



This is a repository copy of *Commercialising Citizenship in Crisis EU: The case of Immigrant Investor Programmes*.

White Rose Research Online URL for this paper:
<http://eprints.whiterose.ac.uk/100916/>

Version: Accepted Version

Article:

Parker, O. orcid.org/0000-0002-1242-0876 (2017) Commercialising Citizenship in Crisis EU: The case of Immigrant Investor Programmes. *Journal of Common Market Studies*, 55 (2). pp. 332-348. ISSN 0021-9886

<https://doi.org/10.1111/jcms.12462>

This is the peer reviewed version of the following article: Parker, O. (2016) Commercializing Citizenship in Crisis EU: The Case of Immigrant Investor Programmes. *JCMS: Journal of Common Market Studies*, which has been published in final form at <http://dx.doi.org/10.1111/jcms.12462>. This article may be used for non-commercial purposes in accordance with Wiley Terms and Conditions for Self-Archiving (<http://olabout.wiley.com/WileyCDA/Section/id-828039.html>).

Reuse

Items deposited in White Rose Research Online are protected by copyright, with all rights reserved unless indicated otherwise. They may be downloaded and/or printed for private study, or other acts as permitted by national copyright laws. The publisher or other rights holders may allow further reproduction and re-use of the full text version. This is indicated by the licence information on the White Rose Research Online record for the item.

Takedown

If you consider content in White Rose Research Online to be in breach of UK law, please notify us by emailing eprints@whiterose.ac.uk including the URL of the record and the reason for the withdrawal request.



eprints@whiterose.ac.uk
<https://eprints.whiterose.ac.uk/>

Commercialising Citizenship in Crisis EU: The case of Immigrant Investor Programmes

Owen Parker¹
University of Sheffield
o.parker@sheffield.ac.uk

Abstract

Immigrant investor programmes (IIPs) – aimed at attracting investment in return for residency or citizenship for wealthy foreigners – have proliferated in EU member states in recent years. Such schemes constitute part of a much broader commercialisation of citizenship, which has intensified during the crisis. They have been particularly controversial in the EU context because they rely for their attractiveness in large part on the reality of EU citizenship and the rights of mobility and residence that it entails. The European Commission, among others, has presented them as threat to national citizenship and yet the EU at once champions a ‘post-national’ citizenship and is arguably culpable in the very commercialisation of citizenship of which investor schemes are a stark manifestation. This paper unpacks the tensions in the theory and politics of investor migration in the recent EU context, arguing that they reveal what is termed a ‘quadrilemma’ at the heart of a multi-level citizenship.

Key words: investor immigration; citizenship; EU citizenship; crisis; commercialisation.

¹ I would like to acknowledge the financial support of the Leverhulme Trust for work conducted in this area. I would also like to thank participants at the workshop ‘Unravelling the Talent Tale: Skilled Migration Policies between National Images, Membership Bonds and Economic Priorities’ (held at the University of Sheffield’s Law School in September 2016) for useful engagement on issues discussed in this paper. Thanks also to Simon Bulmer, Chris Browning and the anonymous JCMS reviewers for helpful comments on various drafts. The usual disclaimer applies.

Introduction

Since 2010 a number of EU member states have controversially launched or significantly liberalised so-called immigrant investor programmes (IIPs) aimed at attracting investments by wealthy foreigners – more specifically, so-called third country nationals – in return for residency or citizenship rights. This paper considers the politics of these schemes and its broader implications for our understanding of a multi-level citizenship in the contemporary EU (among others, see Maas, 2013). It argues that they are a particularly stark manifestation of the ‘commercialisation of sovereignty’ (Palan, 2002) and citizenship, which has intensified since the onset of the economic crisis in the late 2000s. Perhaps because of their starkness in this respect, IIPs – in particular those coined by critics ‘citizenship for sale’ schemes – have met with significant opposition. As Shachar and Hirschl (2014, p. 254-55) argue, “the danger of increasingly frequent links between wealth and privileged access to political membership threatens not only the implementation of the ideal [of citizenship], but *the ideal itself*.” From this perspective, putting a price on political membership marks an encroachment of a market logic into, “the semi-sacrosanct realm of citizenship, a realm that we might have thought of as the last bastion of the sovereignty of nonmarket norms and values” (Shachar and Hirschl, 2014, p. 252). Such critiques implicitly or explicitly assert the importance of a social-contractarian imaginary of citizenship that is understood to be under threat. However, opposition to these IIPs is far from unequivocal in an EU context where a widely valued EU citizenship is itself underpinned by a commercial or market logic, which transcends what for many is a problematic national(ist) citizenship.

The paper draws on this case in order to conceptualise the broader politics of a contemporary multi-level citizenship in the EU in terms of four discourses. A 'market communitarian' discourse associated with the 'commercialisation' of national citizenship, as manifest in these recent IIPs. A 'legal communitarian' discourse associated with the social-contractarian opposition to such processes enunciated above, or the attempted 'de-commercialisation' of citizenship. A 'market cosmopolitan' discourse associated to a large extent with EU citizenship, which emphasises the constitutive importance of the market in potentially transcending national(ist) citizenship and has represented an important backdrop to the recent politics of investor migration. And a 'legal cosmopolitan' discourse – less present in the particular debate on investor migration – which would see an uploading of a substantive social-contractarian citizenship to EU level, including but not limited to naturalisation policy.

In juxtaposing the four discourses highlighted above via an examination of the original case of IIPs, the paper makes both a distinctive contribution to the small extant literature on these schemes and a broader conceptual contribution to debates on a multi-level citizenship in Europe. On the one hand, a comprehensive understanding of the sometimes confusing debates around the empirical case of IIPs arguably *requires* us to bring together *both* a consideration of distinct levels of governance – in this case national and European or, more abstractly, communitarian and cosmopolitan – *and* a political economy lens concerned with the relationship between a social contract and the market. On the other hand, while each of the four abovementioned discourses is present in a large and

multidisciplinary extant literature on contemporary citizenship in Europe (as highlighted in particular in section III below), the conceptual novelty of this intervention lies in its attempt to bring them together. Such discourses, when considered alongside each other in this way, are constitutive of what I term a 'quadrilemma' at the heart of the contemporary politics of a multi-level citizenship in the EU.

Explicating this quadrilemma via the recent politics of investor migration, the argument unfolds in three steps. First, it maps and contextualises recent IIPs in terms of the economic crisis and the aforementioned 'commercialisation of sovereignty'. Second, it considers the debate over Malta's so-called 'citizenship for sale' programme, focusing in particular on the Commission's response, which – in asserting the need to establish a 'genuine link' between investor and adoptive state – rested on the assertion of a social-contractarian national citizenship. This intervention was surprising given that "citizenship acquisition and loss is explicitly identified in the treaties as a matter of exclusive member state competence" (Maas, 2016: 4). And *the nature* of the intervention was surprising given that the Commission generally champions a distinctly *post-national* EU citizenship. In a third step the tensions within the Commission's position – and, indeed, between the different contributions to the debate on investor citizenship and migration – are conceptualised in terms of the aforementioned 'quadrilemma'. Finally, in conclusion, the paper cautions against attempts to definitively resolve this 'quadrilemma', while at once suggesting that a 'legal cosmopolitan' discourse might be contingently promoted as a more

effective response to the commercialisation of citizenship in contemporary 'crisis' EU.

I. Commercialising Citizenship in the EU

IIPs have long been a feature of the immigration policy toolkit of governments. The actual benefits vary considerably in practice and can be difficult to quantify, but they all reflect a desire on the part of governments to attract the wealthy investor in order to, in one way or another, stimulate the national economy (Migration Advisory Committee, February 2014, Sumption and Hooper, 2014, Xu et al., 2015). For investors they offer a range of potential benefits: a route to naturalisation and residence in a desirable location, often including access to education systems for children; greater access to global visa free travel; an insurance policy or escape route in the case of political instability 'at home'; and, in some instances, important tax advantages. Certainly IIPs have been doing a booming business in recent years due to a combination of increased emerging market wealth and increased global instability (Sumption and Hooper, 2014, p. 1, Xu, et al., 2015).

Programmes vary considerably in terms of the rights that they grant and the obligations that they place on potential investors. While some grant temporary residence to the would-be investor with variable tracks to permanent residence and/or citizenship, others grant relatively immediate citizenship. While some require investment in the private sector – including in business and property – others require a payment to the government – either in the form of a direct

transfer to a national agency or the purchase of government bonds (Sumption and Hooper, 2014). While some require significant physical in-country residence others require little or no presence. IIPs of all of these sorts have long existed. Cases where the rights are granted quickly and are substantial and the obligations are relatively limited include some Caribbean small island nations such as St Kitts and Nevis and the Commonwealth of Dominica (Dzankic, 2012). Cases where the rights are initially fewer and the accrual of further rights conditional on meeting substantial obligations include traditional immigrant countries such as Australia, Canada (Ley, 2010) and the US.

IIPs are not entirely new to the EU. Between 1989 and 1998 Ireland permitted the discretionary granting of immediate citizenship to investors (Carrera, 2014, p. 11-12) and Austria has long practiced something similar (Dzankic, 2012). The UK and France run IIPs that grant residence conditional on large investments (Dzankic, 2015, Warrall and O'Murchu, 9 December 2013). It is important to note too that some 22 of 28 EU member states allow for discretionary naturalisation (Dzankic, 2015) on the grounds of, inter alia, a contribution to the nation, its culture, sporting or scientific prowess or economic success. Such discretion may be used to informally (and even secretly) grant citizenship on the basis of economic criteria (Oršolić Dalessio, 2015).

A number of IIPs have been introduced or reformed in the EU context in recent years. Table 1 offers a schematic overview of those launched since 2010 in terms of the relative rights and obligations that are attached to them (see Dzankic

[2015], Carrera [2014] and Xu [2015] for more comprehensive and detailed mappings).

..... INSERT TABLE 1 (APPENDED AT END) HERE

Any ranking of IIPs and the obligations and rights that they entail can only be schematic because their relative attractiveness will, to a large extent, lie in the eye of the beholder – or potential investor – to the extent that they will have to balance the extent and nature of the obligations against the rights offered in terms of their particular needs and means. For instance, an assessment of obligations will relate not simply to the size of investment but also to its nature – whether for instance it amounts to a donation or offers a return on capital – and broader tax and other financial issues. And an assessment of rights will depend on individual investor requirements: do they need to be able to reside in any member state of the EU; is the ability to travel enough; and do they want to actually spend time in the country? These and other non-economic questions mean that investor deliberations will vary considerably.

This important caveat notwithstanding, those IIPs granting a fast track to citizenship (within at most one year), such as the Cypriot, Maltese and Bulgarian programmes, are placed at the top of Table 1 on the basis that they offer substantive rights quickly. National citizenship is certainly a particularly useful asset in the EU context for potential investor migrants because EU citizenship – which encompasses the right to movement and residence throughout the EU – is derivative of member state citizenship. The obligations in terms of levels of

investment are quite different, however, with Cyprus requiring an investment of €5mn (although with some important exceptions discussed below) and Malta and Bulgaria² requiring around €1mn for rapid naturalisation (though whereas the latter may accrue a return, the former investment does not). The other IIPs listed in Table 1 are so-called ‘golden visa’³ programmes. These do not grant residency rights in other member states, but do offer the right to travel within the Schengen area for substantial periods each year. Such rights will be sufficient for many investors who prefer the lower obligations in terms of investment (Wise, 8 October 2014). Such investments are as low as €250k, for instance in Latvia and Greece, and many of the recent ‘golden visa’ programmes require very limited in-country physical presence.

In short, both EU citizenship and mobility rights associated with residency represent important opportunity structures for member states wishing to attract investment in return for some form of membership rights. It is still too early to draw definitive conclusions about the success of these IIPs in monetary terms, but a number of states had, as of the end of 2015, each attracted investments worth hundreds of millions of euros. These figures are, of course, particularly significant for smaller states. Malta, for instance, stands to make €1bn euros or around one-fifth of GDP if it achieves its target and attracts 1800 investors (Sumption and Hooper, 2014, p. 7) (as of May 2015, it had received 585

² This refers to the ‘fast-track option’ (other options require much lower investments). See, <http://www.investbulgaria.eu/a/en/bulgarian-immigrant-investor-program/investment-options.html>

³ Among many other promotional websites, see: <http://golden-visa-europe.com/>

applications).⁴ By contrast, in the UK doubts have been raised about the economic benefits (Migration Advisory Committee, February 2014).

How might we make sense of the emergence of such programmes, both in general and in the EU in recent years? Palan's (2002) broad-brush history of the evolution of tax havens in the context of the trans-nationalisation of corporate activity since around the end of the nineteenth century is instructive in this respect. It is emblematic of the ways in which certain governments transformed themselves from authorities seeking to regulate and extract taxation from capital – corporate and individual – into agents competing with each other to attract capital on the basis of low regulation and taxation. Palan describes the evolution of tax havens and these competing states in terms of the tension between increasingly global capital mobility and the discrete sovereign state. He notes that as governments granted equal rights to foreign or international entities that chose to locate assets or parts of their businesses in a particular jurisdiction, so the 'legal unity of the subject' was effectively undermined:

Individuals, as citizens or as corporate entities, could "reside" in one capacity in one jurisdiction and in another capacity in another jurisdiction. And since "real," living individuals cannot spread themselves physically over different jurisdictions, they were offered fictional or juridical location (Palan, 2002, p. 170).

⁴ Figure reported on website: <http://www.maltaimmigration.com/> (checked January 2016).

'Juridically dispersed' subjects (Palan, 2002, p. 172) thereby became 'shoppers' for low regulation and taxation and many sovereign entities obliged by making themselves attractive for such shoppers. Governments effectively created the conditions for a 'race to the bottom', undermining the ability of other sovereigns to regulate and tax, at least with respect to wealthy corporate or individual entities able to take advantage of the possibility of this juridical dispersion. In the context of investor migration it is precisely the possibility and advantages of a form of juridical dispersion that governments and associated private organisations seek to market to would-be 'global citizens' (see, for instance, Kalin, 2013).⁵

Palan neatly characterises these broader processes as 'the commercialisation of sovereignty'. While such processes may have been constrained to some extent in the aftermath of the second world war in the context of the Bretton Woods settlement (and the possibility of certain capital controls), they returned in the 1970s context of neo-liberalism, marked by falling wages, spiralling credit and the associated empowerment (and deregulation) of the financial sector. Against this backdrop, citizenship has itself been commercialised or 'lightening' (Joppke, 2010). Immigration policies in Western countries have opened borders on a selective basis, primarily for the high skilled or high net-worth and, in accordance with Palan's aforementioned notion of 'juridical dispersion', they have become increasingly amenable to the possibility of multiple (or at least 'dual') citizenship (Joppke, 2010). The sentiment of UK Immigration Minister

⁵ See also the notion of 'global citizenship' deployed by the private intermediary Arton Capital: <http://www.artoncapital.com/>

Barbara Roche in 2000 that “we are in competition for the brightest and best” (a category which includes the wealthy) is one that has been echoed throughout the western world (BBC, 12 September 2000; Menz and Caviedes, 2010). The commercialisation of sovereignty also has an impact on an internal citizenship. Indeed, it has eroded the capacity to support nationally based welfare, employment and industrial policies or at least been used as a pretext for such an erosion. We have consequently witnessed moves to forms of social policy that shift the management of risk on to individuals and reinforce a “market citizenship’ that differs from that reflected in the political grammar of post war social democracy” (Jayasuriya, 2005, p. 2).

In short, a commercialisation of sovereignty and an associated neo-liberal turn impact upon an internal and external citizenship and on the state that governs such citizenship. As Brown (2015, p. 108) has succinctly put it, “it is only through the ascendancy of neoliberal reason that the citizen-subject converts from a political to an economic being and that the state is remade from one founded in juridical sovereignty to one modelled on a firm.” Indeed, while the individual is rendered increasingly as ‘human capital’ to be attracted or nurtured, the corporate sector is both aped and employed by government. This is evident in such stark contemporary practices as ‘nation branding’ (Browning, 2015) in which governments explicitly view themselves as entities competing for fluid global capital and deploy private sector consultancies for the purpose of ‘brand-management’. Investor programmes similarly reflect a desire to attract capital

and, as noted, private sector intermediaries also proliferate in this context (Xu, 2015, p. 7).⁶

The EU and its antecedents have long been both impacted by and implicated in this commercialisation of sovereignty and citizenship in the European context. The activism of the European Court of Justice (ECJ) (Mattli, 1999) and the emergence of the single market project have arguably transformed member states into actors that must today conform to a market logic in accordance with the four freedoms of movement (of goods, capital, services and people). They are 'competition states' (Cerny, 1997) whose 'anti-competitive' behaviour has become punishable within EU law. Moreover, to the limited extent that the EU has engaged with questions of social policy, it has aligned with the trends described in the foregoing and envisaged the task of social policy as the promotion of 'entrepreneurial' subjectivities or high value human capital in increasingly flexible labour markets (Parker, 2012, p. 208). The emergence of a distinctly post-national EU citizenship rooted to a large extent in a market logic of free moving human capital has arguably further contributed to this 'lightening'. Indeed, important ECJ activism in this area both preceding and following the proclamation of EU citizenship in the Maastricht treaty has, in asserting an expansive notion of non-discrimination, for some effectively challenged member state fiscal autonomy (Joppke, 2010, p. 24-28; Bellamy, 2015, p. 563).

⁶ Nation branding and investor migration intersect in concrete terms to the extent that the private organisations promoting the latter often refer to the former in seeking to inform their clients on their options (for instance, see the piece by 'nation-branding guru' Simon Anholt in Kalin, 2013, pp. 79-98).

If the EU has been culpable in this broad direction of travel it has arguably been even more directly culpable in the most recent wave of the commercialisation of sovereignty in Europe in the context of the financial and economic crisis. Indeed, the regime of monetary and economic governance that has accompanied monetary union from its inception (Gill, 1998) has significantly hardened in the context of responses to the crisis (among many others, Oberndorfer, 2015). A regime of fiscal consolidation (austerity) has delimited the room for manoeuvre for states in economic policy-making, particularly those hardest hit by the crisis. Investment in productive sectors rooted in a range of counter-cyclical spending is not possible given these hardened structural constraints and such states have instead sought to revive dysfunctional economic models via the further commercialisation of sovereignty. This has involved, inter alia, programmes of privatisation and the incentivisation of inward private investment, of which IIPs are a part.

The impact of the crisis and its governance is, it should be noted, neither a necessary or sufficient condition for the introduction of IIPs. However, a number of member states that were significantly affected by the crisis have opened some of the most liberal investor programmes since 2010. These include those countries that were heavily indebted – either via public or private debt – in the period leading up to the global and eurozone crises and those that became heavily indebted following these crises as a result of various contagion effects. As Table 1 shows, they include countries such as Greece, where the impact of the crisis has been particularly acute; countries such as Latvia and Spain where the financial sectors required support following the bursting of house price bubbles;

countries hit by the contagion effects of the crises elsewhere, such as Cyprus and Bulgaria – where banking sectors were over-exposed to problems in Greece – and Portugal, which was arguably the victim of speculative attacks which led to unsustainable interest rates on borrowing.

The type of investments required reveal a desire in many of these contexts to, as noted, revive economic models that were hard-hit. Thus, for instance, Spain, Latvia, Portugal and Greece – all countries where property prices fell significantly between 2007 and 2014 (Eurostat HPI, accessed June 2015) – encourage investment in property markets. In certain cases the link between these IIPs and the crisis has been made explicit. The reform of the Cypriot programme was implemented in May 2013 just two months after foreign depositors (largely Russian) were forced to take large losses (of €3mn or more) in the context of the ‘bail-in’ of its banking sector in March 2013. Such individuals are explicitly offered a fast-track to citizenship by way of compensation in the Cypriot legislation (Hope et al., 17 March 2013; Dzankic, 2015, p.9). The preamble to the Spanish legislation explicitly frames its investor programme (along with other legislation packaged under the heading ‘supporting entrepreneurs and their internationalisation’) in the context of the crisis (Law 14/2013).⁷

Against this backdrop I would concur to a large extent with Spiro (2014, p. 9) who says of IIPs (and particularly those that offer rapid naturalisation) that they

⁷ See, <http://www.exteriores.gob.es/Embajadas/ABUDHABI/es/VisadosVisas/Paginas/LeyEmprendedores.aspx>

are, “a manifestation of [a] citizenship that is already being hollowed out. If citizenship still meant what it used to mean, if it still represented special ties as a sociological matter, then investor citizenship schemes would not exist.” What such reasoning cannot easily explain, however, is the vocal opposition that they – particularly those IIPs offering rapid citizenship – have attracted within the European context.

II. De-Commercialising Citizenship in the EU

The initial proposal for Malta’s citizenship IIP stated that citizenship would be granted to individuals donating €650k to the state, with additional costs specified for dependents. The opposition parties strongly opposed the bill that was put before the Maltese Parliament in November 2013 and proposed significant amendments that would, among other things, withdraw the fast-track route to citizenship, requiring of the investor five years residence including 30 days per year spent in Malta. While the Prime Minister initially defended his government’s proposals, concern from the public, the opposition and from abroad led to an amendment to the initial proposal in December 2013 (Camilleri, 26 November 2013). The reform increased the size of the total investment to €1.15 million, including a requirement to invest in property (see Table 1) and capped the number of investors to 1800. Introducing these reforms, Prime Minister Muscat stated that, “This total of €1.15 million will create a bond with the country in a tangible manner” (cit in Carrera, 2014, p. 5). However, opponents inside and beyond Malta were not convinced.

The programme was widely reported and scrutinised throughout the EU in early 2014. The European Parliament debated what it termed 'Citizenship for Sale' schemes in a plenary session in January, with a clear focus on Malta. Vivienne Reding, the Commissioner for Justice, Fundamental Rights and Citizenship, stated at this session that,

Member states should use their prerogatives to award citizenship in a spirit of sincere cooperation with the other member states. In compliance with the criterion used under public international law, Member states should only award citizenship to persons where there is a '*genuine link*' or '*genuine connection*' to the country in question ... *Citizenship must not be up for sale!* (15 January 2014, emphasis added)

In a position paper circulated to other member states in advance of the EP debate, the Maltese government stated that, "it is the exclusive sovereign right of a nation to determine how it should grant citizenship" and in a defiant tone stated that other member states were "free to test this principle at law" (Malta, 5 January 2014). The Commission threatened to do just this, its legal reasoning drawing on the public international law referred to by Reding and, in particular, the decision of the International Court of Justice in the *Nottebohm* case. This, according to the Commission, established that, while naturalisation is indeed a matter for sovereign states, when the naturalisation decision of one state impacts upon another state, the latter may in certain circumstances legitimately refuse to recognise that decision (Carrera, 2014, pp. 20-21). In particular, it may do so if there is no 'social fact of attachment' (in Reding's words 'a genuine link')

– often conceived in terms of ‘habitual residence’ – between the individual concerned and the state that has naturalised that individual.

Whether based on appropriate legal reasoning or not, the threat of legal action prompted a meeting between the Commission and Maltese authorities at the end of January, following which a joint press statement was issued wherein further amendments to the scheme were announced which would require investors to supply evidence of 12-months of residence before nationality would be granted. The Commission expressed its satisfaction at the amendments and in February the programme was amended to this effect (Individual Investor Programme of the Republic of Malta, 4 February 2014, p. 3). However, doubts remained regarding what 12-months residency would mean in practice. The European Commission insisted that it would monitor the ‘effectiveness’ of residence, although it is unclear what will constitute ‘effective’ in practice (Interview with official DG Justice, 17 June 2015).

Malta was, in many respects, unfortunate to become the focal point of debate and critique in relation to its programme. The investment in the Maltese case will be directed to a ‘national development and social fund’, which will be used in ‘the public interest’. It therefore has the potential at least to make a public or social contribution in a way that some of the aforementioned IIPs – where the investment is, for instance, targeted at property or the banking sector – will not clearly do so. Moreover, as noted above, it is not the only EU member state to offer a fast-track to citizenship for wealthy investors, or the only country which offers this benefit with limited residency requirements. That said, the

Commission reportedly had, as of June 2015, initiated a dialogue with Cyprus in relation to its scheme (Interview with official DG Justice, 17 June 2015).

The Commission's intervention in this domain was surprising because of the apparent absence of a clear-cut legal basis (Maas, 2016). Indeed, it represented the, "first direct incursion of a European institution in a previously exclusive terrain of competence by EU member states – namely *the grounds for bestowing citizenship*" (Carrera, 2014, p. 31). It was also surprising in the context of the extant 'lightened' or 'hollowed out' citizenship discussed above, which, as noted, the EU has contributed to in various ways and which both the recent citizenship *and residency* schemes contribute towards. Indeed, this broader commercialisation of citizenship – and the consequent undermining of the 'ties that bind' in a national citizenship – is unlikely to have been the Commission's primary concern when intervening in this case. Rather the Commission's emphasis on a 'genuine link' is more logical when regarded as a means to the broader end of preserving the 'sincere cooperation' among member states required to sustain an *EU* citizenship rooted in free movement.

Member states alone are able to bestow EU citizenship via national naturalisation policies and, in the context of these IIPs, this was seen as a valuable commodity that could be marketed and effectively sold. But the right to free movement accompanying EU citizenship also leads to a mutual interest among member states in their respective naturalisation policies, particularly when they attract large numbers of so-called third country nationals. From this perspective, the Commission intervention is likely to have reflected a concern

that some member states may seek to impose limits on freedom of movement if other member states were to adopt naturalisation policies that are excessively 'liberal' in the ways described (possible 'spillback'). They may do so for economic reasons – because they feel their own IIPs are being undercut (Warrell and Fontanella-Kahn, 9 December 2013) – or political reasons – because they feel that the rapid naturalisation of wealthy individuals has a potentially pernicious effects on national citizenship, including risks associated with security and financial integrity (Xu, et al., 2015, p. 7-8). Such concerns pertain primarily to programmes that grant citizenship rapidly because of different EU rules associated with, respectively, citizens of national states and long-term residents. EU law provides a greater margin for member states to restrict the movement of resident third country nationals than it does member state citizens (European Commission, 2013, p. 18-19). Taken together, these factors are a more logical explanation for both the Commission's intervention and its exclusive focus on citizenship schemes.

There is, however, an irony in the Commission's assertion of a 'genuine link' in order to protect an extant post-national citizenship. In making such an assertion it at once risks undermining such a post-national citizenship that in many respects transcends such links. In concrete terms, as Carrera (2014, p. 27) says, its position runs the risk of "fuelling nationalistic misuses by member states of the genuine link as a way to justify restrictive domestic policies on the acquisition of nationality ...whose compatibility with other EU general principles (such as that of non-discrimination, diversity and fundamental rights) remains at stake." This path between asserting a 'genuine link' as an important feature of

citizenship and preserving the values of a post-national citizenship that in many respects surpass such links is certainly a treacherous one.

III. Multi-level citizenship as 'quadrilemma'

The Commission's position arguably reflects an attempt to navigate a normative tension in contemporary political theory and practice between a discourse that celebrates the 'lightening' of citizenship and one that mourns it. The former seeks to overcome discrimination, particularly based on a nationalism that can be associated with a delimited citizenship, while the latter seeks to preserve the democratic and socialising possibilities of a delimited social-contractarian citizenship. The former seeks to open citizenship (and associated rights) as a category to ever more groups of people and may explicitly, or often implicitly, see the market (and the commercialisation of sovereignty) as a positive tool of such opening to the extent that it embodies the value of non-discrimination (at least on all grounds other than economic). In extreme libertarian form such a discourse would advocate the extension of the commercialisation of sovereignty; a libertarian openness, or overcoming, of political and physical borders and the transcendence of the institutions of both state and national citizenship as we know them (Caplan, 7 October 2015). Freedom, from this perspective, is often conceived in terms of a radical autonomy or *freedom from government*. The latter, in contrast, seeks to close citizenship because in its substantive social-contractarian form it is only conceivable within the confines of some kind of delimited community of fate (Walzer, 1983). It is only within such a context that the collective public (as opposed to individual private) interest can be pursued

and so the commercialisation of sovereignty and broader processes of neo-liberal globalisation are regarded as threat. Freedom, from this perspective, is often conceived as *freedom guaranteed by government*.

Both sides – what I term a ‘market cosmopolitan’ and ‘legal communitarian’ discourse – point to important exclusionary tendencies of the other. The former focuses on the policing of citizenship’s external boundary and the effects of exclusion and discrimination on various ‘others’ both internal and external to a delimited polity. The latter points to the exclusionary effects of the market, which potentially undermines social cohesion and destroys the formal equality of citizenship that permits democratic self-rule. As Walzer (1983, p. 39) has evocatively put it, “[t]o tear down the walls of the state is not... to create a world without walls, but rather to create a thousand petty fortresses.” Such a tension has animated recent legal and jurisprudential debate on the normative value of EU citizenship (for instance see, Kochenov [2014a] for an articulation of something close to the former discourse and Bellamy’s [2015] – in my view, compelling – critique). Such a tension is, as noted, also present in the Commission’s position in relation to Malta’s investor citizenship scheme and, indeed, the broader reality of EU citizenship, which is rooted to a large extent in a market cosmopolitan ideal but risks extending itself to breaking point in the face of legal communitarian resistance.

IIPs do not lend themselves to a clear-cut position from either side of this debate. Indeed, they may themselves be best characterised in terms of a ‘market communitarian’ discourse that coheres with the conflation of commercialisation

and sovereignty or citizenship enunciated in section 1. While they pursue national(ist) or even communitarian goals, those goals are interpreted in quite crude neo-liberal economic terms. Thus, neither an ideal-typical legal communitarian or market cosmopolitan position would be likely to fully endorse IIPs. Legal communitarians would of course defend the state's competence in matters of naturalisation, but would be strongly opposed on the kind of 'genuine link' grounds enunciated by the Commission. Concerns may relate not only to a lack of presence and participation, but also to the substance and magnitude of the political influence that wealthy investors – whether citizens or residents – might be in a position to wield. This may be direct, via, for instance, media ownership and party funding. It may also be indirect, through, for instance, having an inflationary effect on property prices. It may also be criminal or contrary to national security. Indeed, in practice it has been difficult for states (and perhaps not in the immediate interests of those administering these schemes) to exclude those investors with criminal connections or geopolitical links unfavourable to the host state (Xu, et al., 2015, p. 7-8). In the recent EU context widespread misgivings have been raised about the identity of some of those Russians buying property in Latvia (re: baltica, 2015) and this was a factor in the reform of the Latvian scheme in 2014, which substantially increased the investment criteria (Kuznetsov, 12 November 2013, Ziverts, 2013). In Portugal a corruption scandal (The Economist, 17 November 2014) led to a short suspension of its scheme in 2015. And it has been reported that the UK investor scheme has been used as a means to launder the proceeds of corruption (Transparency International, 2015).

In short, from a legal communitarian perspective that values citizenship as a political relationship within a necessarily delimited and cohesive community, the very notion of 'global citizen' as deployed by the proliferating private actors promoting IIPs may be dangerously apolitical or even an oxymoron (Miller, 2011). As presented by these actors, citizenship as a political relationship rooted in a social contract – underpinning rights and obligations or duties – is replaced by a notion based on at best very loose legalistic connections between polities (plural) and 'juridically dispersed' mobile wealthy individuals.

A market cosmopolitan perspective, on the contrary, might be less troubled by such schemes and even positive about their corrosive implications for an ideal social-contractarian notion of citizenship. Citizenship schemes are arguably no more ethically dubious than a host of other naturalisation policies that confer membership and which also have various potential spillover effects to other member states in the EU context. Kochenov (2014b) has noted for instance that many are naturalised on the dubious basis of bloodline (hardly a 'genuine link') or following a questionable citizenship test that long-time citizens would often struggle to pass. Moreover, these schemes are certainly more transparent than discretionary, often secretive, naturalisation practices that are, as noted above, permissible in the majority of member states. From this perspective there is an arbitrariness in the conferral of membership and these methods are at least more transparent and rational than many others. That said, any endorsement from a market cosmopolitan perspective is likely to be equivocal. If this is a discourse that ultimately seeks to transcend the nation-state, endorsement of such programmes would certainly be tempered by a concern that states still act

as gatekeepers and national citizenship (however diminished) remains the prize (albeit as a route to EU citizenship). Indeed, the state, nationalism and a national citizenship are, from this perspective, ethical problems to be overcome.

This section has to this point identified three discourses that have been present in the political and scholarly debate on investor citizenship enunciated in the preceding sections: a 'market communitarian', 'legal communitarian' and 'market cosmopolitan' discourse. As noted in introduction, a fourth discourse, which has not been as present in this debate, logically presents itself at this juncture: namely, a 'legal cosmopolitan' discourse (see Table 2).

..... INSERT TABLE 2 (APPENDED AT END) HERE

Legal communitarian ideals of citizenship have been, in theory at least, generalised beyond the nation-state, or 'cosmopolitanised' (Habermas, 2001, Held, 2000, Linklater, 1998). It is, in short, quite possible to adopt a 'legal cosmopolitan' discourse and champion a very different conception of the 'global citizen' than that conceived by the private actors who promote this subjectivity in the world of investment migration and a very different notion of 'EU citizenship' than the prevailing market reality, rooted as it is in mobility and non-discrimination. From this perspective, if both a political conception of citizenship (contra a neo-liberal reality) and a post-national EU settlement (contra a nationalist reality) are to be protected this would entail the promotion of a far 'heavier' post-national citizenship capable of offsetting the 'lightening' of national citizenship and the commercialisation of sovereignty in the recent

European context. This would amount to a more substantive EU citizenship, which would involve the creation of something closer to, if not exactly, a federal state with redistributive capacity (for one example, see Habermas, 2001 and his many more recent interventions). In relation to the debate on investor citizenship, such a discourse offers the possibility of critiquing both the notion of a national sovereign right to decide questions of naturalisation – which would be uploaded to European or some other post-national level – and the market logics at play in these schemes. While such a discourse has much to offer given the tensions in a contemporary multi-level citizenship enunciated, we should be circumspect in our embrace of a legal cosmopolitan discourse, which is certainly not itself immune from critique. A legal communitarian may highlight the idealism inherent in such a perspective, noting the extant difficulty of developing a ‘heavier’ citizenship beyond state boundaries.⁸ And a market cosmopolitan would point to its capacity to reproduce the exclusionary features of nation-state beyond itself. While these valid critiques effectively caution that such a vision ought not be presented as an alternative definitive answer, it may be an important provisional one, as I discuss in conclusion.

For now, though, I want to emphasise that the politics of this case and a multi-level citizenship more generally can be conceptualised in terms of the four discourses identified in this section, which, when considered together, constitute a ‘quadrilemma’ (summarised in Table 2). This term captures the difficulty of

⁸ In practice it has, indeed, proved difficult to push a more substantive EU citizenship. While at certain junctures the European institutions, particularly ECJ, and certain member states have pushed the idea in various forms, they have been consistently blocked by other states (Maas, 2013, p.19-20). Many have also suggested that attempts to create a democratic ‘transfer union’ (that would underpin this more substantive citizenship) would be unrealisable and potentially stimulate national(ist) resistance.

adjudicating between these four discourses, each of which, as discussed, contains a particular vision of the citizen-subject replete with its own exclusions. The politics of a multi-level citizenship – as animated with reference to the case of investor migration in this paper – reveals the complex ways in which these discourses intersect and rely upon each other in practice, even as they simultaneously contradict each other in important respects. For instance, IIPs fit with a market communitarian discourse but nevertheless rely upon the cosmopolitan aspects of a post-national EU citizenship for their very attractiveness to investors. And in its intervention in this case the European Commission seemed to understand that an extant market cosmopolitan EU citizenship cannot ride roughshod over communitarian realities if it is to be sustained (just as ECJ case law has balanced market cosmopolitan ideals with communitarian sensitivities in relation to EU citizenship in recent years). While no *definitive* solution to this quadrilemma presents itself – and, as discussed in conclusion, nor should it be sought – its very conceptualisation does, I would argue, constitute a useful tool for deciphering and critically engaging with the politics of a multi-level citizenship more generally.

Conclusion

This paper has considered the politics of IIPs in the recent EU context and suggested that it – and the politics of a multi-level citizenship in Europe more generally – is animated by four discourses, which together constitute what I call a ‘quadrilemma’ (see Table 2). Each discourse is underpinned by a particular normative position on the ideal citizen-subject and in relation to the spatial

context in which such an ideal could or should be realised. This quadrilemma should not, I would argue, be solved definitively in favour of a particular discourse – it should be preserved in the face of all such solutions (see also, Parker 2012, 2013). But that is not to say that a recognition of the quadrilemma should blunt a capacity for political action or normative insight; on the contrary, it might sensitise us to those historical moments or situations where an ostensibly ‘final’ solution in favour of a particular discourse threatens to manifest itself in political reality with exclusionary consequence.

Just such a threat is, I have argued, present in the commercialisation of sovereignty and citizenship in the contemporary EU or what I termed a ‘market communitarian’ discourse. This discourse awkwardly combines national(ist) closure (particularly to the economically ‘delinquent’) and neo-liberal policies which allow an opening to the few, including wealthy investor migrants. Such a discourse has intensified in many national contexts since the economic crisis began and the outright sale by member states of citizenship is but one – albeit a particularly stark – manifestation of such a discourse. What is particularly notable with many of the IIPs in this recent wave (in Europe and beyond) is that they are distinct even from the aforementioned policies aimed at attracting the ‘brightest and best’ or ‘high quality’ human capital. These latter programmes at least aim at attracting individuals who could, in accordance with a neo-liberal logic, offer something to a national community that might generate an ongoing income or profit stream. IIPs seem more interested in the one-off ‘capital’ than the ‘human’ and they seem willing to prostitute membership rights to accrue that capital. These particular humans seem to be invisible or irrelevant to the

calculations of many of the governments introducing these recent schemes for short-term gain; they may, indeed, be *literally invisible* or 'fictional' to the extent that they will locate elsewhere and only infrequently touch down in the country offering citizenship. If citizenship becomes, in this way, synonymous with mobile capital itself then the ideal of the citizen as 'homo politicus' that animates the demos is not only weakened, but fully expunged (Brown, 2015).

As discussed in the foregoing, a 'market cosmopolitan' response that looks to transcend the state may simply intensify this attack on 'homo politicus'. And while a 'legal communitarian' resistance may do important work in terms of reviving this figure, it entails – even *requires* – its own exclusions and closures. A 'legal cosmopolitan's' more substantive EU citizen-subject does not entirely evade these problems, but should nevertheless be nurtured as that which contingently keeps open the possibility of both 'homo politicus' and the cosmopolitan ideal of the post-national (see also, Parker, 2013, pp.177-180). Indeed, if the EU collectively is serious about the assertion of its Commissioner in the context of the Malta debacle that 'citizenship must not be for sale' *and* in its desire to support an EU citizenship that overcomes national(ist) discrimination, then it needs to take far more radical steps to develop a substantive political EU citizenship for the contemporary EU. The ongoing context of crisis renders this task at once extremely challenging and extremely urgent.

References

- BBC Online (12 September 2000) 'Call for immigration rethink.' Available at, http://news.bbc.co.uk/2/hi/uk_news/politics/920182.stm
- Bellamy, R. 'A Duty-Free Europe? What's Wrong with Kochenov's Account of EU Citizenship Rights'. *European Law Journal*. Vol. 21, No.5, pp. 558-565
- Brown, W. (2015) *Undoing the Demos : Neoliberalism's Stealth Revolution*. (New York: Zone Books).
- Browning, C.S. (2015) 'Nation Branding, National Self-Esteem, and the Constitution of Subjectivity in Late Modernity'. *Foreign Policy Analysis*. Vol. 11, No.2, pp. 195-214.
- Camilleri, I. (26 November 2013) 'PM again defends citizenship programme.' *Times of Malta*. Available at, <http://www.timesofmalta.com/articles/view/20131126/local/pm-again-defends-citizenship-programme.496375>
- Caplan, B. (7 October 2015), 'The Case for Open Borders' *Time Magazine*.
- Carrera, S. (2014) 'How much does EU citizenship cost? The Maltese citizenship for sale affair: A breakthrough for sincere cooperation in citizenship of the union'. CEPS Working Paper No. 64.
- Cerny, P.G. (1997) 'Paradoxes of the Competition State: The Dynamics of Political Globalization'. *Government and Opposition*. Vol 32, No.2, pp. 251-74.
- Dzankic, J. (2015) 'Investment-based citizenship and residence programmes in the EU'. EUI Working Paper RSCAS No. 08.
- Dzankic, J. (2012) 'The Pros and Cons of Ius Pecuniae: Investor Citizenship in Comparative Perspective'. EUI Working Paper RSCAS No. 14.

- European Commission. (2013) 'Intra-EU Mobility of third-country nationals'.
European Migration Network Study 2013 (DG Home Affairs).
- Eurostat HPI. (accessed June 2015) 'House price index'. Available at,
<http://ec.europa.eu/eurostat/web/hicp/methodology/housing-price-statistics/house-price-index>
- Gill, S. (1998) 'European governance and new constitutionalism: Economic and Monetary Union and alternatives to disciplinary Neoliberalism in Europe'.
New Political Economy, Vol. 3 No. 1, pp. 5-26.
- Habermas, J. (2001) *The Postnational Constellation* (Cambridge: Polity Press).
- Held, D. (2000) *Democracy and the global order : from the modern state to cosmopolitan governance*. (Stanford: Stanford Univ. Press).
- Hope, K., Clover, C. and Steen, M. (17 March 2013) 'Russians join locals as big Cyprus losers'. *Financial Times*.
- Individual Investor Programme of the Republic of Malta. (4 February 2014) In
Subsidiary Legislation 188.03.
- Inerview with official DG Justice European Commission (17 June 2015), in
relation to the Commission's approach to investor citizenship schemes.
- Jayasuriya, K. (2005) 'Economic Constitutionalism, Liberalism and the New Welfare Governance'. Asia Research Centre, Murdoch University. Working Paper No.121.
- Joppke, Christian. (2010), 'The Inevitable Lightning of Citizenship'. *European Journal of Sociology / Archives Européennes de Sociologie*, Vol. 51, No. 1, pp. 9-32.
- Kalin, C.H. (2013) *Global Residence and Citizenship Handbook (Henley and Partners)* (Zurich and London: Ideos Publications).

- Kochenov, D. (2014a) 'EU Citizenship without Duties'. *European Law Journal*. Vol.20, No.4, pp.482-498.
- Kochenov, D. (2014b) 'Citizenship for Real: Its Hypocrisy, Its Randomness, Its Price'. In, Shachar, A. and Bauböck, R., *Debate: Should Citizenship be for Sale?*, EUI Robert Schuman Centre for Advanced Studies EUDO Citizenship Observatory: EUI Working Papers.
- Kuznetsov, S. (12 November 2013). 'Latvia; closing the door to Europe?', *Financial Times*. Available at, <http://blogs.ft.com/beyond-bricks/2013/11/12/latvia-closing-the-door-to-europe/>
- Ley, D. (2010) *Millionaire Migrants: Trans-Pacific Life Lines*. (Malden and Oxford: Wiley-Blackwell).
- Linklater, A. (1998) *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (London: Polity Press).
- Maas, W. (2013) (ed) *Multilevel Citizenship*. (Philadelphia: University of Pennsylvania Press)
- Maas, W. (2016), 'European Governance of Citizenship and Nationality', *Journal of Contemporary European Research*, Vol. 12, No. 1.
- Maltese Government (5 January 2014). 'Draft Position Paper/ Briefing on Citizenship by Investment'. Available at, <https://zoek.officielebekendmakingen.nl/blg-295323.pdf>
- Mattli, W. (1999) *The Logic of Regional Integration : Europe and Beyond*. (Cambridge: Cambridge Univ. Press).
- Menz, G. and Caviedes, A. (2010) *Labour Migration in Europe* (Basingtoke: Palgrave)

- Migration Advisory Committee (UK). (February 2014). *Tier 1(Investor) Route: Investment thresholds and economic benefits*.
- Miller, D. (2011) 'The idea of global citizenship'. Nuffield Working Paper.
Available at, http://www.nuffield.ox.ac.uk/politics/Papers/2011/David_Miller_working_paper_2011_02.pdf
- Oberndorfer, L. (2015) 'From New Constitutionalism to Authoritarian Constitutionalism: New Economic Governance and the State of European Democracy'. In Jager, J and Springler, E., *Asymmetric Crisis in Europe and Possible Futures: Critical Political Economy and Post-Keynesian Perspectives* (London: Routledge), pp. 98-113.
- Oršolić Dalessio, T. (2015) 'Citizenship by Investment in Croatia: In Search of the Way Out of the Grey Zone'. Paper presented at workshop, 'Unravelling the Talent Tale' at the University of Sheffield Law School, 15 September.
- Palan, R. (2002) 'Tax Havens and the Commercialization of State Sovereignty'. *International Organization*, Vol. 56, No. 1, pp. 151-176.
- Parker, O. (2012) 'The Ethics of an Ambiguous Cosmopolitics: Citizens and Entrepreneurs in the European Project'. *International Theory*, Vol 4, No. 2, pp. 198-232.
- Parker, O. (2013) *Cosmopolitan Government in Europe: Citizens and Entrepreneurs in Postnational Politics* (London: Routledge, 2013)
- re: baltica. (2015). 'Latvia's Golden Visas (investigations)'. Available at, http://www.rebaltica.lv/en/investigations/latvias_golden_visas
- Reding, V. (15 January 2014) 'Citizenship must not be up for sale' (Plenary session debate of the European Parliament).

Shachar, A. and Hirschl, R. (2014) 'On Citizenship, States, and Markets'. *Journal of Political Philosophy*, Vol. 22, No. 2, pp. 231-57.

Spiro, P. (2014) 'Citizenship for those who invest into the future of the state is not wrong, the price is the problem'. In, Shachar, A. and Bauböck, R. (eds.), *Debate: Should Citizenship be for Sale?*, EUI Robert Schuman Centre for Advanced Studies EUDO Citizenship Observatory: EUI Working Papers.

Sumption, M. and Hooper, K. (2014) 'Selling Visas and Citizenship: Policy Questions from the Global Boom in Investor Immigration'. Migration Policy Institute Report. Available at, <http://www.migrationpolicy.org/research/selling-visas-and-citizenship-policy-questions-global-boom-investor-immigration>

The Economist. (17 November 2014) 'All that glitters: Portugal's golden visas'. Available at, <http://www.economist.com/blogs/charlemagne/2014/11/portugals-golden-visas>

Transparency International (2015), *Gold Rush: Investment Visas and Corrupt Capital Flows into the UK*. Available at, <http://www.transparency.org.uk/publications/gold-rush-investment-visas-and-corrupt-capital-flows-into-the-uk/>

Walzer, M. (1983), *Spheres of Justice* (Oxford: Robertson).

Warrall, H. and O'Murchu, C. (9 December 2013). 'Passport for sale' plan raises concern among EU members'. *Financial Times*. Available at, <http://www.ft.com/cms/s/2/b8a2adfa-6106-11e3-b7f1-00144feabdc0.html - axzz3dJDFGKQ>

- Warrell, H. and Fontanella-Kahn, J. (9 December 2013). 'Malta passport sale puts UK under pressure'. *Financial Times*. Available at, <http://www.ft.com/cms/s/0/7de0a9fe-60fe-11e3-b7f1-00144feabdc0.html#axzz3nxcoxZ2i>
- Wise, P. (8 October 2014). 'Sea, sun and easy visas lure China buyers', *Financial Times*. Available at, <http://www.ft.com/cms/s/2/d7c1b472-44a6-11e4-ab0c-00144feabdc0.html#axzz3nxcoxZ2i>
- Xu, X., El-Ashram, A. and Gold, J. (2015) 'Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs'. International Monetary Fund Working Paper Working Paper 15/93.
- Ziverts, E. (December 2013) 'Golden Visas: real estate immigrant investor programmes across the European Union'. Unpublished Report.

TABLES:

Country/ Year	Obligations	Rights
Malta (2014)	MEDIUM	HIGH
Bulgaria (2013)	LOW TO MEDIUM	MEDIUM TO HIGH
Cyprus (2013)	HIGH	HIGH
Hungary (2012)	LOW	MEDIUM
Portugal (2012)	LOW TO MEDIUM	MEDIUM
Latvia (2014 reform of 2010)	LOW	MEDIUM
Malta (2013) ⁹	LOW TO MEDIUM	MEDIUM
Ireland (2013 reform of 2012)	LOW TO MEDIUM	MEDIUM
Netherlands (2013)	MEDIUM	MEDIUM
Greece (2013)	MEDIUM	LOW
Spain (2013)	MEDIUM	LOW

Table 1: Schematic overview of rights and obligations in IIPs in the EU launched since 2010. (Compiled with reference to various legal frameworks, cross-referenced with Dzankic 2015, Carrera, 2014 and Xu 2015.)

	MARKET	LEGAL
COMMUNITARIAN	MARKET COMMUNITARIAN commercialised citizenship	LEGAL COMMUNITARIAN social-contractarian citizenship
COSMOPOLITAN/ EUROPEAN	MARKET COSMOPOLITAN global/ EU (market) citizens	LEGAL COSMOPOLITAN global/ EU (legal) citizens

Table 2: Discourses on multi-level citizenship: a ‘quadrilemma’

⁹ This refers to Malta’s ‘Global Residence Programme’ as distinct from its ‘Citizenship by Investment Programme’.