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

This briefing was prepared by the Incorporated Society of Musicians (ISM), the UK’s oldest professional representative body for musicians. For more information please contact Liam Budd, Senior External Affairs & Policy Manager at liam.budd@ism.org.

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Suggested questions

- What steps are the government taking to proactively engage with the EU to find a solution for touring arrangements post Brexit?

- Will the government explore the option of a new bilateral agreement with the EU that is separate to the trade deal to exempt touring performers, creative teams and crews from visa and work permit requirements?

- Will the government provide funding for the performing arts sector to mitigate against the additional costs and loss of work due to the current lack of mobility provisions in the Brexit deal?

- When will the government publish guidance for the performing arts sector to navigate the different requirements for visas and short-stay work permits of each country in the EU/EEA area?

Summary

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.\(^1\) However, as the EU-UK Trade and Cooperation Agreement does not include provisions for the creative industry, musicians face additional costs and bureaucracy, which threatens the viability of working in the EU.

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.\(^2\) Whilst this was a laudable ambition, unfortunately this was not a suitable mechanism for enable touring. The EU’s standard definition of ‘short-term business visitors’ explicitly excludes the selling of services and receiving of payment. Gigging musicians are doing precisely that when they work, which may explain why this proposal was rejected.

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We now have clarity that there was an EU counter proposal for a 90 day visa waiver agreement, which was rejected by the UK Government. These agreements are common practice between the EU and many third party countries. According to George Peretz QC, this would have set out a baseline position where EU and UK citizens working in specific sectors such as music could undertake paid work without needing a visa. Whilst this would have been beneficial for the music sector, we have recently learnt that this would not have covered short-stay work permits as EU Member States retain sovereign power over these rules.

Because the UK and EU could not reach an agreement, each Member State can now choose to treat UK citizens as ‘visa nationals’ when entering that country for paid work. We now know that this means that UK musicians seeking to work in the EU will need to get a visa as well as a work permit, depending on the rules in each Member State (see background for more information). This situation is therefore worse than we previously thought.

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. Going forward, we desperately need the Government deliver on its commitment to frictionless work travel. How that can be achieved, we do not know. But instead of the door being open, we urge the Government to proactively engage with the EU to find a solution to protect our industry, which supports so many individual livelihoods but also promotes the UK’s soft power.

Background

What was discussed during the Brexit negotiations?

A. The UK offer

During the negotiations, the UK Government pursued an “ambitious agreement” with the EU on temporary entry and stay (known as Mode 4) 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 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" which 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.  

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”. 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). We have been advised that 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, UAE, Tonga, St Lucia. 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. Although the latter may be true, it is our understanding that 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.

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13 [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22015A0521%2801%29](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22015A0521%2801%29)
14 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29)
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. Whilst some EU countries offer an exemption for up to 90 days, many EU member states require short-term work permits (e.g. Croatia, Greece, Hungary, Lithuania, Malta, Portugal, Romania, Spain, Bulgaria, Denmark, Italy, and Slovenia - see ISM website for overview).

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:** There is currently much uncertainty over how individual EU member states will apply EU customs rules to musicians travelling from the UK into the EU for work purposes with their instruments or equipment. Reports suggest a range of approaches, from relatively light touch to strict application of duties payable and associated paperwork. In these circumstances the ISM is advising musicians to minimise the risks involved, by obtaining an ATA Carnet (2019) from a local chamber of commerce in the UK. Cost starts at approximately £400 plus a security deposit and are calculated based on the value of the goods being transported (between 30% and 40%).

**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.

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

Currently, there are three ways EU musicians can seek short term work within the UK as of 1 Jan 2021.

1. **Paid Permitted Engagement (PPE):** 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. 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.18

2. **Creative and Sporting Visa Concession:** Allows up to three months to carry out specific engagements (with fewer than 14 days between engagements). Travellers arrive at the UK border with necessary documentation and state to a border official that they wish to obtain a Tier 5 Concession visa. The employer/contractor must supply a Certificate of Sponsorship.

3. **Tier 5 Creative and Sporting:** Allows up to 12 months with possibility to renew for additional 12 months. Applications must be made in advance but not more than 3 months before the

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16 https://www.ism.org/advice/eu-work-permit-requirements-for-musicians
intended entry date. The application requires a certificate of sponsorship from employer/contractor. The cost of this visa is £244, plus immigration health surcharge of £624 per year.

Appendix

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),
- 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.19

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