, Reference 4382 of 27 April 2018.

A. Draft resolution²

1. Welcoming the European Parliament's Resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance, the Parliamentary Assembly emphasises that national programmes of member States for the award of citizenship, residence permits and tax domiciles to foreign investors (hereinafter: investment migration) must respect the legal standards set by the Council of Europe. Fugitive criminals, beneficiaries of financial proceeds from crime and individuals seeking to evade their tax obligations should not be allowed to benefit from immigration schemes which otherwise lawfully attract foreign investors.
2. Recalling the European Convention on Nationality (ETS No. 166) as well as the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and its protocols (ETS Nos. 43, 95, 96 and 149), the Assembly reminds member States that the award and withdrawal of national citizenship should follow established rules. While a State Party to the European Convention on Nationality shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory, the acquisition of another nationality can lead *ex lege* or at the initiative of the State Party to the loss of the original nationality. The acquisition or even accumulation of sham citizenships for undue purposes should thereby be prevented.
3. Aware that beneficiaries of the proceeds from crime logically seek to hide those proceeds from law enforcement by transferring them abroad, the Assembly recalls the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as well as the work of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the Financial Action Task Force (FATF). Member States should do their utmost to ensure that investment migration does not become a tool for international money laundering.
4. Recalling the European Convention on Extradition and its protocols (ETS Nos. 24, 86, 98 and CETS Nos. 209 and 212), the European Convention on Mutual Assistance in Criminal Matters and its protocols (ETS Nos. 30, 99 and 182) as well as the European Convention on the International Validity of Criminal Judgments (ETS No. 70), the Assembly emphasises that member States should not become complicit in crime by harbouring fugitive criminals and awarding them citizenship and residence permits in order to evade law enforcement in another country.
5. Welcoming the work of the NGO Tax Justice Network and the OECD standards on tax related transparency and information exchange, the Assembly recalls the Convention on Mutual Administrative Assistance in Tax Matters and its protocol (ETS No. 127 and CETS No. 208) as well as the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters (ETS No. 100). Member States should not attract investment migration by offering an undue tax shelter for assets and revenue generated abroad.
6. Aware of reports by the NGOs Organized Crime and Corruption Reporting Project and Transparency International about so-called "golden EU visas", the Assembly recalls the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) as well as the work of the Group of States against Corruption (GRECO). Member States should ensure that investment migration or any other form of immigration is not based on corrupt practices by domestic administrations. Citizenship, residence permits and tax domiciles must not be awarded through corruption, because this would undermine the rule of law and the democratic stability of a state.
7. Conscious that investment migration might be a means of reducing travel visa requirements, the Assembly welcomes the bilateral treaties between member States or with third states which waive visa requirements for the citizens of those countries. The Assembly invites member States to use the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25) to facilitate travel between signatory states which are outside the Schengen Area.
8. During the Covid 19 pandemic, national and regional authorities have banned the entry to their territories for foreigners as well as the use of second homes. Mixed nationality families were particularly affected by such bans, as some were granted entry while others not. Therefore, the Assembly emphasises the importance of protecting private and family life under Article 8 of the European Convention on Human Rights as well as property under Article 1 of the Protocol to the Convention, even during a health emergency.

² Draft resolution adopted by the committee on 3 July 2020.

9. The Assembly welcomes the official list of travel documents which entitle the holder to cross external EU borders as well as a non-exhaustive list of passports which are not recognised under international law that are regularly established by the European Commission with the assistance of EU member States and Schengen Associated States in accordance with Decision No 1105/2011/EU of the European Parliament and of the EU Council of 25 October 2011. Member States should apply such lists for their own territory and inform EU authorities of other fantasy, camouflage and non-recognised passports. Investment migration must not be based on illegal passports.

10. The Assembly calls on member States to pay greater attention to unlawful investment migration and take concerted action against it. Member States should in particular:

10.1. sign and ratify without further delay the above-mentioned Council of Europe conventions, if they have not yet done so;

10.2. comply with the respective recommendations contained in country reports by GRECO and MONEYVAL as well as the recommendations by the Financial Action Task Force (FATF), and inform their national parliaments thereof;

10.3. inform relevant member States, where citizenship or a residence permit is awarded to their nationals, with due regard to the protection of personal data; cases of multiple citizenship and residence permits should be known to the countries where these persons hold citizenship;

10.4. ensure that any investment, especially if it comes from abroad and occurs in the context of investment migration, is made with the highest levels of transparency and traceability, including identification of the natural or legal persons on whose behalf or in whose name such investment is made, as well as identification of the origin or source of the investment;

10.5. refrain from awarding citizenship or residence permits to foreign investors, where such investment is effectuated in objects or funds with little or no transparency, such as anonymous funds, beneficial ownership schemes, investments held by trustees or third parties, crypto-currency funds, art or other movable property; investment in real estate should achieve higher transparency through mandatory public land registers, which allow such real estate to be seized by the competent authorities if the illegality of an investment is established;

10.6. cooperate closely with other member States where it is established that proceeds from crime have been used for investment migration, and ensure that any unlawful investment is returned to the legitimate owner or state;

10.7. pursue concerted action with other member States against tax evasion through investment migration which delocalises assets and revenue from where they have been generated;

10.8. set up domestic rules and procedures for the withdrawal of citizenship, where it has been awarded through corruption or the investment of proceeds from crime, or where it is used as an unlawful shield against law enforcement action by another member State, unless such withdrawal would lead to statelessness.

11. The Assembly invites the European Parliament and the EU Council to prepare the accession of the EU to the above-mentioned conventions of the Council of Europe, if the EU is not yet a signatory.

B. Draft recommendation³

1. Referring to its Resolution ... (2020) on investment migration, the Assembly emphasises the relevance and importance of several Council of Europe conventions in this context, in particular:

1.1. the European Convention on Nationality (ETS No. 166) and the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and its protocols (ETS Nos. 43, 95, 96 and 149);

1.2. the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141);

1.3. the European Convention on Extradition and its protocols (ETS Nos. 24, 86, 98, and CETS Nos. 209 and 212), the European Convention on Mutual Assistance in Criminal Matters and its protocols (ETS Nos. 30, 99 and 182) and the European Convention on the International Validity of Criminal Judgments (ETS No. 70);

1.4. the Convention on Mutual Administrative Assistance in Tax Matters and its protocol (ETS No. 127 and 208) and the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters (ETS No. 100);

1.5. the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174); and

1.6. the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25).

2. Under the Committee of Ministers, committees of the contracting parties and relevant expert committees monitor the implementation of those conventions and whether they respond to the requirements of today. In the context of investment migration, the Assembly recommends that the Committee of Ministers:

2.1. advise member States on effective mutual legal assistance and common policies for the prevention, detection and prosecution of typical cases of money laundering;

2.2. emphasise the specific obligations of public authorities requesting or receiving private investments from abroad, in order to avoid money laundering by public authorities and to ensure that proceeds from crime can be attached and seized from public authorities through mutual legal assistance with other member States;

2.3. support establishing public transparency registers in member States for investments in real estate, companies and incorporated trusts or associations as well as other preventive measures against money laundering;

2.4. analyse the risks inherent in cryptocurrencies regarding money laundering and tax evasion;

2.5. establish, possibly in cooperation with the OECD and the EU, common standards for member States on tax evasion through investment migration;

2.6. invite member States to apply the above-mentioned conventions as well as the Financial Action Task Force (FATF) standards to any territories under their authority in accordance with international law, such as overseas territories, if they attract investment migration;

2.7. promote the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25) as a legal basis for facilitated travel between member States which are outside the Schengen Area, invite member States to inform the Secretary General of any bi- or multilateral treaties on travel visas which fall under the scope of this Agreement, and ensure, where necessary through a new protocol, that it is compatible with established travel visa schemes of member States.

³ Draft recommendation adopted by the committee on 3 July 2020.

C. Explanatory memorandum by the rapporteur, Mr Aleksander Pocij

I. Introduction

1. Through its Resolution of 16 January 2014 on EU citizenship for sale,⁴ the European Parliament started public discussions about national policies for granting residence permits and citizenship to foreigners in return for investment. Some civil society organisations addressed this subject, such as the Organized Crime and Corruption Reporting Project, Sarajevo⁵ and Transparency International, Berlin, which estimated that around 100 000 individuals had received residence visas through “golden visa” investment schemes in EU countries over the past decade, generating an income of € 25 billion.⁶

2. Like most aspects of migration policy, investment migration is a controversial and divisive subject. The unfair aspects are often put forward, because it allows more affluent persons to immigrate, while national borders become tighter for migrants without financial means. The risk of national authorities colluding in money laundering and tax evasion is also emphasised. On the other hand, some claim this provides more legal ways of immigration as an alternative to irregular migration.

3. Investment migration has been practiced globally throughout the past centuries. But in a globalised world, where the movement of persons has been made easier, new national rules might be needed and existing international standards should be upheld.

4. For this report, investment migration is understood as the right of a foreigner to acquire citizenship, long-term residence permits or a tax domicile in another state because of an investment made by that person or by a third person. The focus is on natural persons, but it is obvious that legal persons such as companies, trusts, foundations or associations often fall under similar national laws and, in practice, can likewise be used for money laundering and tax evasion or as a vehicle for obtaining long-term visas for agents of such legal entities.

5. I am very grateful for the contributions made by committee members, as well as by the experts heard by the committee, namely Ms Gillian More, Policy Officer, DG Justice, D.3 – Union Citizenship Rights and Free Movement, European Commission, Brussels, Ms Ekaterine Rostomashvili, Advocacy and Campaigns Coordinator, Transparency International, Berlin, and Mr Bruno L’ecuyer, Chief Executive and member of the Governing Board, Investment Migration Council, Geneva, during hearings in Strasbourg on 10 April and in Paris on 2 December 2019, respectively. I also submitted a questionnaire through the European Centre for Parliamentary Research and Documentation (ECPRD), which allowed me to receive relevant information from many national parliaments, which is appended hereto and may guide parliamentary colleagues when comparing and evaluating their own legislation and practice.⁷

6. As a practicing lawyer in Poland, I have adopted a legal approach, while remaining aware that investment migration is primarily a political issue. However, investment migration can only be regulated by law, and only becomes a legal pathway to immigration if it complies with national law and international legal standards. Parliamentarians as legislators have a key role and responsibility in this regard.

II. Acquisition of citizenship, residence permits, passports and tax domiciles

7. In the past, nearly everyone had one citizenship only, whereas many people have dual or multiple citizenship today. This trend has blurred the traditional notion of citizenship and might have led to some change in the understanding of what citizenship actually means and how it can be acquired lawfully. Therefore, some general requirements should be recalled at the outset.

8. Citizenship is typically received by birth, either in a given country (*jus soli*) or from parents (*jus sanguinis*). In addition, citizenship can be acquired by naturalisation. Where the right to citizenship is a part of the return for payment, investment migration falls under the latter category. A typical case of naturalisation is by marriage to a person with another citizenship. Like investment migration, citizenship by marriage can and has been misused for illegal purposes. The report on concerted action against human trafficking and migrant smuggling by Mr Vernon Coaker (Doc. 15023) refers to cases of false declarations of parenthood and sham marriages for the purpose of gaining citizenship illegally.

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0038+0+DOC+XML+V0//EN>.

⁵ <https://www.occrp.org/en/goldforvisas/>.

⁶ https://www.transparency.org/whatwedo/publication/golden_visas.

⁷ See AS/Mig/Inf (2020)02rev2, accessible at <http://www.assembly.coe.int/LifeRay/MIG/Pdf/DocsAndDecs/2020/AS-MIG-INF-2020-02-EN.pdf>.

9. The Council of Europe's European Convention on Nationality (ETS No. 166) stipulates some standards regarding the acquisition and loss of nationality or national citizenship. For instance, Article 6 (3) requires that "each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory." The voluntary acquisition of another nationality can lead ex lege or at the initiative of the State Party to the loss of the nationality of that State Party under Article 7 (1).

10. Unless investment migration concerns a stateless person, the granting of citizenship by a country may thus have legal consequences on the original citizenship of the person concerned. Some states require the renunciation of their citizenship if a new citizenship is acquired, while others permit double or multiple citizenship. In this respect, the Council of Europe's Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (ETS No. 43) with its amending Protocol (ETS No. 95), Additional Protocol (ETS No. 96) and Second Amending Protocol (ETS No. 149) is also relevant.

11. The right and the power to award citizenship or residence permits rests with the state concerned and its authorities. This is part of the sovereign powers of a state. Investment migration, like any other legal immigration, therefore requires administrative acts by the national authorities of internationally recognised states. The European Commission establishes with EU member States and Schengen Associated States a list of travel documents or passports, which entitle the holder to cross external EU borders and which may be endorsed with a visa, as well as a non-exhaustive list of known "fantasy and camouflage" passports and documents of territories not internationally recognised typically offered for sale.⁸ The latter cases cannot be considered as investment migration.

12. Only internationally recognised states can grant citizenship. Under public international law, the existence of a state requires that power is lawfully and effectively exercised over a population in a territory and both, the borders of such territory and the authorities exercising the power are internationally recognised.⁹ As a consequence, non-recognised de facto regimes cannot award citizenship under international law.¹⁰ This is particularly evident where terrorist groups illegally seize de facto control over a territory and award own passports¹¹ or false passports of the occupied or controlled state.¹² Likewise, public international law excludes that foreign authorities, who illegally exercise de facto power in a non-recognised territory outside their own territory, impose their citizenship upon nationals of the occupied territory by delivering their passports.¹³ Investment migration into such territories would not be recognised under international law.

13. A particular case is that of diplomatic and service passports of subjects under public international law, such as international organisations like the UN and the Council of Europe as well as other internationally recognised subjects. Among the latter, the Sovereign Order of Malta has a long tradition of issuing diplomatic passports,¹⁴ but also of providing aid for refugees.¹⁵ With such passports, their holders can travel across borders of countries which recognise that international organisation. While such organisations cannot grant any citizenship or a residence permit, a diplomatic passport may entail also the right to be resident in a country which has diplomatically accredited the granting organisation.

14. Citizens of a state have the fundamental rights to enter, and to reside in, that state and to maintain their citizenship in accordance with Protocol No. 4 to the European Convention on Human Rights (ETS No. 46). Persons do not automatically have the right to enter the territory of a state of which they are not a citizen. Article 5 (1.f) of the European Convention on Human Rights refers to such unauthorised entry. The legal authorisation to enter a state's territory requires typically an entry visa or residence permit. Such residence permits are awarded by many countries to investors. Therefore, investment migration can also be based on long-term residence permits.

15. Tax privileges offered by a state are also attractive to investment migrants. Member States of the Council of Europe have a wide variety of national tax obligations. In Monaco, for example, citizens of Monaco and

⁸ <https://www.consilium.europa.eu/prado/en/prado-recognised-documents.html>.

⁹ [https://www.law.cornell.edu/wex/statehood_\(international_law\)](https://www.law.cornell.edu/wex/statehood_(international_law)).

¹⁰ <https://www.atlanticcouncil.org/blogs/ukrainealert/separatists-launch-new-passportization-strategy-in-eastern-ukraine/>.

¹¹ https://diyaruna.com/en_GB/articles/cnmi_di/features/2017/05/02/feature-02.

¹² <https://www.independent.co.uk/news/world/europe/isis-fighters-virtually-impossible-to-detect-as-group-continues-to-use-fake-passports-to-exploit-a6836376.html>.

¹³ <https://www.theguardian.com/world/2019/apr/24/russia-passports-ukrainians-breakaway-regions-decree-ukraine>.

¹⁴ <http://www.orderofmalta.int/press-release/sovereign-order-malta-clarifies-press-reported-figure-passports-issue-currently-500-passports-circulation/>.

¹⁵ <http://www.orderofmalta.int/humanitarian-medical-works/aid-for-refugees/>.

foreign residents do not pay income tax, capital tax and inheritance tax for direct descendants, except French citizens in Monaco who must pay French taxes.¹⁶ Among the 38 100 inhabitants of Monaco, 9326 are Monegasque nationals.¹⁷

16. In addition, states can authorise investments by persons or companies seated in fiscal paradises. Analysing Land Registry data, the Financial Times found in 2014 that at least £ 122 billion of property in England and Wales was held through companies in offshore tax havens where ownership was difficult to trace.¹⁸ In 2018, Bloomberg reported that wealthy Chinese invested the equivalent of approximately US-\$ 1 trillion in funds and trusts abroad, in order to avoid new Chinese tax legislation.¹⁹ Tax evasion is therefore a major issue regarding investment migration.

III. EU citizenship and work permits

17. The European Union (EU) cannot confer an EU citizenship, but the citizens of all EU member States are by definition EU citizens with specific rights such as freedom of movement within the EU, the right to participate in elections of the European Parliament and the qualification to become an EU civil servant working for an EU organ. In the same vein, the EU cannot issue visas or residence permits, but EU member States have the exclusive power to do so. The Court of Justice of the EU found that EU law establishes only the procedures and conditions for issuing visas by national authorities for transit through, or intended stays on, the territory of EU member States not exceeding 90 days.²⁰

18. The discussions about investment migration within the EU are related to the ongoing discussions about the EU's competence to regulate and possibly issue visas and residence permits for the territory of the EU. For the time being, EU member States retain their competences in this field, as upheld by the Court of Justice of the EU. In January 2019, a report by the European Commission identified Bulgaria, Cyprus and Malta as the only EU member States which operated investor citizenship schemes.²¹

19. Among EU member States, the Blue Card is a work and residence permit for non-EU/EEA nationals, similar to the famous Green Card of the USA. It is issued by EU member States. The minimum work salary for the EU Blue Card in France is € 53 836 gross per year.²² An EU Blue Card in Cyprus requires a gross annual salary of € 23 964.²³ Malta requires € 16 036²⁴ and Latvia € 13 776 gross annual salary.²⁵ For Bulgaria, the gross annual salary for the EU Blue Card is at least € 8 168.²⁶ Therefore even EU frameworks like this are means-tested and depend on the "financial potential" of recipients, even if the sums concerned are small compared to typical thresholds for visas and residence permits delivered to investors.

20. While the EU Blue Card offers only a work and residence permit in the country concerned, the holder of a Blue Card could travel throughout the EU and the Schengen Area. This might offer opportunities for wealthy individuals, as well as for criminal organisations, to create such an employment contract with a pro forma employer, for instance through the creation of a letter-box company with its seat and tax domicile in a given EU country and its agent or employee holding the EU Blue Card.

IV. Investment migration programmes of non-EU countries

21. Non-EU countries have similar programmes for work and residence permits as well as for investor visas. This report cannot describe them exhaustively, but the replies to my ECPRD request provide some overview.²⁷

22. The British Government announced on 19 February 2020, that the salary threshold for skilled workers wanting to come to the UK would be lowered from £ 30 000 to 25 600 or 20 480 for persons in specific shortage

¹⁶ <https://service-public-entreprises.gouv.mc/Fiscalite/Generalites/La-fiscalite-monegasque/La-fiscalite-monegasque>.

¹⁷ <https://embassy-to-uk.gouv.mc/en/Destination-Monaco/Facts-and-figures>.

¹⁸ <https://www.ft.com/content/6cb11114-18aa-11e4-a51a-00144feabdc0>.

¹⁹ <https://www.bloomberg.com/news/articles/2018-12-12/china-s-rich-rush-to-shelter-1-trillion-from-new-taxes>.

²⁰ Judgment in case C-638/16 PPU (X et X v État belge), https://curia.europa.eu/jcms/jcms/p1_299659/fr/.

²¹ https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf.

²² https://ec.europa.eu/immigration/blue-card/France_en.

²³ https://ec.europa.eu/immigration/blue-card/Cyprus_en.

²⁴ https://ec.europa.eu/immigration/blue-card/Malta_en.

²⁵ https://ec.europa.eu/immigration/blue-card/latvia_en.

²⁶ https://ec.europa.eu/immigration/blue-card/Bulgaria_en.

²⁷ See AS/Mig/Inf (2020)02rev2, accessible at <http://www.assembly.coe.int/LifeRay/MIG/Pdf/DocsAndDecs/2020/AS-MIG-INF-2020-02-EN.pdf>.

occupations.²⁸ On 4 April 2019, the Serbian Government adopted legislation which simplified the procedure for work visas for foreigners, in order to attract foreign investment.²⁹ Turkey grants Turkish citizenship to investors without a minimum residence requirement, which subsequently allows those investor citizens to establish a business and apply for permanent residence in every EU member State in accordance with the Ankara Agreement of 1963 creating an association between the European Economic Community and Turkey.³⁰

23. Therefore, the discussion about investment migration should not be limited to the EU or EU member States. Just as with investment migration, national authorities must control that EU Blue Cards and similar visas issued outside the EU are not abused for illegal purposes or fugitive criminals.

V. Criticism by the European Parliament

24. The European Parliament views so-called “golden visas” critically in the context of EU values, corruption and crime.³¹ The EPP Group in the European Parliament called for an end to “golden visas” and special tax schemes to attract foreign investors,³² following a report to the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance of the European Parliament by Mr Luděk Niedermayer (EPP, Czech Republic) and Mr Jeppe Kofod (S&D, Denmark) – the current Minister of Foreign Affairs of Denmark. Based on this report, the European Parliament adopted its Resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance.³³

25. A restrictive approach by the EU is currently opposed by several member States which consider it their national competence to decide on questions regarding visas, residence permits and citizenship. Several countries around the globe continue to openly attract wealthy investors with citizenship, residence permits and tax advantages.³⁴ In this regard, they follow what several countries are doing in attracting foreign companies through tax and other privileges.³⁵

26. The EU’s criticism focuses mainly on financial crimes such as money laundering through investments and tax evasion by delocalising taxable revenue and assets. In the following chapter, those aspects will be dealt with in more detail in the context of international standards.

27. In addition, EU member States are criticised for monetising their EU membership by gaining revenue for citizenship and residence permits. It is difficult to determine the value and impact of EU citizenship rights in the context of investment migration. Non-EU states seem to do well in attracting investment migration, such as the Virgin Islands³⁶ and other states in the Caribbean as well as smaller European states with significance in the financial and banking sectors. Some voices in the United Kingdom even claim that it might become a tax haven for wealthy individuals and companies or trusts after leaving the EU.³⁷

VI. International standards regarding investment migration

VI.1. Money laundering

28. Schemes for investment migration typically require investment in real estate or the business sector. While most such investments may be legal, real estate investments are a prime area for persons seeking opportunities for money laundering, as well as investments in businesses such as restaurants, hotels, fashion shops or used car dealerships, because such businesses can produce a lot of cash revenue without a clear traceability of the products and services provided for money.

29. According to INTERPOL,³⁸ “money laundering is concealing or disguising the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources. It is frequently a component of other, much more serious, crimes such as drug trafficking, robbery or extortion.” The United Nations Office on Drugs

²⁸ <https://www.bbc.com/news/uk-politics-51550421>.

²⁹ <https://www.srbija.gov.rs/vest/en/139454/simplification-of-procedure-of-issuing-work-permits-to-foreigners.php>.

³⁰ <https://www.pwc.com.tr/turkish-citizenship-by-investment>.

³¹ [http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/621887/EPRS_ATA\(2018\)621887_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/621887/EPRS_ATA(2018)621887_EN.pdf).

³² <https://www.eppgroup.eu/newsroom/news/epp-group-wants-to-abolish-golden-visa-schemes>.

³³ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0240_EN.html.

³⁴ <https://www.theguardian.com/news/2019/nov/16/london-ballroom-hosts-showcase-event-for-golden-passports>.

³⁵ <https://www.theguardian.com/business/2019/nov/28/12-eu-states-reject-move-to-expose-companies-tax-avoidance>.

³⁶ https://openaccess.nhh.no/nhh-xmlui/bitstream/handle/11250/166676/A31_13.pdf.

³⁷ <https://ukandeu.ac.uk/the-brexit-tax-haven-a-threat-to-the-uk-not-the-eu/>.

³⁸ <https://www.interpol.int/en/Crimes/Financial-crime/Money-laundering>.

and Crime (UNODC) carries out the Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism since 1997 and administers the International Money-Laundering Information Network.³⁹

30. Obviously, not every foreign investment qualifies as money laundering. To the contrary, investments must be deemed legal unless proven otherwise or where legal requirements for investments have been violated. However, enormous figures by wealthy investors from countries with a low average income have caused suspicion in some media.⁴⁰

31. Portugal was described in the media as having received huge investments by billionaires from its former colony Angola,⁴¹ where 48% of the population were classified as poor in 2016.⁴² Two billionaires from Venezuela living in Florida, USA were charged with money laundering,⁴³ while the daughter of the late Hugo Chavez was reported to have a fortune of US-\$ 4 billion in European banks,⁴⁴ at a time when nearly 90% of Venezuelans were considered to live in poverty with a median monthly wage of US-\$ 6⁴⁵ and the numbers of Venezuelan asylum seekers in Europe on the rise.⁴⁶

32. In Germany, reports suggested that up to half a million persons belong to clans of Lebanese, Turkish, Kurdish, Albanian, Kosovan and Chechen extended families engaged in money laundering and criminal activities.⁴⁷ With the help of Europol, the French police arrested in 2019 members of an organised crime network of Armenians engaged in money laundering throughout France.⁴⁸ Media reported that illegal cannabis cultivations in the United Kingdom valued at £ 2.6 billion annually are largely in the hands of Vietnamese clans engaged in money laundering and migrant smuggling.⁴⁹ Such media reports have caused public criticism of, and opposition to, immigration connected with dubious money.

33. The Council of Europe has set standards against money laundering through the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and the earlier Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141). The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) monitors the implementation of relevant standards and produces country-specific reports.⁵⁰ In its recent report on Cyprus,⁵¹ MONEYVAL identified investment migration as a potential tool for money laundering, as suspicions had been raised years ago in the media.⁵² The PACE delegation of Cyprus informed me that Cypriot authorities have mitigated to a large extent these risks, by implementing a five-tier due diligence procedure which includes the work of independent international firms, that conduct enhanced due diligence checks on all applicants and investments.

34. The work of MONEYVAL is geographically complemented by the Financial Action Task Force (FATF), Paris, which is an inter-governmental body established in 1989 in order to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.⁵³ In 2018, the OECD

³⁹ <https://www.unodc.org/unodc/en/money-laundering/index.html?ref=menuaside>.

⁴⁰ <https://www.theguardian.com/news/2018/may/25/how-britain-let-russia-hide-its-dirty-money>.

⁴¹ <https://www.irishtimes.com/news/world/europe/portugal-dominated-angola-for-centuries-now-the-roles-are-reversed-1.3200881>.

⁴² https://ophi.org.uk/ophi_stories/new-numbers-show-48-of-people-in-angola-are-poor-2/.

⁴³ <https://www.occrp.org/en/daily/8948-us-charges-venezuelan-billionaire-in-1-billion-currency-fraud>.

⁴⁴ <https://www.dailymail.co.uk/news/article-6667889/Rich-Kids-Venezuela-including-Socialist-leader-Hugo-Chavezs-daughter-flaunt-wealth.html>.

⁴⁵ <https://www.csis.org/analysis/venezuelan-drama-14-charts>.

⁴⁶ <https://www.reuters.com/article/us-europe-refugees/asylum-applications-in-eu-rise-as-more-venezuelans-seek-refuge-idUSKCN1TP0LQ>.

⁴⁷ <https://www.dw.com/en/germany-cracks-down-on-clan-crime-with-zero-tolerance/a-47341384>.

⁴⁸ <https://www.europol.europa.eu/newsroom/news/french-gendarmerie-capture-key-members-of-armenian-mafia>.

⁴⁹ <https://www.aljazeera.com/news/2019/10/confessions-cannabis-farmer-vietnamese-uk-high-191015041251676.html>.

⁵⁰ <https://www.coe.int/en/web/moneyval>.

⁵¹ <https://rm.coe.int/anti-money-laundering-and-counter-terrorist-financing-measures-cyprus-/16809c3c47>.

⁵² <https://www.theguardian.com/world/2017/sep/17/cyprus-selling-eu-citizenship-to-super-rich-of-russia-and-ukraine>.

⁵³ <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.

published a guidance for financial institutions on residence by investment and citizenship by investment schemes,⁵⁴ which has been based on a study of more than 100 schemes.⁵⁵

35. Although investment migration might have decreased or even come to a halt during the Covid 19 pandemic due to border closures and shutdowns in administrations, such circumstances have been identified as a particular risk for increased money laundering and terrorist financing by the FATF.⁵⁶

36. Having adopted the first anti-money laundering Directive in 1990, the European Union addresses money laundering through its Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.⁵⁷

37. As expressed in the Resolution of the European Parliament of 26 March 2019 on financial crimes, tax evasion and tax avoidance, there is the fear that money coming from illegal sources is transferred into a country through investment migration.⁵⁸ The same risk has been identified by the Organized Crime and Corruption Reporting Project.⁵⁹

38. The Investment Migration Council, which is an association of persons and companies dealing with investment migration, produced a study on due diligence in investment migration and a set of minimum standard recommendations for consultants or agents as well as governments.⁶⁰ Transparency and measures against money laundering are key aspects of those recommendations.

39. The London-based NGO Tax Justice Network produces regularly a Financial Secrecy Index, which currently includes the member States Switzerland, Luxembourg, the Netherlands as well as the British Overseas Territories Cayman Islands and British Virgin Islands among the top ten countries with highest financial secrecy.⁶¹ Financial secrecy or a lack of transparency and traceability is the basis for money laundering.

40. Member States should require people who work in financial services or a related industry and suspect money laundering or terrorist financing to alert the police about such suspicious transactions. In the United Kingdom, for example, a Suspicious Activity Report has to be submitted.⁶²

41. Real estate agents can be included in this group of persons who have such an obligation. In fact, the acquisition of real estate is in most countries a transaction with high transparency requirements, for instance through public land registers and for tax purposes.

42. Therefore, investment migration based on real estate investments and investments in companies and businesses can actually be controlled through higher transparency obligations. In this regard, Transparency International Portugal has recently won a request for information about Portugal's visa schemes before the Administrative Court of Lisbon.⁶³

VI.2. Tax delocalisation

43. States are generally free to determine their tax system and thus have different tax obligations for natural persons including taxable foreigners as well as for companies or trusts. Lower taxation is a common incentive for the migration of persons and legal entities. Some countries are indeed considered as tax havens for foreigners. Besides the level of taxation, international cooperation and transparency or the lack thereof are decisive aspects of the delocalisation for tax evasion. Research suggests that several trillion US-\$ have been

⁵⁴ <https://www.oecd.org/tax/oecd-clamps-down-on-crs-avoidance-through-residence-and-citizenship-by-investment-schemes.htm>.

⁵⁵ <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>.

⁵⁶ <https://www.fatf-gafi.org/publications/fatfgeneral/documents/covid-19-ml-tf.html>.

⁵⁷ <https://eur-lex.europa.eu/eli/dir/2018/843/oj>.

⁵⁸ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0240_EN.html.

⁵⁹ <https://www.occrp.org/en/goldforvisas/>.

⁶⁰ <https://investmentmigration.org/wp-content/uploads/DD-in-IM-Best-Approach-and-Minimum-Standard-Recommendations-January-2020.pdf>.

⁶¹ <https://fsi.taxjustice.net/en/introduction/fsi-results>.

⁶² <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-terrorist-financing/suspicious-activity-reports>.

⁶³ <https://transparencia.pt/ti-portugal-wins-lawsuit-against-portuguese-government-for-information-on-gold-visas/>.

invested by individuals in tax havens globally, leading to annual losses in tax revenue of several hundred billion US-\$.⁶⁴

44. The Council of Europe created the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127) with its Protocol (CETS No. 208) as well as the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters (ETS No. 100). OECD member countries and most other states agreed on common standards on tax related transparency and information exchange.⁶⁵

45. The EU establishes an official list of non-cooperative jurisdictions for tax purposes, which includes only non-EU countries.⁶⁶ In 2000, the OECD established a list of uncooperative tax havens. The last countries removed from this list were Andorra, Liechtenstein and Monaco.⁶⁷ At first published in 2009, the OECD recently updated its Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors.⁶⁸

46. In addition, the NGO Tax Justice Network publishes regularly a Corporate Tax Haven Index. The 2019 Index lists among the top tax havens the member States United Kingdom with its territories British Virgin Islands, Bermuda, Cayman Islands and Jersey, the Netherlands, Switzerland, Luxembourg and Ireland.⁶⁹

47. In principle, investment migration could be made by using cryptocurrencies. This may lead to a lack of traceability and transparency. The European Parliament produced in 2018 a study on “Cryptocurrencies and Blockchain: Legal context and implications for financial crime, money laundering and tax evasion”, which points to obvious risks and contains policy recommendations for future EU standards.⁷⁰ In the USA, tax authorities have started targeting owners of cryptocurrencies.⁷¹ The British Government’s tax authority recently requested blockchain analysis tools in order to track and tax cryptocurrency users.⁷² All member States should have a coordinated approach in this respect.

48. Investment migration for tax evasion is therefore primarily a political issue. National parliamentarians should take a stand in political discussions of this subject, being guided by the European Parliament’s Resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance.⁷³

VI.3. Delocalisation of criminals

49. Through investment migration, criminals and suspects might attempt to gain an undue advantage by acquiring another citizenship or a long-term residence permit, where law enforcement cooperation and mutual legal assistance do not exist between the country of origin of the investor and the country of the new citizenship or residency.

50. The Council of Europe established legal treaties which address such cases: the European Convention on Extradition (ETS No. 24) with its Additional Protocol (ETS No. 86), Second Additional Protocol (ETS No. 98), Third Additional Protocol (CETS No. 209) and Fourth Additional Protocol (CETS No. 212) as well as the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) with its Additional Protocol (ETS No. 99) and Second Additional Protocol (ETS No. 182). In addition, the European Convention on the International Validity of Criminal Judgments (ETS No. 70) provides the legal framework to enforce a sanction imposed in another state.

⁶⁴ <https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm>.

⁶⁵ <https://www.oecd.org/tax/transparency/>.

⁶⁶ <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>.

⁶⁷ <http://www.oecd.org/ctp/harmful/list-of-unco-operative-tax-havens.htm>.

⁶⁸ <https://www.oecd.org/tax/crime/money-laundering-awareness-handbook.htm>.

⁶⁹ <https://corporatetaxhavenindex.org/introduction/cthi-2019-results>.

⁷⁰ <http://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf>.

⁷¹ <https://www.theguardian.com/technology/2019/jul/27/irs-tax-cryptocurrency-bitcoin-income>.

⁷² <https://cryptonews.com/news/britain-s-tax-agency-cracking-down-on-crypto-tax-evasion-5576.htm>.

⁷³ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0240_EN.html.

VI.4. Corruption

51. The Organized Crime and Corruption Reporting Project established links between foreign investments and corrupt practices in the receiving state.⁷⁴ In addition, NGOs such as Transparency International have worked on cases of corruption and investment migration.⁷⁵

52. In this respect, the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) of the Council of Europe can play an important role. The Group of States against Corruption (GRECO) monitors compliance with Council of Europe anti-corruption standards and prepares recommendations to members, which include also non-member States. However, investment migration might not be more prone to corruption than other financial transactions or administrative decisions worth a lot to individuals or companies.

VI.5. Restrictions during the Covid 19 pandemic

53. As a reaction to the Covid 19 pandemic, all member States introduced travel bans across national borders and sometimes internal local borders. The EU restricted non-essential travel from third countries into the EU and members of the Schengen Area.⁷⁶ Visa-free travel is normally a decisive part of investment migration schemes, thus the Covid 19 restrictions are considered a temporary exception.⁷⁷ Virtually all countries have allowed their own citizens to return to national territory, possibly combined with quarantine measures.

54. However, mixed nationality families were at risk of being separated or treated differently regarding travel to a country, evacuation from a country or the permission to reside in a country. This raises serious human rights concerns with respect to the protection of family life under Article 8 of the European Convention on Human Rights.⁷⁸ Persons with dual nationality were sometimes allowed to enter a country, but other countries prohibited all border-crossings.⁷⁹

55. Such travel bans frequently applied also to owners of secondary residences, who were banned from using their secondary homes in some countries.⁸⁰ Residence permits seem to grant in practice lesser rights of travelling across borders. Nevertheless, human rights must also apply during an extreme situation like a pandemic. In this regard also, member States must respect the right to private and family life under Article 8, as well as the right to the protection of property under Article 1 of the Protocol to the European Convention on Human Rights and the prohibition of discrimination under Protocol No. 12 to the Convention.

VII. Conclusions

56. As can be seen from the numerous legal standards above, investment migration can be measured against several legal yardsticks established by the Council of Europe. As members of the Parliamentary Assembly of the Council of Europe, we should ensure that our member States respect these conventions and that they are effectively implemented. This requires a political analysis by everyone of us.

57. Among the member States of the Council of Europe, sham citizenships and off-shore residencies should be impossible for wealthy individuals, tax evaders and fugitive criminals as well as for any other citizen of member States. This seems to require a critical analysis of the Council of Europe's legal standards and their domestic implementation.

58. National practices may be evaluated and reviewed from the replies to my request to the ECPRD.⁸¹ Specific national action plans should follow from this report, in order to achieve more cooperation and coordination.

⁷⁴ <https://www.occrp.org/en/goldforvisas/>.

⁷⁵ https://www.transparency.org/whatwedo/publication/golden_visas.

⁷⁶ https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic_en.

⁷⁷ <https://edition.cnn.com/travel/article/henley-index-passport-power-coronavirus/index.html>.

⁷⁸ <https://blogs.lse.ac.uk/europpblog/2020/03/17/how-covid-19-is-altering-our-conception-of-citizenship/>.

⁷⁹ <https://www.theguardian.com/politics/2020/jan/29/uk-presses-china-to-let-dual-nationals-join-coronavirus-exodus>.

⁸⁰ <https://www.bbc.com/news/uk-wales-politics-52055456> and <https://www.nytimes.com/2020/03/29/world/europe/rich-coronavirus-second-homes.html>.

⁸¹ See AS/Mig/Inf (2020)02rev2, accessible at <http://www.assembly.coe.int/LifeRay/MIG/Pdf/DocsAndDecs/2020/AS-MIG-INF-2020-02-EN.pdf>.

59. In concluding the work on this report, I submit to the committee the above resolution and recommendation. I invite all Assembly members to follow-up this subject in their own national parliament.