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Judgment of the Court in Case C-181/23 | Commission v Malta (Citizenship by investment)

### Union citizenship: the Maltese investor citizenship scheme is contrary to EU law

*The acquisition of Union citizenship cannot result from a commercial transaction*

While the definition of the conditions for granting and losing the nationality of a Member State is a matter of national competence, that competence must be exercised consistently with EU law. The bond of nationality with a Member State is based on a specific relationship of solidarity, good faith and the reciprocity of rights and duties between the State and its citizens. Where a Member State grants nationality, and thus automatically Union citizenship, in direct exchange for predetermined investments or payments through a transactional procedure, it manifestly infringes those principles. Such ‘commercialisation’ of citizenship is incompatible with the basic concept of Union citizenship as defined by the Treaties. It infringes the principle of sincere cooperation and jeopardises the mutual trust between Member States concerning the grant of their nationality, which governed the establishment of Union citizenship in the Treaties.

Following an amendment to the Maltese Citizenship Act in July 2020, Malta adopted regulations <sup>1</sup> which established detailed rules for the acquisition of ‘Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment’ (‘the 2020 investor citizenship scheme’). <sup>2</sup> Under that scheme, foreign investors could apply to be naturalised where they fulfilled a certain number of conditions, principally of a financial nature.

The Commission asserts that that scheme, which granted naturalisation in return for predetermined payments or investments to persons without a genuine link with Malta, constitutes an infringement of the rules relating to Union citizenship <sup>3</sup> and of the principle of sincere cooperation. <sup>4</sup> It therefore brought an action against that Member State before the Court of Justice.

**The Court holds that by establishing and operating the 2020 investor citizenship scheme, which amounts to the commercialisation of the grant of the nationality of a Member State and, by extension, of Union citizenship, Malta has infringed EU law.**

The Court recalls that each Member State is free to lay down the conditions under which it grants or withdraws its nationality. That freedom must, however, be exercised in **compliance** with EU law. Neither the wording of the Treaties nor their scheme can support the inference that their authors intended to lay down, as regards the grant of the nationality of a Member State, an exception to the obligation to comply with EU law.

European citizenship guarantees free movement within a common area of freedom, security and justice. That common area is based on two essential principles: mutual trust between Member States and mutual recognition of national decisions. European citizenship embodies fundamental solidarity between Member States, based on a set of reciprocal commitments. Each Member State must therefore refrain from any measure that could undermine the EU common objectives, in accordance with the principle of sincere cooperation.

As a result, **a Member State cannot grant its nationality – and indeed European citizenship – in exchange for**

**predetermined payments or investments, as this essentially amounts to rendering the acquisition of nationality a mere commercial transaction. Such a practice does not make it possible to establish the necessary bond of solidarity and good faith between a Member State and its citizens, or to ensure mutual trust between the Member States and thus constitutes a breach of the principle of sincere cooperation.**

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> The Granting of citizenship for Exceptional Services Regulations, 2020, adopted in November 2020, in accordance with Article 10(9) of the Maltese Citizenship Act, as amended by the 2020 Citizenship Act.

<sup>2</sup> Part III and Part IV of the 2020 Regulations contained detailed rules governing the processing of applications for naturalisation for exceptional services by merit and by direct investment in the economic and social development of Malta.

<sup>3</sup> Article 20 TFEU.

<sup>4</sup> Article 4(3) TEU.