



★ ★ ★
★ Senior
★ European
Experts

Free Movement of People within the European Union

Free Movement of People within the European Union

Introduction

This briefing note explains the concept of free movement in EU law, the restrictions that can be applied and identifies some of the difficulties yet to be fully resolved with the 2004 directive. It does not address the question of temporary and transitional provisions on immigration from the new Member States since 2004, as that question is covered by the separate briefing on immigration and asylum.

Free movement of citizens of Member States, and of labour, within the EU was one of the founding principles set out in the Treaty of Rome (the others were free movement for goods, for capital and of services). This right is often described as the “free movement of workers” – a reference to the language used in Article 48 of the Treaty of Rome. But in fact the Treaty’s provisions always extended to a wider group – with any EU citizen having the right to establish a business or seek work (including on a self-employed basis) in another Member State without having first to obtain the approval of that Member State. Later regulations clarified the rules, particularly in respect of the social security and health care rights of those living in another Member State and extended the right to reside in another Member State to retirees and students.

In 2004 the EU adopted a directive (2004/38/EC) – usually referred to as the free movement directive – which consolidated previous EU legislation on the subject and provided greater clarity as to the meaning of the limitations on free movement that can be applied on the grounds of public policy, public security and public health. This directive was controversial because of the way it restricted, in particular, the ability of Member States to expel citizens of other Member States from their territory because of criminal convictions. Difficulties in the transposition of the 2004 directive led to the Commission producing detailed guidance in 2009 designed to ensure greater consistence of implementation across the EU. Nonetheless, the free movement directive, and to some extent the principle of free movement, are still criticised in some quarters.

Background

As explained above, freedom of movement was one of the basic freedoms enshrined in the 1957 Treaty of Rome. It was intended to make it easier for people of working age to take up employment or self-employment, including founding a business, in another Member State. It is sometimes forgotten within the UK, because we only have one natural land border with another Member State (the Republic of Ireland) and there has been free movement across that border for most of the time since it was created in 1922, that on the European mainland

people may live closer to a centre of employment that is in another country than to the nearest such place in their own. Movement across borders to work is therefore a very valuable right and potentially of considerable economic benefit.

In the thirty or so years after the establishment of the Community the law surrounding free movement was clarified and extended. Qualifications in certain professions were the subject of mutual recognition regulations so that, for example, architects and doctors could work in other Member States from those where they had qualified. The right of retirees and students to live in another Member State was established in 1990. The benefit of visa free travel for EU citizens within the EU was later added to by enabling free access to emergency healthcare on the same terms as residents in the country they are visiting.

The Meaning of Free Movement

“Free movement” means in practice that a citizen of an EU Member State can:

- travel to another Member State using their passport or identity card without needing a visa or other permission to enter;
- live and work in another Member State without the need for any work permit;
- set up a new business or seek work self-employed in another Member State;
- study in another Member State;
- live in retirement in another Member State;
- vote in local and European Parliament elections in another Member State where they live.

EU law does not allow people to move to another Member State and immediately begin claiming social security, healthcare or other benefits that may be available to that country's citizens as of right. In general – precise rules vary – those taking or seeking work in another Member State must either be in employment or be able to support themselves and in most cases will not be eligible to claim social security, or to access social housing, unless they have been in work for a year. Students and the retired must have “sufficient resources” so that they do not become a burden on the country they are living in and have comprehensive sickness insurance (whether in a public system or privately). In practice, healthcare provision varies but EU workers will at least be entitled to use the European Health Insurance Card to obtain emergency treatment on the same basis as the nationals of the Member State where they are living (which may be on less generous terms than in their country of origin).

For most EU citizens these rules will be sufficient to enable them to live in another Member State. After five years of living in another Member State they will be eligible for permanent residence if they wish. For those with more complex circumstances, such as being the partner of a third country national or having committed a crime, the details of the 2004 free movement directive are of great importance.

The 2004 Directive

The aim of the 2004 free movement directive was to consolidate the existing (and sometimes confusing) regulations which had developed piecemeal over time. In so doing, the EU also tried to bring greater clarity to the law, not least to ensure that free movement was respected in practice and not just in theory.

In particular, partners and family members of EU citizens who are third country (*i.e.* non-EU) nationals must be given any necessary visa free of charge (and speedily) if they wish to live with their partner in another Member State. Member States cannot seek additional documentation, lay down extra conditions (such as the requirement to learn a language) nor frustrate the intention to give partners and family members easy access.

The directive also addressed the question of EU citizens who commit a crime whilst living in another Member State. The Treaty of Rome had referred to limitations on freedom of movement because of public health, public policy and public security. The directive sets out a narrow interpretation of Member States' rights under the Treaty to take action, such as expulsion, against convicted criminals. It particularly prohibits the use of rules that apply to a particular class of persons – such as those convicted of a specified offence or to a type of sentence.

In other words, a Member State cannot simply expel all convicted armed robbers on their release from prison who are citizens of another EU Member State just because they are convicted armed robbers; it will need to decide each case separately having drawn up a risk assessment. A prisoner who was in custody for their first offence, conducts themselves well in prison and has a job to go to when released would not be liable to be deported because they would not constitute a “present threat” under the directive. The rules tighten further when a person has been resident for more than five years, with a Member State unable to expel someone except on what the guidance calls “serious grounds of public policy or public security” and after 10 years residence, only on “imperative grounds of public security”. Periods in prison do not, however, have to count towards the period of residence.

Assessment & Conclusions

Freedom of movement is a fundamental principle of the EU and one widely seen to be of great value to its citizens. Eight million EU citizens now reside in another Member State and many more make use of this opportunity for a period in their life, whether to work, study or retire.

The development of low-cost travel alongside the enlargement of the EU has increased the take-up of free movement, perhaps beyond what the founding fathers of the EU envisaged in 1957. Inevitably this has brought with it some problems. The Lisbon Treaty used different language from the Treaty of Rome in respect of free movement, saying in Article 2 (2) that the Union should 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.

That change of language is a recognition of the more complicated situation that has developed since the Treaty of Rome was signed and the need for Member States to work together to ensure that abuse of free movement is kept to a minimum and that it is not exploited by those with criminal intentions. The UK's opt-out from the Schengen agreement on open borders is not affected by this change.

June 2010



Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

The group provides high-quality, fact based briefing materials on EU issues.

 senioreuropeanexperts.org

 info@senioreuropeanexperts.org

 [@SEE_Group](https://twitter.com/SEE_Group)