SELLING (EU) CITIZENSHIP OR EXERCISING SOVEREIGNTY? RETHINKING THE EU LAW LIMITS ON NATIONAL COMPETENCE IN GRANTING MEMBER STATE NATIONALITY AFTER *COMMISSION v MALTA*

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This article analyses the Court of Justice's judgment in Commission v Malta, the first case to assess whether investor citizenship schemes comply with EU law. These schemes, which grant nationality in exchange for financial investment, have been widely criticised due to risks such as money laundering, tax evasion, and corruption. The key legal question, however, was whether granting Member State nationality – and thus Union citizenship – through such transactional mechanisms is compatible with EU law. The article supports the Court's conclusion that Malta's scheme is unlawful insofar as it confers Union citizenship, but questions whether granting Member State nationality alone should fall within the same prohibition. It also argues that the Court's reasoning lacks sufficient doctrinal clarity and depth, especially given the constitutional importance of the issue. Despite these concerns, the judgment represents a significant development, confirming that Member State competence over nationality is subject to EU law constraints and challenging the traditional view that such matters lie largely beyond EU scrutiny. At the same time, important questions remain unresolved, including whether the prohibition extends to nationality itself and whether the ruling has retroactive effects on previously granted citizenships.

1 INTRODUCTION

In its recent judgment in *Commission v Malta*,[1] the European Court of Justice (ECJ) was called upon to assess, for the first time, the compatibility with European Union (EU) law of so-called 'golden passport' schemes – investor citizenship programmes under which EU Member States confer their nationality in exchange for financial investment. The case arises against the background of longstanding concerns over such schemes, which have often been criticised for facilitating money laundering and tax evasion, enabling corruption, and granting privileged access to citizenship for wealthy individuals.[2] Yet, in the EU context, these arguments – while politically, legally, and ethically significant – are not the central point of contention. The core issue before the Court was whether the practice of 'selling' Member State nationality, and by extension EU citizenship, is in breach of EU law.

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[1] Case C-181/23 *Commission* v *Malta* EU:C:2025:283.

[2] Transparency International and Global Witness, 'European Getaway: Inside the Murkey World of Golden Visas' (2018) <https://images.transparencycdn.org/images/2018_report_GoldenVisas_English.pdf> accessed 6 August 2025; Financial Action Task Force, 'Misuse of Citizenship and Residency by Investment Programmes – A Joint FATF/OECD Report' (2023) <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Misuse-CBI-RBI-Programmes.pdf.coredownload.pdf> accessed 6 August 2025.

Although I agree with the outcome of the case – which rules that the grant of Union citizenship through investor citizenship programmes is contrary to EU law – I find the Court's reasoning wanting. Given the constitutional significance of the matter and its political sensitivity, one would have expected a more sophisticated and robust legal analysis, as well as greater clarity regarding the implications of the judgment. Instead, the judgment lacks the depth and doctrinal clarity that a case of this magnitude would have deserved.[3]

This shortcoming is particularly notable in light of the ruling's broader constitutional implications. *Commission v Malta* marks the first time the Court has applied – in a concrete case – the principle that Member State competence to determine who qualifies as a national is subject to EU law constraints. While earlier judgments had acknowledged in abstract terms that this competence must be exercised with 'due regard to EU law',[4] this is the first instance in which the Court found that a Member State's conferral of nationality violated EU law. The ruling, therefore, constitutes a clear and express departure from the longstanding assumption that nationality conferral lies outside the scope of EU scrutiny.

To unpack the significance of the case, the article begins with a brief overview of 'golden passport' schemes and the growing concern they have sparked among EU institutions, which since 2014 have closely monitored these programmes, issued critical reports, and warned of their potential implications for Union citizenship. It then turns to a detailed analysis of the *Commission v Malta* case. Finally, it offers a critical assessment of the Court's reasoning and explores its broader implications, not only for the future of investor citizenship programmes within the EU, but also, more broadly, for the evolving balance between national sovereignty and EU oversight in the field of nationality.

2 'GOLDEN PASSPORT' SCHEMES: AN OVERVIEW

The conferral of nationality falls within the competence of States, which retain sovereign authority to determine the conditions under which individuals may acquire it. This principle is recognised under both international law and EU law, which acknowledge that the determination of nationality lies primarily within the domain of the States.[5] Nationality can be acquired in two ways: by birth or through naturalisation. With regard to acquisition at birth, States generally follow the *jus sanguinis* principle (citizenship by descent), the *jus soli* principle (citizenship by birth on the territory), or a combination of both.[6] For naturalisation, States typically require a period of lawful and effective residence, often combined with additional integration requirements such as proficiency in the national language, knowledge of the country's society and culture, and evidence of social ties.[7] These requirements reflect

[3] Basheska and Kochenov even argue that the ruling completely lacks a legal basis and is 'not guided by any principle' – see Elena Basheska and Dimitry V Kochenov, 'A Successful Attempt to Hijack the Union's Liberal Promise: *Commission v Malta*' (2026) 2 Nordic Journal of European law (forthcoming).

[4] See, inter alia, Case C-369/90 *Micheletti v Delegación del Gobierno en Cantabria* EU:C:1992:295 para 10; Case C-192/99 *Kaur* EU:C:2001:106 para 19; Case C-135/06 *Rottmann* EU:C:2010:104 para 39; Case C-221/17 *Tjebbes* EU:C:2019:189 para 30.

[5] See, inter alia, *Nationality Decrees Issued in Tunis and Morocco* (Advisory Opinion) [1923] PJIC Series B No 4 24; *Micheletti* (n 4) para 10. As regards EU law, this is also reflected in Declaration 2 attached to the Maastricht Treaty, which will be mentioned subsequently in the main text.

[6] Rainer Bauböck, 'The Three Levels of Citizenship within the European Union' (2014) 15(5) German Law Journal 751, 753-754.

[7] For a full overview of types of acquisition (and loss) of citizenship across the world see the Global Database

the common underlying assumption that nationality should be reserved for individuals who have established a 'genuine link' to the State and its society.[8]

Most States also provide for alternative pathways to their nationality, designed to attract individuals who can make exceptional contributions to the State, including in the economic sphere. The strategic use of nationality and residence rights as instruments of State policy is far from a novel phenomenon: since antiquity, States have sought to attract wealth, talent, and influence by offering privileged access to citizenship or residence to the world's moneyed elite.[9] In modern times, these practices have evolved into more formalised investor residence and citizenship programmes, commonly referred to – respectively – as 'golden residence' and 'golden passport' schemes.[10] Through investor residence programmes, individuals obtain residence rights in return for significant financial investments. While such schemes do not directly confer nationality, they facilitate lawful residence which may, over time, enable individuals to meet the residence requirements for ordinary naturalisation.[11] Investor citizenship programmes, on the other hand, grant nationality directly in exchange for financial contributions, without imposing the usual residence, language, or integration requirements. It is these latter schemes, therefore, that have generated particular controversy, as they allow for the acquisition of nationality without any meaningful connection to the conferring State or its society. Such schemes create a new 'model' of citizenship, which is based on the economic capacity of the candidates and their willingness to invest in the country.[12]

Within the EU, investor citizenship programmes have attracted sustained criticism and increasing political and legal scrutiny.[13] Beyond the several objections associated with the commodification of citizenship – as well as concerns regarding corruption, tax evasion, and money laundering, the circumvention of traditional naturalisation requirements, and the creation of privileged access for the wealthy – the existence of 'golden passport' schemes, raises specific legal questions under EU law. As nationality of a Member State automatically confers EU citizenship and the full spectrum of rights attached thereto, the 'sale' of Member

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on Modes of Acquisition of Citizenship <https://globalcit.eu/databases/globalcit-citizenship-law-dataset/> accessed 6 August 2025.

[8] For an article analysing the different types of citizen-State links that are found in EU Member State rules for citizenship acquisition and loss see Ashley Mantha-Hollands and Jelena Džankić, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2023) 49(9) Journal of Ethnic and Migration Studies 2091.

[9] See Jelena Džankić, *The Global Market for Investor Citizenship* (Palgrave Macmillan 2019) ch 2; Maarten Prak, 'Citizenship for Sale in Pre-modern Europe' in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales* (Cambridge University Press 2023).

[10] In the EU context, one could add a third type of scheme – the 'golden visa' scheme – which provides the right to reside in the territory of an EU Member State *together* with the grant of a visa to travel in the Schengen area.

[11] For an explanation of investor residence programmes and the concerns that may be raised by them, see European Commission, 'Investor Citizenship and Residence Schemes in the European Union' COM(2019) 12 final 6-9 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019DC0012> accessed 6 August 2025.

[12] Athanasia Andriopoulou, 'The "ius pecuniae": The Prize of Citizenship' (BRIDGE Network Working Paper 4, June 2020) 4 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3633777> accessed 6 August 2025.

[13] For an explanation of the various investor citizenship and investor residence programmes in the EU see Jelena Džankić, 'Investment-based citizenship and residence programmes in the EU' (EUI Working Paper RSCAS 2015/08, Robert Schuman Centre for Advanced Studies 2015) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2558064#> accessed 6 August 2025.

State nationality effectively permits the purchase of EU citizenship itself, thereby implicating the application of EU law.[14] EU citizenship is a particularly valuable asset, granting its holders free and largely unrestricted access to the entire Union, for both economic and personal purposes.[15] Therefore, realistically, the ultra-rich availing themselves of such programmes are often not primarily interested in acquiring the nationality of the particular Member State concerned, but rather seek access to EU citizenship. As Spiro has put it, 'Those who buy Maltese citizenship are less likely to settle in Valletta (one wonders how many could even name the capital city before – or perhaps even after – they have made the purchase) than in Berlin or Paris or Milan'.[16]

The political controversy surrounding golden passport schemes at EU level has persisted for over a decade. In her speech at the Plenary Session debate of the European Parliament on 'EU citizenship for sale', on 15 January 2014, the then Vice-President of the European Commission and EU Justice Commissioner, Viviane Reding, noted that 'Citizenship must not be up for sale!' and that 'One cannot put a price tag on it'.[17] The following day, in its Resolution which resulted from that Plenary Session, the European Parliament voiced concerns that 'golden passport' schemes risked undermining the very concept of Union citizenship. It therefore urged the Commission to assess the various 'golden passport' schemes in Member States, in the light of European values and the letter and spirit of EU legislation and practice.[18] In response, the Commission initiated a dialogue with the Member States operating investor citizenship schemes, aiming to monitor more closely the design and implementation of such programmes.[19] Malta – among the first, if not the first, to come under the Commission's scrutiny – amended its legislation in 2014 to introduce a formal requirement of 'proof of residence' for a period of twelve months prior to the grant of citizenship.[20] In practice, however, this condition had been loosely interpreted, as applicants were deemed to satisfy the requirement merely by obtaining a residence permit, without the need to demonstrate actual physical presence in Malta.[21] While the Commission initially welcomed these legislative changes,[22] it continued to monitor the operation of

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[14] Commission, 'Investor Citizenship and Residence Schemes in the European Union' (n 11) 1.

[15] This is the basis of the 'free rider' argument against 'golden passport' schemes in the EU – see Sergio Carrera, 'How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the Union?' (CEPS Paper in Liberty and Security in Europe No 64, April 2014) 18, 26 <https://www.ceps.eu/ceps-publications/how-much-does-eu-citizenship-cost-maltese-citizenship-sale-affair-breakthrough-sincere/> accessed 6 August 2025. See, also, Magni-Berton Raul, 'Citizenship for Those who Invest into the Future of the State is not Wrong, the Price is the Problem' in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018) 22. For a rejection of this argument see Matjaž Tratnik and Petra Weingerl, 'State Autonomy versus 'Genuine Links': Nottebohm and Beyond' in Dimitry Kochenov, Madeleine Sumption, and Martijn van den Brink (eds), *Investment Migration in Europe and the World* (Hart 2025) 138.

[16] Peter J Spiro, 'Cash-for-Passports and the End of Citizenship' in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018).

[17] Viviane Reding, 'Citizenship must not be up for sale' (Speech, European Parliamentary Plenary Session debate on 'EU Citizenship for Sale', Strasbourg, 15 January 2014) SPEECH/14/18 <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_14_18> accessed 6 August 2025.

[18] European Parliament Resolution of 16 January 2014 on EU citizenship for sale [2013/2995(RSP)].

[19] European Commission, 'On progress towards effective EU citizenship 2013-2016' COM(2017) 32 final 4.

[20] Maltese Legal Notice 47 of 2014, reg 7(12) <https://legislation.mt/eli/ln/2014/47/eng/pdf> accessed 6 August 2025.

[21] 'Golden Passports' (The Documentary, *BBC*, 21 June 2018) <https://www.bbc.co.uk/programmes/p06bn4dv>accessed 6 August 2025.

[22] See, for instance, European Commission and Maltese authorities, 'Joint Press Statement on Malta's

the Maltese scheme and – more broadly – of 'golden passport' schemes across the EU.

In its 2017 EU Citizenship Report, the Commission announced its intention to prepare a dedicated report on Member State investor citizenship programmes, outlining the actions it had undertaken in this area and analysing the relevant legal frameworks and practices across the Member States.[23] To support this effort, it commissioned a Study on the legislation and practice governing citizenship and residence by investment schemes in all relevant Member States.[24] Drawing on, inter alia, the findings of this Study, the Commission published its Report on investor citizenship and residence schemes in 2019.[25] The Report identified a range of serious risks posed by such schemes, not only to individual Member States, but to the Union as a whole. These included threats related to security, money laundering, corruption, tax evasion, and the circumvention of EU legal norms; risks which, according to the Commission, were exacerbated by significant deficiencies in transparency, oversight, and inter-state cooperation.[26] The Commission expressed particular concern that the measures adopted by Member States to mitigate these risks were often inadequate and undertook to closely monitor the implementation of these schemes, with a view to addressing both the governance failings and potential violations of EU law.[27] Similar concerns had been raised by the European Parliament in a May 2018 debate, during which the risks associated with investor citizenship and residence schemes were discussed.[28]

In her first State of the Union address in September 2020, Commission President Ursula von der Leyen explicitly condemned 'golden passport' schemes, declaring that 'European values are not for sale' and linking these programmes to broader rule of law concerns.[29] It therefore came as no surprise that, just one month later, the Commission launched infringement proceedings against Malta and Cyprus, which were operating 'golden

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Individual Investor Programme (IIP)' (29 January 2014) <https://ec.europa.eu/commission/presscorner/detail/en/memo_14_70> accessed 6 August 2025.

[23] European Commission, 'EU Citizenship Report 2017: Strengthening Citizens' Rights in a Union of Democratic Change' (2017) <https://ec.europa.eu/newsroom/just/items/51132> accessed 6 August 2025.

[24] Milieu Law and Policy Consulting, 'Factual Analysis of Member States' Investor Schemes granting citizenship or residence to third-country nationals investing in the said Member State' (2018) <https://commission.europa.eu/document/download/e5ae8330-646b-49b5-9651-16aef54f21d9_en?filename=deliverable_d_final_30.10.18.pdf> accessed 6 August 2025.

[25] Commission, 'Investor Citizenship and Residence Schemes in the European Union' (n 11).

[26] For a critical view of the Report see Dimitry Kochenov, 'Investor Citizenship and Residence: the EU Commission's Incompetent Case for Blood and Soil' (*Verfassungsblog*, 23 January 2019) <https://verfassungsblog.de/investor-citizenship-and-residence-the-eu-commissions-incompetent-case-for-blood-and-soil/> accessed 6 August 2025.

[27] Commission, 'Investor Citizenship and Residence Schemes in the European Union' (n 11). In 2021, a Study was published by the European Parliamentary Research Service which sought to explore potential avenues through which the EU could address the problems arising from 'golden passport' and 'golden residence' schemes – see Meenakshi Fernandes, Cecilia Navarra, David de Groot, and María García Muñoz, 'Avenues for EU action on citizenship and residence by investment schemes' (European Union 2021) <https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)694217> accessed 6 August 2025.

[28] European Parliament, 'EU values and the proliferation of corruption and crime through Golden Visas (topical debate)' (Verbatim report of proceedings, Strasbourg, 31 May 2018) <https://www.europarl.europa.eu/doceo/document/CRE-8-2018-05-30-ITM-019_EN.html?redirect> accessed 6 August 2025.

[29] Ursula von der Leyen, 'State of the Union Address at the European Parliament Plenary' (Speech, Brussels, 16 September 2020) SPEECH/20/1655 <https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655> accessed 6 August 2025. Emphasis added.

passport' schemes at the time,[30] ultimately referring Malta – the last Member State operating such a scheme – to the Court of Justice in 2023, thus giving rise to the case under examination in this article.[31]

The Russian invasion of Ukraine in February 2022, further heightened political and institutional pressure on Member States to terminate such schemes, particularly with respect to applicants from Russia and Belarus. In a Resolution issued one month after the invasion, the European Parliament denounced 'golden passport' schemes as ethically, legally, and economically objectionable and as posing serious security threats, including risks of money laundering and corruption.[32] In that Resolution, it also suggested that investor citizenship schemes 'should be phased out fully across the Member States' and requested the Commission 'to submit, before the end of its current mandate, a proposal for an act to that end that could be based on Article 21(2), Article 79(2), Article 114 or Article 352 TFEU'.[33] The Commission likewise intensified its calls for Member States to discontinue these programmes, and to strictly regulate 'golden residence' programmes.[34]

3 COMMISSION V MALTA

At the heart of *Commission v Malta* lies a fundamental question: can a Member State offer access to EU citizenship – and all the rights that come with it – in exchange for a payment? This infringement action, brought by the European Commission under Article 258 TFEU, challenged Malta's 'Individual Investor Programme', allowing the naturalisation of foreign nationals on the basis of predetermined payments and investments, irrespective of any genuine connection with the country. According to the Commission, by establishing and operating this scheme, Malta had breached its obligations under Article 20 TFEU[35] – on

[30] European Commission, 'Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for "selling" EU citizenship' (Press release, Brussels, 20 October 2020) IP/20/1925 <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925> accessed 6 August 2025.

[31] The infringement action against Cyprus was dropped after Cyprus abolished its 'golden passport' scheme in 2020. The Commission had also been in contact with Bulgaria, expressing its concerns regarding the investor citizenship programme operated by it; however, on 24 March 2022, the Bulgarian Parliament approved an amendment to the Bulgarian Citizenship Act, which ended the investor citizenship scheme, and thus the Commission did not proceed with initiating an infringement action.

[32] European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes [2021/2026(INL)] [2022] OJ C347/97.

[33] ibid para 18.

[34] European Commission, 'Commission Recommendation of 28 March 2022 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.

[35] Article 20 TFEU provides:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, *inter alia*:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in

the status and substance of Union citizenship – and Article 4(3) TEU, which enshrines the duty of sincere cooperation.[36]

Before turning to the Advocate General Opinion and the Court's reasoning, it is important to understand the national framework that gave rise to the dispute.

3.1 THE MALTESE 'GOLDEN PASSPORTS' SCHEME

The Maltese Citizenship Act governs the acquisition, deprivation, and renunciation of Maltese citizenship.[37] Under the Act, there are two main routes through which an individual may acquire citizenship. The first is through ordinary naturalisation, which requires, inter alia, that the applicant has resided in Malta continuously for the twelve months immediately preceding the application, and for a cumulative period of at least four years during the six years prior to that.[38] The second route is naturalisation on the basis of 'exceptional services to the Republic of Malta or to humanity', or where the individual's naturalisation is deemed to be of 'exceptional interest to the Republic of Malta'. This latter category includes cases involving exceptional services rendered through direct investment, namely, the Maltese 'Individual Investor Programme'.[39]

Malta first introduced an investor citizenship programme in 2014, following amendments to the Maltese Citizenship Act which paved the way for this,[40] and the introduction of Regulations in 2014, which established the scheme.[41] Although – as seen in the previous section – the Commission had voiced concerns about the scheme from its inception, it was only in October 2020 that it issued a letter of formal notice to Malta (and Cyprus), stating that the Maltese 'Individual Investor Programme' (as it then stood), was incompatible with EU citizenship and the principle of sincere cooperation.[42] The Commission, in particular, considered that the granting of Member State nationality – and thereby EU citizenship – in exchange for a pre-determined payment or investment and without a genuine link with the Member States concerned, was not compatible with the principle of sincere cooperation enshrined in Article 4(3) TFEU, and undermined the integrity of the status of EU citizenship provided for in Article 20 TFEU.

Following the above letter, Malta adopted a revised framework, through the Maltese

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the same language. These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder'.

[36] Article 4(3) TEU provides: 'Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives'.

[37] Maltese Citizenship Act, CAP 188 <https://legislation.mt/eli/cap/188/eng/pdf> accessed 6 August 2025.

[38] ibid Article 10(1).

[39] ibid Article 10(9).

[40] Malta, Act No XV of 2013, Government Gazette No 19,166 (15 November 2013) <https://legislation.mt/eli/act/2013/15/eng/pdf> accessed 6 August 2025.

[41] Malta, Individual Investor Programme of the Republic of Malta Regulations 2014, Subsidiary Legislation 188.03, Government Gazette No 19,205 (4 February 2014) <https://legislation.mt/eli/ln/2014/47/eng/pdf> accessed 6 August 2025.

[42] Commission, 'Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for "selling" EU citizenship' (n 30).

Citizenship (Amendment No. 2) Act of 2020[43] and the Granting of Citizenship for Exceptional Services Regulations of 2020.[44] The 2020 Regulations contained detailed rules governing the processing of applications for naturalisation on the basis of exceptional services by merit and 'by direct investment in the economic and social development in the Republic of Malta'. In particular, the Regulations provided that foreign investors could apply to be naturalised if they fulfilled, or undertook to fulfil, the following conditions:[45]

a) contributed either EUR 600,000 or EUR 750,000 to the Maltese Government, of which EUR 10,000 was to be paid as a non-refundable deposit upon submission of the residence application or the eligibility form, with the balance payable after approval of the application for naturalisation,
b) acquired and held residential immovable property in Malta with a minimum value of EUR 700,000, or leased such a property for a minimum of five years at a minimum annual rent of EUR 16,000,
c) made a donation of at least EUR 10,000 to a registered philanthropic, cultural, sporting, scientific, animal welfare, or artistic non-governmental organisation or society, or to another entity approved by the authorities,
d) had been resident in Malta for a period of 36 months (where the contribution amounted to EUR 600,000), which could be reduced to a minimum of 12 months if the applicant made an exceptional direct investment of no less than EUR 750,000, and
e) had passed an eligibility assessment by the authorities and had been authorised to submit an application for naturalisation.

Therefore, while the 2020 Regulations introduced a more detailed procedural framework and included a nominal residence requirement, the overall structure and rationale of the programme remained largely unchanged, as the acquisition of citizenship continued to depend primarily on financial contribution rather than on substantive ties to Malta: unlike ordinary naturalisation, which requires long-term actual residence and other integrative criteria, the Maltese 'Individual Investor Programme' did not require applicants to demonstrate a specific link to Malta, such as integration into, and a 'genuine link' to, its society.

In June 2021, the Commission addressed an additional letter of formal notice to Malta (and Cyprus), in which it observed that the revised legislative framework did not alter the transactional nature of the Programme and was thus contrary to EU law.[46] Being unsatisfied with Malta's replies to its letter of formal notice and its subsequent reasoned opinion,[47] the Commission decided to challenge this revised scheme before the Court,

[43] Malta, Maltese Citizenship (Amendment No 2) Act 2020 <https://legislation.mt/eli/act/2020/38/eng> accessed 6 August 2025.
[44] Malta, Subsidiary Legislation 188.06 <https://legislation.mt/eli/sl/188.6/eng/pdf> accessed 6 August 2025.
[45] ibid, Regulation 15(3), Regulation 16(1)(a)(b) and (d), Regulation 16(7), and the first annex to the 2020 Regulations.
[46] See European Commission, 'June infringements package: key decisions' (Press corner, 9 June 2021) <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743> accessed 6 August 2025.
[47] European Commission Representation in Malta, '"Golden passport" schemes: Commission proceeds with infringement case against Malta' (6 April 2022) <https://malta.representation.ec.europa.eu/news/golden-

arguing that its transactional nature and absence of meaningful connection with Malta undermines the essence of EU citizenship and the principle of sincere cooperation under EU law, and is thus in violation of Article 20 TFEU and Article 4(3) TEU. Therefore, the Commission referred Malta to the Court of Justice in March 2023.[48]

In its defence, Malta argued that the power to grant nationality lies at the core of national sovereignty and forms part of Member States' national identity, which the EU is bound to respect under Article 4(2) TEU. Malta rejected the Commission's claim that EU law requires a 'prior genuine link' between a naturalised individual and the Member State, asserting that neither EU law nor international law imposes such a condition. It contended that the Commission's action effectively challenges an entire national legal framework adopted in an area of exclusive national competence and risks turning the Court into an 'indirect legislator'. According to Malta, EU scrutiny should be limited to cases where a Member State's naturalisation policy leads, in a general and systematic way, to serious breaches of EU values or objectives. The 2020 investor citizenship scheme, it maintained, is neither automatic nor unconditional, but subject to a complex, discretionary, and multi-stage assessment process, with meaningful safeguards and a substantial rejection rate. Malta also disputed the Commission's characterisation of the scheme as purely transactional or motivated by budgetary interests, insisting that the scheme is legitimate, well-regulated, and consistent with EU law.[49]

3.2 THE AG OPINION

In his Opinion delivered on 4 October 2024, Advocate General Collins focused on the Commission's central claim: that to preserve the integrity of EU citizenship, there must exist a 'genuine link' between a Member State and the individual it naturalises. He began by affirming that EU citizenship is inseparably linked to, and entirely dependent upon, the possession of the nationality of a Member State.[50] Nonetheless, he stressed that it is settled case-law that Member States have exclusive competence to determine the conditions for the acquisition and loss of their nationality, provided they respect international law. If the Member States had chosen to do so, they could have pooled this competence and conferred on the EU the power to regulate access to EU citizenship; but they have deliberately refrained from doing so.[51]

Within the framework of mutual trust, Member States have agreed to recognise unconditionally the nationality of other Member States – and therefore EU citizenship – regardless of the nature of the link between the individual and the granting

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passport-schemes-commission-proceeds-infringement-case-against-malta-2022-04-06_en> accessed 6 August 2025.

[48] See *Action brought on 21 March 2023*, *European Commission v Republic of Malta* (Case C-181/23) <https://curia.europa.eu/juris/document/document.jsf;jsessionid=D5A95E15C2FEE3622497802F8CD249AC?text=&docid=273734&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=8988594> accessed 6 August 2025.

[49] A detailed analysis of both parties' arguments is found in paras 16-30 of the AG Opinion in Case C-181/23 *Commission v Malta* EU:C:2024:849 and paras 42-78 of the ECJ judgment in *Commission v Malta* (n 1).

[50] AG Opinion in *Commission v Malta* (n 49) para 42.

[51] ibid para 44. See also paras 45-46.

state.[52] Citing the Court's judgments in *Micheletti*[53] and *Zhu and Chen*,[54] the Advocate General explained that this framework of 'mandatory mutual recognition' implies that Member States are *not required* to share a common conception of nationality, and their national rules on naturalisation may diverge accordingly.[55] Nonetheless, although EU law does not prescribe the conditions for granting or withdrawing nationality, the application of such rules must not breach EU law in situations falling within its scope.[56]

He then observed that, to date, the Court has never assessed national rules on the *acquisition* of nationality through the lens of EU law.[57] He agreed with Malta that an exact parallel cannot be drawn between the acquisition and the withdrawal of nationality, and that the two must be treated differently under EU law.[58] Referring to the Court's rulings in *Rottmann*[59] and *Tjebbes*,[60] he explained that while EU law *permits* Member States to rely on a requirement of a genuine link for *withdrawing* their nationality – provided it complies with proportionality and due process – it does not *impose* such a requirement for the *acquisition* of nationality.[61]

Turning to international law, the Advocate General rejected the Commission's reliance on the *Nottebohm* judgment.[62] He explained that although the International Court of Justice (ICJ) in that case held that a State may refuse to recognise nationality granted by another State in the absence of a 'genuine link' between the individual and the nationality asserted, the judgment did not establish a general obligation under international law to require such a link for the acquisition of nationality. Rather, the ruling merely affirmed that a State could, in specific circumstances, withhold *recognition* of another State's nationality in the absence of such a link. Crucially, the ICJ did not define the concept of a 'genuine link', nor did it require States to grant nationality by reference to that concept. On the contrary, it reaffirmed that it is for each sovereign State to settle by its own legislation the rules relating to the acquisition of its nationality.[63]

The Advocate General further emphasised that there is no divergence between international and EU law on this point: neither legal order imposes a requirement that a 'genuine link' must exist between an individual and the State granting nationality. While EU law does require Member States to recognise each other's nationality decisions, this obligation flows from mutual respect for each other's sovereignty – as such, this obligation is not a mechanism for undermining Member States' exclusive competence in the field of nationality. To find otherwise, the Advocate General warned, would disrupt the carefully negotiated balance between national and EU citizenship reflected in the Treaties and would constitute an unlawful encroachment into a domain that the Member States have explicitly

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[52] AG Opinion in *Commission v Malta* (n 49) para 47.
[53] *Micheletti* (n 4).
[54] Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* EU:C:2004:639.
[55] AG Opinion in *Commission v Malta* (n 49) para 48.
[56] ibid para 49.
[57] ibid para 50.
[58] ibid para 52.
[59] *Rottmann* (n 4).
[60] *Tjebbes* (n 4).
[61] AG Opinion in *Commission v Malta* (n 49) paras 53-55.
[62] *Liechtenstein v Guatemala (Nottebohm)* [1955] ICJ Rep 4.
[63] AG Opinion in *Commission v Malta* (n 49) para 56.

retained under their exclusive control.[64]

He therefore concluded that the Commission had failed to establish that Article 20 TFEU imposes a legal obligation on Member States to require a 'genuine link' – or a 'prior genuine link' – as a condition for the lawful grant of nationality. That matter remains within the discretion of the national legislature.[65] Accordingly, he proposed that the Court dismiss the Commission's action in its entirety.[66]

3.3 THE JUDGMENT

The Court, sitting in its Grand Chamber formation, departed from the Opinion of the Advocate General as to the final outcome of the case.

It began its ruling by recalling that every person holding the nationality of a Member State is a Union citizen, and that whether a person possesses the nationality of a Member State is to be determined solely by reference to the national law of that Member State.[67] It also noted that while Member States have the power to set the conditions for granting and withdrawing nationality, that competence must be exercised in compliance with EU law.[68]

The Court then rejected Malta's argument that EU scrutiny of the conditions *for the grant* of nationality should be limited to *general and systematic* breaches of Union values.[69] Referring to Article 3(2) TEU, which provides that the EU is to offer its citizens an area of freedom, security, and justice without internal frontiers in which the free movement of persons is ensured,[70] and to the provisions on free movement, democratic participation, and consular protection of Union citizens,[71] the Court underlined that Union citizenship is grounded in mutual trust between the Member States and the principle of mutual recognition, and structured around a framework of rights and obligations, with solidarity and good faith at its core.[72] Union citizenship, as the fundamental status of the nationals of the Member States, is both a concrete expression of this solidarity and an essential component of the EU's constitutional framework.[73] It follows, the Court pointed out, that the Member States' discretion in granting nationality is not unlimited:

> Union citizenship is based on the common values contained in Article 2 TEU and on the mutual trust between the Member States as regards the fact that none of them is to exercise that power [i.e. the power to lay down the conditions for granting nationality] in a way that is manifestly incompatible with the very nature of Union citizenship.[74]

The Court then explained that 'the bedrock of the bond of nationality of a Member State is formed by the special relationship of solidarity and good faith between that State and

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[64] AG Opinion in *Commission v Malta* (n 49) para 57.
[65] ibid para 58.
[66] ibid para 62.
[67] *Commission v Malta* (n 1) paras 79-80.
[68] ibid para 81.
[69] ibid paras 82-83.
[70] ibid para 84.
[71] ibid paras 86-95.
[72] ibid paras 85 and 96.
[73] ibid para 91.
[74] ibid para 95. See, also, para 98.

its nationals and the reciprocity of rights and duties',[75] and this special relationship 'also forms the basis of the rights and obligations reserved to Union citizens by the Treaties'.[76]

The Court then proceeds to note that a Member State 'manifestly disregards the requirement for such a special relationship of solidarity and good faith […] and thus breaks the mutual trust on which Union citizenship is based' when it establishes and implements a naturalisation scheme based on a transactional process, under which its nationality – and thereby Union citizenship – is granted essentially in exchange for predetermined payments or investments.[77] According to the Court, a scheme such as Malta's 'Individual Investor Programme' amounts to the commercialisation of Union citizenship and is incompatible with its nature under the Treaties.[78] Moreover, because EU law requires Member States to recognise the nationality granted by another Member State for the purposes of EU rights, a transactional approach to naturalisation threatens the mutual trust that underpins this obligation of recognition, 'since that trust relates to the premise that the grant of the nationality of a Member State must be based on a special relationship of solidarity and good faith justifying the grant of rights resulting, in particular, from Union citizenship'.[79]

The Court then turned to apply these principles to the Maltese 'Individual Investor Programme'. It found that the three core requirements of the scheme – fixed contributions, property investment, and donations – place payments and investments at the heart of the naturalisation process.[80] Although the 'Individual Investor Programme' included a residence requirement, the Court held that this did not amount to a genuine requirement of *actual residence* in Malta, since physical presence was only necessary for administrative steps such as the provision of biometric data and the oath of allegiance.[81] The limited physical presence required thus did not constitute a meaningful connection supplementing the financial conditions.[82] The Court also noted that while post-naturalisation monitoring was envisaged, there was no binding requirement that such a meaningful connection be established or assessed after the grant of nationality.[83] Finally, the Court referred to promotional material by authorised agents, which advertised the Maltese 'Individual Investor Programme' as a means of accessing the rights of Union citizenship, particularly free movement.[84] The Court explained that the fact that the scheme was publicly presented as offering EU citizenship benefits through Maltese nationality reinforced the conclusion that Malta had established a transactional system amounting to the commodification of EU citizenship for the purpose of promoting its scheme.[85] On this basis, the Court upheld the Commission's action and found that Malta had failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU.

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[75] *Commission v Malta* (n 1) para 96.
[76] ibid para 97.
[77] ibid para 99.
[78] ibid para 100.
[79] ibid para 101.
[80] ibid para 103.
[81] ibid para 106.
[82] ibid para 108.
[83] ibid paras 116-118.
[84] ibid para 119.
[85] ibid para 120.

4 RETHINKING THE EU LAW LIMITS ON NATIONAL COMPETENCE IN GRANTING MEMBER STATE NATIONALITY AFTER *COMMISSION V MALTA*

4.1 THE FUTURE OF 'GOLDEN PASSPORT' SCHEMES IN THE EU

The question of the acceptability of so-called 'golden passport' schemes has generated significant controversy, with passionate debates and legitimate arguments presented on both sides of the discussion.[86] At its core, the divergence of views often reflects underlying ethical dilemmas regarding the nature of nationality: whether it can be treated as a marketable commodity or whether it is a legal status grounded in the existence of a special relationship – a genuine link – between a person and a particular State. The positions adopted in this discussion are, in many instances – including within the context of EU law – shaped more by these ethical intuitions than by strictly legal reasoning.[87] It is therefore perhaps this underlying ethical discomfort that also informs, at least implicitly, the approach taken by the Grand Chamber in *Commission v Malta*, where the decision to declare such schemes incompatible with EU law appears to precede, and indeed shape, the reasoning offered in support of this outcome.

The Court's reasoning is based on what appears to be a rather simple line of argument: the conferral of nationality by a Member State must be based on a special relationship of solidarity and good faith between the State and the individual, which constitutes the foundation of both national and Union citizenship.[88] A Member State violates this principle, and undermines the mutual trust essential to Union citizenship, where it grants nationality in exchange for predetermined payments or investments.

Central to the Court's reasoning in *Commission v Malta* is, therefore, the notion of a 'special relationship of solidarity and good faith' – a formulation which appears to echo, if not entirely replicate, the much-contested concept of a 'genuine link'.[89] I use the term

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[86] See, for instance, the views expressed in different chapters in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018) Part I.

[87] For a criticism of such a 'functional institutional ethos' approach see Joseph H H Weiler, 'Postscriptum: Commission v Malta (*Citizenship for Sale)*: Who of the Two is Selling European Values?' in Dimitry Kochenov, Madeleine Sumption, and Martijn van den Brink (eds), *Investment Migration in Europe and the World* (Hart 2025) 399. For an article defending the sale of citizenship from an ethical perspective see Javier Hidalgo, 'Selling Citizenship: A Defence' (2016) 33(3) Journal of Applied Philosophy 223. For views that are clearly against 'selling' citizenship from an ethical perspective see, inter alia, Ayelet Shachar and Ran Hirschl, 'On Citizenship, States and Markets' (2014) 22(2) The Journal of Political Philosophy 231; Laura M Johnston, 'A Passport at Any Price? Citizenship by Investment through the Prism of Institutional Corruption' (Edmond J Safra Working Paper No 22, 12 September 2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2324101> accessed 6 August 2025; Ana Tanasoca, 'Citizenship for Sale: Neomedieval, Not Just Neoliberal?' (2016) 57(1) European Journal of Sociology 169. For an argument that there are certain things that should in no circumstances be put up for sale because of their inherently 'superior' nature see Michael J Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Penguin 2013).

[88] The reference to 'a special relationship of solidarity and good faith between a State and its nationals' had already been made in the Court's case-law concerning the withdrawal of nationality (see, for instance, *Rottmann* (n 4) para 51; *Tjebbes* (n 4) para 33); even previously, in its public service exception case-law, for the purposes of Article 45(4) TFEU, the Court referred to a 'special relationship of allegiance to the state' in order to define the situations when a Member State *can* rely on this exception – see, for instance, Case 149/79 *Commission v Belgium* EU:C:1980:297 para 10.

[89] For a different view see Martijn van den Brink, 'Why bother with legal reasoning? The CJEU judgment in

'contested' deliberately: both the 'genuine link' requirement and the judgment from which it originates (*Nottebohm*)[90] have been the subject of extensive academic criticism, both on legal and normative grounds.[91] Notably, this is the first time the EU institutions have questioned *the grant* of Member State nationality – and by extension Union citizenship – on the basis of the absence of such a connection. In other instances where the existence of a genuine link is questionable, the EU institutions have remained silent. Consider, for instance, Italy's practice of granting nationality to individuals in Latin America who have never resided in Italy but can trace ancestry to an Italian national,[92] or Spain and Portugal's laws conferring citizenship on the descendants of Sephardic Jews expelled in the 15th and 16th centuries.[93] In such cases, there is often no meaningful connection between the individual and the Member State in question, let alone with the EU.[94] Yet, none of the EU institutions challenged these practices, nor even raised any concerns in relation to them.[95]

Indeed, the Court's own case-law prior to *Commission* v *Malta* appears to be in line with the hands-off approach followed by the (political) EU institutions with regard to this matter. In *Micheletti*, which involved Spain's refusal to recognise the Italian nationality of a dual

Commission v Malta (Citizenship by Investment)' (*Global Citizenship Observatory*, 2 May 2025) <https://globalcit.eu/why-bother-with-legal-reasoning-the-cjeu-judgment-in-commission-v-malta-citizenship-by-investment/> accessed 6 August 2025, where it was noted that the Court of Justice did not employ the 'genuine link' argumentation put forward by the Commission: 'By foregrounding solidarity and mutual trust and thereby substituting the principle of genuine link, the Court will at least escape criticism that it does not understand ICJ case law'.

[90] *Nottebohm* (n 62).

[91] For an article explaining why *Nottebohm* (n 62) has been misread by the EU institutions and by some academics as imposing a genuine link requirement for the acquisition of nationality, whereas a close reading of it demonstrates that such a requirement has been imposed only for the *recognition* by States of nationality acquired in another State see Martijn van den Brink, 'Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?' (2022) 23(1) German Law Journal 79. See, also, Peter J Spiro, 'Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion' in Dimitry Kochenov, Madeleine Sumption, and Martijn van den Brink (eds), *Investment Migration in Europe and the World* (Hart 2025).

[92] Costica Dumbrava, 'External Citizenship in EU countries' (2014) 37(13) Ethnic and Racial Studies 2340; Jo Shaw, 'Citizenship for Sale: Could and Should the EU Intervene?' in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018). It should be noted, however, that recently Italy has taken steps to limit the instances that its nationality can be granted in these circumstances – see Francesca Strumia, 'Neither Soil, Nor Blood, Nor Money: Disquiet over citizenship in the US, Italy, the UK, and at the CJEU' (*Verfassungsblog*, 20 June 2025) <https://verfassungsblog.de/neither-soil-nor-blood-nor-money/> accessed 6 August 2025.

[93] Hans Ulrich Jessurun d'Oliveira, 'Iberian Nationality Legislation and Sephardic Jews' (2015) 11(1) European Constitutional Law Review 13.

[94] In fact, for many commentators, the absence of a 'genuine link' between individuals and the State of which they are nationals indicates the arbitrariness of the rules determining the acquisition of citizenship, suggesting that objections to investor citizenship programmes on the basis of a missing 'genuine link' are misplaced – see, for instance, Dimitry Kochenov, 'Citizenship for Real: Its Hypocrisy, Its Randomness, Its price' and Chris Armstrong, 'The Price of Selling Citizenship', both in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018); Odile Ammann, 'Residency by Investment and Citizenship by Investment: Just the Tip of the Iceberg? The Pervasiveness of Meritocratic Considerations in Immigration and Citizenship Law' in Dimitry Kochenov, Madeleine Sumption, and Martijn van den Brink (eds), *Investment Migration in Europe and the World* (Hart 2025); Tratnik and Weingerl (n 15); Dimitry Kochenov, 'Victims of Citizenship: Feudal Statuses for Sale in the Hypocrisy Republic' in Dimitry Kochenov and Kristin Surak (eds), *Citizenship and Residence Sales* (Cambridge University Press 2023); Francesca Strumia, 'Twice a missed chance: On citizenship, agency and movement in Commission v. Malta (citizenship for sale)' (2026) Maastricht Journal of European and Comparative Law 1; Basheska and Kochenov (n 3).

[95] Though, as will be seen in the next sub-section, the Court has held that Member States are *entitled* (but not required!) to withdraw their nationality (and as a result Union citizenship), in the absence of such a link – *Tjebbes* (n 4).

(Argentine and Italian) national on the basis that the individual lacked a genuine link with Italy, the Court categorically held that Member States may not question the nationality conferred by another Member State.[96] Moreover, the Court's free movement case-law confirms that EU citizens need not reside within EU territory in order to exercise free movement rights.[97] Taken together, these principles allow us to imagine a scenario in which a person who acquires Member State nationality solely through a distant blood connection – without ever having lived in the EU or established any 'special relationship of solidarity and good faith' with a Member State and the EU – may nonetheless claim full access to Union citizenship and the rights attached to it. And, of course, that imagined scenario is not so hypothetical: it is precisely what happened in *Micheletti*!

Against this backdrop, therefore, the Court's conclusion in *Commission v Malta* cannot be explained solely by the absence of a genuine link.[98] Rather, what seems to have motivated the Court is a broader ethical unease with the commodification of (Union) citizenship – the idea that access to this EU status and its attendant rights may be purchased. It is thus this transactional nature of 'golden passport' schemes – rather than merely the lack of a 'genuine link' or a 'special relationship of solidarity and good faith' – that appears to (really) lie behind the Court's ruling.

Once the dust settles from the first reading of this significant ruling, one is left wondering, however, how the principles established in this ruling, will be applied in future scenarios.

The core concepts invoked by the Court – solidarity, good faith, and mutual trust – are inherently abstract and remain broadly undefined.[99] It is true that the Court has, in the past, employed such notions in its citizenship case-law to construct arguments leading to a finding of a violation of EU law. For instance, in the landmark case of *Grzelczyk*, the Court invoked the idea that a certain degree of financial *solidarity* must exist between nationals of the host Member State and those of other Member States, for requiring the host Member State to extend a minimum subsistence allowance to an economically inactive national of another Member State who was lawfully resident in its territory.[100] This assumption underpinned the Court's broader move towards recognising Union citizenship as a fundamental status, capable of conferring rights even in the face of restrictive EU secondary law provisions. The appeal to solidarity in that case served to frame the interpretation of secondary EU legislation in light of primary law rights, anchoring the assessment of whether a Union citizen had been unjustly deprived of the enjoyment of fundamental rights stemming from EU law. In *Commission v Malta*, however, the Court takes

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[96] *Micheletti* (n 4).

[97] See, for instance, Case C-138/02 *Collins* EU:C:2004:172 and Case C-214/94 *Boukhalfa* EU:C:1996:174.

[98] Unless, of course, the ECJ wished to depart from its previous case-law, which does not appear to be the case. Writing prior to the delivery of the Court's ruling in *Commission v Malta*, Oosterom-Staples considered that the EU institutions arguments against citizenship investor programmes appeared to be calling for a departure from the principles established in *Micheletti* – Helen Oosterom-Staples, 'The Triangular Relationship Between Nationality, EU Citizenship and Migration in EU Law: A Tale of Competing Competences' (2018) 65 Netherlands International Law Review 431, 451.

[99] Another commentator has noted that '[t]he relation to solidarity or good faith, which are often cited in reference to the genuine link, relate to personal subjective feelings of individuals' – see Katja Swider, 'Legitimizing precarity of EU citizenship: *Tjebbes*' (2020) 57(4) Common Market Law Review 1163, 1167 and 1169.

[100] Case C-184/99 *Grzelczyk* EU:C:2001:458 para 44.

a different approach. Here, these abstract principles do not serve as (merely) ancillary tools supporting the application of concrete Treaty rights, such as the right to free movement and residence; rather, they form the very foundation for establishing a breach of another equally indeterminate constitutional principle, namely, the duty of sincere cooperation under Article 4(3) TEU.

Furthermore, the Court's reasoning leaves many important questions unanswered,[101] thereby providing those who are critical of the judgment with grounds to challenge its persuasiveness.[102] In particular, it remains unclear what implications the ruling will have for the future of 'golden passport' schemes, how the judgment is to be applied in practice by national authorities, and – most significantly – the extent to which EU law will now constrain Member States' discretion in matters concerning the grant of their nationality.

As will be explained in more detail in the next part of this section, the judgment has opened the door for the EU to exercise control over national policies and laws concerning the grant of nationality. Is, however, the *transactional* grant of nationality – that is, the conferral of nationality in return for payment or investment and in the absence of the required 'special relationship' – *the only* situation in which a Member State's nationality law may now be found to be in conflict with EU law? If not, what other forms of nationality grants could similarly be deemed incompatible? Can, for instance, the bestowal of nationality upon a top athlete who has no 'special relationship' with the Member State concerned, now be considered a breach of EU law?

Moreover, as another commentator has put it, 'By its decision, the Grand Chamber has effectively created, at the level of EU law, a form of "genuine link" requirement, expressed as the need for "a special relationship of solidarity and good faith justifying the grant of rights resulting, in particular, from Union citizenship"'.[103] This is not surprising, given that the EU institutions have often referred to the concept of a 'genuine link' when commenting on 'golden passport' schemes, and in fact the absence of such a link has been central to the Commission's arguments in *Commission v Malta*.[104] According to the judgment,

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[101] These (and more) questions have been raised in, inter alia, Simon Cox, 'The EU Free Market Does not Extend to Citizenship' (*Verfassungsblog*, 30 April 2025) <https://verfassungsblog.de/the-eu-free-market-does-not-extend-to-citizenship/> accessed 6 August 2025; Eric Fripp, 'EU Court of Justice finds Malta "golden passports" scheme incompatible with EU law' (*EJIL: Talk!*, 9 May 2025) <https://www.ejiltalk.org/eu-court-of-justice-finds-malta-golden-passports-scheme-incompatible-with-eu-law/> accessed 6 August 2025; Steve Peers, 'Pirates of the Mediterranean meet judges of the Kirchberg: the CJEU rules on Malta's investor citizenship law' (*EU Law Analysis*, 30 April 2025) <https://eulawanalysis.blogspot.com/2025/04/pirates-of-mediterranean-meet-judges-of.html> accessed 6 August 2025; Luke Dimitrios Spieker, 'It's solidarity, stupid! In defence of Commission v Malta' (*Verfassungsblog*, 7 May 2025) <https://verfassungsblog.de/its-solidarity-stupid/> accessed 6 August 2025.

[102] See, for instance, Dimitry V Kochenov and Guillermo Íñiguez, 'EU citizenship's new essentialism' (2025) 50 European Law Review 455; Dimitry Kochenov, 'Never Mind the Law, again: Commission v Malta (C-181/23)' (*EU Law Live*, 30 April 2025) <https://eulawlive.com/op-ed-never-mind-the-law-again-commission-v-malta-c-181-23/> accessed 6 August 2025; van den Brink, 'Why bother with legal reasoning?' (n 89); Guillermo Íñiguez, Op-Ed: 'On Genuine Links, Burdens of Proof, and Declaration No. 2: Some Musings on the Court's Reasoning in Commission v. Malta (C-181/23)' (*EU Law Live*, 5 May 2025) <https://eulawlive.com/op-ed-on-genuine-links-burdens-of-proof-and-declaration-no-2-some-musings-on-the-courts-reasoning-in-commission-v-malta-c-181-23> accessed 6 August 2025. For a positive view of the ruling see Merijn Chamon, 'Commission v Malta (C-181/23) and the trilemma of EU citizenship' (2025) 50 European Law Review 475 and Luke Dimitrios Spieker and Ferdinand Weber, 'Commission v Malta (C-181/23): a "miracle" of Union citizenship?' (2025) 50 European Law Review 487.

[103] Fripp (n 101); Spieker, 'It's solidarity, stupid! In defence of Commission v Malta' (n 101).

[104] See, for instance, Reding, 'Citizenship must not be up for sale' (n 17); European Parliament Resolution on

in the absence of 'actual residence' (meaning, physical presence) such a 'special relationship' (or 'genuine link') appears to be missing. However, what level of 'actual residence' or other connecting factors are required to ground the 'special relationship' necessary for the compatibility of a naturalisation decision with EU law?[105]

The ruling also leaves open whether schemes that combine financial contributions *with genuine residence or other substantial ties* to the Member State might be permissible under EU law. Should the Court's reasoning be understood to imply that transactional elements are not inherently objectionable, provided they are accompanied by sufficiently demanding residence or integration requirements? Or does the mere presence of a transactional component render such schemes incompatible with EU law, regardless of additional requirements? These questions are likely to arise as Member States, including Malta, consider revising or redesigning their citizenship and residence schemes in the light of the ruling.[106]

The most significant question that emerges – and one that will more broadly determine the extent to which EU law now limits Member State competence with regard to the bestowal of nationality – is the following: when a Member State grants nationality through a 'golden passport' scheme, what are the consequences for the individual's nationality and Union citizenship statuses? Is the nationality invalid solely for the purposes of EU law, meaning that the person does *not* hold Union citizenship (and cannot be considered a Member State national *for the purposes of EU law*) but can still be considered a national of that State *under national (and international) law*? Such a (rather more limited) implication would reflect the approach taken by the Court in *Airola* back in the 1970s,[107] where it held that Italian nationality – automatically conferred on the wife of an Italian national under a discriminatory rule – while remaining valid under Italian law, could not be recognised for the purposes of EU law, as it breached the general principle of non-discrimination on the basis of sex. The Court thus clarified that, where the manner in which Member State nationality is acquired breaches EU law, its effects may be disregarded for the purposes of EU law, even if the nationality remains valid for all other legal purposes.

In my view, in order to be respectful of Member State sovereignty in the field of nationality, the Court should have made it clear that the prohibition on investor citizenship schemes established in *Commission v Malta* applies only to the *acquisition of Union citizenship* (and to the grant of Member State nationality *for EU law purposes*), and not to the grant of Member State nationality as such.[108] Consequently, individuals acquiring nationality through such

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EU citizenship for sale (n 18); Commission, 'Investor Citizenship and Residence Schemes in the European Union' (n 11).

[105] Carrera, who has been critical of 'golden passport' schemes has, nonetheless, criticised the 'genuine link' requirement, wondering what this criterion is really about and pointing out that it is open to a certain degree of arbitrariness and margin of manoeuvre by State authorities – Carrera (n 15) 31. Similarly, van den Brink has argued that while the 'genuine link' requirement may be normatively justified, its application is fraught with inconsistency and ambiguity. He questions how one can assert that investor citizenship schemes fail to meet the requirement, while the grant of nationality to individuals with only ancestral ties is generally accepted, despite similarly tenuous connections – van den Brink, 'Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?' (n 91). See, also, Basheska and Kochenov (n 3).

[106] Cox (n 101).

[107] Case 21/74 *Airola* EU:C:1975:24.

[108] That said, whether such a separation between national and EU-level effects could function effectively in practice is far from clear. In the context of the Schengen acquis, which is based on a unified external border and the absence of internal border controls, it would be very difficult for a Member State to operate two categories of its own nationals – those whose nationality produces EU-level effects and those whose

schemes should not be able to acquire Union citizenship; and their acquisition of Member State nationality should not count for EU law purposes (for instance, a person who became Maltese through a golden passport scheme, should not qualify as a 'worker' for the purposes of EU law). However, the EU cannot and should not intervene when Member States operate investor citizenship schemes for the exclusive purpose of conferring their own nationality. From the perspective of EU law, the grant of Member State nationality alone – without the accompanying conferral of Union citizenship – does not appear to contravene any principle of EU law and would fall within the legitimate exercise of national competence in the field of nationality.[109]

In practice, this would mean that Member States would be able to continue to operate investor citizenship schemes domestically, provided, following the logic accepted in *Kaur*,[110] that individuals acquiring nationality under such schemes do not acquire Union citizenship. While in *Kaur* – as will be seen in the next part of this section – the Court accepted that a *Member State* may limit *the EU law consequences of its own nationality* by excluding *certain nationals* from Union citizenship,[111] what I propose here would entail the reverse: the EU itself determining that certain nationals of Member States – namely, those who have acquired their nationality through investor citizenship schemes – are not entitled to Union citizenship.[112]

This rationale should also guide how the mutual recognition of the bestowal of Member State nationality is approached by the Member States. In *Commission v Malta*, the Court justified its finding that Malta's scheme was incompatible with EU law by invoking the principle established in *Micheletti*[113] that Member States are required by EU law to recognise the nationality conferred by other Member States for the purposes of EU law.[114] According to this approach, EU law prohibits a 'bottom-up' approach whereby individual Member States, on their own initiative, refuse to recognise another Member State's nationality – and by extension the resulting Union citizenship – *for the purposes of EU law*. However, in my view, this does not mean that EU law requires an outright prohibition on investor citizenship schemes or that such schemes must necessarily render *both* the grant of Union citizenship *and the bestowal of Member State nationality* invalid. Rather, what is required is a top-down approach: a uniform rule at the EU level that limits *the recognition of Union citizenship status* – not nationality itself – where nationality has been acquired through such schemes.

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nationality does not. For instance, a person holding Maltese nationality under domestic law but not recognised as a national of a Member State *for EU law purposes*, would, in principle, have to be treated as a third-country national when entering Malta, a result that would generate significant operational and legal inconsistencies. The alternative solution, which is allowing such individuals to enter Malta without the application of Schengen external-border rules, while simultaneously preventing them from circulating freely within the wider Schengen area, would undermine the mutual trust framework on which Schengen is constructed. These practical constraints distinguish the situation from older cases such as *Airola* (ibid), which arose outside this integrated border-management system. I'm grateful to Professor Jukka Snell for this point.

[109] For a similar view see Hans Ulrich Jessurun d'Oliveira, 'Union Citizenship and Beyond' in Nathan Cambien, Dimitry Kochenov, and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill 2020) 40.

[110] *Kaur* (n 4).

[111] Gerard-René de Groot, 'Towards a European Nationality Law' (2004) 8(3) Electronic Journal of Comparative Law 1, 5-12.

[112] I am, of course, aware of the practical difficulties that will be involved when Member States will need to identify nationals of other Member States who obtained their nationality through a 'golden passport' scheme and who, accordingly, should not be regarded as Union citizens. See, also, note 108 above.

[113] *Micheletti* (n 4).

[114] (n 4).

Under this approach, individuals who have obtained Member State nationality via an investor citizenship scheme would not be able to invoke Union citizenship rights in the territory of other Member States.[115] That said, this would not prevent a host Member State, if it so chooses, from recognising the underlying nationality for its own purposes, provided this does not extend to the enjoyment of rights attached to Union citizenship.[116]

Another difficult question is whether the ruling has retrospective effect and will thus require Member States operating such schemes to now withdraw nationality (or – according to my suggestion above – only Union citizenship) granted through investor citizenship schemes. In response to this, investor citizens may invoke general principles of EU law, such as legal certainty and legitimate expectations, but also fundamental rights stemming from EU law, to challenge any attempt to revoke their citizenship. It would seem, also, that given that there would be withdrawal of Union citizenship by States which continue to be EU Member States, the principles established in *Rottmann*[117] and *Tjebbes*[118] would be applicable, according to which there needs to be an individual assessment of the situation and an examination of whether the withdrawal complies with the principle of proportionality and fundamental human rights protected under EU law.[119] Related to the above question is the position of secondary beneficiaries, for instance children, who have acquired their nationality (and Union citizenship) as dependents of individuals who obtained nationality through 'golden passport' schemes which are in breach of EU law. Should these children also lose Union citizenship (as suggested above) or – even – their Member State nationality, in situations where the parent from whom they derived it has lost it?

Finally, and at a more fundamental level, in paragraph 94 of its judgment the Court recalls that, 'in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, it is for each Member State, inter alia, to refrain from any measure which could jeopardise the attainment of the European Union's objectives'. Yet, which EU objective or objectives have been undermined by the operation of the Maltese scheme?[120]

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[115] Such a scenario was examined – but rejected – in Dominique Ritleng, 'The relationship between Union citizenship and nationality: Is it altered by *Wiener Landesregierung?*' (2023) 60(4) Common Market Law Review 1055, 1069-1070.

[116] Spieker and Weber have similarly argued that a mere obligation of refusal of *recognition* of Member State nationality granted through 'golden passport' schemes with supranational effect for the entire Union 'would not only be doctrinally sound and respectful of the Member States' competences, but also effective in practice. Russian oligarchs who have acquired Maltese nationality through an investor citizenship programme would continue to live in Malta as Maltese citizens – they would simply be denied access to other Member States' – Luke Dimitrios Spieker and Ferdinand Weber, 'Bonds without belonging? The *genuine link* in international, union, and nationality law' (2024) 43 Yearbook of European Law 1, 38.

[117] *Rottmann* (n 4).

[118] *Tjebbes* (n 4).

[119] Kochenov and Íñiguez (n 102) 472. For an analysis of the loss of Union citizenship case-law see Alina Tryfonidou, 'Member State Nationality and the Gain and Loss of EU Citizenship' in Petra Minnerop, Volker Roeben, Robert Schütze and Jukka Snell (eds), *EU Citizenship as an Independent Status: Between Form and Substance* (Oxford University Press 2026 forthcoming).

[120] Elsewhere, I argued that 'golden passport' schemes violate the principle of equality, which is among the EU's values, as noted in Article 2 TEU, as they lead to discrimination on the basis of property; since one of the EU's objectives is to promote its values, action by Member States which jeopardises the attainment of this objective is liable to amount to a breach of the principle of sincere cooperation – see Alina Tryfonidou, 'Citizenship-for-sale schemes and EU law: can third-country nationals buy their way into becoming subjects of EU law?' in Samo Bardutzky and Elaine Fahey (eds), *Framing the Subjects and Objects of Contemporary EU law* (Edward Elgar 2017) 154. For a similar view, in terms of the inequality of treatment created by such schemes between those who can pay and those who cannot, see Andriopoulou (n 12) 9. Without connecting

Greater clarity on this point might have helped to resolve some of the interpretive uncertainties identified earlier in this part of the chapter, and would also have enhanced the judgment's value as a precedent by providing a clearer basis for its application in future cases involving similar schemes.

4.2 EU INTERFERENCE AND NATIONAL COMPETENCE IN THE CONFERRAL OF MEMBER STATE NATIONALITY – A DEFENCE OF *COMMISSION V MALTA*

Having examined the implications of the *Commission v Malta* judgment for the future of 'golden passport' schemes in the EU, and in light of the many questions it raises regarding its broader legal effects, we now turn to a more fundamental issue: how this judgment may affect Member States' competence in the field of nationality. This final part of the section offers a defence of the ruling, exploring the extent to which it may be interpreted as redefining, constraining, or clarifying the scope of national discretion in conferring nationality – an area traditionally regarded as lying at the core of national sovereignty.

Under international law, it is imperative that States should be left free to determine who can acquire their nationality.[121] This stems from the fact that nationality and sovereignty are 'inseparable'[122] and, hence, sovereign independent States should be free to promulgate their own nationality laws.[123]

Yet, the power of Member States to determine who may acquire, retain, or lose their nationality has long posed a conundrum for EU law, given that EU citizenship remains a completely derivative status: there is no way for an individual to acquire Union citizenship without first acquiring the nationality of a Member State. This makes access to EU citizenship entirely contingent on national rules and raises the question of whether Member States can be left with unfettered discretion in defining the personal scope of EU citizenship and the rights attached to it.[124]

Accordingly, the EU has faced the enduring challenge of reconciling, on the one hand, the need to respect the sovereignty of Member States in the nationality field with, on the other hand, its own interest in exercising a degree of control over who may acquire, retain, or lose Union citizenship.

The basis of the EU's position has always been that, since Member States remain sovereign States under international law, they maintain their competence with regard to issues involving nationality attribution and its effects. In order to secure this, the Member States shortly before the status of Union citizenship was introduced in 1993, appended to

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discrimination on the basis of property or wealth with 'golden passport' schemes, Worster has explained that under international law, in their nationality laws, States must not discriminate against persons on the basis of prohibited characteristics; among the prohibited characteristics that he mentions are property and wealth – William Thomas Worster, 'Citizenship by Investment and the Right to Change Nationality' in Dimitry Kochenov, Madeleine Sumption, and Martijn van den Brink (eds), *Investment Migration in Europe and the World* (Hart 2025) 26-27.

[121] Catherine Dauvergne, 'Sovereignty, Migration and the Rule of Law in Global Times' (2004) 67(4) Modern Law Review 588, 596.

[122] Andrew Evans, 'Nationality Law and European Integration' (1991) 16 European Law Review 190.

[123] Stephen Hall, *Nationality, Migration Rights and Citizenship of the Union* (Martinus Nijhoff 1995) 18.

[124] For a critical account of this see Dimitry Kochenov, '*Ius Tractum* of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15 Columbia Journal of European Law 169.

the Final Act of the Treaty on European Union the 'Declaration on Nationality of a Member State' (Declaration No 2), which confirms that Member States maintain their competence with regard to issues involving nationality attribution. Thus, whenever the Treaties make reference 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'.[125] This was confirmed judicially in the case of *Kaur*, which concerned the compatibility with EU law of the UK's refusal to consider certain of its citizens as its 'nationals' *for the purposes of EU law*.[126] The Court held that the contested decision did not amount to a violation of EU law as it 'did not have the effect of depriving any person who did not satisfy the definition of a national of the United Kingdom of rights to which that person might be entitled under Community law. The consequence was rather that such rights never arose in the first place for such a person'.[127] Hence, with this pronouncement, the ECJ clearly demonstrated its intention of leaving Member States free to determine who can acquire their nationality, *even for the purposes of EU law*.

Nonetheless, the Court's case-law has also made it clear that Member States' freedom in the field of nationality is not entirely without limits. While they retain the competence to define the content of their nationality laws and to determine who may acquire, retain and lose their nationality, Member States must exercise that competence with due regard to Union law.[128] Until recently, however, it remained unclear what this obligation entailed, as no case had *directly* addressed the question of whether the conferral of Member State nationality in a specific context was in violation of EU law.

Prior to *Commission v Malta*, the Court had occasionally addressed issues relating only indirectly to the acquisition of Member State nationality. In that case-law, the Court's role was confined to assessing whether such a grant should be *recognised* for the purposes of EU law, either by EU institutions, as in *Airola* (where it could not, because it violated the principle of non-discrimination based on sex),[129] or by other Member States, in contexts where individuals sought to invoke EU-derived rights in their territory, as in *Micheletti*,[130] *Zhu and Chen*,[131] and *Garcia Avello*[132] (where it was held that Member States should recognise for the purposes of EU law the decision of other Member States to grant their nationality, effectively indicating that they cannot require the nationals of other Member States to have a 'genuine link' with their Member State of nationality).

More recent jurisprudence has increasingly turned to questions concerning the withdrawal of Member State nationality, and, by extension, the consequent loss of Union

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[125] 'Declaration on Nationality of a Member State' (Declaration No 2) [1992] OJ C191/98. See also the Decision of the Heads of State and Government meeting within the European Council at Edinburgh on 11 and 12 December 1992 concerning certain problems raised by Denmark on the Treaty of European Union [1992] OJ C348/1.

[126] *Kaur* (n 4). For comments see Stephen Hall, 'Determining the Scope *ratione personae* of European Citizenship: Customary International Law Prevails for Now' (2001) 28(3) Legal Issues of Economic Integration 355.

[127] *Kaur* (n 4) para 25.

[128] *Micheletti* (n 4) para 10; Case C-179/98 *Mesbah* EU:C:1999:549 para 29; *Kaur* (n 4) para 19; *Zhu and Chen* (n 54) para 37

[129] *Airola* (n 107).

[130] *Micheletti* (n 4).

[131] *Zhu and Chen* (n 54).

[132] Case C-148/02 *Garcia Avello* EU:C:2003:539.

citizenship. Since 2010, starting with the famous *Rottmann* ruling,[133] the Court has been seized with a steady stream of references for preliminary rulings addressing this issue. This evolving body of case-law can be broadly categorised into three strands. The first concerns the loss of nationality through individual administrative or judicial decisions which were made as a result of the actions of the citizenship holders (obtaining nationality by deception or committal of minor administrative offences), entailing a corresponding loss of Union citizenship, as illustrated in *Rottmann* and, more recently, *Wiener Landesregierung*.[134] The second strand involves the loss of nationality by operation of law, resulting from the application of general national provisions, as seen in *Tjebbes*,[135] *X*,[136] and *Stadt Duisburg*.[137] And the third strand encompasses the collective deprivation of Union citizenship following Brexit, which has given rise to the preliminary ruling in *Préfet du Gers*[138] and the trilogy of direct actions in *Silver*,[139] *Shindler*,[140] and *Price*.[141] The general principle established by this line of case-law is that when a Member State withdraws its nationality *from an individual* – whether through an individual decision (as in *Rottmann* and *Wiener Landesregierung*) or by operation of law (as in *Tjebbes*, *X* and *Stadt Duisburg*) – EU law, and specifically Article 20 TFEU, requires an individual assessment of the consequences of losing Union citizenship, in the light of the principle of proportionality and fundamental human rights; something which is not required where Union citizenship is lost en masse due to a Member State's sovereign decision to leave the EU.

Thus, until *Commission v Malta* the Court had mainly been called to consider the limits placed by EU law in situations governing the *loss* of Member State nationality and – through it – of Union citizenship. And, as Spieker and Weber have explained, 'limitations under EU law [on the loss of Member State nationality] have become increasingly more detailed, covering time limits or specific steps in the individual assessment'.[142] The ruling in *Commission v Malta* is therefore important because, although the Court had previously affirmed that Member States must exercise their competence in nationality matters (including in relation to the grant of their nationality) with due regard to EU law, this was the first time it was called upon to apply that principle concretely to a case involving *the acquisition* of Member State nationality.

Moreover, *Commission v Malta* signals the beginning of a jurisprudential trend in which

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[133] *Rottmann* (n 4).
[134] Case C-118/20 *Wiener Landesregierung* EU:C:2022:34.
[135] *Tjebbes* (n 4). For analyses of the case see, inter alia, Hanneke van Eijken, 'Tjebbes in Wonderland: On European Citizenship, Nationality and Fundamental Rights' (2019) 15(4) European Constitutional Law Review 714; Swider (n 99); Dimitry Kochenov, 'The *Tjebbes* fail' (2019) 4(1) European Papers 319.
[136] Case C-689/21 *X* EU:C:2023:626.
[137] Joined Cases C-684-686/22 *Stadt Duisburg* EU:C:2024:345.
[138] Case C-673/20 *Préfet du Gers* EU:C:2022:449.
[139] Case T-252/20 *Silver* EU:T:2021:347.
[140] Case T-458/17 *Shindler* EU:T:2018:838.
[141] Case T-231/20 *Price* EU:T:2021:349. In all three actions, appeals were brought before the ECJ against the rulings of the General Court, but they were dismissed – see Case C-499/21 P *Silver* EU:C:2023:479, Case C-501/21 P *Shindler* EU:C:2023:480, and Case C-502/21 P *Price* EU:C:2023:482.
[142] Spieker and Weber, 'Bonds without belonging?' (n 116) 15. The Court's recent case-law concerning the limitations imposed by EU law on the loss and acquisition of Member State nationality has been characterised as 'a romantic turn in which the institutions seek to densify and consolidate EU citizenship', in the sense that the EU institutions go beyond the formalism that makes the Member States solely responsible for this issue – see Jules Lepoutre, 'Romantic Times? Nationality and European Citizenship' (2024) 38 Nordisk socialrättslig tidskrift 55.

the Member States' competence in the field of nationality is no longer merely subject to procedural and proportionality-based limitations, as in *Rottmann* and *Tjebbes*, but also to substantive ones. The principle emerging from *Commission v Malta* is that the exercise of the competence to grant nationality must not be used in ways that undermine the coherence or credibility of EU citizenship, which includes the requirement that naturalisation pathways leading to EU citizenship must be underpinned by an actual, verifiable, connection between the individual and the conferring State. More specifically, the Court appears to have drawn on an argument traditionally invoked by Member States *to justify the withdrawal of nationality* (the need to preserve the 'special relationship of solidarity and good faith' or 'genuine link' *between the State and its nationals*),[143] and repurposed it in order to limit the freedom of those same States in the nationality field: namely, to refrain from conferring Union citizenship (and perhaps even nationality?) in exchange for money *and* to require that in order for Union citizenship (and perhaps their nationality?) to be granted, there must be such a 'genuine link' or 'special relationship'.

Van den Brink has characterised this development 'as a massive stretch from where the case law used to stand'.[144] He noted that whereas 'one may find it logical that the deprivation of EU citizenship is subject to supranational supervision', the same cannot be said of the outcome in *Commission v Malta*, in which 'the Court decided to strike down an entire citizenship practice even though no one had been deprived of their rights'. Moreover, he contrasted the 'supervision [in citizenship withdrawal cases] that [was] so minimal that the proportionality requirement could not even protect individuals from being rendered stateless', with the absence of any requirement to comply with proportionality – or any other principle – in *Commission v Malta*, observing in relation to the latter that the Court 'did not seek to soften the blow by way of a proportionality analysis'.

One can agree that the Court's decision in *Commission v Malta may*, indeed, constitute – depending on the still unclear implications of the judgment – 'a massive stretch from where the case law used to stand'. This is particularly so if the ruling is read as prohibiting, as a matter of EU law, not only the conferral and mutual recognition *of Union citizenship* acquired through investor citizenship schemes, but also the very grant of Member State nationality itself. As explained earlier in this article, it remains unclear whether the judgment goes this far or merely imposes a duty on *all* Member States (including the one awarding its nationality) and EU institutions *not to recognise* that the status of Union citizenship was acquired in this way. If the former, the ruling raises serious questions about the link between such national naturalisation practices and the scope of EU law, which makes it questionable whether the EU's interference is at all warranted.

That said, even if the judgment does mark a significant expansion of the Court's approach, this does not necessarily make it legally flawed. The EU Treaties are viewed as a 'living instrument',[145] which must be interpreted in a way that responds to evolving realities and emerging challenges, while remaining faithful to the EU's core values. In this light, the underlying message of the judgment – that Member States cannot act with complete discretion in matters of nationality when their choices have consequences for the EU legal

[143] This was the case for instance in *Rottmann* (n 4) paras 51-54.
[144] van den Brink, 'Why bother with legal reasoning?' (n 89).
[145] Spieker and Weber, 'Bonds without belonging?' (n 116) 13. This was explicitly noted by the Court – but only with regard to the Charter – in Case C-336/19 *Centraal Israëlitisch Consistorie* EU:C:2020:1031 para 77.

order – is not new or radical. It reflects a principle that has long been present in the Court's case-law, namely, that Member States' sovereignty in nationality matters must be exercised with due regard to EU law.[146] What may be contentious in *Commission v Malta*, therefore, is not the principle itself, but the extent to which the Court intended to extend it.

Moreover, the Court's decision to refrain from requiring a proportionality assessment through an individual examination of the situation is entirely logical. Unlike the case-law concerning the loss of nationality *in individual cases* – where proportionality needs to be assessed in light of the individual circumstances of the person affected – *Commission v Malta* did not concern a situation where the acquisition of nationality *by a specific individual* raised concerns. Rather, it involved a national scheme for granting Member State nationality, which the Court found to be *inherently* incompatible with EU law. As such, there was no scope for a proportionality analysis: the grant of Union citizenship in exchange for money was deemed unlawful by design, rendering any individual assessment irrelevant. Thus, to the extent that the judgment prohibits the *future acquisition* of Union citizenship under such schemes, no link with EU law arises that would necessitate a proportionality analysis: like in *Kaur*,[147] the individuals concerned – namely, third-country nationals *that would potentially* be interested in acquiring Union citizenship in this manner – have never held EU citizenship or enjoyed rights stemming from it. Therefore, the prohibition of granting them Union citizenship *in the future* does not affect pre-existing EU law entitlements and thus need not comply with general principles of EU law.

However, if the judgment is interpreted as requiring Member States to retroactively withdraw Union citizenship *already granted under such schemes*, the situation is arguably different. In that case, individuals who have already acquired Union citizenship and have been enjoying the rights attached to it would stand to lose that status. Thus, as observed by Basheska and Kochenov, 'even if you are an European citizen, the EU can be your enemy – pursuing the legal undoing of your status and rights with no legal basis on previously disclosed rules'.[148] One could therefore argue that such a loss should be subject to an individual assessment to ensure compliance with the principle of proportionality and respect for fundamental rights, as required by the *Rottmann* and *Tjebbes* lines of case-law. Nevertheless, the logic of the Brexit cases, might point in the opposite direction: there, too, Union citizenship was lost collectively and automatically, without an individual assessment being required. If that approach is followed, EU law would not mandate an individualised proportionality assessment even in cases of retroactive withdrawal of Union citizenship granted under investor citizenship schemes. At the same time, it could be argued that Brexit involved the withdrawal of a State from the Union, whereas Malta remains an EU Member State, and thus continues to be bound by EU law, including the obligation to ensure compliance with fundamental rights and proportionality.

The judgment appears also to be consistent with the Court's ruling in *Micheletti*,[149]

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[146] See, for instance, *Rottmann* (n 4) para 41; Case C-274/96 *Bickel and France* EU:C:1998:563 para 17; *Garcia Avello* (n 132) para 25; Case C-403/03 *Schempp* EU:C:2005:446 para 19. For an analysis see Loïc Azoulai, 'The "Retained Powers" Formula in The Case Law of The European Court of Justice: EU Law as Total Law?' (2011) 4 European Journal of Legal Studies 178.

[147] *Kaur* (n 4).

[148] Basheska and Kochenov (n 3).

[149] *Micheletti* (n 4).

which precludes Member States from unilaterally questioning the grant of nationality by other Member States for the purposes of EU law. As Coutts has observed,[150] the Court's reasoning in *Commission v Malta* relies heavily on the principles of mutual trust and mutual recognition, which are crucial for the creation and operation of the EU's area of freedom, security, and justice, which presupposes the exercise of free movement without internal borders. Under this logic, when Union citizenship has been *lawfully* acquired through the grant of Member State nationality, other Member States are expected to recognise that grant automatically. Read in this light, *Commission v Malta* may both reaffirm and qualify *Micheletti*. It affirms the need for mutual recognition, but it seems to be also introducing a caveat: Member States may now be *required* – as a matter of EU law – not to recognise the conferral of Union citizenship (and perhaps even Member State nationality?) if it has been granted through an investor citizenship scheme. In other words, while Member States still cannot *individually* reject another's bestowal of Union citizenship, they may now be required by EU law to deny recognition where EU law itself determines that the conferral was unlawful. This aligns with the settled approach that mutual recognition within the EU operates only in relation to statuses or products that have been *lawfully* acquired or produced in another Member State.

What *is* problematic with the ruling in *Commission v Malta*, nonetheless, is the absence of clearly articulated, justiciable, criteria and principles that national courts and authorities can apply when assessing whether a particular grant of nationality – or a particular scheme granting nationality – is incompatible with EU law. As explained in the previous part of this section, the ruling leaves the scope and intensity of EU-imposed control largely undefined. In particular, what the Court tells us in *Commission v Malta* is that in certain circumstances, Member States are precluded from granting Union citizenship (and perhaps from even conferring their nationality?), where doing so will conflict with EU principles and values. *Which* EU principles and values, however, and – most importantly – how should they be interpreted? Hence, the ruling leaves open the question of what criteria should govern EU law's scrutiny of nationality grants, potentially allowing challenges to a wide array of Member State practices that were previously considered to fall within national competence. As another commentator has noted, this lack of clarity means that excessive application fees or disproportionately burdensome naturalisation requirements, such as lengthy residence periods, could – as a result of this ruling – now be challenged as inconsistent with EU law if deemed unduly transactional or restrictive.[151]

The ruling in *Commission v Malta* may have (re-)sown the seeds of a broader conversation about whether it should remain entirely within the remit of Member States to determine who qualifies as their national. While Member States have long been understood to enjoy exclusive competence in this domain, the judgment implicitly raises the question of whether that competence should, in fact, be subject to certain limitations, not only as regards its exercise, but also as to its very scope. As Peers has observed, there is certainly a case, given the impact of the grant of nationality upon other Member States, for some degree of coordination of nationality laws within the EU. Such coordination would also be consistent

[150] Stephen Coutts, 'Citizenship as a Constitutional Status: Commission v Malta' (*Global Citizenship Observatory*, 14 May 2025) <https://globalcit.eu/citizenship-as-a-constitutional-status-commission-v-malta/> accessed 6 August 2025.
[151] Cox (n 101).

with the logic underlying the existence of Union citizenship: why should a legal status that purports to confer membership in a shared European polity be left entirely without common rules governing its acquisition?[152] After all, '[m]utual recognition regimes range from conditional to unconditional and automatic to non-automatic' and, as a general rule, 'the greater degree of automaticity, the greater need there is for underlying common standards to ensure the required equivalence and hence mutual trust'.[153] Thus, if the Court will formulate an *absolute* mutual recognition principle in this context – as has appeared to be the case to date with *Micheletti* and the cases that followed – it should consider laying down some minimum standards.[154] In its recent proposals for amendments to the Treaties, the Parliament made a suggestion to this effect, arguing that a new paragraph 2a should be added to Article 20 TFEU, which would provide that 'The European Parliament and the Council may, in accordance with the ordinary legislative procedure, adopt common provisions on preventing sale of passports, or other abuses regarding the acquisition and loss of citizenship of the Union by third country nationals, with a view to approximating the conditions under which such citizenship can be acquired'.[155] In fact, one could view *Commission v Malta* as imposing such a minimum standard, and maybe this forms the beginning of the EU's action to impose such standards which will ensure the existence of mutual trust, which is necessary for the full and unconditional operation of mutual recognition.

Bringing this issue to the fore also raises a related, and potentially transformative, question: should Union citizenship remain a purely derivative status, or could there be circumstances in which it is acquired directly? In particular, one might ask whether there should be a route to Union citizenship for individuals whose 'special relationship' lies not with a particular Member State, but with the Union itself. Such a step would entail decoupling access to EU citizenship from national citizenship in exceptional cases where the individual's connection to the EU is sufficiently strong and independently justifiable, while it would not take away Member State sovereignty in the field of nationality. The plausibility of such an approach is reinforced by the Court's reasoning in *Commission v Malta*, which affirms that the conferral of Member State nationality – through which Union citizenship is acquired – must be based on a special relationship of solidarity and good faith between the State and the individual, which constitutes the foundation of both national *and Union citizenship*. I can, of course, understand why the Court considers that a special relationship of solidarity and good faith between *the State* and the individual constitutes the foundation *of national citizenship*; after all, the absence of such a 'special relationship of solidarity and good faith' was relied

[152] Peers (n 101). See, also, Hanneke van Eijken, 'Op-Ed: Nationality for Sale: Different fruits in one basket?' (*EU Law Live*, 28 October 2024) <https://eulawlive.com/op-ed-nationality-for-sale-different-fruits-in-one-basket/> accessed 6 August 2025. For a similar view see Hannes Swoboda, 'Linking Citizenship to Income Undermines European Values. We Need Share Criteria and Guidelines for Access to EU Citizenship' in Rainer Bauböck (ed), *Debating Transformations of National Citizenship* (Springer Open 2018).
[153] Stephen Coutts, 'On Mutual Recognition and the Possibilities of a "Single European Polity": The Opinion of AG Collins in Case C-181/23 *Commission v Malta*' (2024) 9(2) European Papers 818, 823.
[154] For an article supporting this view see Martijn van den Brink, 'A qualified defence of the primacy of nationality over European Union citizenship' (2020) 69(1) International and Comparative Law Quarterly 177. See, also, Bauböck (n 6) 762-763. See, also, Evans (n 122) 192-194, where the difficulties that would arise in an effort to harmonise the nationality laws of the Member States are analysed.
[155] European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties [2022/2051(INL)] amend 87.

upon by Member States (in the case-law concerning loss of Union citizenship), in order to justify decisions to withdraw their nationality. In *Commission v Malta*, the absence of such a special relationship of solidarity and good faith between the individual *and the State*, was relied upon *by the EU*, in order to preclude a Member State from bestowing *Union citizenship* through a specific naturalisation route. It is not evident, however how a relationship of solidarity and good faith between *a State* and an individual can constitute 'the foundation *of EU citizenship*', especially in Member States where a Eurosceptic sentiment appears to be prevalent.

In other words, for the purposes of the acquisition or retention of Union citizenship, what should matter is the special relationship of solidarity and good faith between the individual *and the Union itself*, and this can be developed, whether an individual has established – in parallel – such a special relationship with one (or more) of the Member States or not. Thus, it may be time to consider whether individuals who can demonstrate such a special relationship directly with the Union but not with any particular Member State, should be eligible to acquire Union citizenship *directly* – or, in situations like Brexit, *maintain* EU citizenship – without having to first acquire (or maintain) the nationality of a Member State;[156] a move which would require a significant re-writing of the European Treaties. Yet, academic commentators still appear to be divided as to whether it would be a good idea to (wholly or partially) disentangle Union citizenship from Member State nationality.[157]

5 CONCLUSIONS

The judgment in *Commission v Malta*,[158] marks a significant – if still ambiguously defined – moment in the evolving relationship between EU law and Member State sovereignty in the field of nationality. For the first time, the Court of Justice found that a specific naturalisation route provided for under a Member State's nationality law, which led to the conferral of nationality (and thereby Union citizenship) in exchange for investment, could violate EU law, thereby subjecting naturalisation decisions to supranational scrutiny.

At the heart of the Court's reasoning appears to lie an ethical, or at least conceptual, concern with the commodification of EU citizenship. It is not simply the absence of a 'special relationship of solidarity and good faith' that renders investor citizenship schemes problematic, but rather the transactional nature of such schemes. The Court emphasised that treating Union citizenship as a tradable commodity undermines the principle of sincere cooperation under Article 4(3) TEU and jeopardises the mutual trust that underpins the functioning of the EU legal order.

Yet, despite the clarity of the Court's condemnation of the Maltese scheme, the judgment leaves unresolved a number of important questions. Chief among them is the question whether the judgment merely precludes the acquisition of Union citizenship through investor citizenship schemes, or whether it goes further, prohibiting the acquisition of *both* Union citizenship *and Member State nationality* through such schemes, effectively

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[156] This is the so-called 'partial autonomy' model of Union citizenship – see van den Brink, 'A qualified defence of the primacy of nationality over European Union citizenship' (n 154) 181.
[157] See the various contributions in Liav Orgad and Jules Lepoutre (eds), 'Should EU Citizenship Be Disentangled from Member State Nationality?' (EUI RSCAS Working Paper 2019/24, Robert Schuman Centre for Advanced Studies 2019) <https://globalcit.eu/should-eu-citizenship-be-disentangled-from-member-state-nationality-2/> accessed 6 August 2025.
[158] *Commission v Malta* (n 1).

prohibiting outright the operation of such schemes by Member States. Moreover, the extent to which the ruling applies retroactively, and thus whether Member States are now under a duty to revoke Union citizenship acquired through such schemes, and whether such revocation should also entail the loss of Member State nationality, remains shrouded in uncertainty. The judgment also invites reflection on the broader conceptual relationship between Union citizenship and Member State nationality. If the Court's intention was to prohibit not only the grant of Union citizenship, but also the very conferral of Member State nationality through investor citizenship schemes, this would represent a marked expansion of EU oversight into a domain traditionally considered as central to national sovereignty.

Ultimately, *Commission v Malta* unsettles long-standing assumptions about the boundary between EU and national competence in nationality matters. Whether it signals the beginning of a broader EU role in shaping the acquisition of Member State nationality remains to be seen. Its value as a precedent will depend on how subsequent judgments interpret and apply it and, particularly, in clarifying whether the prohibition it establishes concerns Union citizenship alone or reaches more deeply into national decisions concerning the grant of their nationality. Either way, the ruling opens a new and important chapter in the constitutional development of Union citizenship, which may eventually lead towards the adoption of common minimum standards or, even, the decoupling of EU citizenship from national status in exceptional cases. For now, however, the judgment raises as many questions as it answers, and its long-term legacy will depend on how its ambiguities are resolved in future case-law.

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