

CHALLENGES OF EUROPE: THE QUEST FOR CITIZENSHIP

# The Golden Path to Citizenship

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A review of passport sale programmes in the light of  
earned citizenship theory

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## 1. Introduction

Gaining entrance to a country for migration purposes can be a lengthy and arduous process. It is usually even more difficult to obtain citizenship, which is necessary to be able to fully participate in the civic life of the new host society. However, there are often opportunities to speed up this process and remove or decrease requirements which a regular migrant would have to meet. In many countries across the globe, immigrants can obtain a so-called *golden visa* or *golden passport*: a residence permit or passport provided on the basis of an up-front financial or economic contribution to the host state. Golden passport programmes are ubiquitous among member states of the European Union (EU). Countries such as the United Kingdom, France, the Netherlands, Portugal and Malta all have programmes of this kind in place in order to attract foreign investors (Rodriguez, 2013).

Golden visa and golden passport programmes provide clear advantages to both the investors and the host state. Obtaining the right to reside in a country may bring great benefits to migrants, since the host state may provide for a more fruitful socio-economic climate than the state of origin. The ultimate goal of many migrants – obtaining citizenship – is even more beneficial, since this confers a particular legal status and rights on the migrant, and allows one to engage in (political) participation in the host society. The benefits to the host state are similarly clear: since the migrant is required to pay their dues as a precondition for obtaining a visa or passport, the state can be sure of the exact financial or economic contribution flowing forth from migration in this particular instance.

The advantages that accompany residency and citizenship are even greater for persons migrating to a member state of the EU. Article 20(1) of the Treaty on the Functioning of the European Union (TFEU) provides that those persons holding the nationality of a member state are also granted EU citizenship. Although there is still fierce debate on the precise nature and scope of EU citizenship, it is undeniable that the status of EU citizen provides a number of clear benefits: access to the internal market, the right to move and reside freely within the territory of the member states, the right to participate politically in matters such as local and European elections, etcetera (Barnard, 2013:433-435).

Yet golden passport programmes are not uncontroversial. Many consider the notion of monetisation or marketization to be anathema to the concept of citizenship. Though citizenship is often defined as the membership of a political and geographical community, one should not compare the process of obtaining it to purchasing a pass for the local fitness club. Citizenship is attributed an almost arcane status, which entails not only rights and obligations, but should also encompass a certain sense of belonging (Bloemraad et al, 2008).

The implementation of golden passport programmes may also cause serious problems within the context of the EU. Nation-states have traditionally acted as their own gatekeepers, determining who to admit into their territory and deciding how these migrants may obtain citizenship. However, this notion no longer applies unconditionally within the EU. Member states are still free to set the standards for obtaining national citizenship, but they are obliged to grant access to citizens from other member states by virtue of their EU citizenship. This supra-national ‘backdoor’ into the territory of the individual member states may severely undermine the functioning of golden passport programmes and may result in a race to the bottom among member states. This, in turn, could result in a situation where certain states

capture the benefits of these programmes, whereas other states are left with the social burdens.

In this paper I examine the theoretical and practical issues surrounding golden passport programmes in the European Union. I first illustrate the phenomenon by providing a short overview of the golden residence programmes employed in Portugal, Malta, and Bulgaria. This is followed by an explanation on why European law prevents legal action from being taken against the implementation of such programmes, despite the widespread controversy which was caused in particular by the Maltese plans for monetisation of citizenship. I then examine whether it would be desirable to adapt the legal framework in order to allow action being taken in the future. I will explain that the notion of golden passport programmes might fit in with the *theoretical* underpinnings of the immigration policy of many member states, but that the *practical* reality of the European Union will require action to be taken in order to prevent problems from arising in the future.

## **2. Golden Passport Programmes in Practice**

As explained in the introduction, a golden visa or golden passport programme essentially forms an opportunity for immigrants to acquire a residence permit or a state's nationality on the basis of an up-front financial or economic contribution to the host state. A common feature among these programmes is that the migrant's contribution serves to soften the requirements which would otherwise be imposed in order to be granted a residence permit or passport. The height of the contribution required varies significantly, and some states even go as far as completely removing the regular prerequisites such as the minimum length of stay which is required to qualify. In order to illustrate such differences, I provide a brief introduction to the golden passport programmes in place in Portugal, Malta, and Bulgaria.

### *a. Portugal*

Portugal's Golden Residence Permit programme was introduced in October of 2012 and is aimed at wealthy immigrants from outside of the EU and the Schengen zone. The programme is open to persons who can provide one of three possible economic contributions:

- A transfer of capital of at least €1 million;
- The creation of ten jobs;
- The acquisition of real estate valued at a minimum of €500.000.

The investor must have entered Portugal on a valid visa and may not have been convicted of a relevant crime. After the investment has been made, the immigrant will be granted a one-year residence permit. This permit can then be renewed twice for a two-year period each time. After having kept up the investment for five years, during which the investor must have stayed in Portugal for at least seven days a year, he or she will be allowed to apply for a permanent residence permit. Finally, after six years, the migrant can apply for a Portuguese passport (Order 11820-A/2012 and Order n. 1661-A/2013 amending the legal framework for the entry, permanence and exit of foreigners from national territory).

### *b. Malta*

The Individual Investor Programme (IIP) has recently been passed by the Maltese parliament, but its implementation has since been postponed (Devine, 2014). The current legislation is quite different from the initial proposal, which was adapted after heavy criticism from the European Commission and Parliament. At first, the proposal was straightforward: third-country nationals were to be given the possibility of purchasing citizenship for €50.000, provided that they had no criminal history and passed a number of background checks.

The new amendment L.N. 450 of 2013 to the Maltese Citizenship Act will, if implemented, still create a possibility for third-country nationals to purchase Maltese citizenship. However, this comes at a steep price and under a number of different conditions. Applicants must have legally resided in Malta for at least twelve months, and must have a clean criminal record in Malta and any countries in which they have resided for a minimum of six months during the ten-year period prior to the application. Furthermore, they must pass an additional background check carried out by the Maltese authorities.

However, the most far-reaching requirements introduced in the IIP are financial in nature. Applicants must commit to three cumulative investments in order to qualify for citizenship. They are required to:

- Purchase real estate valued at a minimum of €50.000, or commit to a five-year lease on real estate with a rent of at least €6.000 per year (art. 7(5b));
- Invest at least €50.000 in matters such as Maltese stocks for at least five years (art. 7(6));
- Donate €50.000 to the National Development and Social Fund (art. 4(1) and Schedule 1).

### *c. Bulgaria*

The Investment Encouragement Act of the Republic of Bulgaria provides a number of options for obtaining a permanent residence permit, which may result in obtaining a Bulgarian passport. In general, the applicant can obtain a permanent residence permit within six to nine months after applying. Two main options are available: under the Full Investment option, the migrant must *invest* €500.000 in Bulgarian government bonds for five years. Under the Financed Investment option, the migrant must *pay* €80.000 and demonstrate that they have a net worth of over €1.000.000. In both cases, the migrant may qualify for Bulgarian citizenship after five years. However, under the Fast Track option, the migrant can double their investment and obtain a Bulgarian passport after a mere one year of having a permanent residence permit. Language requirements and the need to relinquish one's previous nationality are waived for investment migrants, although they must pass a number of background checks ([www.investbulgaria.eu](http://www.investbulgaria.eu)).<sup>1</sup>

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<sup>1</sup> N.B: This is a website run by private investment company Arton Capital, one of the many different brokers which offer assistance in guiding migrants through the Bulgarian investor programme. Primary sources on Bulgarian legislation are only scarcely available in English. The veracity of Arton Capital's claims and activities were recently confirmed by reporters of The Telegraph, who found no evidence that Arton Capital's claims ran contrary to Bulgarian legislation. See Watt, Newell, and Bryant, *EU citizenship for sale to non-Europeans in Bulgaria for as little as £150,000*, March 14<sup>th</sup> 2014, The Telegraph.

### 3. Golden Passports within the European legal framework

Article 20 (1) of the Treaty on the Functioning of the European Union (TFEU) determines how one can become a citizen of the EU:

*“Every person holding the nationality of a Member State shall be a citizen of the Union”*

This means that it is up to the individual member states to determine who shall become an EU citizen, and under what conditions. This basic principle has been confirmed by the Court of Justice of the European Union (CJEU). In the cases *Kaur* (Case C-192/99 [2001] ECR I-1237) and *Rottman* (Case C-135/08 [2010] ECR I-9925) the Court has held that it is up to the member states to set out the conditions for the acquisition and loss of nationality. However, the exercise of this authority must be done with due regard to European law. This means that there can be exceptional circumstances in which the protection of European law may warrant that the national rules on citizenship are to be set aside.

In *Rottman* such an exceptional circumstance occurred when an Austrian litigant ran the risk of becoming stateless due to his criminal history. Mr. Rottman had requested and received the German nationality, which meant that he automatically lost his Austrian nationality per the Austrian citizenship legislation. However, the German authorities were unaware of the fact that criminal proceedings had been initiated against Rottman in Austria, where he was being accused of serious fraud. This prompted the German authorities to start a procedure in order to retroactively withdraw Mr. Rottman’s German nationality. The CJEU held that the German authorities were not allowed to follow through with this decision, since this would cause Mr. Rottman to become stateless. Furthermore, it would deprive him of the rights attached to his status as a European citizen (Barnard, 2013:476).

Thus, as a general rule, the European authorities cannot influence the member states’ legislation regarding nationality. But in the case of Malta’s IIP legislation, both the European Commission and the European Parliament demanded that the legislation would be withdrawn or at the very least amended. Viviane Reding, the European Commissioner for Justice, was mainly concerned due to the fact that the IIP would result in a price tag being put on EU citizenship. She was also concerned that investors would have no genuine link to the country. This stance was applauded by the European Parliament, which passed a resolution stating that *“EU citizenship should never become a tradable commodity”*. Furthermore, selling citizenship was said to contradict the EU’s values (Peter, 2014).

Whether a Golden Passport programme would constitute an exceptional circumstance warranting nullification of the national legislation is as of yet unclear. If the European Commission believes that a member state has breached European law, it can take action through the infringement procedure of article 258 TFEU. This procedure can be used to prompt a member state to comply with its obligations under European law, either via a reasoned opinion or through a judicial procedure before the CJEU. In case of the Individual Investor Programme, such a procedure was not initiated – possibly due to the fact that Malta has not breached the Treaty provisions regarding nationality.

However, there are also extra-legal methods available to the Commission which can be used to coerce a member state into a particular direction. In case of Malta, the Commission and the European Parliament exercised diplomatic pressure on the Maltese government in

order to ensure that the IIP would be adapted. Several changes – such as the introduction of a residency requirement – were made to the programme following talks with Viviane Reding.

#### **4. Golden passports in relation to immigration theory**

The negative reactions from Commissioner Reding and the European Parliament towards Malta's plans for selling citizenship received support from various politicians, journalists, and commentators throughout the European Union. This widespread resistance towards the idea of putting a price on citizenship seems to indicate that there is some inherent quality attributed to the idea of citizenship by the general population which does not 'fit' with commercialisation of that idea. But if commercialisation is such a contradictory notion in the context of citizenship, then how did we end up in a situation in which citizenship has effectively been put up for sale? After all, it should be remembered that Malta is but one example of many member states which have a golden passport programme in place.

There are many different approaches to citizenship, and when one asks for a definition the answer will vary greatly depending on the discipline of the person answering the question and the particular theory of citizenship adhered to by that person. Generally speaking, the modern sociological concept of citizenship can be defined as some form of membership of a political and geographic community. This "membership" can then be divided up into a number of different elements: a particular legal status, rights, (political) participation in society, and a certain sense of belonging (Bloemraad et al, 2008:2). In order to determine whether commercialisation is indeed inherently contradictory within this context, it is more fitting to examine theories relating to *access* to citizenship rather than focusing on one or more definitions of citizenship formulated in the literature. In other words: how does the concept of commercialisation relate to the theories underlying the modern-day immigration policies of the member states of the European Union?

Although migration has been a common occurrence since time immemorial, immigration policy is a relatively recent phenomenon. Up until the 19<sup>th</sup> century, societies only incidentally implemented immigration policies in response to extraordinary occurrences which caused abnormally large migration flows. The general attitude towards migrants at the time can be described as "indifferent": as long as they caused no trouble, people were allowed to enter as they pleased (Miller, 2008:373).

From the start of the 19<sup>th</sup> century, nations started imposing various forms of immigration policy. These varied from exclusive to inclusive, though they often shared one common notion: migration should come to the benefit of those already present in the host state. For this purpose, the state is allowed to impose certain conditions on immigrants, provided that these conditions are applied fairly. During most of the 20<sup>th</sup> century, immigration policies were being adapted in order to reflect the concept of *equal citizenship*: based on the general idea that all humans should be provided equal rights and opportunities, it was generally accepted that immigrants who had obtained a residence permit should be granted citizenship in order to achieve the same rights and opportunities as possessed by the incumbents (Miller, 2008:374-375).

Though equality and human rights are still at the core of most modern-day states, the theories behind immigration policy have begun to shift once more. Recent migratory flows have served to put a strain on the welfare-state models of various European countries, and

have caused many (predominantly Western-European) countries to become more and more critical towards immigrants. Van Houdt et al. have conducted a study into the immigration policies of the Netherlands, France, and the United Kingdom. They observe that these three countries have been shifting away from a model under which citizenship was granted to migrants on the basis of their residence, towards models which require non-refugee immigrants to first prove their worth. During their initial residence period, immigrants first bear the responsibilities of citizenship, such as being bound by the rule of law. The accompanying benefits of citizenship are only granted after meeting particular economic, civic, and cultural conditions. This is referred to as a model of *earned citizenship* (Van Houdt et al, 2011).

Research shows that these three countries are not alone in their shift towards imposing economic requirements on immigrants. A study of the migration policies of all 27 EU member states conducted by the International Centre for Migration Policy Development (ICMPD) shows that nearly every member state imposes minimum income or employment requirements on those seeking to gain long-term residence and/or nationality. Belgium and Portugal are the only countries without such requirements in their immigration legislation (Healy & Reichel, 2013:9-10).

Within the context of a general shift towards an economic emphasis on migration policy, golden passport programmes are not such an odd development. Looking back to the immigration policies of the 19<sup>th</sup> century, one could say that the current shift towards earned citizenship reflects a return towards the old notion that immigration should benefit the host state's incumbents. States wish to ensure that the economic benefits outweigh any socio-economic costs which may accompany immigration. Therefore, economic requirements normally form a part of a larger package of integration measures, which includes things such as civic and cultural conditions. These non-economic conditions are aimed at reducing 'social' costs, and serve to integrate the migrant into the host state. Matters such as language proficiency are an important factor in influencing political trust and participation of citizens, thereby ensuring that the would-be citizen is not estranged from (political) life in the host society (Jacobs & Tillie, 2004).

The host state carries out a balancing exercise in order to determine whether the benefits of immigration outweigh the costs. By emphasising significant economic and financial contributions, the host state can be certain that a particular migrant will pose a benefit to the host society – despite not meeting the cultural and civic norms which are normally required from a would-be citizen.

### **5. A race to the bottom?**

As explained in Section 3, golden passport and golden visa programmes are unlikely to be contrary to European law. The current trend in which more and more EU member states introduce such programmes also fits in with the general line of thought behind the immigration policy of many European countries, under which non-refugee immigrants are increasingly often being required to earn their citizenship through their socio-economic contributions to the receiving state. But even though golden passport programmes do not come into conflict with the legal and ideological underpinnings of the system of European migration law, there is still cause for concern due to the specific legal framework surrounding

citizenship within the European Union. It is this system which could potentially undermine the functioning of golden passport programmes in the future, and which may require action to be taken at the EU level.

The general idea behind golden passport programmes, as set out in the previous Section, is that a receiving state can balance the costs and benefits of immigration, thereby ensuring that it will reap clear economic benefits from the entry of wealthy migrants. As long as the state is in control it should be able to carry out this balancing exercise without too much difficulty, allowing that state to adapt its policy in response to developments such as the number of migrants seeking to make use of the programme.

Yet in case of the EU, states are obliged to admit citizens from other member states by virtue of their European citizenship. As a result, golden passport migrants which succeed in obtaining any member state's nationality could subsequently move to another member state with a better socio-economic climate. Due to this, the state of entry would reap all the benefits from the golden passport programme, whereas the secondary receiving state would be forced to cope with the potential social costs of immigration.

Looking at the examples of golden passport programmes set out in Section 2, one could imagine that a wealthy migrant wishing to move to Malta may opt for a detour through Bulgaria rather than entering into Malta's IIP. Whereas the IIP would require someone to pay a total of €1.15 million, of which €500,000 is non-refundable, the immigrant could also decide to temporarily situate themselves in Sofia in order to obtain Bulgarian citizenship. Under the Fast-Track Financed Investment option, the migrant could obtain a Bulgarian passport for €360,000 without having to learn the Bulgarian language or having to give up their original nationality. After one year of living in Bulgaria the migrant could make use of their free movement rights and relocate to Malta, thereby bypassing the IIP. Just one year of living in Bulgaria would save that person €290,000 and would ensure that they would not be obliged to keep up investments worth another €500,000. The migrant saves money, Bulgaria makes money, and Malta is essentially obliged to accept a non-integrated third-country national into their country.

One could imagine that member states seeking to quickly make money could be tempted to introduce an even more attractive golden passport programme than the one currently in place in Bulgaria. Especially abandoning residency requirements altogether could serve to attract transitory golden passport migrants to a particular state, thereby ensuring revenue for that country while potentially creating costs for other member states. In the worst-case scenario this could cause member states to start competing for wealthy migrants, thereby causing the gains from golden passport programmes to become lower and lower across the board. This phenomenon is known as a regulatory race to the bottom, which is seen as an undesirable development in which regulatory standards are decreased further and further as a result of overwhelming market forces (Drezner, 2006). One could expect that the more wealthy countries would ultimately be forced to bear most of the costs of such a development, although it would likely serve to decrease the potential revenue from golden passport programmes for all member states.

Within the European Union, this fear for a race to the bottom is not new. Since cases such as *Cassis de Dijon* (Case 120/78 [1979] ECR 649), which required member states to mutually recognise each other's product standards, it has often been posited that such free

market developments would cause a race to the bottom among member states. Though in many cases this fear has proved to be unfounded, in other cases such a development has been observed. One of the most-used responses to this has been to harmonise certain legislation, thereby implementing (minimum) standards at the European level which member states are not allowed to deviate from (Kerber & van den Bergh, 2007:13-14).

Implementation of minimum harmonisation in the area of golden passport programmes may be necessary in order to prevent problems from arising in the future. This could be done by, for example, requiring that migrants reside in the state of entry for at least a minimum number of years. One could also harmonise economic requirements, ensuring that no state could go under the European minimum level. Yet implementing such legislation would not be easy: a (time-consuming) amendment to the Treaties may be required, member states might resist the ensuing loss of sovereignty, and it could be very difficult to reach a consensus due to the sensitive nature of the topic.

## **6. Conclusion**

An increasing number of EU member states has decided to implement programmes which provide a path to citizenship for wealthy migrants, revolving primarily around their financial or economic contribution to the receiving state. This development fits in with the increasing adherence of European countries to the notion of earned citizenship: non-refugee immigrants should not only meet minimum standards of integration, but should also be able to contribute economically to the state in order to obtain citizenship.

Despite the fact that golden passport programmes could be considered to fit in with the ideological foundations of many member states' immigration policy, the idea of putting a price on citizenship has still created a lot of controversy within the EU. In particular the European Commission and the European Parliament have resisted member states' attempts to introduce programmes which would allow a third-country national to purchase a passport without prior residency requirements. Yet very little can be undertaken against such efforts. Even though European citizenship exists as a separate concept, access to this supra-national citizenship is governed by the member states. Due to this, there are no legal means to take action against member states planning to sell their citizenship. However, the EU and the member states can exercise political pressure to dissuade states from such plans.

Ideological concerns relating to the sale of citizenship notwithstanding, there is also a potential for practical problems being caused by golden passport programmes within the European Union. The primary issue is the potential for wealthy immigrants to enter the EU via the member state with the most favourable scheme in place, after which they can then use their right to free movement to relocate to another member state. This has the potential to undermine the central goal of golden passport programmes, which is to counterbalance the social costs of the entrance of unintegrated migrants via the financial benefits brought by their entry into the state. The member states' desire to capture these financial benefits might cause a race to the bottom, which could hinder the effectiveness of golden passport programmes throughout the entire EU. It may therefore be beneficial to implement minimum harmonisation at the EU level.

## 7. Bibliography

Barnard, 2013 – C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, Oxford: University Press 2013.

Bloemraad et al, 2008 – I. Bloemraad, A. Korteweg, G. Yurdakul, *Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State*, *Annu. Rev. Sociol.* 2008. 34:153–79.

Devine 2014 – L. Devine, *Immigration: Malta Individual Investor Programme*, *The Law Society Gazette*, February 3<sup>rd</sup> 2014.

Dubourg & Prichard, 2004 – R. Dubourg, S. Prichard, *Organised crime: revenues, economic and social costs, and criminal assets available for seizure*, United Kingdom Home Office: 2004

Drezner 2006 – D.W. Drezner, *The Race to the Bottom Hypothesis: an Empirical and Theoretical Review*, The Fletcher School, Tufts University, December 2006

Healy & Reichel 2013 – *Earning Rights: Economic Status and Access to Citizenship*, ICMPD Working Paper 05, May 2013

Van Houdt et al 2011 – *Neoliberal communitarian citizenship: Current trends towards ‘earned citizenship’ in the United Kingdom, France and the Netherlands*, *International Sociology* 26(3) 408–432 2011

Jacobs & Tillie 2004 – D. Jacobs, J. Tillie, *Introduction: Social Capital and Political Integration of Migrants*, *Journal of Ethnic and Migration Studies*, 30:3, 419-427

Kerber & van den Bergh 2007 – W. Kerber, R. van den Bergh, *Unmasking Mutual Recognition: Current Inconsistencies and Future Chances*, *Marburg Papers on Economics*, No. 11-2007

Miller 2008 – D. Miller, *Immigrants, Nations, and Citizenship*, *The Journal of Political Philosophy*: Volume 16, Number 4, 2008, pp. 371–390

Peter, 2014 – L. Peter, *EU questions Malta on passport sale for rich foreigners*, *BBC News*, January 23<sup>rd</sup> 2014 (consulted on March 30<sup>th</sup> 2014 via <http://www.bbc.com/news/world-europe-25858025>)

Rodriguez 2013 – C. Rodriguez, *Want To Live In Europe? “Buy” A Residency Permit*, *Forbes*, September 29<sup>th</sup> 2013 (consulted on April 28<sup>th</sup> via <http://www.forbes.com/sites/ceciliarodriguez/2013/09/29/want-to-live-in-europe-buy-a-residency-permit/>)