

Summary note

Stakeholder consultation on investor citizenship and residence schemes in the EU

I. Background

On 23 January 2019, the Commission adopted its Report on Investor Citizenship and Residence Schemes in the European Union¹, which provides an overview of all such schemes operating in the EU. In the Report, the Commission undertook to set up a group of experts from the Member States to address the concerns identified.

In parallel with the group of experts from the Member States, a targeted and structured stakeholder consultation meeting was held on 16 May 2019 with civil society and industry representatives to inform the process². This note summarises the positions expressed by the stakeholders both in the context of the consultation and in writing based on a list of questions made available by the Commission ahead of the meeting³.

II. General

The Report was welcomed by all stakeholders. In general, all of them described its adoption as timely and agreed both on the importance of the debate as well as on the risks linked to investor schemes. Opinions varied on more specific points such as the description of the role of the industry, which was deemed as stereotyped by some and as fair by others, the correctness of certain assumptions of the report, in particular the fact that the conditions for naturalisation on the basis of investment schemes are not less stringent than under other schemes. Some industry representatives argued that the Report had not tried to identify the benefits of investor schemes.

Regarding the key points the group of experts should focus on, answers focused on minimum standards for security and due diligence checks, practices relating to the marketing of schemes, the need for further research, designing risk assessment frameworks and risk mitigation measures for the operational integrity of the schemes, and the need to enhance transparency and oversight of the schemes, in particular through information-sharing mechanisms.

III. Security

Stakeholders agreed on the security concerns identified in the Commission's Report. Several industry stakeholders noted that these risks were not limited to investor schemes, but applied to any activity involving the transfer of large sums of money into the EU accompanied with persons crossing borders. There was general agreement among the stakeholders that the security risks raised by investor

¹ COM(2019) 12 final, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2019:0012:FIN>

² A list of participating stakeholders can be found at the end of this note.

³ Available at: https://ec.europa.eu/info/sites/info/files/2019-05-16_stakeholder_consultation_list_of_questions_0.pdf

citizenship are essentially the same as those raised by investor residence schemes, in particular where investor residence schemes facilitate the acquisition of citizenship.

Turning to how these risks should be tackled, stakeholders considered that better information sharing was key, in particular among the competent government bodies of a single Member State, between the different Member States, as well as with supranational bodies such as Interpol. Civil society stakeholders noted that there was a need to deal with risks in a harmonised manner, and to reduce the discretion schemes grant to civil servants by means of clear rules and guidelines. To avoid security gaps, checks should also apply to family members who are part of an investor scheme application.

IV. Risk management

The stakeholders were asked to share their views on particular risk vulnerabilities of investor schemes, including risks related to money-laundering, tax evasion and corruption, on the best ways to try to address such risks as well as on the role of private companies in the risk management process.

Stakeholders from the industry suggested separating the risks related to applicants from those related to decision-making authorities. Applicant-based risks include the risks that applicants provide untruthful information, hide the existence of investigations against them, misuse these schemes for tax evasion purposes, import illicit money into the economy and evade law enforcement efforts. Authority-based risks include risks of corruption and bribery, lack of audits, checks and balances. A specific risk of conflict of interest was also mentioned concerning private service providers (see *infra* under Section on Governance and Transparency).

It was suggested that in order to assess applicant-based risks, applicants' motives for applying should be examined – if, for example, an applicant already holds the citizenship of a country with greater mobility or better tax conditions than the country where he or she applies for investor citizenship, he or she should be regarded as a high-risk candidate. Stakeholders took the view that it is also necessary to check whether the applicant is subject to civil or criminal proceedings in all jurisdictions he or she has resided. The following risk categories were identified as part of a possible risk assessment framework: intent, identification and verification; political exposure, watchlists and sanctions; regulatory compliance and legal conduct; beneficial ownership and corporate affiliations; sources of funds and wealth; taxation; reputational risk; social structure and interaction. It was also noted that risk assessments should not only be based on the applicant's profile but also take into account dependants, family members and sponsors.

With respect to corruption and other authority-based risks, some stakeholders took the position that such risks do not significantly differ from other industries. Others, however, stressed the importance of these risks in view of the substantial transfer of money investor schemes require. Civil society stakeholders mentioned that the lack of clear guidelines carries corruption risks. All stakeholders agreed that the decision-making process should be documented, auditable and transparent and made exclusively by public authorities. Specific measures such as appointing a single person accountable for the whole process or encouraging procedures based on the four-eye principle were also mentioned.

Regarding tax evasion, a small number of stakeholders considered this risk rather low since citizenship rarely influences a person's tax residency and the legal meaning of "residence" varies depending on the field of law. This position was not shared by all, though, and many saw a need for conducting further research on the tax evasion risks related to investment migration, referring also to the recent work by the European Parliament, the European Parliamentary Research Service and the OECD on the

matter. Tax evasion risks could be minimised by asking the applicant to self-declare their tax residency and provide supporting documents.

V. Governance and transparency

When asked about the governance and transparency of investor schemes, all stakeholders agreed on the need for greater transparency on the process, practice and standards of governance and due diligence. Based on the recognition of risks these schemes entail, the need for strong oversight and governance was stressed, in particular regarding all actors involved in the operation of the schemes and the identification of their respective responsibilities. The current general lack of information on these issues was stressed by all, with a specific reference to the specific objectives of the schemes, the residence criteria and the enhanced due diligence checks.

Transparency should also be ensured through regular audits, the publication of audit results and the monitoring of the situation of successful applicants, to ensure that requirements are continuously met, in particular the investment, and that no security or corruption concern has emerged since granting the residence rights or citizenship. The lack of research, in particular regarding the potential socio-economic impact of investor schemes, was also mentioned. This could allow opening a dialogue with citizens about the risk appetite, social and economic benefits or detriments of the policy, and the regulatory and operational aspects of the scheme.

Against this background, it was suggested that standardised information and statistics should be made available on a yearly basis, taking into account data protection requirements, possibly by a public register or an annual report demonstrating the number of approved applications and rejected applications (including family members), the original citizenship of applicants, and the capital raised in the context of the schemes. It was mentioned that transparency could also be improved via audits or an independent body scrutinising the decision-making process. The latter should in any event be well-documented and responsibilities of all actors along the procedure should be clearly structured.

The role of civil society and private companies in enhancing transparency and governance was acknowledged by all stakeholders. Civil society can exercise positive influence in scrutinising the information related to the operation of the schemes, thus enhancing government's accountability.

Concerning the role of private companies in screening applicants, several stakeholder suggested an accreditation or licensing system for intermediaries advising applicants. Such entities should have thorough vetting procedures of prospective clients in place. Intermediaries active in the field of investor schemes should also be subject to anti-money laundering requirements.

Both industry and civil society stakeholders considered that private due diligence providers could provide useful additional information complementing information gathered by Member State authorities, in particular information requiring human resources, expertise and language skills in the country of origin of the applicant. There was agreement that such due diligence providers could only provide their assessment but that any decision-making power must remain with the government authorities.

It also emerged that improved transparency is required for the industry's activities. Some stakeholders noted that companies should not at the same time design and manage an investor scheme for a State and market it or provide services to applicants, as this results in conflicts of interest. Transparency must also be enhanced for the selection procedures of service providers providing services to States.

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VI. List of participating stakeholders

Arton Capital (*incl. written contribution*)

Centre for European Policy Studies (CEPS)

Civiquo Limited (*incl. written contribution*)

EPPA SA

European University Institute

Fragomen Global LLP

Future Citizen Institute Ltd.

Global Witness (*incl. written contribution co-authored with Transparency International*)

Henley & Partners Holdings Ltd (*incl. written contribution*)

Investment Migration Council (*incl. written contribution*)

Refinitiv (*incl. written contribution*)

Kylin Prime Capital

Transparency International (*incl. written contribution co-authored with Global Witness*)

Transparency International Portugal (*incl. written contribution*)