

Can Investor Residence and Citizenship Programmes be a Policy Success?

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18 June 2019

1. Introduction¹

Investor residence and citizenship programmes, which grant status to wealthy individuals in return for a financial investment, are a niche area of immigration policy. In 2017, investment-related grants of status made up around 1% of US green cards, 0.6% of non-EU settlement grants in the UK, and less than 4% of Australia's Migration Programme.² However, investor programmes punch above their weight when it comes to the capacity to generate controversy in public debates. Both the economics and politics of investor migration are complex and controversial.

Despite the growing number of investor programmes operating in high-income countries, there is no consensus on what constitutes 'good practice'. This chapter examines the question what makes for a successful investor programme, defining 'success' from both an economic and a political perspective. I argue that, perhaps even more than in other areas of migration policy, there is a conflict between policy designs that are economically beneficial and those that are politically acceptable, with important consequences for how investor policies are designed and promoted to public audiences.

2. Defining success and failure in investor programmes

Measuring success in public policy is notoriously difficult, because there are so many ways of doing it. Perceptions of success depend on a host of factors including whose interests one values most, how high one sets the threshold for success, and the timeframe over which a policy is evaluated.³ A policy might benefit some people while hurting others; or it may bring benefits in the short run at the expense of long-run costs. Perceived policy failures may result from unrealistic expectations about what government action can actually achieve,⁴ or 'excessive policy demand' that makes it hard for politicians to admit that the government simply does not have the tools to solve a given problem.⁵

To assess whether a policy has been a success, one would ideally have a clear set of objectives against which to measure it, but this is not always the case.⁶ Keeping objectives opaque can be part of a deliberate strategy to build a coalition of groups with

¹ Thanks to Kyrill Ryabtsev for excellent legal research assistance, and to Dimitry Kochenov and Kristen Surak for their helpful comments on an earlier draft.

² Department of Homeland Security (DHS), "Yearbook of Immigration Statistics 2017", Washington DC: DHS 2018, Table 6; Home Office, "Immigration Statistics year ending September 2018", London: Home Office, 2018, Table se_03; and Department of Home Affairs, "Migration program planning levels", (website) <https://immi.homeaffairs.gov.au/what-we-do/migration-program-planning-levels>, accessed 18 March 2019. Australian figures are the FY2017-18 planning levels.

³ Helen M. Ingram, "Policy failure: An issue deserving analysis" in *Why policies succeed and fail*, edited by Helen M. Ingram and Dean E. Mann, London: Sage, 1980, pp12-16.

⁴ Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (first published 1979, Transaction Publishers 1992), pp48-56.

⁵ Ingram, "Policy Failure", pp17-19.

⁶ Harold L. Wolman, 'The determinants of programme success and failure', *Journal of Public Policy* 1(04):433 - 464 October 1981, pp438-440.

different or even conflicting interests.⁷ In other cases, policies may be introduced for symbolic reasons alone.⁸ Choices between different policy tools involve trade-offs between competing objectives such as accuracy vs. complexity or political palatability vs. operational feasibility; the academic researcher cannot necessarily decide which objectives to prioritise 'by analytical fiat'.⁹

All of these analytical and conceptual problems arise when looking at investor residence and citizenship, as much as in any other policy area. Nonetheless, to proceed with any discussion of how we can evaluate investor programmes either economically or politically, it is useful to settle on a working definition of policy success. Allan McConnell provides a useful definition that captures both objective and subjective evaluation: "A policy is successful if it achieves the goals that proponents set out to achieve and attracts no criticism of any significance and/or support is virtually universal."¹⁰ Taking this definition as a starting point, in this chapter I will look at three main questions: what are the goals of investor programmes; what evidence do we have that these goals are being achieved; and how much criticism or support do the policies garner?

What are investor programmes for?

A full empirical investigation of the objectives of investor programmes in different countries is beyond the scope of this chapter. However, a brief review of press releases, speeches and other official statements in English-speaking countries helps to illustrate how governments publicly portray the programmes' objectives.¹¹ These statements tend to focus strongly on the expected economic impacts. This includes, first, the economic benefits of the transaction itself. For example:

"These two initiatives are about protecting existing jobs and creating new opportunities. Ireland clearly needs investment and there is considerable potential out there." *Ireland's Justice Minister announcing the new entrepreneur and investor programmes in 2012.*¹²

"The chief goal of the programme is to attract investments to our shores, create jobs and grow the economy." *Antigua and Barbuda's Prime Minister announcing citizenship by investment programme in 2013.*¹³

"The ethos behind citizenship by investment is about opening up the Federation to investment that will have a direct impact on the quality of life of its citizens." *Saint Kitts and Nevis 2017 Government press release.*¹⁴

⁷ Wildavsky, *Speaking Truth to Power*, p215.

⁸ Ingram, 'Policy failure', p20.

⁹ Stephen H. Linder and B. Guy Peters, Instruments of Government: Perceptions and Contexts, *Journal of Public Policy*, 9 (1989), p55.

¹⁰ Allan McConnell, Policy Success, Policy Failure and Grey Areas In Between, *Journal of Public Policy*, 30 (3), 2015:345-362; p351.

¹¹ Based on review of press releases, speeches and other government documents announcing introduction, changes, or evaluation of investor programmes in Canada, Australia, New Zealand, United Kingdom, United States, Ireland, Antigua and Barbuda, Dominica, Grenada, Saint Kitts and Nevis, and Saint Lucia.

¹² Department of Justice and Equality, Shatter announces two new initiatives: Immigrant Investor Programme and Start-up Entrepreneur Scheme, Press Release, 24 January 2012.

¹³ Antigua and Barbuda, "PM Spencer Launches Antigua And Barbuda Citizenship By Investment Programme" press release, 13 October 2013.

¹⁴ Government of Saint Kitts and Nevis, "Hurricane Relief Fund announced as part of the citizenship by investment programme", Press Release, September 23, 2017.

A second potential benefit is the skills or contributions of the investors themselves. For example:

“The Government is keen to attract international investors with business and entrepreneurial skills, who will bring the necessary capital to enhance investment into innovative Australian businesses.” *Australian Assistant Minister for Immigration and Border Protection announcing investor visa reforms in 2015.*¹⁵

“The objective of the IN [Investor] class is to attract experienced business persons and capital to Canada.” *Canadian government evaluation of the Business Immigration Programme, 2014.*¹⁶

In other cases, policymakers cite the potential benefit of sending the message that the country is ‘open for business’. For example:

“The IIP has been designed accordingly to facilitate productive investment into Ireland and to position Ireland as a ‘business friendly’ country.” *Ireland’s official application guidelines, 2014.*¹⁷

Of course, investor programmes may have other objectives not announced in press releases, including corrupt or secret ones. For example, they could provide a mechanism for policymakers to give favours to businesspeople whose business projects are eligible to receive investor funding, or agents and intermediaries involved the application process.

Overall, it is worth noting that official statements about the purpose of investor programmes are often quite generic and it is not always obvious whether governments who create investor programmes have a clear vision of their purpose and the precise mechanisms through which economic impacts will be generated. Indeed, the rapid development of programmes in the late 2000s and early 2010s raises the question whether a ‘bandwagon’ effect is in part responsible for some programmes’ existence. As Alan Gamlen and colleagues note, “Remarkably few IIPs specify any clear purposes for the funds they generate [...].The few existing attempts to incentivize/dis-incentivize investment in particular regions or sectors have proved difficult to monitor and enforce, and most programs simply dissolve private investments into the economy in the vague hope that growth will somehow result.”¹⁸

3. Investor residence and citizenship programmes: what are the options for policy design?

¹⁵ Minister for Trade and Investment, ‘Final complying investment design for the Significant and Premium Investor Visas: Measures will promote investment and innovation,’ Joint media release, 15 May 2015.

¹⁶ Citizenship and Immigration Canada (CIC), “Evaluation of the Federal Business Immigration Programme”, Ottawa, CIC, 2014, p2.

¹⁷ Irish Naturalisation and Immigration Service (INIS), “Immigrant Investor Programme 2014 Guidelines” Dublin: INIS, 2014, p27.

¹⁸ Alan Gamlen, Christopher Kutarna and Ashby Monk, “Re-thinking Immigrant Investment Funds”, Investment Migration Working Papers IMC-RP 2016/1, 2016, p22.

Defining exactly where investor programmes begin and other migration and citizenship policies end is not entirely straightforward. In this chapter I use the term ‘investor programmes’ to describe policies in which the government awards a residence status or citizenship to individuals and/or their family members in return for a financial transaction, with relatively limited requirements to be actively involved in the day-to-day operations of a business.

I do not include entrepreneur programmes, for which separate policies exist in many countries. Entrepreneur programmes require individuals actually to run (and often to start up) a business rather than just invest in one, and as a result are arguably much more focused on the applicant’s skills and knowledge than investor programmes.¹⁹ That said, the distinction between investor and entrepreneur programmes is not entirely clean. As discussed later in the chapter, some investor programmes require applicants to have a business background, presumably on the basis that their skills and active involvement in business activity is expected. On the other hand, entrepreneur visa holders may delegate day-to-day operations to others—a practice that the UK’s Migration Advisory Committee criticised as an ‘investor-lite model’ that violates the spirit of entrepreneur programmes by using them as a cheaper version of the investor visa.²⁰

While the policies described in this chapter are often known as ‘investment migration’ policies, both the terms ‘investment’ and ‘migration’ are used rather loosely. The word ‘investment’ is typically used to describe the process of investing money with the expectation of a financial return, many investor programmes provide no such expectation. Whether investor programmes are even ‘migration policies’ at all is also up for debate. The term ‘migration’ generally refers to people changing their place of ordinary residence for a period of time and usually does not include international travel for leisure or business. Some participants in investor programmes, however, are clearly not migrants in the traditional sense of the word as they have no intention to move their ordinary place of residence but instead use the programmes to facilitate short-term international travel (e.g. travel within the Schengen area).²¹ Both residence permits and citizenship do not just give their holders rights in the country that granted them, but also beyond that country’s borders.²² This creates an incentive for some people to acquire a second citizenship (or residence) offering more global rights, regardless of where they plan to live—what Yossi Harpaz calls ‘compensatory’ citizenship in that it makes up for the deficits in the one the individual already holds.²³

Investor programmes come in many shapes and sizes, but when thinking through both the economics and the politics of the programmes it is useful to organise them along

¹⁹ For a discussion of differences between investor and entrepreneur programmes, see Francesca Strumia, “New-generation Skilled Migration Policies and the Changing Fabric of Membership: Talent as Output and the Headhunting State” *Investment Migration Working Papers*, IMC-RP 2016/4, 2016, pp6-7.

²⁰ Migration Advisory Committee, “Tier 1 entrepreneurs: Review of the Tier 1 Entrepreneur and Graduate Entrepreneur routes”, London: MAC, 2014, pp59-63.

²¹ Madeleine Sumption and Kate Hooper, “Selling visas and citizenship: Policy questions from the global boom in investor migration” Migration Policy Institute, 2014, p5.

²² Dimitry Kochenov and Justin Lindeboom (eds), *Kälin and Kochenov's Quality of Nationality Index (QNI)* (London/Oxford: Bloomsbury Professional/Hart Publishing, 2019).

²³ Yossi Harpaz, “Compensatory citizenship: dual nationality as a strategy of global upward mobility” *Journal of Ethnic and Migration Studies*, 2018, p2.

two main dimensions.²⁴ The first dimension is type of financial transaction the programme requires. The second dimension is whether there is any realistic expectation that the applicants or their family members will be genuinely involved in the economic and social life of the country at some point on their pathway towards citizenship, such as by spending time there as residents.

3.1. Financial investment

Investor programmes across different countries allow applicants to qualify via a wide range of transaction types, and the options on offer have an important impact on their politics and economics. I categorise permitted transactions into four groups: 1) non-refundable cash payments to the government or non-governmental ‘worthy causes’; 2) investments in private businesses, either directly or via a managed fund; 3) residential property investments; and 4) ‘display of wealth’ – programmes in which applicants must show that they have funds at their disposal but do not have to make a productive investment. These categories are not mutually exclusive (i.e. an applicant may have a choice between them or may be required to do more than one).

Non-refundable cash payments

These programmes require applicants to make a non-refundable payment, and thus are not investments in the normal sense of the word. The payment can take various forms. First, it may be an explicit contribution to the government, such as the €650,000 required in the Maltese Individual Investor Programme (IIP)²⁵ or the payments of \$100,000-\$250,000 in the Caribbean island nations of Antigua and Barbuda, Dominica, Grenada, or Saint Kitts and Nevis.²⁶

In some cases, applicants may be able to qualify by making a donation to a ‘worthy cause’ that is not the government. This includes, for example, donations to registered charities in Ireland,²⁷ or to projects “of public interest in the fields of culture, education, immigration management, scientific research, preservation of cultural and natural heritage” in Italy.²⁸

In other cases, a programme may not explicitly ask for a payment but nonetheless take money from applicants in another way. For example, it may charge such high ‘application fees’ that there must be significant profits generated for the government (e.g. €38,000 applicants pay for choosing the interest-free bonds option in Latvia).²⁹ Or the government can take money directly from investors by asking them to purchase zero-interest bonds, in which the investor forfeits over a period of several years the

²⁴ This is based on the typology previously developed in Sumption and Hooper, “Selling visas and citizenship”, p8-17.

²⁵ Maltese Citizenship Act (CAP. 188) of 1965, art. 10(9b); The Individual Investor Programme of the Republic of Malta Regulations, 2014 (L.N. 47 of 2014).

²⁶ Antigua and Barbuda citizenship by investment Act of 2016, Schedule of fees, art. 2; The Commonwealth of Dominica Citizenship by Investment Regulations of 2014, Schedule, art. 1(2b); Grenada Citizenship by Investment Act of 2013; Saint Christopher and Nevis Citizenship by Investment Regulations of 2011, Schedule, art. 3(1).

²⁷ Department of Justice and Equality, “Immigrant Investor Programme: Guidelines for Applicants” February 2019, p7.

²⁸ Ministry of Economic Development, “Investor Visa for Italy: Policy Guidance” 14 September 2018, https://investorvisa.mise.gov.it/images/documenti/Investor-Visa-for-Italy---Policy-guidance-ENG-14_09_2018-DEF.pdf.

²⁹ Latvia Immigration Law of 2007, section 24(1)(4); Office of Citizenship and Migration Affairs, “Persons investing in bonds” <https://www.pmlp.gov.lv/en/home/services/residence-permits/doc2/person-investing-in-bonds.html>, accessed 16 March 2019.

normal interest that he or she would otherwise receive by investing at market rates.³⁰ This latter model is used in Quebec and Latvia.³¹

Private-sector business

Programmes that bring funding for the private sector are more akin to what one would normally consider an investment. Some countries envisage investments in a company or project chosen by the investor, potentially with a requirement to create a specific number of jobs (e.g. the United States and Portugal have private-enterprise investments with job creation requirements, while Italy has one without).³² In other cases, the destinations of the funds are narrower. For example, several of the Caribbean citizenship programmes offer approved real-estate development options in which applicants choose between a limited number of developers who have received government approval to solicit investor money.³³

In some cases, investors may put their money into shares, managed funds, private equity or venture capital fund. In Singapore, for example, the government approves fund managers operating funds that invest in Singapore-based companies (in 2018 the list included funds for private equity, venture capital and SME project finance), following a rating exercise by the consultancy company, Mercer.³⁴ (This is a passive investment, although the programme is primarily aimed at business owners intending to set up or invest in businesses in Singapore.)

At least in principle, the applicant may expect a financial return from such investments, although in practice they may not be particularly profitable, especially where the recipient of funds is well aware that immigration status and not financial returns are the main motivation for the transaction.

Display of wealth

Some programmes do not require applicants to make a productive investment, but instead simply hold sufficient funds. For example, some programmes allow applicants to transfer funds to a bank account in the country (e.g. a local bank deposit of €1m will qualify in Spain and Portugal).³⁵ Spain and Portugal also allow applicants to qualify if they purchase ordinary, interest-bearing government bonds, and this option existed in the UK until March 2019.³⁶ I classify these as ‘display of wealth’ policies because it is difficult to argue that the transaction itself will bring a meaningful economic benefit, as discussed further below.

Residential property

³⁰ The actual cost to the investor depends on the difference between the investor bond rate and the market rate for equivalent government bonds. This will fluctuate over time depending on the performance of the bond rate and in theory could become negative in periods when the cost of government borrowing on the open market is low.

³¹ Latvia Immigration Law of 2007, section 24(1)(4); Quebec Immigration Act of 2019, art 30; Immigration, Diversity and Inclusion Quebec, ‘Investor Program’ <http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/businesspeople/applying-business-immigrant/three-programs/investors/index.html> accessed 17 March 2019.

³² United States Immigration and Nationality Act of 2002, act 203(5); Portugal Migration Act of 2012, art 3(iii).

³³ The Commonwealth of Dominica Citizenship by Investment Regulations of 2014, art. 6(1); Saint Christopher and Nevis Citizenship by Investment regulations of 2011, Schedule 3(1).

³⁴ Mercer, “Rating reports on Global Investor Programme (‘GIP’) Funds”, 2015.

³⁵ Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización, Artículo 11 (2); Portugal Migration Act of 2012 art. 60 (2b).

³⁶ Disposiciones Generales Jefatura del Estado, art 11(2); Act 23/2007 of July 4, amended by Act 29/2012 of August 9, art 60 (2b); and UK government, Statement of changes to the Immigration Rules: HC 1919, 7 March 2019.

A number of countries, particularly in the EU, allow investors to qualify if they purchase (or in some cases lease) residential property above a minimum price level. Key cases include Portugal, Latvia, Greece, Spain, and the residence programmes in Malta and Cyprus.³⁷

In these last three investment models (private-sector business, display of wealth and residential property), it should in principle be possible to withdraw the investment after a given period of time, and this will affect the economic impacts of the programmes, as discussed further below. How long the investment must be maintained will depend on the programme and how quickly it grants a permanent status or citizenship that is not contingent on the investment. Programmes that grant a temporary status with a long pathway to permanent residence can in theory prevent the applicant from withdrawing the investment for longer. Controversially, however, there is at least one model—investment in property in Cyprus—in which participants must maintain the investment even after becoming citizens.³⁸

3.2. Personal investment

While all investor programmes require a financial commitment of some kind, not all of them require the applicant to make any personal commitment to the destination country, such as living there.

Rules expecting the applicant to be personally engaged with the country's economic or social life are sometimes referred to as a requirement for a 'genuine link' or 'genuine connection' between the individual and the state,³⁹ and have also been described as 'engagement criteria'.⁴⁰ Such criteria come in various forms, including required periods of residence; language tests; civic knowledge tests; or membership of clubs or associations.

As discussed in the next section, the reasons governments impose such demands may be economic or political. That is, they may aim to encourage further economic activity in the country, or to reassure onlookers that residence and citizenship are not being doled out purely in return for a financial transaction but also on the basis of a more 'meaningful' connection.

However, assessing whether applicants have made a meaningful commitment to the destination country is difficult. As Peter Spiro argues in a legal analysis of the 'genuine link' concept in nationality law, "sorting supposedly authentic citizenship from instrumental citizenship is a fool's errand". He maintains that policies such as cultural integration tests are unlikely to succeed, since "short of minutely inspecting a person's

³⁷ Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización, art. 10; Portugal Migration Act of 2012 art. 60 (2b); Latvia Immigration Law of 2007, Section 24(1)(4); Greece Law No 4251 Immigration and Social Integration Code and other provisions of 2014, art 20(B); Maltese Citizenship Act (CAP. 188) of 1965, art. 10(9b); Criteria for Granting an Immigration Permit within the Scope of the Expedited Procedure to Applicants who are third Country Nationals and Invest in Cyprus of 2016, art. 2(2.4).

³⁸ Sofya Kudryashova, "The Sale of Conditional EU Citizenship: The Cyprus Investment Programme Under the Lens of EU Law" *European Papers* Vol 3 (2018) no 3: 1265-1288.

³⁹ Peter J. Spiro, "Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion", *Investment Migration Working Papers*, IMC-RP 2019/1.

⁴⁰ Gamlen et al, Rethinking Immigrant Investor Funds, pp8-10.

beliefs, friends and daily interactions, these conditions are incapable of measuring a naturalisation applicant's actual connection to the existing community."⁴¹

Governments going down this route must indeed rely on rather crude proxies for personal commitment. Some requirements supposedly indicating personal involvement can be delegated to agents or intermediaries. For example, specialist consultancy Zenturo Ltd notes on its website that it will help applicants to the Maltese IIP identify properties, arrange a Power of Attorney so that applicants do not have to come to Malta to sign contracts, and assist clients 'to be in full compliance' with genuine link evidence such as electricity bills and club memberships.⁴²

Physical presence requirements are arguably more meaningful, as they cannot be delegated to someone else (except in some cases to family members).⁴³ Physical presence requires at least some personal commitment, since for many people time is one of the most valuable things they have. At the high end, the UK's Tier 1 (investor) programme, for example, applicants must show 185 days of physical presence per year during a 2-5 year qualifying period before permanent settlement (the application requires them to list details of every absence from the country),⁴⁴ not an endeavour that can be undertaken lightly. However, physical residence by no means guarantees social, economic or civic participation, as discussed further in the next two sections.

While such criteria are relatively common, many investor programmes are clearly not aimed at attracting active participants in the country's social and economic life, and keep such requirements to a minimum. For example, official promotional material for the Saint Kitts and Nevis and Dominica citizenship by investment programmes prominently advertise that there is need to live in the country, no need to go there for an interview, no language requirement and no human capital criteria.⁴⁵

3.3. What status is on offer?

One could in principle add a third dimension: the status on offer. Some programmes offer citizenship up front (e.g. Caribbean islands), while others offer temporary residence permits (e.g. Portugal). As we will see in section 5, this question is quite important for examining the politics of investor programmes.

However, it is not easy to categorise programmes neatly by the available status. Even if a programme offers only temporary status up front, there will generally be a path to permanent status or citizenship over time for those who meet the criteria. Criteria for maintaining temporary residence permits may be different from those required for permanent residence or citizenship, and there will also be differences in the extent to

⁴¹ Spiro, "Nottebohm", p19.

⁴² Zenturo Ltd, "Immigration by Investment: Frequently Asked Questions" website accessed 4 March 2019, <https://malta-citizenship.info/individual-investor-program-faq.html>.

⁴³ Since most programmes do not require applicants to have business backgrounds themselves, wealthy individuals can often give funds to their partner or child, to serve as the principal applicant; these applicants may find it easier to meet residence requirements, bringing in the remaining family member later via family unification procedures.

⁴⁴ UK immigration rules 2016, arts 245E-245EF.

⁴⁵ Government of Saint Kitts and Nevis, "Citizenship by Investment", brochure, <https://ciu.gov.kn/wp-content/uploads/2015/01/Brochure-1.pdf>, accessed 27/08/2018; Government of Dominica, "Dominica Citizenship by Investment", flyer, no date, on file with author; The Commonwealth of Dominica Citizenship by Investment Regulations of 2014, Schedule, 1(2b); Saint Christopher and Nevis Citizenship by Investment regulations of 2011, Schedule 3(1).

which the pathway for investors is shorter or smoother than for other migrants such as employees or family members.

4. The economics of investor programmes

In theory, the economic impact of investor programmes may come in various different forms. These include the impact in the labour market (e.g. does the investment create jobs directly or indirectly); impact on productivity (e.g. does the investment lead to the development of productivity-enhancing technologies or infrastructure); or broader wellbeing (e.g. does the investment improve amenities or services available to residents, whether publicly or privately provided). When assessing impact we must also consider short-run vs. long-run impact, including whether any expected impacts are sustainable or transient; and compliance with the spirit or letter of the policy (i.e. how easily can governments ensure that the investment is really of the kind they intended).

A full understanding of the economic effects of investor programmes is stymied by the limited publicly available data and evaluations. If official data are available at all, published information is often limited to the number and nationalities of programme participants. Based on theory and the available evidence, this section makes some general observations.

4.1. *The economics of the financial transaction itself*

Non-refundable payments

Programmes requiring a straightforward payment are designed to facilitate potentially welfare-enhancing activities or service provision without the economic burdens of taxation. Regardless of the precise destination of the funds, the general rationale of this model appears to be to generate ‘free money’ for useful causes.

Where investor money is paid directly to the government, it may be ring-fenced for a specific purpose or simply added to general government revenues. In Malta, for example, a share of the cash donations supplements normal government revenues while the majority is channelled to the ‘National Development and Social Fund’, which was established to disburse funding to social projects. The permitted purposes of the fund are quite broad and rather resemble normal functions of government, however, including activities such as contributing to the “development of better public services” and initiatives to improve health care for the elderly.⁴⁶ The Government of Dominica describes the purpose of its citizenship by investment fund as providing capital for both public and private sector projects, citing examples such as construction of schools and hospitals.⁴⁷ Quebec uses the profits from its zero-interest bonds for a programme of grants to businesses looking to expand or innovate, and for a subsidy programme to encourage the employment of minorities and immigrants.⁴⁸

⁴⁶ Malta subsidiary legislation 595.12 of 2015, art 4(k); Subsidiary Legislation 497.12, National Development and Social Fund (Establishment as an Agency) Order, 6th January, 2015.

⁴⁷ The Commonwealth of Dominica Citizenship by Investment Regulations of 2014. art 2; Government of Dominica, “Government Fund”, accessed 27 January 2018, <http://cbiu.gov.dm/investment-opportunities/government-fund>.

⁴⁸ Investissement Quebec, “Business Assistance – Immigrant Investor Programme” website accessed 8 February 2019, <http://www.investquebec.com/quebec/en/financial-products/all-our-solutions/business-assistance-immigrant-investor-program.html>; and Emploi Quebec, “Employment Integration Program for Immigrants and Visible Minorities” website accessed 8 February 2019, <http://www.emploi.quebec.gouv.qc.ca/en/citizens-pgu/starting-a-new-job/employment-integration-programs/employment-integration-program-for-immigrants-and-visible-minorities-priime/>.

If non-refundable payment programmes have drawbacks, they result primarily from the fact that revenues are unpredictable and cannot be counted on for the long term. Revenues from the programmes depend not only changing interest from applicants in such schemes, but also competition from other countries. Competition is particularly relevant in countries selling a relatively homogenous product—such as the Caribbean CBI programmes providing access to visa-free travel and, arguably, EU countries offering Schengen visas—where applicants are not planning to live in the country in question and thus have an incentive to shop around for the best deal.

A challenge when evaluating the impact of these programmes is the fact that it is not always clear what the money was spent on and to what effect – especially where revenues are simply added to overall government current or capital budgets. However, IMF Article IV evaluations of countries running cash-based investor programmes provide an interesting insight into the benefits and risks, at least at a high level. In Saint Kitts and Nevis, for example, the IMF estimated investor programme fees at 12.4% of GDP in 2015 but projected that this would fall to 1.8% of GDP by 2019, citing “increased competition in the region and global security concerns” as reasons behind declining revenues.⁴⁹ The IMF notes that revenues estimated at 7.4% of GDP in 2016 in Dominica provided ‘relief in the near term’.⁵⁰ However, it also repeatedly warns against using the funds being diverted to current government spending that would be difficult to reverse when revenues decline, criticising Antigua and Barbuda for not allocating the money to longer term priorities such as repaying debt and ‘fiscal buffers for future shocks’.⁵¹

Private-sector business

In theory, programmes that reward investments into private businesses are expected to bring economic benefits by stimulating inflows of foreign capital that can generate jobs in private-sector businesses and/or improve productivity.

Unlike cash programmes, private-sector investments can typically be withdrawn after a few years, once the applicant has qualified for status. Because these investments are made not for returns, but to secure residence or citizenship, swift withdrawal of the funds appears likely. When analysing the economic impact of this investment, it thus makes sense to consider the impact of a *temporary* injection of capital.

Proponents of the EB-5 programme in the United States emphasise the value of the programme in providing ‘patient capital’ at low rates, and providing financing when bank lending dried up in the wake of the financial crisis.⁵² In other words, funds from investor programmes may enable projects to get off the ground that would otherwise not have happened. This could be particularly useful in markets where venture capital and project finance for small and medium business are not well developed. Private-sector investor programmes may also stimulate infrastructure investments that themselves have spillover effects; in the Caribbean, for example, investments have in

⁴⁹ IMF, ‘St Kitts and Nevis’ IMF Country Report No. 17/186.

⁵⁰ IMF, “Dominica: 2017 Article IV Consultation-Press Release and Staff Report” *IMF Staff Country Reports*, 2017, p1.

⁵¹ IMF, “IMF Staff Completes 2016 Article IV Mission to Antigua and Barbuda”, November 9, 2016.

⁵² Steve McMillin, Michael Solon and Matt McDonald, “Harnessing Private Capital for Job Creation: An Analysis of the EB-5 Programme” US Policy Metrics, June 2015.

several cases been channelled towards resort developments that are hoped will boost the tourism industry and create jobs for local employees.

The challenges with the private-sector model primarily arise from the difficulty in monitoring and overseeing transactions. Investor applicants will want to secure a desired immigration status with minimum hassle and minimum risk, often before withdrawing their funds. This will favour investment in low-risk activities, rather than the dynamic start-ups policymakers may have in mind when thinking about foreign direct investment. As a result, the availability of an immigration benefit may distort the investor's market decisions and make the investment less economically beneficial. Depending on which investments are permitted, a private company's economic activities are not always conducted in just one country and in some cases may be conducted primarily abroad. There are also risks to transparency, particularly where governments pre-approve specific companies to receive funds, as this raises the question how decisions are made and whether rigorous criteria are applied.⁵³

Assessing the extent of such problems in practice is naturally difficult, although there is certainly reason to believe that investors often do not get a particularly good deal. The United States' Securities and Exchange Commission has pursued numerous cases of fraud in the EB-5 scheme.⁵⁴ Reviewing the EB-5 programme, the US-China Economic and Security Review Commission noted that the prevalence of fraud and the fact that investors are 'disinclined or unable to assess business risks' raises questions about whether the programme is bringing the intended benefits to the US economy.⁵⁵ The fact that any investors in the Caribbean Island programmes prefer to give away over \$100,000 in cash, rather than take up the option for investment in designated real-estate that can be sold again after a few years, suggests that the private-sector real estate options are not particularly good value.

Governments may attempt to impose criteria on the investment to ensure that they really involve the kind activity that policymakers envisage. Some business investment options, for example, require a certain number of jobs to be created (e.g. in Portugal an investment of €350,000 that creates at least 5 permanent jobs for at least 3 years can qualify).⁵⁶ Job creation requirements, however, may result in distortions if businesses steer towards labour-intensive activities to make it easier to employ enough staff, or if they lay off staff as soon as the job-creation requirement has been met and the desired immigration status secured.

The use of professionally managed funds—e.g. the approach taken by Singapore mentioned above—resolves the oversight problem to some extent. However, as Alan Gamlen and colleagues point out, these funds are still for-profit vehicles that “fail to link the IIP monies they receive to a clearly demonstrable public-good outcome”.⁵⁷

⁵³ For a discussion in the Hungarian case, see Boldizsár Nagy, “In Whose Interest? Shadows over the Hungarian Residency Bond Program” Investment Migration Council and Transparency International, 2016.

⁵⁴ Stephen Cohen, Testimony on the EB-5 Immigrant Investor Program before the Committee on the Judiciary, United States Senate, February 2, 2016, <https://www.sec.gov/news/testimony/cohen-testimony-02022016.html>.

⁵⁵ US China Economic and Security Review Commission, “Chinese Investment in the United States: Recent Trends in Real Estate, Industry, and Investment Promotion” USCC Staff Research Report, February 2015, p15.

⁵⁶ Portugal Migration Act of 2012, art. art 3(d ii).

⁵⁷ Gamlen et al, 2016, p27.

Display of wealth

Some countries offer investment options that in themselves are unlikely to bring particular economic benefits. The most obvious examples of this are requirements to deposit funds with a local bank or to purchase ordinary government bonds. Unless the government has serious liquidity problems or the number of investor programme participants is very large, applicants purchasing government bonds are unlikely to shift the cost of government borrowing and therefore are not expected to have any economic impact. Similarly, bank deposits may bring some minor benefits to the bank in question, but unless injected at a very large scale relative to the overall size of the banking sector will not appreciably affect liquidity or have broader economic benefits.

Surprisingly, this option has been used in some of the most popular destinations—places that could probably afford to charge a real price for entry but who instead essentially give away residence for free. For example, the UK government until early 2019 maintained its policy of awarding investor visas based on government bond purchases despite its Migration Advisory Committee finding that the economic benefits of doing so were ‘not obvious’.⁵⁸ Australia offered investment in government bonds as an option until 2015, when it refocused the programme investments expected to have an economic impact, such as venture capital.⁵⁹ Spain and Portugal both allow investors to qualify based on bank deposits or ordinary government bonds, as noted above.

To the extent that ‘display of wealth’ programmes have any economic benefit, it is likely to come from the investor’s further activities in the country once they live there, as outlined in next section.

Residential property

The rationale for permitting investments in residential property is not entirely obvious, although it is used in several EU countries including Latvia, Spain, Greece, and Portugal.⁶⁰ Concern about depressed housing markets may have played a role, particularly in the aftermath of the late 2000s economic crisis, when these four programmes were established. The fact that Portugal operates a lower threshold (€350,000 instead of €500,000) for properties at least 30 years old in areas of ‘urban regeneration’⁶¹ hints at the expectation that the programme will encourage property owners to undertake renovations (which in turn would also be expected to generate jobs in the construction sector). However, interventions to boost demand for property have winners and losers—they may be good for existing home owners but push up prices for first-time buyers—so it is not clear that the economics of higher demand for housing are entirely positive.

It is also possible that the residential property option instead functions as an extension of the ‘display of wealth’ category, simply requiring a transaction to show that the

⁵⁸ Migration Advisory Committee (MAC), Tier 1 (investor) route: Investment thresholds and economic benefits, London: MAC, 2014, p55.

⁵⁹ Australian migration regulations 1994, Compilation N.185 of 2017, Schedule 7A.9, 7A96 (b). Minister for Trade and Investment, ‘Final complying investment design for the Significant and Premium Investor Visas: Measures will promote investment and innovation,’ Joint media release, 15 May 2015.

⁶⁰ Latvia Migration Law of 2007, Section 12(6); Ley 14/2013, de 27 de septiembre, de apoyo a los emprendedores y su internacionalización, art. 66; Greece Law No 4251 Immigration and Social Integration Code and other provisions of 2014, art 20 B(1b); Portugal Migration Act of 2012, art 3(d iii).

⁶¹ Portugal Migration Act of 2012, art 3(d iii); SEF, ‘ARI – Residence permit for investment activity’, accessed 17 March 2019 <https://www.sef.pt/en/pages/conteudo-detalhe.aspx?nID=21>.

applicant can muster the funds—but with the additional effect of creating a more tangible link between the investor and the destination country. For countries hoping to attract investors who will actually spend time in the country, property ownership may in theory provide a ‘nudge’ in this direction.

Finally, it is worth noting that in all of these models, the transaction takes place at a fixed point in time and once the person has obtained status is not expected to be repeated. The commitment that the state makes to the individual may be much longer lasting, in cases where citizenship is ultimately awarded. Indeed, depending on nationality laws, citizenship may ultimately be passed on to the next generation.

4.2. The economics of personal commitment requirements

As discussed in section 3, some countries require investor programme participants to be in some way involved in their economic or social life, while others do not.

If investors actually establish their lives in the destination country and conduct further economic activity there, this may bring additional economic impacts. For example, they may increase export revenues by using overseas funds to purchase goods and services, pay sales tax or VAT on those purchases, or become tax resident in the country and thus contribute to public finances. Some may set up businesses or make additional investments.

The main question about these impacts is on what scale they actually take place, and whether the design of investor programmes facilitates them. In the UK case, for example, the Migration Advisory Committee’s 2014 evaluation concluded that both business and further investments appeared to take place on a limited scale, and that for many investors the main business activity continued to take place abroad.⁶²

Even if a person holds a residence permit or citizenship, they will generally not be a resident for tax purposes unless they spend a minimum (often substantial) amount of time. This will depend on tax laws. The United States, for example, is unusual in treating all citizens and permanent residents as tax resident regardless of time spent in the country (so investor programme participants will automatically be tax residents), and the United Kingdom physical presence requirement is also sufficient to make a person automatically tax resident. However, investor programme applicants in countries with minimal physical presence requirements will generally not be tax residents if they do not actually live there.

In many cases investor applicants do not necessarily have a business background themselves but may have inherited, been given, or even borrowed the required funds. Stakeholders responding to the UK MAC consultation noted that because wealthy businessmen do not want to meet the residence requirement, it was often the spouse who applied to the investor programme, while in other cases businessmen gave their children the necessary funds to apply in their own right.⁶³ An evaluation of business immigration in Canada prior to significant reforms made in 2014 noted that ‘most’

⁶² MAC, ‘Tier 1 (investor) route’, p. 49.

⁶³ Ibid. p21 and p78.

investors borrowed money to make the investment;⁶⁴ despite requirements for applicants to have a net worth above a given threshold, business immigrants had lower ‘economic performance’ than other economic immigrants such as skilled workers entering through the federal points test, were less likely to be declaring personal income from employment, self-employment or investment after 10 years in the country and paid less in income tax.⁶⁵ The Canadian programme was overhauled completely in 2014, in response to concerns that it had not had the economic benefits expected and that programme participants were not sufficiently involved in Canadian economic or social life.⁶⁶

To address this phenomenon, some countries require investor applicants to show that they actually have a business background. For example, Singapore and New Zealand both require a track record of business experience,⁶⁷ while Australia requires applicants to pass an ‘innovation points test’ that rewards characteristics such as business and investment experience, registered patents and receipt of venture capital funding—requirements that create some conceptual overlap with entrepreneur programmes.⁶⁸ Little is known about the practical effects of such requirements.

In principle, eligibility criteria and residence conditions such as screening for business backgrounds or imposing significant residence requirements are expected to increase the likelihood of an applicant’s economic involvement in the host country, all else equal. However, they are necessarily crude instruments and cannot guarantee it, as the experience of Canada and the UK, cited above, suggests. Nor are all countries in a position to impose such requirements. To generalise, countries that are desirable destinations in themselves can ‘afford’ to impose requirements such as physical residence periods without losing too many customers, while countries that are not desirable immigration destinations cannot.

In summary, we should not take it for granted that investor programmes bring significant economic benefits, although this is often taken as given in public debates. From a theoretical perspective, cash-based programmes seem most promising, as their economic benefits are more tangible, the funds cannot be withdrawn and the transaction can be enforced more easily than private-sector investments (that is, the government knows if it has received the requisite payment, but it does not know much about what happened in a transaction between two private-sector parties). Similarly, investor programmes in which applicants actually plan to reside in the country are more likely to bring benefits resulting from human capital or consumption spending; with the caveat that actually imposing residence requirements may not be economically beneficial if it deters too many prospective applicants.

5. The politics of investor programmes

⁶⁴ Note that the investor category being evaluated at that point included mostly investors but also some entrepreneurs and self-employed. CIC Evaluation Division, “Evaluation of the Federal Business Immigration Program”, Citizenship and Immigration Canada, June 2014, p47.

⁶⁵ Ibid, Section 5.

⁶⁶ Miriam Cohen, The Re-Invention of Investment Immigration in Canada and Constructions of Canadian Citizenship, Investment Migration Working Papers IMC-RP2017/2, p17-19.

⁶⁷ New Zealand Immigration Act of 2009, art. 227 (3a); Contact Singapore, ‘Global Investor Programme’ <https://www.contactsingapore.sg/gip> accessed 17 March 2019.

⁶⁸ Australian Migration Regulations of 1994, Compilation N.185 of 2017, Schedule 7A.1.

Economic or employment-based migration programmes, in which governments admit individuals who are expected to bring economic benefits, are widespread and largely uncontroversial. Indeed, public opinion broadly supports high-skilled immigration⁶⁹ and political rhetoric about migration often focuses on the economic contributions of the ‘brightest and best’. Investor programmes in political discourse may be packaged together with other forms of high-skilled migration as a kind of migration that is an economic no-brainer. However, they can also attract significant criticism, to which I now turn.

The way that investor programmes are discussed, promoted and criticised varies enormously. The politics of investor programmes will depend on country-specific factors including attitudes towards migration and foreign nationals, or trust in political institutions. Nonetheless, I hypothesise that in general there are two main ingredients to a politically controversial investor programme: accepting cash payments; and offering a fast path to citizenship without meaningful residence requirements beforehand. Whether or not concerns about such programmes are justified, they do appear to inform the way that governments design and discuss their policies.

5.1. *The political risks of naked transactions*

While those arguing in favour of investor programmes tend to focus on economic benefits, criticisms generally focus on non-economic questions. The argument that as a matter of principle citizenship simply shouldn’t be ‘bought and sold’ is a common criticism, illustrated by comments on the Maltese IIP such as:

“Do we like the idea of selling the rights provided by the EU Treaties? Certainly not. Citizenship must not be up for sale!” (Viviane Reding as EU Justice Commissioner in 2014).⁷⁰

“Citizenship is something that has to be earned, not simply handed out to people with deep pockets” (Latvian MEP Robert Zīle in 2016, discussing the Maltese Individual Investor Programme.)⁷¹

Media coverage following the UK Migration Advisory Committee’s recommendation that some UK investor visas should be auctioned off cited immigration lawyers arguing against the idea, concerned that auctions would “create an ‘eBay culture’ for visas that would leave a bad taste in the mouth of the British public.”⁷²

Public statements such as these by their nature do not ‘unpack’ the arguments in much detail, but rather assert that selling citizenship is inherently wrong. Concerns about the commodification of citizenship or residence have been elaborated in more detail in academic critiques. For example, Michael Sandel shows that arguments against buying and selling things, like citizenship, that cannot normally be exchanged for money usually fall into one of two types. The ‘inequality’ argument posits that market

⁶⁹ Jens Hainmueller and Michael J. Hiscox, ‘Attitudes toward highly skilled and low-skilled immigration: Evidence from a survey experiment. *American Political Science Review*’, 104(01) [2010]: 61-84.

⁷⁰ Viviane Reding, “Citizenship must not be up for sale” *Malta Independent*, 19 January 2014.

⁷¹ Politico, “Malta slammed for cash-for-passports program”, *Politico*, 17 August 2016.

⁷² Alan Travis, “Sell UK visas to highest bidders, say government immigration advisers”, *Guardian*, 25 February 2014.

exchanges unfairly disadvantage the poor, while the ‘corruption’ argument states that financial transactions erode non-market norms and values that would otherwise have been associated with the thing being bought and sold.⁷³ The second critique is more profound than the first, since it implies that market exchanges can be inherently damaging regardless of the ultimate distribution of the goods (in this case, citizenship). He recognises that whether market values are in fact eroded in any particular case is an empirical question, and that in some cases it may be ‘worth it’ if the benefits of commodification are sufficiently great.

Looking specifically at investor programmes, Ayelet Shachar and Ran Hirschl take a similar line, arguing that “government-facilitated transactional visions of citizenship may ultimately erode the ties that bind and what it means to belong to a political community”.⁷⁴ They argue that residence and particularly citizenship designate membership and belonging in a society and should thus be reserved for people who are actively engaged, full participants in that society; otherwise, they fear, there is a risk that ‘those who contribute to the civic fibre of these societies’ will become less willing to do so, knowing that ‘others free ride on their efforts’.⁷⁵

The question whether the commodification of citizenship has negative effects on existing residents’ sense of belonging or willingness to participate is in practice an empirical question. Do people who contribute to their communities do so of the perceived value of their citizenship? Do ordinary members of the public actually know enough about their country’s investor programmes for the policies to affect their behaviour? Are immigration policies any more important than other areas of public policy in which the government sends messages about who society values and what it stands for? These empirical questions are difficult to answer, though it is certainly plausible that the concrete impacts of investor programmes on society are small relative to other things that shape feelings of membership and belonging.

There is one quite concrete way in which one *can* argue that investor programmes might undermine the value of citizenship. In rare cases, citizenship by investment programmes have been explicitly associated with another country’s unwillingness to offer visa free travel. For example, in November 2014, Canada suspended visa-free travel rights for *all* citizens of Saint Kitts and Nevis, citing “concerns about the issuance of passports and identity management practices within its Citizenship by Investment program”.⁷⁶ However, this does not appear to be the norm, and citizens of countries offering CBI programmes continue to enjoy relatively liberal access to visa-free travel across Europe and other high-income countries.⁷⁷

Putting aside normative arguments and the questions about how investor programmes affect value of membership, one thing is clear: many people find investor programmes intuitively distasteful. Further, distaste for the programmes is particularly focused on

⁷³ Michael Sandel, *What Money Can’t Buy: The Moral Limits of Markets*, London: Penguin, 2013.

⁷⁴ Ayelet Shachar and Ran Hirschl, *On Citizenship, States, and Markets*, *Political Philosophy* 22 (2), 2014: 231-257, p250.

⁷⁵ *Ibid*, p249.

⁷⁶ Government of Canada “Notice – St. Kitts and Nevis citizens now need a visa to travel to Canada”, website accessed 15 March 2019, <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/notice-kitts-nevis-citizens-need-visa-travel-canada.html>.

⁷⁷ Henley and Partners – Koehenov Quality of Nationality Index, <https://www.nationalityindex.com/>.

models requiring a straightforward payment, where the financial transaction between the investor and the state is particularly naked.

Non-cash programmes involve transactions that can be portrayed as a real ‘investment,’ conjuring up the image of skilled businesspeople getting involved in the financial life of the country (even if in practice little judgment is required since the whole process can be outsourced to an intermediary). This creates an image of applicants that is conceptually similar to skilled migrants on work visas, who can be portrayed as active participants and contributors. In cash programmes, however, the fiction of the shrewd investor is stripped away, leaving a naked transaction between buyer and seller. Illustrating this distinction, Shachar and Hirschl, for example, argue that while both the ‘traditional’ investor residence programmes in countries such as the UK or the US are objectionable, the “unfettered cash-for-passport programs are far more extreme and blatant than the traditional investment programs” and are thus particularly problematic.⁷⁸

What does this mean for policy? The implication is that even if the economic benefits of cash-based programmes are greatest (and there is certainly an argument that this is the case, as discussed above), governments will either be reluctant to take this route and instead opt for something less economically beneficial; or will have a clear incentive to hide the transactional nature of the relationship.

This is what we see when looking at many investor programmes. The desire to mask a cash transfer plausibly explains the existence of the zero-interest bond option, since presumably it would be simpler for governments to accept a one-off payment rather than manage larger sums that later need to be repaid. Non-refundable payments may be packaged together with other investments that can more credibly be explained as ‘investments’ – as in the Maltese IIP or the high fees for applying to the investor programme in Latvia. In a different context, the Labour Party’s 2017 manifesto, which proposed raising cash from investor applicants to support a government fund to reduce strains on public services, coyly refers to a ‘contributory element’ to be introduced in investor visas (thus also hinting at the idea of philanthropy rather than a straightforward fee).⁷⁹

Even where countries clearly do accept cash payments, there have been some valiant attempts to shift the narrative about the programme towards something less transactional. For example, officials promoting the Caribbean schemes describe investors as philanthropists motivated by the desire to improve the island’s economy: “The Hurricane Relief Fund [in Saint Kitts and Nevis] is an attractive option for citizenship applicants in the way it fulfils their own desire to make a positive impact on the environment in which they are seeking to play an active part.”⁸⁰ Similarly, the introductory text to the Maltese IIP website in 2019 describes the aims of the programme saying that it seeks to “attract individuals not only willing to invest, but who believe in our country”.⁸¹ This rhetoric of active participants with philanthropic motives

⁷⁸ Shachar and Hirschl, 2014, p246.

⁷⁹ Labour Party, “For the Many Not the Few: The Labour Party Manifesto 2017”, London: Labour Party, 2017, p28.

⁸⁰ St Kitts and Nevis Citizenship by Investment Unit, “Hurricane relief fund announced as part of the Citizenship by Investment programme” *press release, September 23, 2017*, <http://ciu.gov.kn/hurricane-relief-fund-announced-as-part-of-the-citizenship-by-investment-programme/>

⁸¹ Government of Malta, “Individual Investor Programme” website accessed 16 March 2019, <https://iip.gov.mt/>

is a far cry from the way that citizenship by investment programmes are marketed to applicants themselves, with promotional materials highlighting the fact that investors barely need to set foot in the country.⁸²

Meanwhile, governments with investor programmes that do not accept payments will also want to emphasise this fact. For example, Cyprus' finance minister is quoted in 2017 dismissing claims that Cypriot investor programme means that passports are for sale: "the Cypriot state does not receive a single euro; it is an investment scheme, Cyprus is an open economy and an attractive investment destination and in cases of genuine, reliable investments, it can, under conditions, offer the Cypriot passport".⁸³

5.2. Residence requirements and citizenship

Giving investors temporary residence permits appears to be much less controversial than offering citizenship. Unlike citizenship, temporary residence is not a symbol of membership in society – even if it may become a first step on the way to full membership.

In most advanced industrialised economies, a large range of people can receive temporary residence rights, ranging from business visitors to students to temporary workers. Investor residence permits are therefore not exceptional but one of several ways to gain access to the territory for a given set of activities deemed to be in the economic or other interests of the country. Citizenship, by contrast, both offers more rights than temporary residence and has a symbolic function that temporary residence does not.

At the same time, investors who receive citizenship after some years of residence can avoid the criticism of not being participants in society since they have lived in the country first (at least on paper, if not always in practice). This is especially the case if applicants for citizenship have to meet the normal naturalisation conditions, including any language or residence requirements. For example, Ayelet Shachar in her critique of investor programmes distinguishes between investor citizens and what she considers to be more legitimate members of society who 'habitually reside' in the country.⁸⁴ Governments too are sensitive to this concern. Irish government's announcement of new entrepreneur and investor programmes notes in bold text that investors wanting citizenship must meet the same conditions as all other non-Irish nationals.⁸⁵

The combination of accepting a payment from investors *and* offering citizenship without first requiring residence appears to be particularly potent from a political perspective. On one hand, investor programme participants who have been admitted based on their wealth are better positioned to escape criticisms about not having 'earned' citizenship if they have lived there first. On the other hand, a country can grant

⁸² Saint Christopher and Nevis Citizenship by Investment Regulations of 2011; Government of Saint Kitts and Nevis, "Citizenship by Investment", brochure, <https://ciu.gov.kn/wp-content/uploads/2015/01/Brochure-1.pdf>, accessed 27/08/2018; Government of Dominica, "Dominica Citizenship by Investment", flyer, no date

⁸³ CyprusMail, "Cyprus denies 'selling' EU citizenship to rich" *CyprusMail*, 18 September 2017.

⁸⁴ Ayelet Shachar, "Citizenship for Sale?" In *The Oxford Handbook of Citizenship*, Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds), Oxford: 2017, p807.

⁸⁵ Department of Justice and Equality, "Shatter announces two new initiatives."

ancestry-based citizenship to people who do not live there or meaningfully participate in its social life if they are not accepting a payment in return – a phenomenon that Yossi Harpaz describes in his chapter in this volume. For example, Hungary has received relatively little attention for naturalising hundreds of thousands of non-residents of Hungarian ancestry between 2011 and 2015, relatively few of whom actually moved to the country.⁸⁶

5.3. Security threats and undesirable actors

A second criticism levelled against investor programmes is that (1) investors' funds might be the proceeds of crime or corruption in the applicant's country of origin and thus that the programmes could facilitate money laundering; or (2) the investors themselves are a security risk, using the programmes to gain access to third countries without the scrutiny that would normally come with a visa application. For example, the US State Department's 2017 International Narcotics Control Strategy Report bluntly states that "Antigua and Barbuda also operates a Citizenship by Investment Program (CIP) that increases its susceptibility to money laundering and other financial crimes"; and that "Dominica's CIP has vulnerabilities that present AML and regional security risks and that may make it susceptible to abuse by criminal actors".⁸⁷

Media and academic criticism of investor programmes often focuses on specific individual cases of 'undesirable' people admitted through investor programmes. For example, *Guardian* coverage of leaked information on names of people granted Cypriot citizenship highlights rich oligarchs and a Syrian businessman accused of corruption, citing a response from campaigning group Global Witness saying that without stringent checks on applicants the programmes "risk offering a 'get-out-of-jail free card' to the corrupt and criminal."⁸⁸ In another case, criticism of the 'undesirable immigrant' is made explicit: a UK peer is cited responding to a fraud case involving an investor visa holder, "We have in effect been selling off British citizenship to the rich from often non-democratic countries who otherwise one would not regard as desirable immigrants."⁸⁹

In one respect this critique of investor programmes is quite separate from the concerns about the nature of the transaction and commodification of citizenship discussed above. Money launderers and criminals should not necessarily be more attracted to payment programmes than private investment or real estate ones if the status they are seeking to achieve is the same. Investor programmes are also not unique in their capacity to attract people perceived to be undesirable: in principle it should be *easier* for such people to move on tourist or business visit visas that involve less detailed background checks and scrutiny of the source of wealth (though this may not be obvious to the casual participant in the public debate).

However, what arguments about security and commodification have in common is the concern that programmes fail to uphold the vision of the 'good immigrant' – the person

⁸⁶ Judit Toth, "The curious case of Hungary: why the naturalisation rate does not always show how inclusive a country is" GLOBALCIT, 2 January, 2018.

⁸⁷ US Department of State, "International Narcotics Control Strategy Report: Volume II: Money Laundering and Financial Crimes", Bureau for International Narcotics and Law Enforcement Affairs, March 2017, p76.

⁸⁸ Sara Farofli, David Pegg and Stelios Orphanides, "Cyprus 'selling' EU citizenship to super rich of Russia and Ukraine", *Guardian*, 17 September 2017.

⁸⁹ David Pegg, 'The golden visa deal: We have in effect been selling off citizenship to the rich' *Guardian* 4 July, 2017.

who is both an economic contributor and an active participant in social life. This means that doubts about the background of investor programme participants may compound concerns about commodification (and thus perhaps be particularly salient in cash programmes or those offering fast access to citizenship), even if the nature of the criticisms are in practice quite different.

5.4. *Malta: a recipe for political controversy?*

Malta provides an interesting case study of the politics of investor programmes. In 2013, the Maltese government proposed a programme that included all of the ingredients of a controversial programme: a cash donation of €650,000 in return for immediate citizenship with no residence requirement.

Following criticism from the domestic opposition and the European Commission to the effect that Malta should not sell (EU) citizenship, Malta agreed in 2014 to make some modifications to the programme to require that applicants should have ‘effective residence status’ in Malta for at least 12 months before naturalisation and that they should establish genuine links to the country.⁹⁰ The programme was also made a bit more complicated, adding requirements for applicants to own or rent property in Malta and to hold some stocks and bonds in Malta.⁹¹ A joint EU-Malta press release noted that with the residence requirement and assessment of ‘genuine links’ with Malta, “both parties express satisfaction about the understanding reached on this issue.”⁹²

Looking at the revised programme, it is difficult not to conclude that these modifications were simply designed to address political perceptions of the programmes rather than change its substance. The 12-month ‘residence’ requirement does not require any specific amount of physical presence and thus is better described as a waiting period. This matters because physical presence is one of few metrics of personal commitment to a country that cannot be delegated to someone else. Investors must show that they have established ‘genuine links’ with the country, but this can be done without much physical presence. For example, specialist consultancy Zenturo Ltd. suggests that acceptable criteria for establishing their connection with Malta could include “a minimum of two visits within the year, having a local mobile phone, donations to charity, membership of a local club or professional body, business activity, or any involvement in philanthropy”.⁹³

Meanwhile, Malta’s IIP continues to be marketed to applicants as a way to get into other EU countries. Private agencies offering immigration services emphasise the fact that Malta offers EU citizenship.⁹⁴ Even the government’s official brochure in 2018

⁹⁰ Malta Citizenship by Investment Act Amendment of 2014, art. 7(12).

⁹¹ Malta Citizenship by Investment Act Amendment of 2014, art. 4(2e).

⁹² European Commission, “Joint Press Statement by the European Commission and the Maltese Authorities on Malta’s Individual Investor Programme (IIP)”, memo, 29 January 2014, http://europa.eu/rapid/press-release_MEMO-14-70_en.htm.

⁹³ Zenturo Ltd, “Immigration by Investment: Blog”, website accessed 4 March 2019, <http://malta-citizenship.info/malta-passport-blog.html>.

⁹⁴ For example, Chetcuti Cauchi Advocates’ website introduces the programmes with the text: “The Malta Citizenship by Investment Programme is the first EU approved citizenship Programme to be launched in Malta. It offers a second citizenship option to families wishing to relocate their personal or business affairs to an EU country,” while the law firm Residency Citizenship’s page on Malta opens with the text, “Malta is an EU member state and also a member of Schengen Zone. As a citizen of Malta, you are also an EU citizen. That means you can freely move in the EU, and you may live and work in any EU country.” Chetcuti Cauchi Advocates, “Malta Citizenship by Investment” website accessed 15 March 2019,

prominently advertised the benefits of EU rights on its first page, introducing its 'About Malta' section with the text: "Malta is a European Union member state since 2004. Malta can offer Citizenship in an EU country that is stable, neutral and highly respected. It offers Visa free travel to more than 160 countries. Maltese citizenship will also grant the right of work and establishment in all 28 EU countries."⁹⁵ (The website was subsequently revamped to remove this text and tell a story more focused on the attractions of Malta itself.)

The Maltese case thus illustrates the hazards of transparency in the politics of investor programmes. While the changes to the programme did not by any means put an end to criticism, they at least made the financial transaction between investor and state slightly less nakedly transparent—enough to enable the EU negotiators and the Maltese government to get up from the negotiating table suggesting that citizenship was not for sale.

6. Conclusion: conflicts between political and economic objectives

What, then, makes for a successful investor programme? Which policies are best positioned to achieve their intended goals while avoiding significant criticism? Because the economic objectives of different countries naturally differ, there is unlikely to be an 'optimal' policy design from an economic perspective. However, it is possible to make some broad observations about the impacts of different choices.

First, there is no guarantee that investor programmes will bring significant economic benefits. Some programmes—e.g. involving purchase of ordinary government bonds or transfer of money to a local bank account—simply admit wealthy individuals on the basis of an 'investment' that even in theory is not expected to have much impact. They do this apparently in the hope that participants will subsequently spend some time, money or business-related energy there. Other programmes—such as those rewarding investments in private companies—clearly aim to create jobs and it is likely that at least some of them do so, at least in the short run before the investment is withdrawn. However, the economic benefits are difficult to guarantee, and making sure that the transactions genuinely lead to job creation or productivity-enhancing activity (rather than investors simply parking money in a safe place and withdrawing it as soon as possible) is a challenge.

Arguably the model that is most promising from an economic perspective are those involving non-refundable cash payments, since the money does not have to be repaid to the investor. Of course, the money will not necessarily be spent wisely, particularly if governance is weak or there are risks of corruption (though this is a risk in programmes of all kinds). And countries that receive significant revenues need to be careful not to become dependent on an income stream that may dry up. However, this is the model in which the theory behind the economic benefit is arguably most compelling.

<https://www.ccmalta.com/publications/malta-citizenship-investment>; and Residency Citizenship, "Malta Citizenship by Investment", website accessed 15 March 2019, <https://www.residency-bond.eu/malta-citizenship.html>.

⁹⁵ Government of Malta, "Individual Investor Programme of the Republic of Malta", accessed 6 March 2018, on file with author.

Second, governments face a trade-off when deciding whether to impose personal commitment criteria such as residence requirements. On one hand, applicants who reside in the country are expected to bring greater economic benefits in the form of broader activity after they arrive (e.g. further investment or export revenues resulting from consumption using money earned abroad). On the other hand, residence and other requirements will on average make a programme less attractive to investors, particularly if they are not already attractive destinations in their own right.

Third, the politics of investor programmes push governments in a rather different direction from economic considerations. Even if the cash payment model is more economically beneficial, it is politically toxic. Programmes that don't involve a cash payment are more consistent with narratives about investor migrants as people who are selected for their business expertise and will participate in the country's business world—similar in some respects to high-skilled workers coming as employees. Meaningful residence requirements also make it easier to foster the image of active participants in society rather than people purchasing a commodity, though not all countries can afford to impose them without losing their customers.

Governments can resolve this tension in one of three ways. As this paper has shown, some countries bite the bullet and go for cash programmes (and indeed citizenship-based cash programmes) despite the political risks, accompanying them with often unconvincing rhetoric about how committed applicants are to the community they are joining. After all, the economic benefits may be worth it—especially in small countries like Malta or the Caribbean Islands where programme revenues can make up a non-trivial proportion of government revenues or GDP.

Others prefer to play it safe and select a model with lower political risk but also lower economic benefit, even going so far as to give away investor visas for free to those who are sufficiently wealthy (i.e. in return for a bank transfer or government bond purchase)—something that the UK did for many years and that is still an option in Spain and Portugal.

But many countries rely on a third strategy: eliciting cash transfers in a less nakedly obvious way. This involves strategies such as allowing investors to make a donation directly to a registered charity instead of the government, 'diluting' the political impact of the cash payment by requiring other types of investment alongside it, or hiding cash transfers behind high application fees or zero-interest loans.

These strategies may actually be quite effective. Ultimately, the criticisms of the cash model are mostly based on the intuitive feeling, probably widely shared, that selling residence rights or citizenship is distasteful. Analytically, however, there is no clear line between investor programmes that devalue membership and those that do not. If introducing market norms to the bestowal of membership rights erodes civic values, does it still matter if governments successfully conceal the market transaction? How much physical residence is required before someone admitted for investment purposes can be considered an active participant in the community? If cash programmes are problematic because they sell membership rights, is it any better to give away such rights to rich people for free, as many residence programmes do? Are other policies that naturalise those with few links to the community because of ancestral ties also ethically

problematic?⁹⁶ Residence programmes that do not involve cash payments appear less vulnerable to political criticism, but with so many grey areas this may be a matter of perception more than substance.

⁹⁶ See Yossi Harpaz's chapter in this volume.