



Horizontal Price Coordination and Norm Fragmentation in Citizenship-by-Investment: The Court of Justice of the European Union in *Commission v. Malta* (Case C-181/23, 2025)

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Abstract

Background: Citizenship-by-investment programs commodify political membership across fragmented legal regimes, creating tensions between national sovereignty and emerging anti-commodification norms.

Objective: This article examines how the CJEU judgment in *Commission v. Malta* (Case C-181/23, April 29, 2025) reshaped citizenship-by-investment (CBI) governance without creating a consolidated global regime.

Methods: Qualitative critical desk research was conducted on relevant legal, policy, and multilateral documents from 2014–2026. The materials were examined through thematic coding, critical reading, and descriptive competition-economics tools, with claims triangulated across primary documents.

Results: Four findings emerge. First, the 2024 OECS Memorandum of Agreement shifted Caribbean CBI toward coordinated convergence, narrowing the donation spread from USD 150,000 to USD 50,000 through a common floor, a prohibition on discounts, and cross-member reporting. Second, the CJEU rejected commodification through Article 20 TFEU and Article 4(3) TEU rather than the *Nottebohm* doctrine, making its reasoning specific to Union law. Third, the United States Gold Card commodifies political membership through permanent residence, while uptake remained far below its target through April 2026. Fourth, these developments exhibit the indicators of norm fragmentation: simultaneity, institutional autonomy, and stable pluralism.

Conclusion: The study operationalizes norm fragmentation and applies competition-economics tools to CBI governance. For Indonesia, it supports stronger due diligence and structural reciprocity.

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INTRODUCTION

Citizenship-by-investment (CBI) programs allow individuals to acquire citizenship through financial contributions, generally in the form of donations to government funds or investments in real estate. The practice is growing in the Caribbean, the Pacific, Turkey, Jordan, and a number of small European countries, with investment thresholds ranging from USD 130,000 to several million dollars. Host countries promote such programs as a strategy to attract foreign exchange in jurisdictions with a limited economic base (Surak, 2021, 2023). Their expansion has

given rise to a fundamental debate about the meaning of citizenship in the contemporary global order.

Normatively, citizenship is understood as a political relationship that encompasses rights, obligations, and attachments to a particular political community (Marshall, 1950). The CBI scheme reduces such interconnectedness to financial transactions, thus treating citizenship as an asset that can be accessed through financial capacity—a shift from citizenship as a political institution to citizenship as a commodity (Christians, 2017).

The regime's normative landscape reached a turning point on 29 April 2025, when the Grand Chamber of the CJEU handed down its judgment in *European Commission v. Republic of Malta* (Case C-181/23, ECLI:EU:C:2025:283). The Court held that Malta's transactional naturalization scheme breached the obligations of Member States under Article 20 TFEU, read in conjunction with Article 4(3) TEU. Five months later, the dynamics moved in the opposite direction: on 19 September 2025, the President of the United States signed an Executive Order launching the Gold Card program at a contribution of USD 1 million, followed by an announced Platinum Card tier of USD 5 million. The two events are not, however, symmetrical in kind. The Maltese scheme conferred citizenship and is therefore a citizenship-by-investment (CBI) scheme, whereas the Gold Card confers lawful permanent residence and is therefore a residence-by-investment (RBI) scheme. This distinction is maintained consistently throughout the article and is analyzed in Subsection 4.3 because it determines precisely which norm is being reversed.

The existing literature has discussed CBI from the perspectives of migration law (Spiro (2019), Džankić (2019)), financial security (Parker (2017)), and transnational elite mobility (Surak, 2021). Three gaps remain. First, the dimensions of the CBI market structure have not been analyzed using the economic tools of competition economics, whereas the vocabulary used in the literature—race to the bottom, regulatory arbitrage, and price segmentation—remains largely propositional and empirically testable. Second, the dynamics of the post-2025 decision have not been fully analyzed, including the gap between normative declarations and material realizations. Third, the strategic implications for countries with a single-citizenship regime, such as Indonesia, have not been sufficiently explored in a literature dominated by a Global North perspective.

One doctrinal expectation should be set aside at the outset because the 2025 judgment departs from it. The genuine link doctrine derives its authority from the International Court of Justice's judgment in the *Nottebohm* (1955), which held that nationality must reflect a substantive connection between the individual and the conferring state. Its status in contemporary citizenship law is contested: post-1955 jurisprudence tends to confine it to the context of diplomatic protection, while its application to the acquisition of nationality under domestic law remains disputed (Sloane, 2009; Spiro, 2019). The CJEU itself rejected *Nottebohm* as a precondition for the recognition of nationality between Member States in *Micheletti and Others* (C-369/90, 1992)—a position Malta later invoked as a defense in its submissions in C-181/23. *Nottebohm* is therefore not the basis of the 2025 ruling, and this article does not treat it as such. Rather, it is the doctrinal route that the Court declined to take, while Subsection 4.2 sets out the autonomous construction the Court used in its place.

The European context adds its own dimension through the concept of Union citizenship introduced by the 1992 Maastricht Treaty. Since national citizenship automatically serves as the gateway to Union citizenship, along with rights to freedom of movement and cross-border access to the labor market, the decision of one Member State has direct implications for other Member States (Kochenov, 2019). This is the structural basis of the 2025 jurisprudence.

Surak (2021, 2023) shows that CBI has grown into a global market worth tens of billions of dollars per year, involving consulting firms, brokerage agencies, and an institutionalized legal ecosystem. Christians (2017) formulated a buying-in thesis, arguing that CBI transforms citizenship into a purchasable mobility instrument. Džankić et al. (2025), through longitudinal data from 1960–2023, show that microcountries, middle-income countries, and tax havens are systematically more likely to adopt CBI. Surak (2024) confirms that its economic benefits are concentrated in a handful of small jurisdictions.

The theoretical framework of this article is international political economy in the tradition of Strange (1984) and the concept of the retreat of the state. Shachar (2009) extends the analysis through the birthright lottery: citizenship functions as a profoundly unequal mechanism of wealth

allocation, and CBI is an elite strategy for exiting it. Ong (2026) shows how transnational elites in Asia have long practiced multi-passport accumulation as a strategy of tax optimization and political risk mitigation. These works and the norm-dynamics literature discussed below operate at different levels of analysis and are used here in a deliberate division of labor. Strange and Shachar supply the political-economy account of why states market political membership and why individuals buy it; Finnemore and Sikkink supply the vocabulary for tracing what happens to the norm that such markets contest. The contribution of this article sits in the second register and draws its explanatory content from the first: without the retreat-of-the-state account, there is no reason for the norm to come under pressure in the first place, and without the norm-dynamics vocabulary, there is no way to describe what that pressure has produced.

One dimension that has not been sufficiently examined is the structure of the market itself. The literature routinely uses the terms race to the bottom and regulatory arbitrage without defining the relevant market, measuring concentration, or analyzing demand-side dynamics. By contrast, the regulatory competition literature provides well-established tools: Oates (1972) on fiscal federalism, Vogel (1995) on the difference between the Delaware effect and the California effect, and Genschel and Schwarz (2011) on tax competition. This article applies these analytical tools in Subsection 4.1.

The life-cycle model of norms advanced by Finnemore and Sikkink (1988) assumes a linear progression from emergence through cascade to internalization. The model provides no category for a condition in which a norm is simultaneously strengthened and weakened in different regimes. This article proposes norm fragmentation as an analytical complement and defines it before differentiating it. Norm fragmentation is a condition in which an international norm is simultaneously reinforced in one regional regime and reversed in another, without the norm being lost globally. Three indicators operationalize the concept, and each is tested against the record in Subsection 4.4: (i) simultaneity, meaning that reinforcement and reversal occur within adjacent time windows, operationalized here as a window of no more than twenty-four months; (ii) institutional autonomy, meaning that the diverging regimes each possess their own enforcement capacity and that no hierarchical arbiter stands above them; and (iii) stability of pluralism, meaning that no actor holds both the incentive and the capacity to impose consolidation. To ensure that the concept does not collapse into an established typology, Table 1 differentiates it from five neighboring concepts.

Table 1

Conceptual differentiation of norm fragmentation from neighboring concepts (compiled by the author)

Concept	Core and source	Differentiator from norm fragmentation
Norm Challenge	Contestation of the meaning of inherent and sustainable norms in multilateral multilogue (Wiener 2014, 2018)	Operating within a regime framework that is still intact; fragmentation operates between autonomous regional regimes
Norm backsliding / regress	The regression of compliance with previously firm norms (McKeown, 2009)	It is unidirectional (declining compliance); Fragmentation is bidirectional and simultaneous
Norm death	Norms disappear completely from the international arena (Panke & Petersohn, 2016)	Terminal conditions; fragmentation describes a stable normative pluralism without consolidation
Fragmentation of international law	Diversification and expansion of international law into special regimes (ILC, 2006)	Focusing on conflicts between legal corpuses; Norm fragmentation here focuses on the opposite normative direction on the same issue
Regime complexity	Overlapping institutions without hierarchy (Alter & Meunier,	Explain the institutional architecture; Norm fragmentation explains the

2009; Pratt, 2023; Raustiala & Victor, 2004)	divergent normative content in the architecture
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Table 1 establishes what norm fragmentation is not. It is narrower than regime complexity, which describes institutional architecture rather than normative content, and it differs in direction from norm backsliding, which is unidirectional. Because the concept is defined by three indicators rather than merely asserted, it can fail: were a hierarchical arbiter to emerge, or were one regime's position to collapse into the other's within the observation window, the description would no longer hold, and the case would be better described as norm challenge or regime complexity. Subsection 4.4 tests the three indicators against the 2014–2026 record instead of assuming that they are satisfied.

This article answers one principal question: how did the Commission v. Malta judgment of 2025 change the normative landscape of global CBI governance, and why did that change not produce uniform consolidation of the regime? The question is decomposed into three subquestions: (i) how the structure of the contemporary CBI market can be described; (ii) what doctrinal construction the CJEU employed and how far that construction can be transplanted outside the European Union; and (iii) what the strategic implications of post-2025 fragmentation are for Indonesia's policy position. Three objectives follow. The first is to define the relevant product markets and characterize price behavior within them using the tools of competition economics. The second is to identify the legal foundation of the ruling and delimit its exportability. The third is to operationalize norm fragmentation through three testable indicators. The intended contributions correspond to these objectives: an empirical redescription of a market that the literature still characterizes as a race to the bottom; a doctrinal reading that separates the Court's reasoning from the genuine link doctrine on which it is commonly assumed to rest; and a conceptual instrument for cases in which a norm strengthens and weakens simultaneously. The implications are addressed to three audiences: to scholars of norm dynamics, a category for nonlinear normative change; to regulators in single-citizenship jurisdictions, the due diligence and reciprocity agenda set out in Subsection 4.5; and to Indonesian policymakers specifically, the four steps stated in the conclusion. The article argues that global CBI governance remains fragmented because of divergent economic and political interests and that this fragmentation operates on three dimensions at once: geographical-institutional, hierarchical-structural, and between normative intention and material realization.

METHOD

The research used a qualitative approach with a critical desk-research design. This design was chosen because the CBI phenomenon involves legal and policy documents distributed across jurisdictions that do not allow for direct observation, while the normative dimension that was the focus of the study required a critical interpretation of the construction of meaning within those documents.

The corpus consisted of three groups. First, legal documents: an authentic copy of the CJEU Grand Chamber decision in Case C-181/23 (ECLI:EU:C:2025:283), together with the Opinion of Advocate General Collins (4 October 2024); the jurisprudence referred to therein (Commission v. Belgium, Case 149/79; Micheletti, Case C-369/90; Rottmann, Case C-135/08); the Nottebohm Case (ICJ, 1955); the Executive Order on the Gold Card Program (19 September 2025); Law Number 12 of 2006; and Law Number 27 of 2022. Second, policy and market-regulatory documents: the OECS Memorandum of Agreement of 20 March 2024, the national regulations governing the five Caribbean programs as amended in 2024, and the official release from the OECS Pressroom regarding their implementation. Third, reports from international institutions and academic literature: FATF/OECD (2023), Clerides et al. (2025), European Commission documents from 2018–2025, as well as key theoretical literature.

The selection was carried out purposively based on three criteria: substantive relevance, direct relevance to post-decision dynamics, and contribution to explaining normative and structural dimensions. The study period was limited to 2014–2026, with 2014 as the starting point of the Malta program that was the subject of the case. The unit of analysis was an institutional document treated as a text carrying normative, argumentative, and political content.

The analysis was carried out in three stages. The first stage consisted of qualitative content analysis: thorough reading to identify inductive themes, thematic coding into four main categories (commodification of citizenship, doctrinal construction, market structure, and regime fragmentation), and restructuring of themes with reference to the international political economy framework. The second stage consisted of critical reading: identification of normative arguments in each document, comparison of positions across documents, and assessment of their political and strategic implications. The third stage consisted of analysis of market structure: definition of the relevant market based on demand-side substitution, description of price dispersion before and after the coordinated intervention, and identification of enforcement mechanisms. The third stage used an analogous business-competition analytical tool—although sovereign states are not business actors and are not subject to competition law—so that the findings remained descriptive and structural rather than constituting an assessment of legality.

Validity was maintained through source triangulation (each analytical claim in Section 4 was supported by at least two primary documents from different categories), systematic confrontation with a counter-theoretical framework as presented in Table 1, and author reflexivity. The first author situated himself as a researcher from a Global South jurisdiction with a single-citizenship regime, a position that influenced his reading of the Global North CBI regime. Four limitations were recognized: CBI implementation data were limited because of the confidential nature of transactions; the 2025 CJEU decision was less than two years old, so its full empirical implications had not yet been observed; price data were sourced from regulations and official announcements and therefore did not capture informal discounts; and the Indonesian dimension remained exploratory. The study was not intended to produce statistical generalizations.

RESULTS AND DISCUSSION

Results

CBI market structure: from race-to-the-bottom to horizontal price coordination

The analysis of the market structure must start from the definition of the market in question. The products traded are not abstract “citizenship,” but rather a set of rights that are of different value to different segments of buyers: visa-free access, residence and work rights, fiscal treatment, and option value in the form of the ability to leave the jurisdiction of origin. Based on demand-side substitution, the program corpus commonly referred to as the “global CBI” is actually divided into at least three different product markets: (i) the mass mobility market, served by the Caribbean and Vanuatu programs at prices below USD 300,000 and without residency obligations; (ii) the EU access market, which before 2025 included Malta and Cyprus at prices above EUR 600,000; and (iii) the United States access market, which is served by residency-based schemes priced above USD 1 million. Figure 1 shows the distribution of these prices.

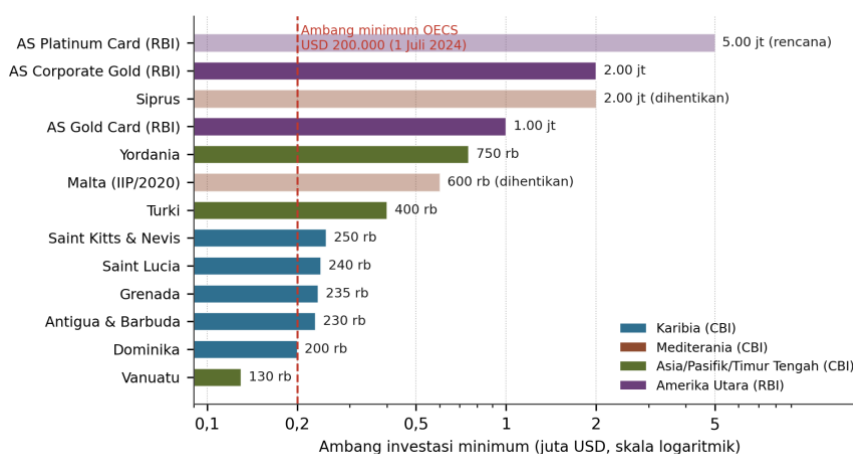


Figure 1. Minimum investment threshold of CBI programs and equivalent schemes (logarithmic scale).

Data cut-off: 30 April 2026. Source: processed by the author from the national regulations of each program as amended 2024-2025, CJEU decision C-181/23 paragraphs 24 and 26, Executive Order of September 19, 2025, and OECS Pressroom (2024).

This separation matters analytically. The Trump Gold Card (USD 1 million, access to the United States) and Dominica (USD 200,000, visa-free access to the Schengen Area) do not belong to the same market: the cross-price elasticity of demand between them is low, so a price increase in one does not divert a significant share of demand to the other. The theoretical consequence reinforces the argument of this article—that governance fragments in part because the regimes serve different product markets and therefore face no pressure toward competitive convergence.

The second finding reverses the dominant narrative in the literature. Throughout 2017–2022, the Caribbean market did show race-to-the-bottom characteristics: the donation threshold dropped to USD 100,000, and the practice of selling below the official threshold through agent discounts was widespread. However, since 2023, the direction of competition has reversed. Following the United States–Caribbean Roundtable that resulted in a six-principle agreement in February 2023, the heads of government of the five OECS countries signed a Memorandum of Agreement on March 20, 2024, that set a shared minimum investment threshold of USD 200,000, effective July 1, 2024. Table 2 and Figure 3(a) show the impact.

Table 2

The minimum donation threshold of the Caribbean CBI program before and after the OECS Memorandum of Agreement (March 20, 2024, effective July 1, 2024). Data cut-off: 30 April 2026. Source: processed by the author from OECS Pressroom (2024), national regulations promulgated in 2024, and Clerides et al. (2025).

Country	Minimum donation. before MoA (2023)	Minimum donation. after the MoA (as of 2026)	Starting year	Status 2026
Dominica	USD 100,000	USD 200,000	1993	Active
Antigua and Barbuda	USD 100,000	USD 230,000	2013	Active
Grenada	USD 150,000	USD 235,000	2013	Active
Saint Lucia	USD 100,000	USD 240,000	2016	Active
Saint Kitts and Nevis	USD 250,000	USD 250,000	1984	Active
Dispersion (max-min)	USD 150,000	USD 50,000		

Three structural characteristics can be read from these data. First, what occurred was not simply competitive convergence but coordinated convergence: the spread between the highest and lowest minimum donation narrowed from USD 150,000 to USD 50,000 in less than a year, and the entire price level moved upward rather than downward. Second, the agreement is accompanied by an enforcement mechanism. The OECS official release affirmed that granting discounts below the agreed minimum price is prohibited and called on marketing agents, local agencies, and developers to report any attempt to offer, or agreement to provide, discounts to the CBI unit, the investment migration agency, or the financial intelligence unit of the participating country. In the vocabulary of competition economics, the combination of a horizontal minimum price, a prohibition on undercutting, and a cross-member monitoring mechanism corresponds to three structural elements that, in commercial markets, are treated as indicators of a functioning cartel. The claim made here is one of structural correspondence and not of legal characterization, for the reasons set out in the following paragraph. Third, the process is moving toward institutionalization: the participating countries agreed to establish a regional regulator through legislation promulgated in 2025, preceded by an interim regulatory commission.

It should be emphasized that these findings are descriptive and structural, not legal judgments. Sovereign states are not business actors, and competition law instruments do not apply to such intergovernmental agreements. Precisely therein lies the significance: arrangements that are structurally analogous to price cartels remain valid because the participants are states. Normatively interesting, such coordination was born out of pressure for integrity—not from a motive of rent extraction—and the result was an increase in standards, not a decrease. This is consistent with a pattern that Vogel (1995) calls the California effect: regulatory

competition can raise the bar if there are large actors with bargaining power to access the market. The actors in this case are the United States and the European Union, which have threatened to revoke visa-free facilities.

A fourth structural dimension, absent from the literature, is concentration on the intermediary side. Several programs are reported to have been designed and marketed under exclusive or near-exclusive concessions to a single consultancy, so that the downstream structure would be more concentrated than the upstream structure described in Table 2. This is stated here as a structural hypothesis and not as a finding because the evidence required to establish it is not in the public domain: the concession agreements and tender awards of the programs concerned are not uniformly published, and no program publishes the share of applications handled by each agent, so no concentration measure can be computed. Bexell (2025) documents the industry's strategies of self-legitimation but does not measure its market structure. Testing the hypothesis requires access to the concession instruments and application-level data held by the program units and is therefore set out as a research task in the conclusion.

The sharpest dimension of this commodification, in terms of integrity, is the practice of name-switching: naturalization in some programs does not require that the nominal identity recorded on the new passport be identical to that on the applicant's original identity document. An individual may then lawfully operate under two parallel identities, so that name-based due diligence can be defeated and watchlist matching against international sanctions lists may fail to identify the same person. Establishing this point requires the primary instruments of each jurisdiction—the naturalization act and the regulations governing the entry of names in the civil register—to be read individually, and that reading has not been carried out here for every program country. The claim is therefore stated as a testable proposition rather than a validated finding, and verification is listed in the research agenda in the conclusion. The Panama Papers ICIJ (2016) and Pandora Papers ICIJ (2021) investigations are consistent with the practice and are cited as corroboration, but they are journalistic corpora and cannot substitute for the legal provisions themselves.

Commission v. Malta: rejection of commodification without Nottebohm

The decision of the Grand Chamber of the CJEU in Case C-181/23 (April 29, 2025, Judge-Rapporteur S. Rodin) marks the jurisprudential consolidation of anti-commodification norms at the European regional level. The Commission's infringement action was filed on March 21, 2023, under Article 258 TFEU, preceded by a pre-litigation dialogue beginning with the official notification letter of October 20, 2020, followed by an additional letter of June 9, 2021, and a reasoned opinion of April 6, 2022. At the heart of the ruling is the rejection of Malta's argument that the grant of citizenship is an exclusive competence of the Member State that cannot be reviewed by the institutions of the Union. Referring to *Micheletti* and *Rottmann*, the Court affirmed that although the determination of who is entitled to citizenship is a national competence, its implementation must respect Union law.

What makes this ruling doctrinally significant—and this is the finding most deserving of attention from readers outside Europe—is that the CJEU did not rest its reasoning on the Nottebohm doctrine. The Court had itself rejected that doctrine in *Micheletti* (1992), and Malta invoked that rejection as a shield in its defense. The Court reasoned instead from Union law alone, and the foundation of that reasoning can be stated precisely. Its starting point is Article 20 TFEU, which has been read since *Grzelczyk* (C-184/99) as making Union citizenship the fundamental status of nationals of the Member States, and which *Rottmann* (C-135/08) established may constrain the exercise, though not the existence, of national competence over nationality. Read together with the duty of sincere cooperation in Article 4(3) TEU and with the principle of mutual trust that underpins the mutual recognition of national decisions, these provisions yield what the Court terms a special relationship of solidarity and good faith between a state and its nationals. That relationship is an autonomous concept in the technical sense the term carries in Union law: a concept given a uniform meaning throughout the Union, independent of the content of any national legal order and not derived from general international law. Its legal foundation is accordingly the Treaties as interpreted in the Court's own case law, and the judgment concludes that there has been a breach of Article 20 TFEU, read with Article 4(3) TEU—

not a breach of any genuine-link obligation under general international law.

The methodological implications of this observation are important and often overlooked in the initial commentary on the ruling: the normative foundations used by the CJEU are *sui generis* and cannot simply be transplanted outside the European Union. There is no constitutional equivalent of mutual trust in ASEAN, CARICOM, or within the framework of the FATF. That is, the 2025 ruling reinforces anti-commodification norms precisely in a way that limits their pervasiveness—a paradox that is one of the structural explanations for fragmentation analyzed in Sub-section 4.4.

The immediate implication of the ruling is the termination of the Citizenship by Naturalization for Exceptional Services by Direct Investment 2020 scheme, which is structured in layered tariffs: a contribution of EUR 600,000 or EUR 750,000 to the government; the acquisition of residential property for a minimum of EUR 700,000 or a minimum rent of EUR 16,000 per year for five years; and a minimum donation of EUR 10,000 to a nonprofit organization, with a quota of 400 certificates per year and a maximum total of 1,500 (paragraphs 24 and 26 of the judgment). The Court specifically highlighted a clause that allows for a reduction of the residency period from 36 to 12 months with an additional payment of EUR 150,000, which precisely underscores the transactional nature of the scheme. In July 2025, Malta launched a Citizenship by Merit replacement scheme that nominally removed the direct-purchase line. Whether this new scheme meets the standards set by the CJEU or constitutes a rebranding of the same practice will be the subject of ongoing empirical observation and the possibility of further litigation.

Trump Gold Card: normative reversals, category limits, and market failures

On September 19, 2025, the President of the United States signed an Executive Order formalizing the Trump Gold Card as an accelerated pathway to lawful permanent resident status through the EB-1/EB-2 categories, at a contribution of USD 1 million and a nonrefundable processing fee of USD 15,000. A corporate variant permits companies to sponsor foreign employees at a contribution of USD 2 million per person. A premium Platinum Card tier of USD 5 million was announced alongside it, with the promise of special fiscal treatment, and its legal status must be stated precisely because commentary frequently treats it as an operating program. As of the data cutoff of April 30, 2026, the Platinum Card exists only as an announcement: no executive instrument has been issued, no implementing guidance has been published, no application channel has opened, and the fiscal treatment attached to it is a proposal without legal basis. It is recorded in Table 3 for completeness and is excluded from every structural claim made in this article. Applications for the Gold Card opened on December 10, 2025. Table 3 places the scheme in the non-Caribbean landscape.

Table 3

CBI programs and equivalent schemes outside the Caribbean, 2025-2026. CBI = citizenship-by-investment; RBI = residence-by-investment. Data cut-off: 30 April 2026. Source: processed by the author from CJEU decision C-181/23 paragraphs 24 and 26, Executive Order of September 19, 2025, and the national regulations of each program.

Country/program	Minimum threshold	Starting year	Status 2026 and categories
Malta (2020 scheme)	EUR 600,000-750,000	2014	Terminated (CJEU 2025) - CBI
Cyprus	EUR 2,000,000	2013	Discontinued (2020) - CBI
Turkey	USD 400,000	2018	Active, largest volume - CBI
Vanuatu	USD 130,000	2017	Active, visa-free Schengen - CBI
Jordan	USD 750,000	2018	Active - CBI
AS - Gold Card	USD 1,000,000	2025	Active, minimal realization - RBI
AS - Corporate Gold Card	USD 2,000,000	2025	Active - RBI

US - Platinum Card	USD 5,000,000	Announced 2025	Announced only; no legal instrument issued as of 30 April 2026 - RBI
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The final column of Table 3 carries the qualification that is decisive for the argument of this article and that popular commentary on the Gold Card program tends to miss. The United States scheme confers permanent residence, not citizenship. It belongs in the same category as Indonesia’s Golden Visa, and not in the same category as the Maltese scheme. Two further qualifications matter. Gold Card holders are subject to worldwide income taxation in the United States on the same basis as other holders of permanent resident status. The much-publicized fiscal exemption attaches to the Platinum Card, which, as set out above, has not been promulgated and has no implementing guidance. The claim that the Gold Card aggravates the erosion of the global tax base therefore cannot be sustained on the present state of the evidence.

Does this qualification undermine the normative reversal thesis? No, but it changes the formulation. The norm being reversed is not a narrow anti-commodification norm of citizenship, but rather a broad anti-commodification norm of political membership status—a spectrum that includes CBI and RBI at the same time, since permanent residency in the United States is a pathway to naturalization after five years. This broader formulation is consistent and defensible, with one consequence that must be honestly accepted: Indonesia’s Golden Visa is on the same spectrum, so Indonesia’s criticism of the United States should be formulated at the level of reciprocity and due diligence, not at the level of principled rejection of investment migration.

The third finding in this subsection is the gap between declaration and realization. On the public evidence available through April 2026—the court filing of the Department of Homeland Security and the testimony of the Secretary of Commerce before a subcommittee of the United States House of Representatives on April 23, 2026—the program had received approximately 338 applications against an initial target of 80,000 cards, with 165 applicants having paid the processing fee and one application approved, or some 0.42 percent of the announced target. Two cautions attach to these figures. The observation window is short, since applications opened only on December 10, 2025; and the figures are those the government has placed on the record in litigation and testimony, rather than a published administrative series. Figure 3(b) visualizes the funnel.

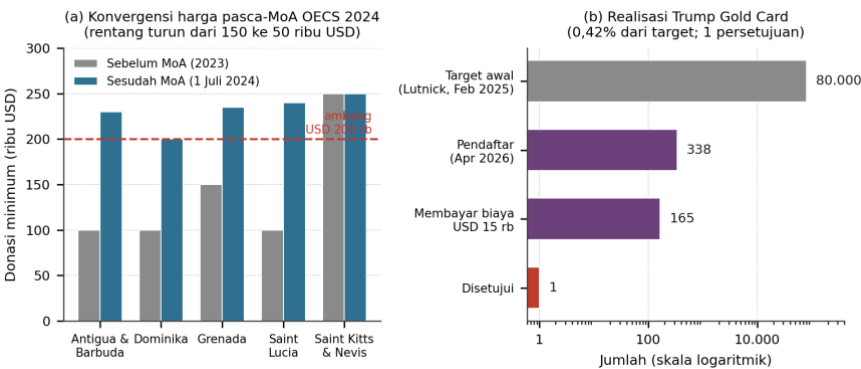


Figure 3. (a) Convergence of Caribbean CBI program prices before and after the OECS Memorandum of Agreement; (b) funnel of the realization of the Trump Gold Card as of April 2026 (logarithmic scale). Data cut-off: 30 April 2026. Source: processed by the author from OECS Pressroom (2024), 2024 national regulations, DHS court filing, and official statement April 2026.

The program also faces constitutional challenges at home. The lawsuit *American Association of University Professors v. U.S. Department of Homeland Security* (No. 1:26-cv-00300, D.D.C.), filed in February 2026, raises three issues: overstepping executive authority because the President is alleged to have no authority to create new immigration categories without congressional action; inconsistencies with the Immigration and Nationality Act, which governs the EB-1/EB-2 categories; and violations of the Administrative Procedure Act because the program

was implemented without notice-and-comment procedures. As of mid-2026, the government's request to dismiss the lawsuit is still pending.

Three explanations can be advanced for the low uptake, and they are put forward as candidates for testing rather than as established causes: legal uncertainty following the litigation; reputational objections among prospective applicants who regard the program as politicized; and the availability of substitutes that are legally better established and considerably cheaper, from EB-5 to skills-based pathways. The third is the most powerful in economic terms: in a market with close substitutes costing a fraction of USD 1 million, a new product carrying high legal risk may struggle to attract demand. What matters for the normative argument is that low uptake does not cancel the normative declaration; if anything, it sharpens it, since the launch of the program was a political statement rather than a response to measurable demand. It would be wrong, however, to conclude on this record that the Gold Card has failed as a market. What the evidence supports is the narrower statement that uptake through April 2026 has fallen far below the announced target, and whether that outcome proves durable cannot be settled within the present observation window.

Testing of three indicators of norm fragmentation

Figure 2 places all of the above events in a twelve-year chronology, with two Indonesian milestones as markers of position.

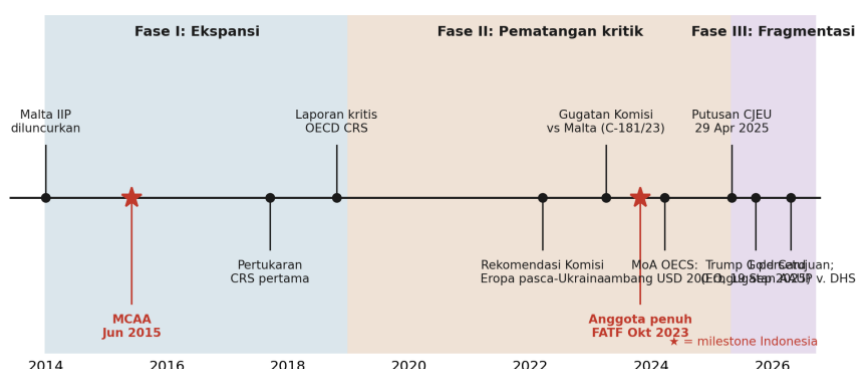


Figure 2. The evolution of the global CBI regime 2014-2026 and the placement of Indonesia's milestones. Source: processed by the author from CJEU decision C-181/23 paragraphs 28-40, OECS Pressroom (2024), FATF Plenary Outcomes October 2023, press release of the Directorate General of Taxes June 2015, and Executive Order September 19, 2025.

The first indicator, simultaneity, is met: the CJEU decision (April 29, 2025) and the Executive Order establishing the Gold Card (September 19, 2025) are five months apart. On a broader scale, the OECS price coordination (March 2024) took fourteen months before the ruling, so the window of strengthening and reversal of the norm was entirely within a two-year period.

The second indicator, institutional autonomy, is met and strengthened by the doctrinal findings in Subsection 4.2. The CJEU is binding on the Member States of the Union but not binding on the United States; the opposite applies to Executive Orders. What adds depth is that the normative foundation of the CJEU decision is *sui generis*, so that even its persuasive influence outside the Union is limited. The OECS regional regulator being formed is a third center of authority with its own logic, namely market integrity and income stability.

The third indicator, the stability of pluralism, is met: no actor holds both the incentive and the capacity to impose global consolidation. The FATF and the OECD generate normative output without jurisdiction over the conferral of nationality. Their instruments—the FATF Recommendations, the OECD Common Reporting Standard, and the joint 2023 report on the misuse of citizenship- and residency-by-investment programs—are soft law, enforced through mutual evaluation and peer review rather than through binding decisions, and neither body holds any mandate over the grant of nationality, which remains a matter for each state under customary international law as codified in Article 1 of the 1930 Hague Convention. Within the Union, that

competence is now constrained by Micheletti, Rottmann, and C-181/23; it is constrained nowhere else. The European Union thus has jurisdiction, but only within its own legal order. The United States has leverage, but now also has an interest of its own in operating a comparable scheme.

An additional finding that the initial framework did not anticipate was that fragmentation operates on three dimensions instead of one. The geographical-institutional dimension (EU versus the United States versus OECS) is the most visible. A hierarchical-structural dimension appears from compliance asymmetry: the United States does not implement the Common Reporting Standard and operates FATCA as a one-way reporting regime, while peripheral countries bear the full cost of compliance (Christians, 2017). The third dimension, between normative intentions and material realization, can be seen in the contrast between the European Union, which succeeded in effectively closing the Malta scheme, and the United States, which formally opened the scheme but had limited realization through April 2026. These three dimensions enrich the proposed concept: fragmentation is not just a split map, but a layered divergence whose dimensions reinforce each other.

Strategic implications for Indonesia

Indonesia is not a major actor in the CBI, but the structural consequences of this regime affect its domestic and international policy positions. Four implications can be identified.

Domestic

Indonesia operates the Second Home Visa and Golden Visa programs, with investment thresholds that vary according to the applicant's category. Both programs provide only residence permits, not citizenship, so they are consistent with the principle of single citizenship adopted by Law Number 12 of 2006. But, as affirmed in Subsection 4.3, categorical consistency does not mean normative immunity: this regime is on the same spectrum as the criticized United States scheme. Therefore, its expansion needs to be accompanied by due diligence equivalent to the standards demanded by Indonesia from other parties, including verification of sources of funds, data integration with the Financial Transaction Reporting and Analysis Center, and enhanced due diligence for CBI passport holders—to prevent Indonesia from becoming the third node in multi-layered jurisdictional shopping.

Diplomatic

Indonesia signed the Multilateral Competent Authority Agreement in June 2015 and was accepted as a full member of the Financial Action Task Force in October 2023. These two dates, as marked in Figure 2, are not ornaments: they place Indonesia as the party that has borne the cost of compliance at a time when a number of jurisdictions are expanding CBI programs. This position gives procedural legitimacy to demands for structural reciprocity, not merely complaints about asymmetry. Substantively, these demands can be formulated in three points: that jurisdictions that refuse to implement the Common Reporting Standard cannot simultaneously act as compliance assessors of other countries; that investment-migration schemes in developed countries are subject to due diligence standards equivalent to those demanded from small jurisdictions; and that reporting asymmetry be included as a category of structural risk in the mutual evaluation methodology. This position is critical but constructive: Indonesia does not reject a transparency regime, but rather demands an equal distribution of the burden.

Law enforcement

The corruption case involving the procurement of PT Garuda Indonesia's fleet illustrates the routing of commission payments through intermediary companies operating from offshore jurisdictions. The case does not involve CBI directly, so its value here is to illustrate the shell-company mechanism rather than to provide evidence for the thesis of this article, and it is drawn from the indictment and the decision of the court of first instance rather than from press reporting. The 1Malaysia Development Berhad case is frequently invoked in this connection, on the basis that several central actors are said to have obtained passports through investment programs as exit insurance. That claim is not adopted here. In the sources available to this study, it rests on journalistic accounts rather than on case files, and no filing in the forfeiture proceedings of the United States Department of Justice or in the Malaysian prosecutions has been identified in which the acquisition of an investment-based passport is established as a finding of the court. The claim is recorded as an open proposition requiring documentary verification, and no analytical

weight is placed on it. For Indonesia, the strategic lesson rests on the Garuda case alone: the mutual legal assistance framework with the principal CBI jurisdictions requires strengthening.

Detection technology

The practice of name-switching structurally defeats name-based detection architectures. For Indonesia, which faces the challenge of detecting citizens who obtain second citizenship without declaration—a circumstance that under Article 23 of Law Number 12 of 2006 results in the loss of Indonesian citizenship status—biometrics-based detection is the technically most robust option. However, this option cannot be treated as a ready-made solution. Law Number 27 of 2022 categorizes biometrics as specific personal data, so cross-border exchanges require a legal basis that is not yet available. Privacy-preserving matching technology can mitigate technical risks, but it does not create a legal basis. This article therefore recommends a phased approach: first, drafting a legal feasibility study; then, piloting an operational memorandum of understanding with one jurisdiction as a prototype, with strict evidentiary thresholds for suspect status or arrest warrants, reciprocal standards, and independent oversight mechanisms before considering regional expansion.

CONCLUSION

This article concludes that contemporary citizenship-by-investment (CBI) programs reflect a fragmented form of citizenship commodification. The Caribbean market no longer fully corresponds to the race-to-the-bottom narrative because the 2024 OECS Memorandum of Agreement introduced minimum thresholds, prohibited discounting, and established cross-member reporting, thereby narrowing price disparities while increasing overall price levels. Meanwhile, the CJEU's decision in *Commission v. Malta* (2025) rejected citizenship commodification through an autonomous interpretation of Article 20 TFEU and Article 4(3) TEU rather than the *Nottebohm* doctrine. Although this strengthens the anti-commodification norm within the European Union, its EU-specific legal basis limits broader application. Conversely, the Trump Gold Card constitutes a hegemonic normative counter-move with significant signaling power, although it grants permanent residence rather than citizenship and had limited uptake through April 2026. These developments demonstrate fragmentation across geographical-institutional, hierarchical-structural, and normative-material dimensions.

For Indonesia, these findings underline the need to align Golden Visa due diligence with the standards expected from other jurisdictions, formulate multilateral positions based on structural reciprocity within the G20, FATF, and OECD Inclusive Framework, strengthen mutual legal assistance with CBI jurisdictions, and conduct a legal feasibility study before adopting biometric detection measures. The findings also extend Strange's retreat-of-the-state thesis to political membership while showing that commodification is neither uniform nor inevitable. Regional judicial intervention, coordinated regulation, and limited market uptake may constrain its development. Future research should examine Malta's Citizenship by Merit scheme, intermediary concentration within the investment-migration industry, legal mechanisms enabling nominal identity changes, documented links between investment-based passports and transnational corruption, and comparative ASEAN approaches to undeclared dual citizenship. These inquiries may clarify how Indonesia can transform consistent compliance into substantive diplomatic influence within an increasingly fragmented global regime.

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