Finding a solution for touring musicians post Brexit
Briefing by the Incorporated Society of Musicians (Feb 2021)

This briefing was prepared by the Incorporated Society of Musicians (ISM) ahead of an evidence session on Monday 08 February for the following e-petition: Seek Europe-wide Visa-free work permit for Touring professionals and Artists. For more information please contact Liam Budd, Senior External Affairs & Policy Manager at liam.budd@ism.org.

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Summary and key asks

International touring represents an essential part of the music industry, with 44% of musicians earning up to half of their income in the EU before the pandemic. However, as the trade deal does not include provisions for the creative industry, creative workers now face additional costs and bureaucracy, which threatens the viability of working in the EU. A recent survey by the Petitions Committee found that 81% of artists and touring professional were ‘very likely’ or ‘likely to stop touring Europe; and 79% were ‘extremely worried’ or ‘very worried’ for their career.

The Culture Secretary’s recent statement that the “door is still open” for sorting out touring rules with the EU is positive news. We also welcome the government’s commitment to working with the sector to urgently put in place the support and information it needs. But instead of the door being open, now is the time for the UK and EU to come together to fix these problems and ensure that close cultural collaboration can continue after Brexit.

We are therefore calling on the UK Government to:

- Negotiate a bespoke visa waiver agreement with the EU that is separate to the trade deal exempting touring performers, creative teams and crews from needing to obtain a visa for up to 90 days in a 180-day period when seeking paid work.

- Enter bilateral discussions with individual EU Member States that do not currently offer cultural exemptions for work permits, such as Spain, Italy, Belgium and Portugal.

- Publish guidance to help the performing arts sector navigate the different visa and work permit requirements for each EU Member State as a matter of urgency.

- Provide an emergency funding package for the performing arts sector to mitigate against the additional costs and loss of work due to the lack of mobility provisions in the trade deal.

- Explore with the EU cultural exemptions for new Carnets and Cabotage rules
Suggested questions

- The Culture Secretary’s recent statement that the ‘door is still open’ for sorting out touring rules is positive news. However, a recent survey by the Petitions Committee found that 81% of artists and touring professional were ‘very likely’ or ‘likely to stop touring Europe.\textsuperscript{iv} What steps are the government taking to proactively engage with the EU to find a solution for touring arrangements post Brexit?

- The EU-UK Joint Commission will meet this week to discuss problems with application of the Brexit agreement, which presents an opportunity to urgently review touring rules. Please can the Minister provide assurances that this will be on the agenda for discussion?

- Because the UK and the EU failed to reach an agreement, UK Nationals can now be treated as ‘visa nationals’ when entering EU countries for paid work. This means that UK musicians may need to get a visa as well as a work permit depending on the rules of each EU Member State. Will the government return to the negotiation table and secure a bespoke visa waiver agreement with the EU that is separate to the trade deal to exempt touring performers, creative teams and crews from needing to obtain a visa for up to 90 days in a 180-day period when seeking paid work?

- Although a number of EU countries offer exemptions for cultural activities, many do not, making touring costly and planning a logistical nightmare. It also makes performing at short notice in some countries virtually impossible. Will the Government enter bilateral discussions with individual EU Member States that do not currently offer cultural exemptions for work permits, such as Spain, Italy, Belgium and Portugal?

- In addition to tackling the serious issue of visas and work permits, will the government provide funding for the performing arts sector to mitigate against the added costs and loss of work due to the current lack of mobility provisions in the Brexit deal?

- There is still uncertainty around the movement of goods, and whether some musicians will need to purchase an expensive customs document (called an ‘ATA Carnet’) when transporting portable and non-portable instruments and equipment between GB and NI, and UK to EU. Please can the government provide clarity on these rules urgently so that professional bodies, such as Incorporated Society of Musicians, can provide clear advise for their members?

Background

Research and evidence

Creative industries are hugely successful, contributing more than £111bn to the UK economy in 2018 and growing more than five times faster than the national economy.\textsuperscript{v} The sector employs over three million people and generates significant value across supply chains.\textsuperscript{vi}

Music is key component of our fantastic creative industries, contributing £5.8 billion to the UK economy annually.\textsuperscript{vii} Music also plays a vital role in the UK’s soft power and is currently ranked second in the Portland Soft Power 30 Index.\textsuperscript{viii} The UK boasts an impressive music scene that affords us a prominent cultural platform on the world stage.

Europe is one of the most important marketplaces for touring and other professional work. Working in the EU/EEA – whether that involves performing, recording, teaching, collaborating or other activities – is an essential part of the profession’s ability to earn. There is not enough work available in the UK for musicians to sustain their livelihoods so they must travel abroad.
Research by the ISM found that:

- 44% of respondents earn up to half of their earnings in the EU/EEA (54% in 2016)
- 43% travelled to the EU more than five times a year (39% in 2018)
- 32% spend more than 30 days in the EU for work (41% in 2018)

However, our research also revealed a gradual decline in cultural exchange since the EU referendum. Over half the music workforce identified Brexit as having a negative impact on their professional work – a year-on-year increase since 2016. There is now a trend with EU promoters and venues no longer engaging UK passport holders in Europe because it is too uncertain.

**What was discussed during the Brexit negotiations?**

**A. The UK offer**

We welcome the government’s efforts during the negotiations to reach an ambitious agreement with the EU on temporary entry and stay (Mode IV) to facilitate frictionless travel between the UK and the EU for short-term creative work. Specifically, the UK proposed treating musicians and other artists as ‘short-term business visitors’ under a section of the agreement dealing with trade in services. According to the Government, “this would have delivered an outcome closer to the UK’s approach to incoming musicians, artists and entertainers”.

Whilst this was a laudable ambition, unfortunately this was potentially not a suitable mechanism for enabling touring and was rejected by the EU. This could be explained by the following reasons:

1. There is no precedent in any other Free Trade Agreement for a Mode IV agreement to facilitate touring and other creative work. This includes the Canada-European Union Comprehensive Economic and Trade Agreement (Annex 10-D), which was the desired model for the UK Government.
2. The EU’s standard definition of ‘short-term business visitors’ explicitly excludes any situation in which the visitor is selling services to the general public during their visit and receiving payment from people in the country they are visiting. To change this could have led to other countries, which have existing trade deals with the EU such as Canada or Japan, seeking changes to their trade agreements with the EU.
3. Annex 4 (Contractual Service Supplies and Independent Professionals) of the Brexit deal does not remove the need for visas/work permits. It merely offers a guarantee that if the requirements are met and paperwork is filled out correctly, the individual would not be refused entry for no reason.

**B. The EU offer**

During the negotiations the EU proposed a “visa waiver agreement”. According to the EU and leading QC George Peretz, this would have exempted UK musicians from needing to obtain a visa for up to 90 days in a 180-day period when entering a Member State to do paid work. This was outlined in the EU’ draft legal text last March.

The EU’s standard visa waiver agreements (see appendix) include a definition of ‘paid activity’ which would not cover “artists performing an activity on an ad-hoc basis”. We have been advised that this is interpreted to include musicians travelling for specific performances (as opposed to a musician taking up a long-term contract for example with an orchestra). The legal text of any visa waiver agreement can be also extended to other professionals (such as technical or support staff) based on what is negotiated.
Analysis of the EU’s legislation database shows that these agreements are common practice between the EU and third countries – including Colombia\textsuperscript{xvi}, UAE\textsuperscript{xvii}, Tonga\textsuperscript{xviii}, St Lucia\textsuperscript{xix}. A significant number of these agreements were signed in 2013.

The EU claims that their offer was more generous than the UK and would have made life much easier for musicians. Whilst this would have been beneficial for the music sector, this would not have delivered frictionless work travel for musicians. This is because a visa waiver agreement would not cover work permits as EU Member States retain sovereign power over these rules.

In contrast, Ministers have argued that the EU’s offer was incompatible with the Government’s manifesto commitment to take back control of our borders. While we understand this concern, it is our understanding that a visa waiver agreement would not lead to this. Instead it would benefit only those professions listed in the legal text, such as artists, sportspeople and journalists.

**What does the Brexit deal mean for musicians?**

**Short-term work:** Currently, all UK nationals holding a valid passport (with at least six months’ validity) can travel for up to 90 days in a 180-day period in the Schengen area under the existing visa-waiver regime. However, this does not cover those entering for paid work, which is crucial for gigging musicians.

As there are no provisions in the Trade and Cooperation Agreement accounting for the creative industry, UK musicians seeking to work in the EU need to comply with the immigration rules of each EU member state. Each Member State can now choose to treat UK citizens as ‘visa nationals’ when entering that country for paid work and require both a visa and a work permit.\textsuperscript{xxi}

Whilst some EU countries offer an exemption for up to 90 days, many EU member states require short-term work permits.\textsuperscript{xxi} In the absence of government guidance, navigating the rules for multi-country tours has now become incredibly complex, and adding costs that will cut into the financial viability of the tour. With applications taking up to three months, this patchwork of different entry requirements makes touring at short notice in some countries virtually impossible.

**Customs:** An ATA (Admission Temporaire/Temporary Admission) Carnet is likely to be useful when travelling with musical instruments and equipment between the UK and the EU. A Carnet is an international customs document that covers goods that are exiting and entering again (not for sale). Over 70 countries are in the Carnet scheme, and it’s valid for one year. The cost of a carnets comprises two elements: an issuing fee (currently £360), and a security deposit calculated between 30-40% of the value of the goods/equipment listed. These additional costs bring into question the viability of touring in the EU, particularly for new and emerging artists who are less financially secure.

There is currently much uncertainty as to whether ATA Carnets are required for movement of musical instruments and equipment between GB and NI, and between UK and EU in relation to portable and non-portable instruments and equipment. The music sector recently identified a set of EU and UK regulations that appear to exempt musicians from needing an ATA Carnet if the individual is travelling with an instrument in their hand.\textsuperscript{xxii} However, this would not cover shipping or cargo. For months we have been lobbying the Government for clarity on these rules. In this context, we are currently advising ISM members that a Carnet is the safest option as it will act as a guarantee that your instrument will not be seized.

**Logistics:** Under the new FTA rules, reduced cabotage’s for hauliers over 3.5 tonnes operating in the EU from the UK will now be permitted a maximum of 3 internal movements. This will prove extremely difficult for tour operators hoping to facilitate tours organised from the UK in the EU.
Healthcare: An alternative document to the EHIC will be decided upon 'in due course', making healthcare for short-term stays in the EU free in most cases. In the meantime, existing EHICs are valid until the expiry date.

Social security: EU member states will decide whether to opt-in to cross border workers and employers only being liable to pay social security contributions in one state at a time. This will avoid some of the duplication of social security rules and additional costs. HMRC have stated that the full list of countries' positions on this will be available at the end of January, although this has not yet been published. However, we have heard positive reports that every member state in the EU has opted into the scheme.

What are the routes for EU musicians seeking short-term work in the UK?

There are multiple ways EU musicians can seek short term work within the UK as of 1 Jan 2021.

- **Paid Permitted Engagement (PPE) (up to 30 days):** Allows for up to 30 days in total. Travellers arrive at the UK border with necessary documentation (such as a CV, press clippings, letter of engagement from promotor, proof of onward travel and sufficient funds) and state to a border official that they wish to obtain a PPE visa. EU nationals do not need to apply in advance or pay for this. The ISM has campaigned for the Permitted Paid Engagement route to be extended from 30 days to 90 days to allow for longer tours and opera seasons, and to allow for multiple entries to the UK. xxiv

- **Creative and Sporting Visa Concession (T5)** (up to 6 months): Allows up to three months to carry out specific engagements (with fewer than 14 days between engagements). As with the PPE, travellers arrive at the UK border with necessary documentation (such as a CV, press clippings, letter of engagement from promotor, proof of onward travel, accommodation, and sufficient funds for stay) and state to a border official that they wish to obtain a Tier 5 Concession visa. The employer/contractor must also supply you with a Certificate of Sponsorship. EU nationals do not need to apply in advance or pay for this.

- **Standard Visitor - Permit Free Festival (PFF) (up to 6 months):** list is appendix 5 to Appendix V of the Immigration Rules. It has been in place for many years to enable festivals, which form an important part of the UK’s cultural life, to continue to showcase international artists, entertainers and musicians. Exceptionally, these visiting performers (who can come to the UK for up to six months) may be paid for their participation in festivals on the PFF list. An applicant can arrive as a Standard Visitor to work at a Permit Free Festival and receive payment for their work.

Appendix

Standard EU visa waiver agreements

**JOINT DECLARATION ON THE INTERPRETATION OF THE CATEGORY OF PERSONS TRAVELLING FOR THE PURPOSE OF CARRYING OUT A PAID ACTIVITY AS PROVIDED FOR IN ARTICLE 3(2) OF THIS AGREEMENT**

Desiring to ensure a common interpretation, the Contracting Parties agree that, for the purposes of this Agreement, the category of persons carrying out a paid activity covers persons entering for the purpose of carrying out a gainful occupation or remunerated activity in the territory of the other Contracting Party as an employee or as a service provider.

This category should not cover:
- businesspersons, i.e. persons travelling for the purpose of business deliberations (without being employed in the country of the other Contracting Party),
The Incorporated Society of Musicians (ISM) is the UK’s professional body for musicians and a nationally recognised subject association for music. Since 1882, we have been dedicated to promoting the importance of music and protecting the rights of those working in the music profession. We support almost 11,000 members across the UK and Ireland with our unrivalled legal advice and representation, comprehensive insurance and specialist services. Our members come from all areas of the music profession and from a wide variety of genres and backgrounds.

• sportspersons or artists performing an activity on an ad-hoc basis
• journalists sent by the media of their country of residence, and
• intra-corporate trainees.

The implementation of this Declaration shall be monitored by the Joint Committee within its responsibility under Article 6 of this Agreement, which may propose modifications when, on the basis of the experiences of the Contracting Parties, it considers it necessary. xxvi

About the ISM

1 34% earn between 1-25% of their income in the EU, 10% earn between 26-50% of their income in the EU, 6% earn between 51-75% of their income in the EU, 5% earn between 76-100% of their income in the EU


2 https://committees.parliament.uk/writtenevidence/22289/default/

3 https://hansard.parliament.uk/commons/2021-01-19/debates/FBDSBA3A-AC00-4DCA-8168-7D0EBC5FF927/UKMusiciansEuVivaArrangements

4 https://committees.parliament.uk/writtenevidence/22289/default/


7 https://questions.statement.parliament.uk/written-questions/detail/2021-01-19/H12311

8 https://www.gov.uk/advice/uk-work-permit-requirements-for-musicians


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