

European Movement International

Resolution on safeguarding the Freedom of Movement in light of new security measures

Free movement is one of the fundamental rights guaranteed by the European Union to its citizens. It is enshrined and protected in the EU Treaties and is the right that EU citizens consider as the most notable achievement of European integration. The right to freely move and reside in another member state is also a widely exercised right, with close to 20 million citizens living in an EU member state or EEA state other than the one in which they were born and more than half a million citizens regularly commuting to another EU or EEA country for work.

Following the recent terrorist attacks in France and Denmark, a number of new security measures are being discussed at the European level. Quite rightly, European leaders are concerned about ensuring the safety and security of the EU population. However, the recently suggested policy responses to the terrorist attacks are likely to have serious repercussions on the free movement of persons in connection with both Union citizenship and the Schengen rules.

More precisely, Interior Ministries of a number of EU member states released a statement¹ after the attacks proposing that the rules of the Schengen Borders Code should be amended to allow for broader consultation of the Schengen Information System during the crossing of external borders by individuals enjoying the right to free movement²; and that the EU should move towards establishing a European Passenger Name Record (PNR) framework that would extend to movement into and within the EU. This statement has been followed by similar calls from the European Council, Justice and Home Affairs Ministers, and the Commissioner for Migration, Home Affairs and Citizenship.

However, these proposals are not new and have already been the subject of controversy prior to the Paris terrorist attacks. The European Parliament's Civil Liberties Committee, for example, has previously rejected the PNR framework back in 2013 amid doubts about the necessity and the proportionality of the proposal². The European Parliament currently discusses a new version of the draft report on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offenses and serious crimes. This controversial proposal would apply to all travellers, including EU citizens crossing internal borders of the Schengen area.

1 Available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20150111_joint_statement_of_ministers_for_interior_en.pdf

2 European Parliament Press Release, 26 January 2015, available at [http://www.europarl.europa.eu/news/en/news-room/content/20150123BKG12902/html/EU-Passenger-Name-Record-\(PNR\)-proposal-what's-at-stake](http://www.europarl.europa.eu/news/en/news-room/content/20150123BKG12902/html/EU-Passenger-Name-Record-(PNR)-proposal-what's-at-stake)

These measures are likely to come into conflict with the general principle of freedom of movement. The Court of Justice in the European Union has previously held that national systems that process personal data concerning EU citizens must comply with the EU's free movement rules and such systems cannot extend to information that is not strictly necessary to enforce those rules³.

Furthermore, the measures could encourage violations of the principle of non-discrimination on the basis of nationality. There is considerable concern that the new EU PNR will inevitably target EU citizens with a second nationality and more generally those with a non-EU background.

Moreover, large scale surveillance established by the EU PNR database could pave the way to a person-centric approach where profiling will be performed on the basis of nationality, migrant status, family ties or other behavioural aspects.

In order to strike the right balance between security measures and the right to move freely in Europe, the European Movement International proposes two sets of recommendations aimed at improving the agenda on security and the consequent enforcement of free movement right in Europe.

- The EU Institutions should engage in a debate on the need for security measures on the basis of objective evidence and ensure their compatibility with the Charter of Fundamental Rights;
- The EU Institutions should create an inter-institutional task-force on security cooperation which will study the impact of the current EU counterterrorism legislation on free movement rules and citizens' rights, including the data protection rules;
- The task-force should be assisted by an independent ad-hoc expert group, composed of independent academics and practitioners working on the issues of extremism, radicalism and security as well as EU citizenship rights which would review European policies for their compatibility with European rights and freedoms and monitor the implementation; and
- Special focus should be placed on data protection and the privacy of EU citizens and their family members in accordance with the rights and obligations arising from EU legislation and the case law of the EU Court of Justice.

To improve more generally free movement rights in Europe, the European Movement International proposes⁴ that:

- European Commission's power of investigation should be strengthened so that it can investigate and enforce the free movement rules more efficiently and fulfil its mission as Guardian of the EU Treaties;

3 Case C-524/06 Huber [2008] ECR I-9705. The Judgment has been the subject of an official press release by the Court of Justice of the European Union, available at <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/cp080090en.pdf>

4 These proposals are based upon the Seven Strategies to Improve Free Movement of Persons as proposed by the EU Rights Clinic and ECAS, available at <http://www.righttomove.eu/>

- [The collection of data at Member State level is improved and harmonised so that better statistics on the free movement of persons](#) can be collated. This would encourage better evidence-based policy-making by the Member States as well as the EU.
- [Member States deepen their collaboration on the free movement of persons](#). An expert group, with the involvement of civil society, should be set up and its findings made publicly accessible in order that best practices can be shared amongst Member States.
- Civil society groups should be empowered to inform and assist mobile citizens to ensure that these citizens can make effective use of their rights and overcome obstacles that may come their way.