

Commission v. Malta – the End of Citizenship by Investment ?

By its recent judgment of 29 April 2025 in Commission v. Malta, the Grand Chamber of the Court of Justice of the European Union upheld the action for failure to fulfil obligations brought by the European Commission, finding that Malta's system of acquiring Union citizenship through investment was incompatible with EU law. The Court's ruling reveals the tension between political activism and well-structured legal reasoning, between the pressures stemming from migration policy and the legal substance of the arguments. Indeed, the "commercialisation" of EU citizenship undermines the relationship of solidarity and loyalty between the Member States as well as the mutual trust on which EU citizenship is founded, in breach of Article 20 TFEU and of the principle of sincere cooperation enshrined in Article 4 (3) TEU. Nevertheless, Union law does not require the existence of a 'genuine link' between a Member State and an individual other than that which the internal law of a Member State may impose for the acquisition or retention of its nationality. Our study is not merely concerned with citizenship-by-investment programmes and the added value brought by the civic paradigm of citizenship put forward in the judgment. Rather, it explores the limits of the evolutionary interpretation of the Treaties and examines whether the Court of Luxembourg, based on Article 2 TEU, can derive a European competence to review national legislation governing the granting of citizenship.

Keywords: *citizenship of the Union, citizenship by investment, failure of a Member State to fulfil obligations, special relationship of solidarity and good faith, principle of sincere cooperation.*

Introduction

The narrative thread of landmark citizenship cases rewrites human history and reveals, in the form of living theorems, the interactions sustained with various universal values and fundamental rights. Moreover, the rulings handed down have often triggered diplomatic tensions, social conflicts, or even civil wars and genuine revolutions in thought.

The landmark decision in *Dred Scott v. Sandford*, in which, in 1857, the Supreme Court of the United States held that persons of African descent could not enjoy the rights that the federal Constitution recognized as belonging to American citizens, is still criticized today for having effectively "nationalized"¹ slavery and, by no means coincidentally, contributing to the outbreak of the American Civil War (1861–1865). Another landmark ruling is *United States v. Wong Kim Ark* (1898), in which, applying the principle of *jus soli*, the Court ruled on the citizenship status of children born on U.S. territory to foreign

¹Prof. Gerald L. Neuman, interviewed by Reed (2025) available at <https://hls.harvard.edu/today/can-birthright-citizenship-be-changed>.

1 parents². The precedential value of *Wong Kim Ark* is currently being tested in the
 2 context of a heated debate concerning the descendants of undocumented
 3 immigrants, as more critical voices view the phenomenon of the “anchor baby”
 4 with skepticism and oppose the automatic granting of U.S. citizenship to such
 5 children.

6 Any survey of citizenship litigation would be incomplete without
 7 mentioning *Liechtenstein v. Guatemala* (1955), which culminated in the
 8 landmark *Nottebohm* judgment, in which the International Court of Justice held
 9 that a state may refuse to recognize citizenship granted by another state where
 10 the individual concerned has no genuine and effective link with that state.

11 In fact, Liechtenstein sought compensation from the Government of
 12 Guatemala on the grounds that the latter had acted toward Friedrich Nottebohm,
 13 a citizen of Liechtenstein, in a manner contrary to international law. Mr.
 14 Nottebohm, a German national born in Hamburg, had settled in Guatemala in
 15 1905, where he engaged in business activities. In October 1939, shortly after the
 16 outbreak of the Second World War, while visiting Europe, he acquired
 17 Liechtenstein citizenship and returned to Guatemala in 1940, where, as a
 18 permanent resident, he resumed his previous commercial activities. Against the
 19 backdrop of wartime measures adopted in 1943 and the deportation of Germans
 20 from Latin America, Nottebohm was arrested by the Guatemalan government as
 21 an enemy alien and handed over to the United States military. The Guatemalan
 22 government confiscated all of his property in the country, while the U.S.
 23 government also seized the assets of his company in the United States. In 1950,
 24 the U.S. government returned part of the confiscated assets to the Nottebohm
 25 family, while in 1962, following Nottebohm’s death, the Guatemalan
 26 government returned 16 coffee plantations to his family. Acting on Nottebohm’s
 27 behalf, the Government of Liechtenstein instituted proceedings against
 28 Guatemala before the International Court of Justice, alleging the unjust treatment
 29 of Nottebohm and the unlawful confiscation of his property. The Government of
 30 Guatemala, however, argued that Nottebohm had not acquired Liechtenstein
 31 citizenship for the purposes of international law. The Court accepted the
 32 respondent State’s arguments and held that Mr. Nottebohm’s nationality was not
 33 based on any prior genuine connection with Liechtenstein, the sole purpose of
 34 his naturalization having been to enable him to acquire the status of a neutral
 35 national during wartime. For these reasons, Liechtenstein’s claim to exercise
 36 diplomatic protection on behalf of Nottebohm against Guatemala was declared
 37 inadmissible.

38 The judicial history woven around the institution of citizenship is not limited
 39 to its relationship with human dignity, equality before the law, and the
 40 prohibition of discrimination, but also encompasses the right to property, as
 41 demonstrated by the celebrated Hungarian *Optants* case, which showcased the
 42 remarkable legal reasoning of the eminent Romanian diplomat Nicolae

²Although his parents were Chinese immigrants and ineligible for naturalization in the United States, the Supreme Court held that Wong Kim Ark, born in San Francisco, acquired U.S. citizenship at birth under the Citizenship Clause of the Fourteenth Amendment.

1 Titulescu³. Following Romania's 1921 agrarian reform, Hungarian landowners
 2 argued that the expropriations violated the 1920 Treaty of Trianon⁴ and, although
 3 the measures had been implemented without any distinction on the basis of
 4 ethnicity, brought their claims before the Council of the League of Nations,
 5 seeking exorbitant compensation based on pre-war market values and payable
 6 directly in gold, amounting to 33 billion lei and due immediately. The dispute,
 7 which was nothing less than an attempt to revise the existing borders - as even
 8 Count Albert Apponyi, the Hungarian statesman who opposed Titulescu,
 9 acknowledged - was ultimately settled by the Convention of 20 January 1930 on
 10 Eastern and Western Reparations, concluded at The Hague, and the Paris
 11 Convention of 28 April 1930. An International Agrarian Fund was established to
 12 compensate the dispossessed landowners. Romania contributed to the Fund but
 13 was exempted from the direct payment of the excessive compensation claimed⁵,
 14 thereby securing a diplomatic and legal victory.

15 Contemporary developments and, at times, profound upheavals call for
 16 conceptual reconfigurations brought about by digital innovations, and
 17 citizenship is no less exposed to these new realities. Following the granting, in
 18 October 2017, of Saudi citizenship to the humanoid robot powered by artificial
 19 intelligence known as "Sophia," created by Hanson Robotics and modeled after
 20 the actress Audrey Hepburn, the ensuing legal dilemmas also concerned the
 21 extent to which the holder of citizenship could be a humanoid. Once the
 22 implications concerning identity, rights and obligations, and, above all, legal
 23 liability⁶ are examined, the answer can only be negative.

24 Any other approach would amount to diverting citizenship from its sacred
 25 and inviolable foundations, as these were articulated in the cradle of democracy
 26 and of the very notion of citizenship - the Athenian *polis*⁷. Political participation

³From his pleadings of 20 April 1923, we reproduce several of his arguments: '*At every turn, you are doing nothing but asking for the impossible. And I fear that you have deliberately asked for the impossible. You are asking for preferential treatment for Hungarian landowners as compared with Romanian landowners: a moral impossibility. You are also asking for payment in gold, knowing full well that, in order to make such payment, a sum exceeding by two and a half times the total amount of the Romanian budget would be required: a financial impossibility. You are asking Romanian peasants to return the lands that had become theirs forever: a social impossibility. Romania sought to give its agrarian legislation an objective, almost mechanical character, perhaps the hallmark of a harsh justice, but of equal justice for all. This led to Hungarian optants and Romanian landowners alike being treated on an equal footing.*' in Nistor (2011) at 270-271.

⁴According to the Treaty of Trianon, the inhabitants of Transylvania, who had been considered citizens of Austria-Hungary until the Great Union, were granted, within a specified period, the right to opt for Romanian, Hungarian, or another citizenship.

⁵Constantin (2011) available at <https://historia.ro/sectiune/actualitate/criza-romano-maghiara-un-razboi-diplomatic-de-585966.html>; <https://titulescu.eu/2018/10/lansarea-volumelor-de-documente-procesul-optantilor-unguri-marturii-documentare-din-arhivele-ministerului-afacerilor-externe-al-republicii-franceze/>.

⁶Țințărescu (2018) available at <https://www.juridice.ro/591515/cetatenia-si-posibilele-implicatii-ale-dobandirii-ei-de-catre-humanoizi.html>.

⁷For further discussion of the specific standards of Athenian democracy (*isegoria*, *isonomy*, *isocracy*, *isoteleia* and *isopoliteia*) and the idea that democracy „requires educated citizens”, see Papanikos (2022) at 105-118, 119.

1 in the life of the city and equality before the law, as described by Aristotle in
 2 *Politics*, together with the civil rights associated with the status of citizen,
 3 constituted what has come to be known as the Greek model of citizenship, which
 4 also inspired the Roman republican variants. Machiavelli in *The Prince* and
 5 Rousseau through his theory of republicanism did little more than further
 6 develop this original classical model.

7 Cicero's speech *Pro Archia Poeta* perhaps remains the most subtle and
 8 moving passage ever devoted to the defense of the idea of civic friendship and
 9 citizenship that jurors throughout history could have encountered and
 10 understood. At the time, legal proceedings were brought against Aulus Licinius
 11 Archias, a Greek poet born in Antioch who built his reputation through his
 12 travels among the cities of antiquity and later in Rome, under the patronage of
 13 the general Lucius Lucullus. He would achieve full renown through his
 14 friendship with Cicero, to whom he gave lessons in rhetoric and exerted a
 15 profound influence on his intellectual formation. Under the *Lex Julia* and the *Lex*
 16 *Plautia Papiria*, which granted Roman citizenship to foreigners from cities
 17 allied with Rome who were registered by a praetor, Archias was a citizen of
 18 Heraclea. Accused by the political opponents of his patron of having unlawfully
 19 obtained Roman citizenship⁸, Archias was prosecuted under the *Lex Papia de*
 20 *Peregrinis*.

21 Thus, shortly after exposing the conspiracy against the Republic in his
 22 celebrated *Catilinarian Orations*, Cicero pleaded in defense of his mentor,
 23 invoking not only technical legal arguments but also a line of reasoning that
 24 developed into a genuine legal philosophy of citizenship. Speaking of Archias's
 25 intellectual contribution to the common good⁹ and of the benefits of literature
 26 and legal education, Cicero emphasized that he himself had placed the rhetorical
 27 skills he had learned from Archias at the service of the values of the civic
 28 community¹⁰, driven by "the interest or necessity from which neither leisure,
 29 pleasure, nor sleep has ever withdrawn me."¹¹ In speaking of the civic
 30 friendship existing among individuals, as well as between citizens and the
 31 Republic, Cicero was in fact drawing upon Aristotelian ideas, according to which
 32 this sense of belonging to the community, together with a commitment to the
 33 interests of society, constituted one of the essential dimensions of citizenship.
 34 More precisely, the Greek philosopher posited that a tacit agreement, the so-
 35 called *harmonia*, depended upon the expression of social solidarity, without
 36 which citizens could not live together in accordance with their shared values.
 37 Only when they are sufficiently closely connected can they be capable of
 38 determining the qualities best suited to those who are to occupy seats in the
 39 Senate, selecting the appropriate persons for such positions, resolving contested
 40 claims harmoniously, and adopting collective policies unanimously¹².

⁸In 65 BC, the Roman Senate adopted the *Lex Papia de Peregrinis*, which challenged fraudulent claims to citizenship and provided for the expulsion of foreigners from Rome.

⁹Ciucă (2023) at 3.

¹⁰Diaconescu (2020) at 9.

¹¹Cicero, *Pro Archia poeta*, [12] available at <https://www.thelatinlibrary.com/cicero/arch.shtml>.

¹²Aristotel (2008) at 98.

Spectacularly foreshadowing the concept of European citizenship, Cicero invokes, in the particular case of persons originating from the municipalities of the Italian Peninsula (who were granted Roman citizenship on condition that they had not fought against Rome during the Social War), the fact that they had a country “by nature and one by law”¹³. Thus, civic virtue and, by implication, service to the common values of a community, regarded by the ancients as a key element of the relationship between the individual and the state¹⁴, find a remarkable contemporary extension in the concept of European citizenship, more precisely in the reasoning developed by the Court of Justice of the European Union in *Commission v Malta*.

The judgment of the Court of Justice of the European Union of 29 April 2025 concerning the incompatibility of Malta’s system for acquiring Union citizenship through investment with EU law brings into focus the constitutional dimension of Union citizenship and its „capacity to embody the values of the Union”¹⁵. The Court’s traditional approach, according to which Member States may not exercise their powers concerning the granting of nationality except in compliance with EU law, is now being explored in the specific context of the transactional nature of the naturalisation scheme and its implications for the value of Union citizenship. The Court’s reasoning¹⁶ thus focuses on the special relationship of solidarity and good faith, as well as on mutual trust between the Member States, which may exercise their powers concerning the granting of nationality only in a manner that does not undermine the essence and integrity of Union citizenship.

Political and Legal Context. Malta’s Citizenship-by-Investment Scheme

Government programmes offering citizenship by investment (“golden passports”), residence by investment (“golden visas”), or hybrid arrangements combining immediate residence with an accelerated path to citizenship have become a socio-political reality over the past several decades. Drawing on perspectives from political science and legal theory, leading scholars have explained „states’ propensity to adopt investor citizenship policies as part of the offshore world, or the legal spaces of “archipelago capitalism.”¹⁷ Thus, the Caribbean island states of Saint Kitts and Nevis (in 1984) and Dominica (in 1993) were the first to implement administrative mechanisms for granting citizenship by investment, subsequently followed by other countries in the

¹³Cicero, *De legibus* [5] available at <https://www.thelatinlibrary.com/cicero/leg2.shtml>.

¹⁴On the role of education as a mechanism for integrating foreigners into the Athenian community in late Hellenistic Athens, and on the possibility for foreign students enrolled in the *ephebeia* to acquire Athenian citizenship by completing a course of study, see Wick (2022) at 106.

¹⁵Marti (2025) at 1.

¹⁶For developments concerning the judicial dialogue between the national courts and the Court of Justice in Luxembourg, see D. M. Şandru (2018) at 197.

¹⁷Džankić, J., Seyfettinoglu, M., Shachar, A., Vink, M., & van der Baaren, L. (2025) available at <https://journals.sagepub.com/doi/10.1177/00104140251400342>.

1 region, such as Antigua and Barbuda, Grenada and Saint Lucia, as well as by
 2 other archipelagic microstates in the South Pacific, including Vanuatu and
 3 Nauru. At the same time, citizenship-by-investment policies have also been
 4 pursued by certain European states, including Austria, Bulgaria, Cyprus, Malta,
 5 North Macedonia, Montenegro and Moldova, and by states in Asia, including
 6 Cambodia, Egypt, Jordan and Türkiye. In an effort to stimulate the inflow of
 7 foreign capital into their economies, residence-by-investment programmes have
 8 become even more widespread at both the European and international levels.
 9 Within the European Union, relevant examples of so-called Golden Visa
 10 programmes, regarded as noteworthy for their practices and results, include
 11 those introduced in Greece in 2013, which had attracted €2.6 billion by 2024,
 12 Portugal, which had attracted €7.3 billion since 2012, as well as Spain, Cyprus,
 13 Italy, Hungary, Latvia and Ireland. Globally, the list has also included
 14 programmes operated by the United Kingdom, which was closed to new
 15 applicants in 2022, the United States, Canada, whose programme was suspended
 16 in 2014, New Zealand and the United Arab Emirates.

17 Emerging as a “contemporary form of small state ingenuity,” Citizenship-
 18 by-Investment (CBI) programmes have been criticised for the risks they pose in
 19 relation to white-collar crime as well as the circumvention of sanctions regimes,
 20 and, last but not least, for the commodification of citizenship. As early as 2014,
 21 the European Parliament expressed the view that “the rights conferred by EU
 22 citizenship are based on human dignity and should not be bought or sold at any
 23 price.”¹⁸ Subsequently, in 2019, the European Commission identified the
 24 security risks associated with golden passports and golden visas which, by
 25 failing to require genuine links with the Member States concerned, undermine
 26 the fundamental nature of European citizenship¹⁹. Citizenship cannot be
 27 distorted into a luxury commodity through a transaction granting access to
 28 freedom of movement, political rights relating to participation in the democratic
 29 life of the Union, and consular and diplomatic protection, and thus to the full
 30 range of rights conferred on EU citizens by the Treaty of Maastricht. The
 31 Member States identified in the Commission’s report were Malta, Cyprus and
 32 Bulgaria, with the latter two subsequently abandoning their citizenship-by-
 33 investment schemes for foreign investors in November 2020 (Cyprus) and April
 34 2022 (Bulgaria).

35 Naturalisation schemes based on predetermined payments or investments
 36 became even more controversial following Russia’s invasion of Ukraine on 24
 37 February 2022, insofar as maintaining such schemes could provide a gateway
 38 through which Russian oligarchs financing the Kremlin might circumvent the
 39 sanctions regime imposed on Russia by the European Union. Consequently, on

¹⁸See European Parliament resolution of 16 January 2014 on EU citizenship for sale ([2013/2995\(RSP\)](#)), OJ C 482, 23.12.2016, pp. 117–118.

¹⁹See Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Investor Citizenship and Residence Schemes in the European Union {SWD(2019) 5 final}, Brussels, 23.1.2019 COM(2019) 12 final, available at https://commission.europa.eu/system/files/2019-01/com_2019_12_final_report.pdf.

2 March 2022, the Republic of Malta suspended its 2020 citizenship-by-investment scheme for Russian and Belarusian nationals, while keeping it in force for nationals of other third countries, with the exception of nationals of Afghanistan, North Korea, Iran, the Democratic Republic of the Congo, Somalia, Sudan, South Sudan, Syria, Venezuela and Yemen. Against the backdrop of the immediate measures prompted by the aggression against Ukraine, in its Recommendation of 28 March 2022²⁰, the Commission called on any Member State operating Citizenship-by-Investment programmes to repeal them.

In fact, following the launch of Malta's first CBI programme in 2014²¹, 1,800 investors and their family members were naturalised, before the 2020 adoption of the Regulations governing the granting of citizenship for exceptional services²². Under Maltese law, foreigners or stateless persons could apply for naturalisation for exceptional services by direct investment, provided that they met or undertook to meet the following conditions:

- payment of a contribution of €600,000 or €750,000 to the Maltese Government, of which €10,000 was payable as a non-refundable deposit upon submission of the residence applications;
- the purchase of residential real estate in Malta with a minimum value of €700,000, or the lease of such property at an annual rent of at least €16,000 for a minimum period of five years;
- a donation of at least €10,000 to a philanthropic, cultural, sporting, scientific or artistic organisation or non-governmental organisation, or to an organisation operating in the field of animal welfare;
- lawful residence in Malta for a period of 36 months (in the case of a contribution of €600,000) or 12 months (in the case of a contribution of €750,000);
- an assessment by the competent authorities of the investor's eligibility and the issuance of authorisation to submit an application for naturalisation.

Considering that Malta's 2014 and 2020 citizenship-by-investment schemes amounted to the "sale" of Union citizenship, thereby exploiting the common achievement represented by Union citizenship and undermining the principle of

²⁰See Recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes (C(2022) 2028 final), 28 March 2022, available at <https://www.europeansources.info/record/commission-recommendation-on-immediate-steps-in-the-context-of-the-russian-invasion-of-ukraine-in-relation-to-investor-citizenship-schemes-and-investor-residence-schemes/>

²¹Individual Investor Programme of the Republic of Malta Regulations, 2014 (Subsidiary Legislation 188.03 of the Laws of Malta) (*The Malta Government Gazette* No 19,205, of 4 February 2014; 'the 2014 Regulations').

²²Granting of citizenship for Exceptional Services Regulations, 2020 (Subsidiary Legislation 188.06 of the Laws of Malta) (*The Malta Government Gazette* No 20,524, of 20 November 2020; 'the 2020 Regulations').

sincere cooperation between the Member States, the Commission initiated infringement proceedings for breach of Article 20 TFEU and Article 4 (3) TEU.

Commission v Malta: From EU Market Citizenship to a Civic (Aristotelian) Conception of Citizenship

The Parties' Arguments and the Opinion of the Advocate General. We do not intend, at this stage, to provide a detailed account of the case or, by implication, to revisit all the arguments that underpinned the Commission's position and, subsequently, the defence put forward by the Republic of Malta. Rather, our aim is to highlight those elements of added value emerging from the proceedings and established by the Court's judgment that may contribute to articulating the relationship between Member State nationality and EU law, as well as that between EU citizenship²³ and the principle of sincere cooperation.

Primarily, the Commission argued that, even when exercising their exclusive competence to grant nationality, Member States remain under an obligation to comply with EU law. Given that, pursuant to Article 20(1) TFEU, every national of a Member State is also a citizen of the Union, Member States are required not to undermine the essence and value of Union citizenship in order to preserve the mutual trust underpinning that status. Furthermore, in the absence of a requirement for a genuine link between the State and the applicants, the commercialisation of nationality by a Member State undermines the integrity of Union citizenship established by Article 20 TFEU and infringes the principle of sincere cooperation enshrined in Article 4(3) TEU²⁴. Or, as legal scholarship has perceptively observed, Malta "monetises what it does not possess"²⁵, namely access to the intrinsic value of the rights and economic benefits conferred by the status of citizen of the European Union, thereby monopolising an economic advantage to the detriment of the interests of the other Member States and of the Union as a whole²⁶.

Indeed, Union citizenship constitutes one of the major achievements of the European project and of the solidarity underpinning European integration, and is intended to become the fundamental status of nationals of the Member States²⁷. Thus, pursuant to Article 20(2) TFEU, Union citizenship entails the

²³Regarding the fact that „EU citizenship requires a multilayered and dynamic concept of European identity“, see Ivic at 415.

²⁴CJEU (Grand Chamber), 29 April 2025, *Commission v Malta (Citizenship by investment)*, C-181/23, ECLI:EU:C:2025:283, para. 42 and 46.

²⁵Lepoutre (2024) at 9-23, available at <https://shs.hal.science/halshs-04776961/file/V2%20Projet%20article%20RTDE%20Lepoutre.pdf>; Lepoutre & Weil (2024), available at https://www.lemonde.fr/idees/article/2024/10/16/jules-lepoutre-et-patrick-weil-en-vendant-la-citoyennete-de-l-union-malte-degrade-le-statut-de-tous-les-citoyens-europeens_6353444_3232.html.

²⁶Carrera (2014) at 420 apud Kaltenecker (2024), available at https://www.revuegenerale.dudroit.eu/wp-content/uploads/PRGD_2024054_1.pdf.

²⁷CJEC, 20 September 2001, *Grzelczyk*, C-184/99, ECLI:EU:C:2001:458, para. 31; CJEC, 17 September 2002, *Baumbast and R*, C-413/99, ECLI:EU:C:2002:493, para. 82; CJEU (Grand

1 recognition of the right to move and reside freely within the territory of the
 2 Union, as well as the right not to be discriminated against on grounds of
 3 nationality. In addition, it encompasses fundamental political rights enabling
 4 participation in the democratic life²⁸ of the Union, as well as the right of a
 5 national of a Member State to receive consular protection from the authorities of
 6 other Member States in a third country where their Member State is not
 7 represented. Last but not least, the right to petition the European institutions
 8 completes the set of rights enjoyed by Union citizens, rights which rank among
 9 the most important provisions of the Treaties. Against this background, the
 10 systematic granting of Maltese citizenship in exchange for predetermined
 11 payments or substantial investments becomes, according to the Commission, the
 12 costly gateway unlawfully opened by the Government in Valletta to the benefits
 13 attached to Union citizenship. Indeed, media coverage of the Maltese
 14 naturalisation scheme confirmed that European citizenship status was “the
 15 linchpin of the marketing campaign, presented precisely as a commercial bonus
 16 attached to Maltese citizenship”²⁹.

17 By contrast, in the view of the Republic of Malta, the 2020 citizenship-by-
 18 investment scheme constitutes a legitimate, robust, effective and professionally
 19 managed naturalisation scheme that does not undermine the objectives of the
 20 Union. Malta’s defence focuses primarily on the sovereignty of the Member
 21 States in determining the conditions for the conferral of citizenship and identifies
 22 precisely “investment in the local economy and integration into the applicants’
 23 social fabric”³⁰ as connecting factors³¹. Thus, the competence to confer
 24 citizenship would constitute the effective exercise of sovereign prerogatives and
 25 would be closely linked to the national identity of a Member State, which the
 26 Union is required to respect pursuant to Article 4(2) TEU. In the view of the
 27 Maltese authorities, it is only where a Member State’s naturalisation policy
 28 results in a general and systematic serious infringement of the values and
 29 objectives of the Union, as defined in EU law, that the Member State could be
 30 considered to have breached its obligations arising from the requirement to
 31 comply with EU law. Otherwise, allowing the Commission to challenge the legal
 32 framework through which Member States determine the conditions for the
 33 conferral of citizenship would, in effect, amount to an action seeking to have the
 34 Court act as an “indirect legislator”, thereby exercising a veto over national

Chamber), 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, ECLI:EU:C:2022:449, para. 49.

²⁸For reflections on citizenship education and civic participation in the exercise of public governance, see Podda (2026) at 237-252.

²⁹Oprescu (2026) available at <https://www.universuljuridic.ro/cetatenia-europeana-de-vanzare-consideratii-despre-hotararea-din-29-aprilie-2025-pronuntata-in-cauza-c-181-23-comisia-europeana-vs-republica-malta/>. Alongside the moral considerations, the author also addresses the economic and sociological dimensions, as well as the dimension concerning equality of rights, around which the CJEU’s reasoning is structured.

³⁰*Commission v Malta*, para. 115.

³¹Regarding citizenship as a connecting factor in the context of private international law and the determination of the applicable law see Aniței (2025) at 394. On the concept of „corporate citizenship“ and corporate social responsibility, see Mohapatra & Verma (2019) at 152.

1 legislation adopted in an area falling within the exclusive competence of the
2 Member States³².

3 Adopting a Cartesian line of reasoning, the Advocate General's (AG)
4 analysis is firmly anchored in the relevant provisions of primary law [Articles 9
5 TEU and 20(1) TFEU], as well as the text of Declaration No 2 concerning the
6 nationality of a Member State³³, while distancing itself from any romanticised
7 understanding of the notion of citizenship. At the outset, AG Collins recalls that,
8 according to settled case-law, the Court has held that the legislation of a Member
9 State may not restrict the effects of the acquisition of the nationality of another
10 Member State by imposing an additional condition for the recognition of that
11 nationality³⁴. Although that reasoning was articulated in the specific context of
12 the exercise of a fundamental freedom provided for by the Treaties, both prior to
13 (*Micheletti*) and following the establishment of Union citizenship (*Zhu and*
14 *Chen*), its relevance remains valid in circumstances relating to a national
15 investment-based naturalisation scheme. Accordingly, in the AG's view, the
16 Commission had failed to demonstrate that, for the lawful conferral of national
17 nationality, Article 20 TFEU genuinely requires the existence of an "effective
18 link" or a "prior effective link" between a Member State and an individual³⁵. The
19 AG therefore proposed that the Commission's action be dismissed.

20 **The Court's Assessment: Rejecting *Ius Pecuniae* and Promoting an**
21 **Axiological Conception of Citizenship.** Received very differently in legal
22 scholarship³⁶ and becoming the subject of considerable controversy³⁷, the Court
23 upheld the Commission's action, without, however, attaching the same
24 importance to the genuine-link criterion as that established in the celebrated
25 *Nottebohm* judgment. Leading scholars have welcomed this cautious approach
26 by the Court, observing that, under different circumstances, various national
27 regimes established by certain Member States might have been exposed to
28 significant tension with an approach centred on the "genuine link" factor.
29 Examples include the so-called reparative citizenship schemes granted by certain
30 Member States (Austria, France, Germany, Greece, Poland, Portugal and Spain)
31 to descendants of Jewish minorities; the highly "liberal" conditions governing

³²*Idem*, paras. 66, 68.

³³According to the terms set out in Declaration No. 2 on nationality of a Member State, annexed by the Member States to the final Act of the Treaty on European Union (OJ 1992, C 191, p. 98) „The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned“. The text of Declaration No. 2 was reaffirmed by the Edinburgh Decision of 11 and 12 December 1992.

³⁴CJEC, 7 July 1992, *Micheletti and others*, C-369/90, ECLI:EU:C:1992:295, para.10; CJEC, 19 October 2004, *Zhu and Chen*, C-200/02, ECLI:EU:C:2004:639, para. 39

³⁵Opinion of Advocate General Collins delivered on 4 October 2024 in *Commission v Malta*, ECLI:EU:C:2024:849, para. 58.

³⁶For a detailed account of the critical as well as favourable views concerning the judgment, see Spineanu-Matei (2025) at 189-202.

³⁷Kochenov (2025) available at <https://verfassungsblog.de/eu-citizenships-new-essentialism/>; Peers (2025) available at <https://eulawanalysis.blogspot.com/2025/04/pirates-of-mediterranean-meet-judges-of.html>.

1 the acquisition of Italian citizenship through the timely discovery of ancestors;
 2 and the naturalisation in France of foreigners³⁸ who, pursuant to Article 21-21 of
 3 the French Civil Code, “through their outstanding contribution, contribute to the
 4 development of the French-speaking world and to the prosperity of France’s
 5 economic and international relations.”

6 The Court’s reasoning begins with the classic propositions set out in the
 7 landmark *Micheletti* and *Rottmann* judgments. Although the definition of the
 8 conditions for the acquisition and loss of the nationality of a Member State falls
 9 within the competence of each Member State, that competence must be exercised
 10 in compliance with EU law³⁹. The Court then emphasises that the basis of the
 11 nationality relationship between a Member State and its nationals lies in the
 12 special relationship of solidarity and loyalty between that State and its nationals,
 13 as well as in the reciprocity of rights and obligations. In a context where the
 14 provisions on Union citizenship form an integral part of the Union’s
 15 constitutional order and constitute one of the essential manifestations of the
 16 solidarity⁴⁰ that lies at the very foundation of the integration process, the
 17 exercise by Member States of their competence to confer nationality may not
 18 undermine the objectives and values set out in Article 2 TEU.

19 Given that Union citizenship is well known to provide access to free
 20 movement, political rights concerning participation in the democratic life of the
 21 Union, and consular and diplomatic protection, it cannot be distorted into a
 22 luxury commodity through a commercial transaction. This is all the more
 23 significant given that citizenship-by-investment programmes have been
 24 criticised for the risks they pose in relation to white-collar crime (money
 25 laundering, corruption and tax evasion⁴¹), violations of sanctions regimes, and
 26 pressure on the real estate market.

27 The novelty introduced by the Court lies in this “systemic and constitutional
 28 vision of citizenship”⁴² and, above all, in the conceptual shift from market
 29 citizenship, as reflected in the case-law on free movement (*Ruiz Zambrano*, *Zhu*
 30 *and Chen*, *Dano*), towards a conception of Union citizenship grounded in the
 31 common values set out in Article 2 TEU and in the mutual trust that Member
 32 States place in one another. The civic virtue that nourished Aristotle’s *harmonia*
 33 and which Cicero later explored in *De Legibus*, *Pro Archia Poeta* and *De*
 34 *Amicitia* finds a remarkably effective continuation on the Kirchberg plateau.
 35 Clearly, the value and integrity of European citizenship, articulated around the

³⁸Lepoutre (2025) available at <https://blog.juspoliticum.com/2025/05/23/golden-passports-la-cour-de-justice-ferme-le-marche-de-la-citoyennete-par-jules-lepoutre/>.

³⁹*Micheletti and others*, para. 10; CJEU (Grand Chamber), 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, para. 45; CJEU (Grand Chamber), 5 September 2023, *Udlændinge- og Integrationsministeriet (Loss of Danish nationality)*, C-689/21, EU:C:2023:626, para. 30 and the case-law cited.

⁴⁰For a broader discussion of solidarity as a ‘shared social value among the Member States which, pursuant to Article 2 TEU, characterises the society in which the Union is developing’, see Lenaerts & Adam (2021) at 307-417.

⁴¹See Aniței & Lazăr (2022) at 35.

⁴²Iliopoulou-Penot (2025) available at <https://revuedlf.com/droit-ue/la-citoyennete-de-lunion-telle-quelle-decoule-des-traites-breves-reflexions-sur-larret-commission-malte-citoyennete-par-investissement/#sdfootnote15anc>.

1 special relationship of solidarity and loyalty between the State and its nationals
 2 and imbued with the axiological dimension deriving from Article 2 TEU,
 3 transcend the boundaries of a purely symbolic paradigm. The question that
 4 nevertheless arises is to what extent the solution advanced by the Court is
 5 genuinely grounded in the provisions of the TFEU, or, more precisely, to what
 6 extent there is a legal basis in primary law that enables the Union to scrutinise
 7 national legislation governing the acquisition of the nationality of a Member
 8 State. Some scholars have not hesitated to argue that the approach endorsed by
 9 the judgment “has the air of an informal constitutional change”⁴³ or to ask
 10 “which of the two is actually selling European values”⁴⁴. Mai mult, s-a remarcat
 11 și faptul că „amidst all this deep theorizing the Court decided not to mention that
 12 Ireland was selling citizenship throughout the negotiations and the entry into
 13 force of the Maastricht Treaty (from 1988 to 1998) and that this established
 14 practice thus dates back to the cradle of EU citizenship”⁴⁵.

15
 16

17 **Is There a Legal Basis in the TFEU for “European Citizenship Supervision”?**

18

19 Within the doctrinal debate prompted by the historic judgment of 29 April
 20 2025 in *Commission v Malta*, the detailed analyses of Professor Jules Lepoutre⁴⁶
 21 have the further merit of bringing to the fore the prophetic commentary through
 22 which, thirty years ago, Stephan Hall, in his work *Nationality, Migration Rights*
 23 *and Citizenship of the Union*, anticipated the consequences of the establishment
 24 *de jure* of Union citizenship by the Maastricht Treaty. In effect, the author
 25 foresaw the conceptual shift and the effects that the introduction of EU
 26 citizenship would entail for national citizenships. With remarkable clarity, he
 27 thus envisaged the possibility of the emergence of a “power of supervision over
 28 the manner in which Member States exercise their powers in matters of
 29 nationality.”⁴⁷

30 This is why we consider that the Court’s judgment is not merely about
 31 banning golden passports and repudiating the sale of Union citizenship. At a
 32 deeper level, it raises the question of the extent to which the “legal alliance”
 33 forged by the Court between Article 20 (1) TFEU and Article 2 TEU constitutes
 34 the legal foundation upon which this “supervision” of national legislation
 35 governing access to Member State citizenship may be activated. Some scholars
 36 have adopted particularly firm positions, denouncing the constitutional impurity
 37 from which this approach allegedly suffers and the fact that „the Court happily
 38 discards constitutional guardrails when political expediency so demands”⁴⁸.

39 Although we prefer not to approach the issue under consideration in such
 40 radical terms, the question we pose is the following: has Article 2 TEU perhaps,

⁴³ *Idem*.

⁴⁴ Weiler (2024) available at <https://verfassungsblog.de/citizenship-for-sale/>.

⁴⁵ Kochenov (2025) available at <https://eulawlive.com/op-ed-never-mind-the-law-again-commission-v-malta-c-181-23/>.

⁴⁶ Lepoutre (2025).

⁴⁷ Hall (1995) at 44.

⁴⁸ *van den Brink* (2025) available at <https://verfassungsblog.de/why-bother-with-legal-reasoning/>.

in recent times, become too broad a gateway, increasingly relied upon to expand the competences of the Union into areas where, in reality, the Member States retain exclusive prerogatives? Could it be that this emphatic prohibition on the commercialisation of Union citizenship rests on an idealistic interpretation that goes beyond the provisions of the TFEU? Furthermore, do mutual trust between the Member States and loyalty to the European integration project genuinely permit such an evolutive interpretation of the Treaties? And, last but not least, how far can we go with an evolutive - or perhaps excessively lax-interpretation of the text of the Treaties?

Conclusions

It is true that citizenship, insofar as it confers access to Union citizenship, cannot be “an empty shell freely placed in the hands of the Member States”⁴⁹. At the same time, it must be acknowledged that the recent development of the Court’s case-law has been significantly influenced by the geopolitical context created by the successive rounds of sanctions adopted by the European Union against Russia since 2022 (the latest, 21st package of sanctions dating from 23 July 2026). Nor should it be overlooked that, despite the risks they may entail, citizenship-by-investment and residence-by-investment schemes generate undeniable economic benefits for the Member States. In a context in which the Treaty of Lisbon considerably expanded the European Union’s exclusive competence in the field of the common commercial policy, extending it to foreign direct investment⁵⁰, it is hardly surprising that Member States have sought other legal means of attracting international capital.

Although the conception of citizenship advanced by the judgment in *Commission v Malta* is well constructed, we nevertheless venture to suggest that the Court’s judgment displays a certain degree of ambiguity. It reveals an underlying tension between an approach largely driven by public policy considerations and the requirement that judicial reasoning remain firmly anchored in the Treaties. Moreover, it illustrates the difficulties faced by EU law in reconciling migration policy objectives⁵¹, the requirements of European security, and the principle of conferral⁵².

This ultimately raises a broader constitutional question: does Article 2 TEU in fact constitute an autonomous and sufficiently robust legal basis that genuinely enables the European Union to scrutinise national regimes governing the conferral of citizenship? Even acknowledging these vulnerabilities, the *Commission v Malta* judgment marks a significant shift away from a

⁴⁹Lepoutre (2025).

⁵⁰Ungureanu (2021) at 239.

⁵¹Regarding the challenges posed by the instrumentalization of migration at the external borders of the European Union see Roots (2025) at 237.

⁵²For developments concerning „the constitutional aspects of sovereignty within the EU, the principle of conferred competencies and the relationship between national and supranational governance“ see Safta & Toader (2026) at 65-117.

predominantly functional and market-oriented conception of Union citizenship towards an axiological conception grounded in the common values enshrined in Article 2 TEU.

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