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Golden Passports in the EU: Is the End Near?

Updated: Oct 21, 2020

* *By: Stjepan Klinar*



Immigration has been a much-debated topic across the European Union (“EU”) member states and institutions for a large part of the 2010’s.[1] Debates surrounding immigration to the EU have not subsided entering the new decade, notwithstanding the current COVID-19 pandemic. In her recent State of the Union speech, Ursula von der Leyen, the newly-appointed EU Commissioner, addressed a controversial, albeit overlooked, facet of the immigration regime of several EU member-states: the issue of so-called “golden passports.”[2] Countries such as Malta, Cyprus, and Bulgaria all run investment-for-passport regimes that have raised concerns,[3] and in some cases, have led to high-profile criminal investigations.[4] Commissioner von der Leyen briefly, yet strongly, condemned the practice by implying that it goes against European values, primarily the rule of law.[5]

Be that as it may, the practice as it currently stands may be perfectly legal within the larger European migration framework. According to Article 79 of the Treaty on the Functioning of the European Union, the EU gives general guidance on how member states should structure their immigration policies, with the states retaining considerable power in how to implement these policies, such as determining volumes of admission for potential immigrants seeking employment.[6] Immigration practices vary considerably across the Union,[7] and motivations behind national policies range from restitution for past atrocities, such as the Holocaust,[8] and reuniting diasporic communities with their homelands,[9] to fears of lesser national homogeneity.[10]

The practice of “selling” passports, however, comes with a unique set of concerns owing to the massive popularity such programs enjoy with the “nouveau riche” from high-risk jurisdictions.[11] The EU offers its citizens unconstrained freedom of movement and the right to make one’s domicile anywhere in the EU, along with generous privacy protections. Thus, there are considerable inherent compliance risks in the domains of sanctions evasions and money laundering, ones that could allow for a foreign national to legitimize their illegally-obtained funds or undermine EU-wide sanctions policies by making a relatively small investment in Cyprus, Malta, or Bulgaria. The examples of the practice as being rife with problems is underscored by high-profile scandals in the EU and other jurisdictions that have similar regimes.[12]

For the EU Commissioner, who sets the general policy direction of the Union, a decision to veer into changing national immigration programs may be a politically costly move, or to make things more complicated, one that she may not influence directly due to EU-member states’ retained rights in the immigration domain. One commentator insinuates that the most egregious violations may be tackled through anti-money laundering (AML) regulations.[13] How to best approach the issues posed by golden passports through AML regulations is far from clear. The Commission, for example, promulgates AML regulations and since 2015 maintains a registry of high-risk third countries that pose significant threats to the EU’s financial system.[14]

What a golden passport scheme allows, however, is circumventing any applicable client due diligence measures by providing a holder from a high-risk jurisdiction with an EU passport, with all the privileges that go along with it. For example, an Iranian citizen may open a bank account in a third EU-member state by using their Cypriot or Maltese passport without triggering any relevant EU AML regulation provision. The United States faced a similar problem with Iranian nationals using a similar citizenship-for-investment program operated by Saint Kitts & Nevis (SKN); Financial Crimes Enforcement Network (FinCEN), the Treasury Department bureau tasked to combat financial crime, issued an advisory in 2014 with guidance on how to address compliance risks coming from the SKN golden passports regime.[15] The guidance states that financial institutions conducting risk-based customer due diligence may require a form of government-issued identification in addition to or along with the SKN passport.[16] This seemingly simple solution may come with hostile connotations in the EU context: a policy singling out Cypriot, Maltese, or Bulgarian passport holders in other EU countries as potential money launderers may be seen in tension with EU values.

Even though the EU is yet to devise creative political and legal solutions to the golden passport schemes operated by three of its members, Commissioner von der Leyen has made an important step in battling the questionable practice by taking a strong stance against it. The negative publicity surrounding the practice may garner enough public pressure to stop it: just recently, the Qatar-based news organization Al-Jazeera published an investigation called the Cyprus Papers, revealing instances of high-profile political corruption and money laundering.[17] In the wake of the report, the EU Commission announced it was ready to take the Cypriot government to court over its golden passport practice.[18] A few days ago, the government announced that it will scrap the scheme in its current form by November.[19] It remains to be seen whether the three countries will discontinue the scheme because of increased pressure. However, the European Commission should pursue a lasting solution to either mitigate risks or end the golden passport practice regardless.[20] Given that the practice started in the wake of the Great Recession and the ensuing Eurocrisis, a new economic crisis caused by the COVID-19 pandemic may motivate other EU countries to consider adopting similar schemes in the future.

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[1] Hsiao-Hung Pai, *The Refugee "Crisis" Showed Europe's Worst Side to the World*, *The Guardian* (Jan. 1, 2020), <https://www.theguardian.com/commentisfree/2020/jan/01/refugee-crisis-europe-mediterranean-racism-incarceration>.

[2] Ursula von der Leyen, EU Commissioner, State of the Union Address by President von der Leyen at the European Parliament Plenary (Sept. 16, 2020) ("Breaches of the rule of law cannot be tolerated. I will continue to defend it and the integrity of our European institutions. Be it about the primacy of European law, the freedom of the press, the independence of the judiciary or the sale of golden passports. European values are not for sale."), https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

[3] *The Ghana Herald, Rich Nigerians Buying Citizenship in Caribbean Nations to Beat Visa Rules* (Sept. 22, 2020), [https://www.westlaw.com/Document/Ibd857230fd0311ea96129628b195edfb/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/Ibd857230fd0311ea96129628b195edfb/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0); *The Economist, The Right to Sell Passports* (Sept. 26, 2020), [https://www.westlaw.com/Document/I78447830feaa11eabd55b32d64843/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I78447830feaa11eabd55b32d64843/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0).

[4] Governance, Risk, & Compliance Monitor Worldwide, *Malta Police Arrest Former PM's Chief of Staff in Golden Passports Scandal* (Sept. 26, 2020), <https://plus.lexis.com/api/permalink/ceb87bc1-f67c-442f-a72c-d56b3de0af90/?context=1530671>.

[5] von der Leyen, *supra* note 2.

[6] Consolidated Version of the Treaty on the Functioning of the European Union art. 79, Oct. 26, 2012, 2012 O.J. (C 326/47), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

[7] See Charlemagne, *supra* note 3 ("All EU countries issue passports for reasons beyond the bog-standard naturalisation of those who marry a local or live in the country in question long enough to qualify.").

[8] Hayley Bronner, *Austria Joins Other European Countries in Offering Citizenship to the Persecuted Who Never Returned*, *CICLR Blog* (Sept. 21, 2020), <https://www.cardozociclr.com/post/austria-joins-other-european-countries-in-offering-citizenship-to-the-persecuted-who-never-returned>.

[9] See *The Economist, supra* note 3.

[10] Ivan Krastev & Stephen Holmes, *The Light that Failed: A Reckoning* 44 (2020). ("In a Europe populated by threatened majorities who can no longer take the survival of their inherited way of life for granted, [Eastern and Central European] populist leaders insist, against the multiculturalism they believe liberals naively promote, that indigenous majorities have a right to decide how many immigrants will come to their country, and from where. They stridently assert that unequivocal adoption of the majoritarian culture should be made a precondition for gaining citizenship precisely because they think such an onerous standard will choke off immigration at its source.").

[11] In Cyprus alone, more than 4000 such passports have been issued since 2013. Canadian Press, *Cyprus 'golden passports' to be revoked if wrongdoing found* (Nov. 4, 2019), <https://plus.lexis.com/api/permalink/97442bfa-9943-47a2-91f6-0a70fe211632/?context=1530671>.

[12] Transparency International Russia, *Corruption Risks in the United States Eb-5 Immigrant Investor Program* at 12, 18 (2020), [https://transparency.org.ru/research/CORRUPTION%20RISKS%20OF%20THE%20EB-5%20\(en\).pdf](https://transparency.org.ru/research/CORRUPTION%20RISKS%20OF%20THE%20EB-5%20(en).pdf).

[13] See *The Economist, supra* note 3.

[14] *Anti-Money Laundering and Counter Terrorist Financing*, European Commission, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en (last visited Oct. 16, 2020).

[15] *Passports Obtained Through St. Kitts and Nevis Citizenship-by-Investment Program Used to Facilitate Financial Crime*,

<https://www.fincen.gov/sites/default/files/advisory/FIN-2014-A004.pdf>.

[16]*Id.*

[17]Al Jazeera Investigative Unit, *Cyprus Officials Implicated in Plan to Sell Passport to Criminals*, Al Jazeera(Oct. 12, 2020), <https://www.aljazeera.com/news/2020/10/12/cypriot-politicians-implicated-in-plan-to-sell-criminals-passport>.

[18]*Id.*

[19]Nikolaj Nielsen, *Cyprus risks EU legal threat over selling “Golden Passports,”* Euobserver (Oct. 14, 2020), <https://euobserver.com/justice/149741>.

[20]According to some commentators, the recent FinCEN Papers leak points to widespread deficiencies in the current EU AML regime; a wholesale reform may be necessary in addition to closing the most obvious legal gaps. Neil Hodge, *“FinCEN Files” Show Europe’s AML Efforts Maybe Aren’t so World Class*, ComplianceWeek(Sept. 25, 2020), <https://www.complianceweek.com/aml/fincen-files-show-europes-aml-efforts-maybe-arent-so-world-class/29521.article>.