

**OPINION OF THE COMMITTEE OF LEGAL ADVISERS ON
PUBLIC INTERNATIONAL LAW (CAHDI)
ON RECOMMENDATION 2191 (2020) OF THE PARLIAMENTARY ASSEMBLY ON
"INVESTMENT MIGRATION".**

1. On 14 January 2021, the Ministers' Deputies, at their 1392nd meeting, agreed to communicate Recommendation 2191 (2020) of the Parliamentary Assembly of the Council of Europe (PACE) on "[Investment migration](#)" to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments. The Ministers' Deputies agreed also to communicate it to the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

2. In its Recommendation 2191 (2020), the Assembly underlined the need for the Committee of Ministers to engage in co-operation with the European Commission with a view to working with the member States concerned in order to phase out the practice of granting residence status or even citizenship in return for the payment or investment of a sum of money, and invites the Committee of Ministers to:

- a. advise member States on effective mutual legal assistance and common policies for the prevention, detection and prosecution of typical cases of money laundering,
- b. emphasise the specific obligations of public authorities requesting or receiving private investments from abroad in order to avoid money laundering by public authorities and to ensure that proceeds from crime can be seized and confiscated from public authorities through mutual legal assistance with other member States;
- c. support the establishment of public transparency registers in member States for investments in real estate, companies and incorporated trusts or associations as well as other preventive measures against money laundering;
- d. analyse the risks inherent in cryptocurrencies as regards money laundering and tax evasion;
- e. establish, possibly in co-operation with the Organisation for Economic Co-operation and Development (OECD) and the European Union (EU), common standards for member States on tax evasion through investment migration;
- f. invite member States to apply the above-mentioned conventions as well as the standards of the Financial Action Task Force (FATF) to any territories under their

authority in accordance with international law, such as overseas territories, if they attract investment migration.

3. Furthermore, in its Resolution 2355 (2020) on "[*Investment migration*](#)", the Assembly emphasised that national programmes of member States for the award of citizenship, residence permits and tax domiciles to foreign investors must respect the legal standards set by the Council of Europe, as well as relevant international legal standards designed to prevent corruption, money laundering and the financing of terrorism.

4. The CAHDI examined the above-mentioned Recommendation and adopted the following comments.

5. The CAHDI points out that the follow-up to the recommendations in paragraph 2 above, in particular in paragraph 2(c) with relation to paragraph 2.3 of the Recommendation, should be considered in light of the applicable FATF regulations and standards.

6. The CAHDI recalls that several Council of Europe treaties mentioned in Recommendation 2191 (2020) concerning, inter alia, nationality and nationality-related obligations, the fight against money laundering and corruption, mutual judicial and criminal assistance, mutual assistance in tax matters or the free movement of persons between Council of Europe member States, constitute relevant legal instruments in this context binding for the parties thereto.

7. With regard to the recommendations mentioned under point 2(a) above, the CAHDI shares the Assembly's view on the need to strengthen mutual legal assistance and international co-operation between member States, in particular through the development of common policies for the prevention, detection and prosecution of typical money laundering cases. The CAHDI recalls in this respect the relevance of the *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* (CETS No. 198) and the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ETS No. 141).

8. With regard to the Assembly recommendation mentioned under point 2(e) above, the CAHDI also points out to the need for member States to cooperate with the aim of dealing with all relevant problems and to promote good practices. In this respect, the *European Convention on Nationality* (ETS No. 166) in particular and the *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and its Protocols* (ETS Nos. 43, 95, 96 and 149) might be of certain relevance and could be taken into consideration when tackling the matter.

9. Finally, the CAHDI considers that the question of tax evasion be best dealt with in other Council of Europe Committees such as CDPC, MONEYVAL or other relevant fora and that possible adoption of common standards on tax evasion lies outside of CAHDI's Terms of Reference.