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EUROOPAN UNIONIN TUOMIOISTUIN
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JUDGMENT OF THE COURT (Grand Chamber)

29 April 2025 *

(Failure of a Member State to fulfil obligations – Article 20 TFEU – Citizenship of the Union – Article 4(3) TEU – Principle of sincere cooperation – Principle of mutual trust between the Member States – Grant of the nationality of a Member State – Special relationship of solidarity and good faith – Operation of an investor citizenship scheme – Naturalisation in exchange for predetermined payments or investments – Transactional nature of the naturalisation scheme, which amounts to the ‘commercialisation’ of Union citizenship)

In Case C-181/23,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 21 March 2023,

European Commission, represented by C. Ladenburger, E. Montaguti and J. Tomkin, acting as Agents,

applicant,

v

Republic of Malta, represented by A. Buhagiar, acting as Agent, and by D. Sarmiento Ramírez-Escudero, abogado,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, K. Jürimäe, C. Lycourgos, I. Jarukaitis, M.L. Arastey Sahún, S. Rodin (Rapporteur), A. Kumin, N. Jääskinen and D. Gratsias, Presidents of Chambers, E. Regan, I. Ziemele and J. Passer, Judges,

* Language of the case: English.

Advocate General: A.M. Collins,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2024,
after hearing the Opinion of the Advocate General at the sitting on 4 October 2024,

gives the following

Judgment

- 1 By its application, the European Commission asks the Court to declare that by establishing and operating an institutionalised citizenship investment programme, such as the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment (‘the 2020 investor citizenship scheme’), based on Article 10(9) of the Maltese Citizenship Act (Chapter 188 of the Laws of Malta), as amended by the Maltese Citizenship (Amendment No. 2) Act (Act XXXVIII of 2020) (*The Malta Government Gazette* No 20,452, of 31 July 2020; ‘the 2020 act’), and the Granting of citizenship for Exceptional Services Regulations, 2020 (Subsidiary Legislation 188.06 of the Laws of Malta) (*The Malta Government Gazette* No 20,524, of 20 November 2020; ‘the 2020 regulations’), which offers naturalisation in the absence of a genuine link of the applicants with the country, in exchange for predetermined payments or investments, the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU.

Legal context

European Union law

The EU and FEU Treaties

- 2 The second paragraph of Article 1 TEU reads as follows:

‘This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.’
- 3 Article 2 TEU provides:

‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the

Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

4 Under Article 3(2) TEU:

‘The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.’

5 Article 4 TEU states:

‘...

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. 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.’

6 Article 9 TEU provides:

‘In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.’

7 Article 10 TEU reads as follows:

‘1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.’

8 Article 11 TEU provides:

‘1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

...

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens’ initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.’

9 Under Article 20 TFEU:

‘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 same language.

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

- 10 Article 21(1) TFEU states:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.’

- 11 Article 22 TFEU provides:

‘1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.’

- 12 Article 23 TFEU reads as follows:

‘Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

...’

- 13 Article 24 TFEU provides:

‘The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens’ initiative within the meaning of Article 11 [TEU], including the minimum number of Member States from which such citizens must come.

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.’

Declaration No 2

- 14 Declaration No 2 on nationality of a Member State, annexed by the Member States to the final act of the Treaty on European Union (OJ 1992 C 191, p. 98; ‘Declaration No 2’), is worded as follows:

‘The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. ...’

The Edinburgh Decision

- 15 According to Section A of 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 on European Union (OJ 1992 C 348, p. 1; ‘the Edinburgh Decision’):

‘The provisions of Part Two of the Treaty establishing the European Community relating to citizenship of the Union give nationals of the Member States additional rights and protection as specified in that Part. They do not in any way take the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.’

Maltese law

- 16 Article 10 of the Maltese Citizenship Act, which lays down the conditions governing ordinary naturalisation, provides, in the first subparagraph of

paragraph 1, that an applicant may be granted a certificate of naturalisation as a citizen of Malta if he or she satisfies the Minister of the following conditions:

- ‘(a) that he has resided in Malta throughout the period of twelve months immediately preceding the date of application; and
- (b) that, during the six years immediately preceding the said period of twelve months, he has resided in Malta for periods amounting in the aggregate to not less than four years; and
- (c) that he has an adequate knowledge of the Maltese or the English language; and
- (d) that he is of good character; and
- (e) that he would be a suitable citizen of Malta’.

17 In accordance with the second subparagraph of Article 10(1) of that act, the Minister may, if he so thinks fit in the special circumstances of any particular case, allow periods of residence earlier than seven years before the date of application to be reckoned in computing the aggregate mentioned in paragraph (b) of that article.

18 On 15 November 2013, the Republic of Malta adopted Act No XV of 2013: An Act to amend the Maltese Citizenship Act (Chapter 188 of the Laws of Malta) (*The Malta Government Gazette* No 19,166, of 15 November 2013; ‘the 2013 amendment’). In parallel to the procedure laid down in Article 10(1) of the Maltese Citizenship Act, the 2013 amendment established the possibility for an applicant to be granted a certificate of naturalisation through participation in an ‘individual investor programme’ governed by a separate set of conditions and procedures.

19 The scheme for individual investors was initially provided for under the Individual Investor Programme of the Republic of Malta Regulations, 2014 (Subsidiary Legislation 188.03 of the Laws of Malta) (*The Malta Government Gazette* No 19,205, of 4 February 2014; ‘the 2014 regulations’). Under the 2013 amendment and the 2014 regulations (‘the 2014 investor citizenship scheme’), the number of successful main applicants, excluding dependants, could not exceed 1 800 for the whole duration of the programme.

20 On 28 July 2020, the Republic of Malta adopted the 2020 act.

21 Following the entry into force of that law, Article 10(9) of the Maltese Citizenship Act states:

‘Notwithstanding the provisions of this or any other Act, the Minister may grant a certificate of naturalisation as a citizen of Malta to an alien or stateless person, who has rendered exceptional services to the Republic of Malta or to humanity, or

whose naturalisation is of exceptional interest to the Republic of Malta, and who satisfies the requirements prescribed under this Act. For the purposes of this sub-article “exceptional” means manifestly superior, and refers primarily to contributions by scientists, researchers, athletes, sports people, artists, cultural performers, investors and entrepreneurs:

Provided that the Minister shall also grant a certificate of naturalisation to an eligible dependent of an alien or a stateless person who has rendered exceptional services to the Republic of Malta through investment:

Provided further that such person makes an application in such manner as may be prescribed and upon taking the oath of allegiance in Malta.’

- 22 Article 9 of the 2020 act, from which Article 27 of the Maltese Citizenship Act derives, provides, as a transitional provision, that the 2020 act is not to apply to any applications for granting of Maltese citizenship by naturalisation filed before the coming into force of that act.
- 23 On 20 November 2020, the Republic of Malta adopted the 2020 regulations and orders establishing the relevant agencies to manage the 2020 investor citizenship scheme.
- 24 In accordance with Regulation 15(3), Regulation 16(1)(a)(b) and (d) and Regulation 16(7) of the 2020 regulations, and the first annex to those regulations, foreign investors may apply to be naturalised for exceptional services by direct investment where they fulfil or undertake to fulfil the following conditions:
 - make a contribution of either EUR 600 000 or EUR 750 000 to the Maltese Government, EUR 10 000 of which are due as a non-refundable deposit together with the residence applications or with the eligibility form, while the rest is due after the approval in principle of the application for naturalisation;
 - acquire and hold a residential immovable property in Malta having a minimum value of EUR 700 000, or take on a lease of a residential immovable property in Malta for a minimum annual rent of EUR 16 000 (for a minimum period of five years);
 - donate a minimum of EUR 10 000 to a registered philanthropic, cultural, sport, scientific, animal welfare or artistic non-governmental organisation or society, or as otherwise approved by the authorities;
 - have been a resident in Malta for a period of 36 months (where the payment amounts to EUR 600 000) which may be reduced to a minimum of 12 months subject to an exceptional direct investment, namely, where the payment amounts to EUR 750 000;

- have passed the eligibility assessment carried out by the authorities and have been authorised to submit an application for naturalisation in accordance with Regulation 10 of those regulations.
- 25 In accordance with Regulation 16(3) of the 2020 regulations and point 1(b) of the first annex thereto, applications may also include family members of an applicant. Additional payments must be made to that effect for an amount which has been raised to EUR 50 000 for spouses and all children.
- 26 Under Regulation 19 of those regulations:
- ‘The number of certificates by Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment granted, excluding dependants, shall not exceed four hundred (400) per annum, and in any case the total accumulated amount of successful applicants excluding dependants shall not exceed one thousand five hundred (1 500)’.
- 27 While Regulation 31(1) of those regulations repealed the 2014 regulations, they were, however, to remain in force until the maximum number of applications established in Regulation 12 of the 2014 regulations, that is to say 1 800, excluding dependants, was reached.

The pre-litigation procedure

- 28 The 2014 investor citizenship scheme allowed foreign nationals to obtain Maltese nationality in exchange for predetermined payments and investments prescribed in the 2014 regulations. In accordance with those regulations, a concessionaire was appointed with a view to designing, implementing, administering, operating and promoting the scheme.
- 29 After learning of that scheme, the Commission entered into dialogue with the Republic of Malta on that issue of the repercussions of that scheme on the European Union and the other Member States.
- 30 By letter dated 1 April 2020, the Commission indicated to the Republic of Malta that investor citizenship schemes such as the 2014 investor citizenship scheme, which involve the ‘sale’ of Union citizenship, could be considered to exploit the common achievement of Union citizenship in breach of the principle of sincere cooperation between the Republic of Malta and the Member States.
- 31 Between April and October 2020, the Republic of Malta provided additional details concerning the operation of the 2014 investor citizenship scheme and informed the Commission of its plans to revise the existing legal framework.
- 32 On 20 October 2020, the Commission issued a letter of formal notice to the Republic of Malta. In that letter, the Commission reiterated concerns that an

investor citizenship scheme such as the 2014 investor citizenship scheme was incompatible with Article 20 TFEU and Article 4(3) TEU.

- 33 In its reply dated 18 December 2020 to that letter of formal notice, the Republic of Malta informed the Commission that it had revised the national legislative framework applicable to the granting of Maltese nationality. It thus explained that following the enactment of the 2020 act, the provisions allowing for the granting of Maltese nationality on the basis of the 2014 regulations were no longer in force. It nevertheless clarified that, in view of legitimate expectations and pending commitments, those provisions would remain in force and applicable to applications received until 15 August 2020.
- 34 On 9 June 2021, the Commission sent an additional letter of formal notice to the Republic of Malta, in which it stated that the amendments made by the 2020 act and the 2020 regulations did not change the transactional nature of the 2014 investor citizenship scheme and that the 2020 investor citizenship scheme was also considered to be contrary to Article 20 TFEU and Article 4(3) TEU.
- 35 By letter of 6 August 2021, the Republic of Malta replied to the additional letter of formal notice, expressing its disagreement with the Commission. That Member State submitted, *inter alia*, that the Commission's position was incompatible with the principle of conferral in so far as it entailed an encroachment on an area that remains within the sovereign sphere of the Member States.
- 36 On 2 March 2022, Malta suspended its 2020 investor citizenship scheme for Russian and Belarusian nationals until further notice, while continuing to operate the scheme for citizens of other third countries, except for nationals of Afghanistan, the Democratic Republic of Congo, Iran, North Korea, Somalia, South Sudan, Sudan, Syria, Venezuela and Yemen.
- 37 On 28 March 2022, the Commission adopted the Commission Recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes (C(2022) 2028 final). In that recommendation, the Commission reiterated its view that investor citizenship schemes under which naturalisation is granted in exchange for a predetermined payment or investment are not compatible with EU law and called on any Member State operating such schemes to repeal them.
- 38 On 6 April 2022, the Commission sent a reasoned opinion to the Republic of Malta in which it confirmed its position that the 2014 investor citizenship scheme and the 2020 investor citizenship scheme are contrary to Article 20 TFEU and Article 4(3) TEU, and called on that Member State to take the measures necessary to comply with that opinion within two months of its receipt.
- 39 In its reply of 6 June 2022 to the reasoned opinion, the Republic of Malta again expressed its disagreement with the Commission's position.

- 40 Considering that the 2014 investor citizenship scheme and the 2020 investor citizenship scheme implemented by the Republic of Malta are incompatible with EU law, the Commission initiated the present infringement proceedings, while specifying that those proceedings only concern the latter scheme. However, the Commission adds that the provisions of the 2014 investor citizenship scheme that infringed EU law were, in essence, reproduced in the legal framework governing the 2020 investor citizenship scheme, with the result that that institution refers, in its examination of the latter scheme, to factual elements that already existed at the time of the application of the 2014 investor citizenship scheme.

The action

- 41 The application is based on a single plea in law, alleging infringement of Article 20 TFEU and Article 4(3) TEU.

Arguments of the parties

- 42 In the first place, the Commission maintains that, while it is for each Member State to lay down the conditions for the grant and loss of nationality, that competence must be exercised with due respect for EU law. Since the grant of nationality of a Member State automatically results in the possession of Union citizenship, each Member State, in exercising that exclusive competence, is under an obligation to ensure that it does so without compromising or undermining the essence, value and integrity of Union citizenship, in order to preserve the mutual trust which underpins that status. Those requirements stem from the principle of sincere cooperation, laid down in Article 4(3) TEU, and from the status of Union citizen, provided for in Article 20 TFEU.
- 43 In that regard, the nationality of a Member State is the only condition for being a Union citizen, within the meaning of Article 20 TFEU. Union citizenship is accompanied by rights conferred directly by the EU legal system, in particular the right to move and reside freely within the territory of the European Union and the right not to be discriminated against on grounds of nationality. Furthermore, Union citizenship has a strong civic component and includes political rights that are fundamental for participation in the democratic life of the European Union, referred to in Article 10(3) TEU, and the right of a national of a Member State to receive consular protection from other Member States in a third country where that Member State is not represented. As the Court has consistently held, Union citizenship is destined to be the fundamental status of nationals of the Member States.
- 44 Contrary to what the Republic of Malta claims in its defence, the present action does not challenge an entire national legislative framework governing the naturalisation of persons, since that action is limited, according to the Commission, to a specific scheme for the granting of nationality of a Member State to investors which, by commoditising Union citizenship, undermines the

integrity of that status in a manner which constitutes a particularly serious infringement of EU law.

- 45 Furthermore, the Republic of Malta's assertion that the Court can review the exercise of national competences to grant nationality only in so far as they constitute serious breaches of the values or objectives of the European Union, in a general and systematic manner, is not supported by the Treaties or the case-law of the Court.
- 46 In the second place, the Commission submits that an investor citizenship scheme, which involves the systematic granting of the nationality of a Member State in exchange for predetermined payments or investments and without there being a need for a genuine link between the State and the applicants, compromises and undermines the essence and integrity of Union citizenship established in Article 20 TFEU, and infringes the principle of sincere cooperation enshrined in Article 4(3) TEU.
- 47 First, the European Union is not only founded on the integration of a group of European States that share a set of common values, but also entails bringing together the peoples of each of those States, which was made clear by the Treaty of Lisbon.
- 48 Thus, the provisions on democratic principles, inserted by that Treaty into Title II of the EU Treaty, emphasise the centrality of Union citizens in what is not only an economic Union but also a political Union. Furthermore, the provisions on the Union institutions, set out in Title III of the EU Treaty, recall that the values promoted, objectives advanced and interests served by the Union institutions are both those of the citizens of the Union and those of the Member States.
- 49 Secondly, the Commission submits that, as is apparent from Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014 (EU:C:2014:2454, paragraph 172), citizenship of the Union and the rights derived from that status are amongst the most fundamental provisions of the Treaties, which are part of the framework of a system that is specific to the EU and which are structured in such a way as to contribute to the implementation of the process of integration that is the *raison d'être* of the Union itself. Thus, Union citizenship and the rights derived from that status should be considered to be an expression of solidarity and mutual trust by the Member States.
- 50 As regards, more particularly, mutual trust, the Commission asserts that, by agreeing to grant the rights attached to Union citizenship and to extend that solidarity to others, the Member States rely on a common basic understanding of the nationality of a Member State, namely that nationality is the expression of a genuine link between a Member State and its nationals. The Court has recognised since 1980 that the special relationship of solidarity and good faith between a Member State and its nationals and also the reciprocity of rights and duties form the bedrock of the bond of nationality.

- 51 The Commission adds that the agreement by each Member State to extend, automatically and unconditionally, certain rights to the nationals of all other Member States, in line with the principle of mutual trust, is premised on the understanding that these other Member States only award nationality on the basis of a genuine link with the applicant concerned. Such unconditional acceptance would be undermined if Member States were unable to trust that decisions on the granting of nationality are based on that shared concept of ‘nationality of a Member State’. In that regard, the Commission submits that it is apparent from the judgment of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295), that there is an obligation of mutual recognition between the Member States of decisions in matters of nationality of a Member State.
- 52 In those circumstances, the establishment of an investor citizenship scheme of a transactional nature, which allows for the systematic grant, in return for predetermined payments or investments, of the nationality of a Member State to applicants who do not have a genuine link with a Member State and who are thus manifestly outside the class of persons which the authors of the Treaties intended to be beneficiaries of Union citizenship, is in contradiction with the very essence of the status of Union citizen.
- 53 Thirdly, the Commission asserts that that Article 4(3) TEU, which enshrines the principle of sincere cooperation, includes both a ‘positive’ duty to facilitate the achievement of the European Union’s tasks as well as a ‘negative’ duty to refrain from taking measures that could jeopardise the European Union’s objectives. The establishment and operation of an investor citizenship scheme that allows for the systematic grant of the nationality of a Member State on the basis of predetermined payments or investments, without any need to establish a genuine link with the Member State granting that nationality, would jeopardise the integrity of the status of Union citizen and the mutual trust that underpins that status and the rights attaching to that status.
- 54 As regards the establishment of an operational and functional threshold for deciding what constitutes a ‘genuine link’ for the purposes of granting the nationality of a Member State, the Commission claims that actual residence is one of the means of establishing such a link. However, it is not for the Commission to prescribe the connecting factors which must be prioritised by the Member States in awarding their nationality.
- 55 In the third place, the Commission submits that the 2020 investor citizenship scheme, which allows for the systematic grant of the Maltese nationality in return for predetermined substantial payments or investments and is thus transactional in nature, constitutes an unlawful investor citizenship scheme.
- 56 First, it maintains that the requirement of legal residence imposed by the 2020 investor citizenship scheme is insufficient to ensure that there is a genuine link with the Republic of Malta.

- 57 In that regard, the Commission submits that the documents and emails obtained by the Daphne Caruana Galizia Foundation and shared with the media under the project name ‘Passport Papers’ demonstrate that there is no requirement of actual residence in the 2014 investor citizenship scheme. Those documents do not constitute evidence of the alleged failure to fulfil obligations, but are intended solely to support the Commission’s argument that key deficiencies in the Maltese legal framework lead to the systematic granting of Union citizenship to third-country nationals who have not demonstrated that they satisfy a requirement of actual prior residence in Malta.
- 58 In addition, according to the Commission, first of all, it was not disputed, during the pre-litigation stage of the procedure, that it is not necessary to establish a significant actual presence in Maltese territory. Next, the absence of a need to prove physical presence for a significant period of time in the context of the 2020 investor citizenship scheme is reinforced by a comparison of the requirements imposed by that scheme with those applicable to ‘ordinary’ naturalisations, laid down in Article 10(1) of the Maltese Citizenship Act, a provision which requires residence in Malta ‘throughout’ a specified period, and does not contain rules on absences capable of interrupting periods of residence. Moreover, during that pre-litigation stage, the Republic of Malta was not in a position to provide information on applications for citizenship rejected or withdrawn on the ground of failure to comply with the residence requirement. Lastly, the notional nature of the residence requirement is also reflected in the rules that allow the three-year period required for residence to be reduced to a minimum of 12 months, in return for payment of an additional sum of EUR 150 000.
- 59 Secondly, the Commission maintains that the ‘genuine link’ must exist at the time when the nationality of a Member State is granted. In that regard, a system providing for the possibility of granting naturalisation by creating such a link to be developed subsequently would not be consistent with the objective of strengthening the solidarity between the peoples of the European Union through the existence of a genuine link with a Member State of the European Union. An investor citizenship scheme such as that at issue in the present case clearly differs, in that respect, from a scheme intended to attract third-country nationals to work and reside in a Member State.
- 60 Moreover, given that the benefits conferred by Union citizenship take effect when that status is granted, there is no guarantee that a newly naturalised Maltese citizen would decide to stay in Malta in order to forge a ‘prospective genuine link’, rather than moving to another EU Member State or residing in a third country while making use of the rights conferred by Union citizenship. In that regard, the Commission asserts that the promotional material published by authorised agents of the 2020 investor citizenship scheme advertises the possibility that a naturalised citizen might take up residence in another Member State or in a Schengen associated country as one of the ‘benefits’ of obtaining Maltese nationality.

- 61 The Commission adds that it does not dispute that the naturalisation process includes the implementation of a verification procedure in respect of applicants. It is, however, apparent from the legislative framework governing the 2020 investor citizenship scheme that that procedure consists in assessing the risk that applicants might present in terms of security or even their reputation and the extent of their wealth, and not in ascertaining whether there is a genuine link between such applicants and the Republic of Malta. The existence of this verification process and the minister's discretion to refuse to grant a certificate of naturalisation do not alter the scheme's transactional nature.
- 62 In addition, the Commission submits that the Republic of Malta does not dispute the fact that, in order to be covered by the 2020 investor citizenship scheme, the actual physical presence of the applicant in Malta is required only on two occasions, namely to provide biometric data for the purposes of obtaining a residence permit and for the swearing of an oath of allegiance. The legal residence that that scheme requires is therefore incapable of creating a genuine link between the Republic of Malta and that applicant.
- 63 In its defence, the Republic of Malta maintains, first, that it is true that Member State competence on the acquisition of nationality of those States must be exercised with due respect to EU law, in the fields of EU competence, but without undermining the duty to protect the national identity of the Member States.
- 64 As a preliminary point, the Republic of Malta asserts that, in its action, the Commission undertakes to review the entire legislative framework governing the requirements, procedures and effects of a naturalisation scheme of a Member State, which amounts to calling into question that Member State's policy choices on nationality. In that regard, the broader the review carried out in a field of national competence, the higher the risk that the European Union will exceed its competences.
- 65 First, the review of Member State action in situations that amount to a *de iure* or *de facto* deprivation of the rights and duties attached to the status of Union citizen should be carried out in the light of a different criterion from that applicable in situations concerning the grant of the nationality of a Member State. The power to confer nationality is at the very core of national sovereignty and is attached closely to the conception and the development of a Member State's national identity that Article 4(2) TEU requires the European Union to protect.
- 66 Thus, if the exclusive competence of the Member States to grant nationality is not to be jeopardised, it is only where a Member State's naturalisation policy amounts in a general and systematic way to a serious breach of the values and objectives of the European Union, as defined in EU law, that that policy is contrary to EU law. According to the Republic of Malta, that interpretation is consistent with the case-law of the Court according to which the status of Union citizen is 'destined' to be the fundamental status of nationals of the Member States, it being noted that this

is not a present reality but an ongoing process which, at the current stage of integration, closely coexists with Member State nationality.

- 67 Secondly, the interpretation advocated by the Commission entails serious risks. First of all, that interpretation would have an immediate impact on the legislative frameworks governing nationality in all the Member States, in particular in those States in which naturalisation is granted in a discretionary manner. Next, that interpretation would amount to allowing the Commission, as guardian of the Treaties, to review the naturalisation policies, laws and practices of the Member States in the light of EU law. Finally, such an interpretation would allow Member States to challenge the law and practice of the other Member States in this area.
- 68 In that regard, if the Commission's action were upheld, the Republic of Malta would be required to repeal a set of legislative and regulatory instruments. Thus, by challenging a Member State's entire legal framework governing access to nationality, the Commission invites the Court to act as an 'indirect legislator', exercising a veto over national legislation adopted in an area that falls within the exclusive competence of the Member States.
- 69 In the second place, the Republic of Malta submits that EU law does not impose on Member States a legal obligation to require a 'prior genuine link' with the Member State of naturalisation, irrespective of the existence of payments or other commitments by the applicant. It is true that the existence of such a link can legitimately induce States to recognise that an individual has sufficient ties to their political community. However, that result derives not from an obligation under international or EU law, but from a political and sovereign decision made by the democratic institutions of the Member States.
- 70 In that regard, first, the obligation to require a 'prior genuine link' before the granting of the nationality of a Member State does not follow from the Treaties or from the procedure which led to their adoption. It is also apparent from Declaration No 2 and the Edinburgh Decision that the question whether a person has the nationality of a Member State is to be settled solely by reference to the national law of the Member State concerned. Furthermore, the Treaties do not establish the European Union as a 'single polity'.
- 71 Secondly, the 'prior genuine link' does not derive from international law. In particular, it cannot be inferred from the judgment of 6 April 1955, *Nottebohm (Lichtenstein v Guatemala)* (ICJ Reports 1955, p. 4), on which the Commission relied as the basis for a duty under EU law requiring the existence of such a link as a condition for the granting of the nationality of a Member State, even though such a requirement was, moreover, rejected by the Court in the judgment of 7 July 1992, *Micheletti and Others* (C-369/90, EU:C:1992:295).
- 72 Thirdly, according to the Republic of Malta, the Commission does not provide an operative and working threshold of what constitutes a 'genuine prior link', and it is not for the Republic of Malta to define such an operative threshold.

- 73 In the third place, the Republic of Malta submits that the 2020 investor citizenship scheme is a legitimate, robust, professionally run and effective naturalisation scheme that does not undermine the European Union's objectives. In that regard, the Commission's portrayal of that scheme as an automatic and unconditional access route to Maltese nationality, providing for the systematic granting of nationality in exchange for predetermined payments or investments, in the purely budgetary interests of the Republic of Malta, is an oversimplification without any foundation in law or in fact.
- 74 First, the Republic of Malta has always acted in good faith and in accordance with the principle of sincere cooperation between the European Union and the Member States, referred to in Article 4(3) TEU. That Member State made legislative amendments following the dialogue with the Commission.
- 75 Secondly, the Commission provides an erroneous and distorted portrayal of the Maltese legislative framework as the premiss of its analysis. First, that legislative framework does not establish a 'transaction' scheme, but an exhaustive, multi-phased and complex procedure, involving a variety of public authorities, in order to ensure strict safeguards and which may culminate in naturalisation.
- 76 Next, that legislative framework does not allow for the systematic granting of nationality in exchange for certain payments since it is discretionary and subject to strict compliance mechanisms. In particular, the procedure comprises eleven procedural steps, the purpose of which is to provide a full overview of the applicant, thereby facilitating the Minister's final and discretionary decision. In that regard, compliance by an applicant with the requirements imposed does not confer on him or her an automatic right to be naturalised.
- 77 Lastly, that legislative framework is based on various retrospective, present and prospective links which develop over time. First, a prior period of legal residence of three years or one year is required, depending on the scope of the investment concerned, a feature that conforms to international practice in residence and citizenship by investment. In addition, the administrative practice in relation to 'ordinary' naturalisation, under Article 10(1) of the Maltese Citizenship Act, is that physical presence is required only for specific periods of time. Furthermore, immigration law provides plenty of examples in which integration measures are to be developed at a later stage, in both residence and naturalisation procedures, in the absence of prior links with the host State.
- 78 That Member State also objects to the Commission's submission of the Passport Papers as evidence to be taken into consideration by the Court, since those documents concern the implementation of the 2014 investor citizenship scheme and not the 2020 investor citizenship scheme, which is the subject of the present action.

Findings of the Court

- 79 It must be recalled that, in accordance with Article 9 TEU and Article 20(1) TFEU, every person holding the nationality of a Member State is to be a citizen of the European Union. According to those provisions, Union citizenship is to be additional to and is not to replace national citizenship.
- 80 Furthermore, Declaration No 2 and the Edinburgh Decision state that the question whether a person has the nationality of a Member State is to be settled solely by reference to the national law of the Member State concerned.
- 81 That said, according to settled case-law, while it is for each Member State, having due regard to international law, to lay down the conditions for the grant and loss of the nationality of a Member State, those powers must be exercised having due regard to EU law (judgments of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295, paragraph 10; of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 45; and of 5 September 2023, *Udlændinge- og Integrationsministeriet (Loss of Danish nationality)*, C-689/21, EU:C:2023:626, paragraph 30 and the case-law cited).
- 82 In that regard, it is necessary, at the outset, to reject the argument, put forward as a preliminary point by the Republic of Malta, that the examination of the procedures for granting the nationality of the Member States should, unlike the examination of situations of loss or withdrawal of that nationality, which entail the deprivation of a person's rights under EU law, be limited to a finding of significant breaches of the values or objectives of the European Union, which are general and systematic in nature.
- 83 There is nothing in the wording or the scheme of the Treaties to support the inference that their authors intended to lay down, as regards the grant of the nationality of a Member State, an exception to the obligation to comply with EU law whereby only such significant breaches of the values and objectives of the European Union are liable to entail a breach of EU law when the Member States exercise their powers in the matter. In those circumstances, such an exception cannot be accepted since it would amount to a limitation of the effects attaching to the primacy of EU law, which falls within the essential characteristics of EU law and, therefore, within the constitutional framework of the European Union (see Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 166).
- 84 As regards the alleged infringement of Article 20 TFEU and Article 4(3) TEU, it should be pointed out, first of all, that, according to the very wording of Article 3(2) TEU, the European Union is to offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured through the existence of appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

- 85 In that regard, the Court has stated that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is based on that former principle, are, in EU law, of fundamental importance, given that they allow that area without internal borders to be created and maintained (Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 191, and judgment of 29 July 2024, *Alchaster*, C-202/24, EU:C:2024:649, paragraph 63).
- 86 The achievement of that area without internal borders encompasses the right to move and reside freely within the territory of the Member States, conferred directly on every Union citizen by Article 20(2)(a) and Article 21(1) TFEU, the exercise of which Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34), aims, according to settled case-law, to facilitate (judgments of 12 March 2014, *O. and B.*, C-456/12, EU:C:2014:135, paragraph 35; of 18 December 2014, *McCarthy and Others*, C-202/13, EU:C:2014:2450, paragraph 31; and of 22 February 2024, *Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date*, C-491/21, EU:C:2024:143, paragraph 37).
- 87 Moreover, that right finds specific expression in Article 45 TFEU concerning freedom of movement for workers, in Article 49 TFEU concerning freedom of establishment and in Article 56 TFEU concerning the freedom to provide services (see, to that effect, judgment of 11 November 2021, *MH and ILA (Pension rights in bankruptcy)*, C-168/20, EU:C:2021:907, paragraph 61 and the case-law cited).
- 88 Next, Union citizens have political rights which ensure their participation in the democratic life of the European Union, as referred to in Articles 10 and 11 TEU and given concrete expression in Articles 20, 22 and 24 TFEU. These include, inter alia, the right to submit a citizens' initiative, the right to petition the Parliament, the right to apply to the Ombudsman, the right to address the institutions and advisory bodies of the Union in one of the official languages of the European Union, and the right to vote and stand as a candidate 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.
- 89 In that regard, in exercising the political rights conferred on them by Articles 10 and 11 TEU, Union citizens participate directly in the democratic life of the European Union. Its functioning is founded on representative democracy, which gives concrete expression to democracy as a value, which is, under Article 2 TEU, one of the values on which the European Union is founded (see, to that effect, judgments of 19 December 2019, *Puppinck and Others v Commission*, C-418/18 P, EU:C:2019:1113, paragraph 65; of 19 November 2024, *Commission*

v *Czech Republic (Ability to stand for election and membership of a political party)*, C-808/21, EU:C:2024:962, paragraphs 114 and 115; and of 19 November 2024, *Commission v Poland (Ability to stand for election and membership of a political party)*, C-814/21, EU:C:2024:963, paragraphs 112 and 113). It follows that the exercise by the Member States of their power to lay down the conditions for granting their nationality has consequences for the functioning of the European Union as a common legal order.

- 90 Finally, Union citizenship also confers on any national of a Member State, in a third country in which that Member State is not represented, the right, enshrined in Article 20(2)(c) TFEU and given specific expression in Article 23 TFEU, to the protection of the diplomatic and consular authorities of other Member States, on the same conditions as the nationals of those States.
- 91 It is in the light of those various rights that the Court has held that the provisions relating to citizenship of the Union are among the fundamental provisions of the Treaties which are part of the framework of a system that is specific to the European Union and which are structured in such a way as to contribute to the implementation of the process of integration that is the *raison d'être* of the European Union itself and thus form an integral part of its constitutional framework (see, to that effect, Opinion 2/13 (*Accession of the European Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 172).
- 92 Similarly, in the light both of the scope of the rights attaching to Union citizenship, set out in paragraphs 86 to 90 of the present judgment, and of the fact that that status derives automatically from the fact of being a national of a Member State, the Court has repeatedly held that Union citizenship constitutes the fundamental status of nationals of the Member States (see, to that effect, judgments of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31; of 18 January 2022, *Wiener Landesregierung (Revocation of an assurance of naturalisation)*, C-118/20, EU:C:2022:34, paragraphs 38 and 58 and the case-law cited; and of 5 September 2023, *Udlændinge- og Integrationsministeriet (Loss of Danish nationality)*, C-689/21, EU:C:2023:626, paragraphs 29 and 38 and the case-law cited).
- 93 Union citizenship is thus one of the principal concrete expressions of the solidarity which forms the very basis of the process of integration referred to in paragraph 91 of the present judgment, and which is an integral part of the identity of the European Union as a specific legal system, accepted by the Member States on a basis of reciprocity (judgments of 15 July 1964, *Costa*, 6/64, EU:C:1964:66, pp. 593 to 594, and of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 246).
- 94 Moreover, 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 (judgment of 4 July 2023, *Meta Platforms and Others (General terms of use of a social network)*, C-252/21, EU:C:2023:537, paragraph 53).

- 95 The exercise of the Member States' power to lay down the conditions for granting the nationality of a Member State is not, therefore, in the same way as their power to lay down the conditions for loss of nationality, 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 in a way that is manifestly incompatible with the very nature of Union citizenship.
- 96 In that regard, it is clear from the Court's settled case-law 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 its nationals and the reciprocity of rights and duties (see, to that effect, judgments of 17 December 1980, *Commission v Belgium*, 149/79, EU:C:1980:297, paragraph 10; of 3 July 1986, *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraph 27; of 26 April 2007, *Alevizos*, C-392/05, EU:C:2007:251, paragraph 70; of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 51; and of 25 April 2024, *Stadt Duisburg (Loss of German nationality)*, C-684/22 to C-686/22, EU:C:2024:345, paragraph 37).
- 97 In the same vein, it is clear from the very wording of the first sentence of Article 20(2) TFEU that citizens of the Union are to enjoy the rights and be subject to the obligations laid down in the Treaties. In accordance with Article 20(1) TFEU, the special relationship of solidarity and good faith between each Member State and its nationals also forms the basis of the rights and obligations reserved to Union citizens by the Treaties.
- 98 As regards the establishment of such a particular relationship of solidarity and good faith, it follows from the case-law referred to in paragraph 81 of the present judgment that the definition of the conditions for granting the nationality of a Member State does not fall within the competence of the European Union, but within that of each Member State, which has a broad discretion in the choice of the criteria to be applied, provided that those criteria are applied in compliance with EU law.
- 99 However, a Member State manifestly disregards the requirement for such a special relationship of solidarity and good faith, characterised by the reciprocity of rights and duties between the Member State and its nationals, and thus breaks the mutual trust on which Union citizenship is based, in breach of Article 20 TFEU and the principle of sincere cooperation enshrined in Article 4(3) TEU, when it establishes and implements a naturalisation scheme based on a transactional procedure between that Member State and persons submitting an application under that programme, at the end of which the nationality of that Member State and, therefore, the status of Union citizen, is essentially granted in exchange for predetermined payments or investments.

- 100 A programme of that sort amounts to the commercialisation of the granting of the status of national of a Member State and, by extension, Union citizenship, which is incompatible with the conception of that fundamental status that stems from the Treaties.
- 101 In addition, it must be borne in mind that the Member States are required to recognise the effects of the granting to a person, by another Member State, of the latter's nationality with a view to the exercise of the rights and freedoms arising from EU law (see, to that effect, judgments of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295, paragraph 10; of 2 October 2003, *Garcia Avello*, C-148/02, EU:C:2003:539, paragraph 28; and of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 39). Transactional naturalisation, which is granted in exchange for predetermined payments or investments, is not only contrary to the principle of sincere cooperation, but is also liable, by its nature, to call into question the mutual trust which underlies that requirement of recognition, since that trust relates to the premiss 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.
- 102 In the present case, it is apparent from the provisions governing the 2020 investor citizenship scheme, recalled in paragraph 24 of the present judgment, that the conditions which must be satisfied in order for an investor to be able to apply for Maltese nationality are, first, the payment of a contribution of EUR 600 000 or EUR 750 000 to the Maltese Government, secondly, the purchase of residential property with a minimum value of EUR 700 000 or, alternatively, the lease of such property for an annual rent of at least EUR 16 000 for a minimum period of 5 years, thirdly, a donation of at least EUR 10 000 to a philanthropic, cultural, sporting, scientific, artistic or non-governmental organisation or society for the protection of registered animal welfare, or otherwise approved by the authorities, fourthly, legal residence in Malta for a period of 36 months, it being specified that that period may be reduced to 12 months if the applicant makes an additional contribution of EUR 150 000 and, fifthly, obtaining validation of his or her eligibility and authorisation to submit an application for naturalisation.
- 103 Thus, in the first place, the first three conditions laid down by the provisions governing the 2020 investor citizenship scheme suggest that payments or investments for predetermined minimum amounts occupy a key position in that scheme, suggesting that the latter amounts to the commercialisation of the granting of the nationality of a Member State following a transactional procedure.
- 104 It is nevertheless necessary to assess whether that classification is capable of being called into question by the other conditions to which the grant of Maltese nationality under the 2020 investor citizenship scheme is subject.
- 105 In that regard, as regards, in the second place, the condition relating to legal residence of a minimum duration in Malta prior to such a grant, it should be noted at the outset that the Commission cannot validly rely on the Passport Papers in

order to support its argument that that condition relates exclusively to such residence of the applicant and not to his or her physical presence on Maltese territory. Those documents relate to the 2014 investor citizenship scheme, which is not the subject of the present action.

- 106 That said, it is apparent from the explanations provided by the Republic of Malta that the condition relating to prior residence on Maltese territory, laid down in the 2020 investor citizenship scheme, relates to the legal residence of the applicant. According to the information in the file submitted to the Court, that condition does not amount to a requirement of actual residence in the territory, since the physical presence of the applicant on that territory is required only when biometric data are collected in order to obtain the residence permit and to take the oath of allegiance.
- 107 That analysis cannot be called into question by the Republic of Malta's assertion that the successful applicants were physically present throughout the period of their legal residence, since that assertion does not correspond to the legal framework described by that Member State and is, moreover, supported only by a few examples.
- 108 In those circumstances, in the light of the very limited presence in the territory of Malta that is required under the 2020 investor citizenship scheme, it cannot be considered that actual residence on that territory was regarded by the Republic of Malta as constituting an essential criterion for the grant of the nationality of that Member State under that scheme, in addition to that of the predetermined payments or investments referred to in paragraph 103 above.
- 109 That conclusion is supported, first, by the fact that the length of the period of legal residence prior to the grant of Maltese nationality under the 2020 investor citizenship scheme may be reduced from three years to one year by an additional payment of EUR 150 000, with the result that the residence condition itself appears closely linked to the transactional nature of the grant of Maltese nationality under that scheme, in exchange for predetermined payments or investments.
- 110 It is also justified, secondly, by the comparison made by the Commission of the 2020 investor citizenship scheme with the 'ordinary' naturalisation procedure under Article 10(1) of the Maltese Citizenship Act, which requires applicants to have resided in Malta 'throughout' a period of 12 months before the application for naturalisation was made, but also for at least four years out of the six years immediately preceding that 12-month period.
- 111 It follows from that comparison that, where the application for the grant of nationality is not accompanied by predetermined payments or investments, only a significantly longer actual residence in Malta is considered by the Republic of Malta to be such as to permit the grant of Maltese nationality to be considered.
- 112 As regards, in the third place, the last condition referred to in paragraph 102 of the present judgment, the Republic of Malta submits that the purpose of the procedure

for reviewing the eligibility of an applicant is to carry out checks concerning that applicant, his or her business and corporate affiliations, his or her political exposure, the source of his or her wealth, his or her reputation, the legal and regulatory matters relating to that applicant and the relative impact on that applicant's immediate network.

- 113 It should be noted that, according to the information provided by the Republic of Malta, such checks are intended, in essence, to ensure that the implementation of the 2020 investor citizenship scheme does not undermine certain public interest objectives of the Republic of Malta, in particular the public security and national security of that Member State and its internal and external image. Those checks are not, however, capable of calling into question the finding that that scheme amounts to the commercialisation of the grant of Maltese nationality, following a transactional procedure.
- 114 Those checks are not intended to assess whether the applicant's situation justifies the grant of Maltese nationality, but only to determine whether certain duly identified risks preclude the grant of that nationality, despite the fact that the applicant is willing to make payments or investments enabling him or her to meet the first three conditions referred to in paragraph 102 of the present judgment. The function thus conferred on those checks means that they have the effect of limiting the scope of the 2020 investor citizenship scheme but that they do not, however, call into question the transactional nature of that scheme.
- 115 The Republic of Malta further submits that the 2020 investor citizenship scheme takes into account certain connecting factors on the part of the applicants, such as investments in the local economy, the integration of those applicants into the social fabric through their investments, or even the prospective links between those applicants and the Republic of Malta that could be developed after that nationality has been granted.
- 116 In that regard, first, there is nothing in the file before the Court to suggest that the 2020 investor citizenship scheme provides for a specific and concrete examination of the relevance of certain investments in order to establish the existence and extent of an applicant's ties with the Republic of Malta, or to enable the development of such links with that Member State, distinct from the examination relating to the fulfilment of the conditions laid down by the provisions governing that scheme, as recalled in paragraph 102 of the present judgment.
- 117 Secondly, as regards the Republic of Malta's argument that it takes into account the links that may be developed by an applicant under the 2020 investor citizenship scheme after the naturalisation decision, it should be noted that it is apparent from the clarifications provided by that Member State that its authorities may withdraw Maltese nationality granted under that scheme on three grounds, namely, failure to comply with a material obligation laid down by the applicable legislation, the existence of a threat to national security, or the involvement of the

person concerned in conduct which is seriously prejudicial to the interests of the Republic of Malta.

- 118 Therefore, although, during the five years following the date of naturalisation, the Maltese authorities ensure, in essence, that applicants continue to comply with the conditions applicable to their naturalisation, the fact remains that it cannot be considered that the 2020 investor citizenship scheme contains a condition which must be satisfied after the naturalisation decision, in addition to the conditions referred to in paragraph 102 of the present judgment.
- 119 In the fourth and last place, it is apparent from the extracts from the websites of authorised agents promoting the 2020 investor citizenship scheme, produced by the Commission in an annex to the application, that that scheme offered potential applicants the ‘right to reside, study and work in any of the 27 countries of the European Union’, as well as the ‘citizenship of an EU country for the entire family of the applicant, including financially dependent and unmarried children under 29 years old, as well as parents over 55 years old’. Although the Republic of Malta submits that the activities of private third parties cannot be attributed to the Maltese authorities, the fact remains that that Member State does not dispute that that advertising comes from websites of agents authorised in the context of the implementation of the 2020 investor citizenship scheme, who play an essential role in that respect in so far as applications for naturalisation under that scheme may be submitted only through those agents.
- 120 Thus, the 2020 investor citizenship scheme was publicly presented by the Republic of Malta as a naturalisation scheme offering primarily the benefits arising from Union citizenship, in particular the right to move and reside freely in the other Member States. That presentation helps to establish that, by means of that scheme, that Member State established a transactional procedure which amounts to the commercialisation of the grant of the nationality of a Member State, by making use of the rights attaching to Union citizenship for the purpose of promoting that procedure.
- 121 Consequently, it must be held that, by establishing and operating the institutionalised 2020 investor citizenship scheme, based on Article 10(9) of the Maltese Citizenship Act, which establishes a transactional naturalisation procedure in exchange for predetermined payments or investments and thus amounts to the commercialisation of the grant of the nationality of a Member State and, by extension, that of Union citizenship, the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU.

Costs

- 122 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Commission has applied for costs and

the Republic of Malta has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares that, by establishing and operating an institutionalised citizenship investment scheme, such as the Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment scheme, based on Article 10(9) of the Maltese Citizenship Act (Chapter 188 of the Laws of Malta), as amended by the Maltese Citizenship (Amendment No. 2) Act (Act XXXVIII of 2020) and the Granting of citizenship for Exceptional Services Regulations, 2020 (Subsidiary Legislation 188.06 of the Laws of Malta), which establishes a transactional naturalisation procedure in exchange for predetermined payments or investments and thus amounts to the commercialisation of the grant of the nationality of a Member State and, by extension, that of Union citizenship, the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU.**
2. **Orders the Republic of Malta to pay the costs.**

Lenaerts

von Danwitz

Jürimäe

Lycourgos

Jarukaitis

Arastey Sahún

Rodin

Kumin

Jääskinen

Gratsias

Regan

Ziemele

Passer

Delivered in open court in Luxembourg on 29 April 2025.

A. Calot Escobar

K. Lenaerts

Registrar

President