Where is music in the Brexit trade agreement?
Briefing by the Incorporated Society of Musicians (Jan 2021)

This briefing was prepared by the Incorporated Society of Musicians (ISM) for a debate in the House of Lords on 08 January 2021: Trade and Cooperation Agreement reached between the UK and the EU - Lord True. The ISM is the UK’s oldest professional representative body for musicians, set up in 1882 to promote the art of music and to protect the interests of all those working in the music sector. For more information please contact Liam Budd, Senior External Affairs & Policy Manager at liam.budd@ism.org.

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Summary

International touring represents an essential part of many musicians’ livelihoods, with 44% of musicians earning up to half of their income in the EU before the COVID-19 pandemic. However, from 01 January 2021 UK musicians now face a mountain of red tape and extra costs, which threaten the future viability of working in the EU. Not only does this harm the value of the music industry (which generates £5.8bn a year to the UK economy), but also individual livelihoods at a time when large parts of the music workforce have had no source of income since March 2020 due the pandemic.

The music sector feel badly let down by the absence of mobility provisions for musicians in the Brexit trade agreement. This is especially concerning following months of assurances (see Appendix for full details) provided by the Government that they (1) understood the need for frictionless travel between the UK and the EU for short-term creative work and (2) would be negotiating an ambitious agreement on temporary entry and stay (Mode IV) to achieve this objective. At no point was there any indication that this might not be possible until the very last moment on 30 December 2020 when the Government claimed during a debate in Parliament that this was rejected by the EU.

We call on the Government to be fully transparent as to the nature of those negotiations and outline what steps they are taking to protect the UK music sector, making good on the many assurances made just a matter of weeks ago.

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2 https://www.ukmusic.org/research/music-by-numbers-2020/
Suggested questions to government

On 30 December, Lord True stated that the Government ‘pushed for a more ambitious agreement… on the temporary movement of business travellers that would have covered musicians and others’ but these proposals were rejected by the European Union. To support this claim, will the Government provide complete transparency to the negotiation process with a clear timeline of events and explain the EU’s justifications for rejecting this proposal?

The Government’s stated aim was to negotiate a ‘Canada-style’ agreement with the EU seeking reciprocal arrangement on temporary entry and stay (Mode IV) to facilitate touring and other short-term creative work. However, there was no precedent for this in any other Free Trade Agreement making this an unrealistic target. Does the Government agree that it was disingenuous to give assurances to Parliament on a number of occasions that the music sector would be included in negotiations on Mode IV, or in reciprocal arrangements for short-term work, which has led to a serious case of overpromising and underdelivering?

The Government has provided financial support to UK fisheries of £100 million to address the impact of lost quotas having left the EU. The fishing industry contributes £1.4 billion to the UK economy compared to the music industry which is worth £5.8 billion. Will the Government provide similar financial support to mitigate against the loss of work for touring musicians due to the lack of mobility provisions and the additional red tape caused by ATA Carnets and CITES?

Many music businesses and musicians will now find it very difficult to tour in the EU due to a lack of mobility provisions. What steps are the Government taking to ensure that the assurances made to musicians throughout the transition period will be met through further discussion with the EU?

As of 01 January 2020, musicians are required to purchase ATA Carnets which cost in excess of £400 depending on the value of the goods plus a costly security deposit. To help musicians survive post-Brexit, will the Government cover the cost of carnets or seek a cultural exemption for musical instruments, so carnets or customs documentation are not needed?

The Government has stated that they have no immediate plans to change the provisions for short term work in the Brexit deal, which excludes musicians and other creative workers. However, the Government has already provided assurances to other service industries left out from the Brexit deal such as finance, who have been promised a new a regulatory framework in the coming months. What steps are they now going to take to protect the UK music sector, making good on the many assurances made just a matter of weeks ago?

The trade agreement and musicians: key points

Following the publication of the UK/EU trade agreement, the Incorporated Society of Musicians (ISM) is deeply concerned about the absence of provisions for working musicians, as part of the agreements for business visitors and independent professionals in the service industries (Annex SERVIN-4).

- UK musicians will now be considered as ‘third country nationals’, meaning that they will need to comply with the immigration rules of each EU member state when they try and tour. This is contrary to the assurances given to the music sector by the Government and will have huge implications for UK musicians seeking to tour in the EU.

3 https://hansard.parliament.uk/Lords/2020-12-30/debates/1A699CA6-A2A3-43FF-89C2-6D6BAE2EFDB1/EuropeanUnion(FutureRelationship)Bill?highlight=musicians#contribution-C61A35B9-1696-4EA3-B3BD-BD240E1D231C
Other main points in the trade agreement for the music sector include:

- 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.
- Customs: declarations become necessary straight away. For musicians travelling with instruments and/or equipment, this means obtaining ATA Carnets (the cost starts at approximately £400 plus an expensive security deposit) and applying for a Music Instrument Certificate if the instrument requires one (and if so, travelling through certain ports).
- 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. 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.  

The ISM has prepared an overview of the different requirements for short-stay work permits of each country in the EU/EEA area for all those working in the music sector. Where relevant, links are provided to access more information and performer exemptions as well as notification requirements for some states. In addition to the 30 EEA countries (EU27 plus Iceland, Norway, Liechtenstein) and Switzerland, we have included details of some non-Schengen area countries (Bulgaria, Croatia, Cyprus, Ireland, Romania).

**Background**

**A. Mode IV and precedent for touring provisions in free trade agreements**

The Government’s stated aim was to negotiate a ‘Canada-style’ agreement with the EU seeking reciprocal arrangements for temporary entry and stay (Mode IV) to facilitate touring and other short-term creative work ‘based on best precedent’. Whilst this was welcome, **there was no precedent for Mode IV provisions to facilitate touring.** Mode IV is the term used in the World Trade Organization (WTO) to describe international trade in services involving the provider of the services travelling to the location of the consumer. Mode IV agreements typically grant free access to persons travelling ‘for business purposes’, but this does not generally include performing services, including touring. Australia, Canada, the EU, India, Norway and Switzerland have given greater Mode IV market access under their schedules to the General Agreement on Trade in Services (GATS), but only in very restricted areas.  

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https://hansard.parliament.uk/Commons/2020-02-03/debates/2002039000001/GlobalBritain?highlight=canada-style#contribution-AC847EDE-64CA-4CCD-A515-724AA9CF4432

5 Their schedules of commitments can be seen on the WTO website here. It is important to remember that ‘unbound’ does not mean that access to that country’s market is open but rather that the country makes no commitments whatsoever concerning it.
Cruically, Canada also does not provide a best practice model for facilitating musician’s mobility. In the Canada-European Union Comprehensive Economic and Trade Agreement (Annex 10-D), short term business visitors are defined and extends to activities such as contract negotiations, attendance at trade fairs and business meetings. Some contractual service suppliers and independent professionals are permitted to actually perform services, but these are limited to specific sectors listed in the agreement (Annex 10-E). Crucially, music and the performing arts are not listed.

Unlike the Canada-European agreement, a positive list approach was taken for Annex 4 (Contractual Service Supplies and Independent Professionals) of the EU-UK Trade and Cooperation Agreement.⁶ This means that rather than listing reservations, they list the sectors that are liberalised with no commitments being made in relation to any others (see para 5 of Annex SERVIN-4). Music and entertainment are not listed in either para 10 (for CSSs) or 11 (for IPs) so the parties make no commitments whatsoever in relation to musicians.

In any event, even if musicians were added to Annex 4, it does not remove the need to apply for visas and work permits. Instead it means that those documents will not be unreasonably refused. The inclusion of music professionals would offer some assurances for UK musicians travelling to EU countries that require work permits such as Croatia, Greece, Hungary, Lithuania, Malta, Portugal, Romania, Spain, Bulgaria, Denmark, Italy, and Slovenia.

The government has made clear that although there is the possibility to potentially update the list further down the line, they have no immediate plans to do so. As a minimum, the ISM calls on the Government to explore what steps can be taken to add creative workers to the list of independent professionals.

B. Customs checks for musicians

ATA Carnets: transporting musical instruments and equipment

ATA Carnets (international customs documents that cover the temporary movement of goods between countries) will be required for musical instruments and equipment. Official guidance states that procuring ATA Carnets is optional, but musicians risk their instruments or equipment being seized if they do not have one. ATA Carnets are valid for 12 months and the starting cost is £325.96. In addition, there is a security fee which can cost many hundreds of pounds. Where musician earn on average £20,000 per year, this is prohibitively expensive. New and returning applicants hoping to attain ATA Carnets for instruments experience processual delays, causing travel disturbances. The ISM recommends that the Government negotiates a cultural exemption for the temporary transportation of instruments and equipment, or covers the cost of carnets for musicians.

CITES: musical instruments containing endangered materials

Where an instrument or accessory contains CITES-protected materials (such as ivory, Brazilian rosewood, tortoiseshell), a Musical Instrument Certificate (MIC) is required. The application form for a MIC is the same as for all other CITES-protected specifies (alive or dead), meaning that it can be very confusing to complete (see attached application form). When travelling with a MIC, musicians must travel in and out of CITES-designated ports (a full list of the designated ports and airports can be found at GOV website). This does not currently cover Eurostar (the preferred way to travel to the EU as airlines are notoriously problematic for larger instruments). The ISM recommends that the Government does not introduce a charge for MIC applications in

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2021 and that the MIC application form be streamlined and simplified for musical instruments.

Northern Ireland ports: CITES-Designated ports

From 1 January 2021, CITES permits are required to move goods or specimens between Great Britain and the EU, and GB and Northern Ireland. For the movement of CITES specimens from GB to NI, and NI to GB, CITES import and export checks will all happen in Northern Ireland. This means that those traveling with instruments covered by CITES, they must use one of the CITES-designated points of entry/exit in NI. The ISM is concerned that this will mean musicians travelling between NI and GB with requiring CITES MICs must do so only through limited routes.

Reduced cabotage for UK hauliers operating in the EU

From the 1st Jan 2021, under the new FTA rules, reduced cabotage for hauliers operating within the EU will be permitted a maximum of 3 internal movements before needing to return to the UK. The same rules will apply for EU hauliers working within the UK. This will prove extremely difficult for tour operators hoping to facilitate tours organised from the UK in the EU. Industry stakeholders have criticised this rule, suggesting it will be detrimental to UK haulier business, which makes up 85% of European concert trucking business. The ISM is calling on Government to amend the new rule for cabotage hauliers and increase the number of movements permitted, and thereby providing touring operators and concert tours the confidence to plan European tours without extra costly logistics provision.

C. Music industry statistics

- The UK music industry contributed £5.8 billion to the UK economy in 2019 - up 11% from £5.2 billion in 2018 (providing more than four times the value to the economy than fishing at £1.4 billion)
- The Creative Industries are worth £111.7 billion
- Employment in the industry hit an all-time high of 197,168 in 2019 - an increase of 3% from 190,935 in 2018.
- The total export revenue of the music industry was £2.9 billion in 2019 - up 9% from £2.7 billion in 2018. (Music by Numbers (UK Music, 2020))
- In addition to the industry’s direct economic contribution, music tourism alone contributed £4.7 billion in terms of spending to the UK economy in 2019 - up 6% from £4.5 billion in 2018.

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7 https://www.iq-mag.net/2020/12/the-brexit-deal-what-we-know-so-far/#_X bq-9j7TU
8 https://www.ukmusic.org/research/music-by-numbers-2020/
10 https://www.ukmusic.org/research/music-by-numbers-2020/
11 https://www.ukmusic.org/research/music-by-numbers-2020/
Appendix: Timeline of government assurances around frictionless movement for musicians

On 3 June the government stated during a debate about British musicians that they were working towards a reciprocal arrangement for a touring visa based on best precedent.

The Earl of Clancarty
To ask Her Majesty’s Government what progress they have made on reaching a reciprocal agreement with the European Union to enable British musicians to tour and play in Europe following the end of the transition period.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con)
The Government recognise the importance to musicians of the continued ability to tour, for both artistic and economic reasons. We are open to negotiating reciprocal arrangements to facilitate this. A reciprocal arrangement based on best precedent will mean that UK citizens will be able to undertake some business activities in the EU without a work permit on a short-term basis. The details, including the range of activities, the documentation needed and the time limit, will be negotiated.

The Earl of Clancarty
Touring and playing in Europe are essential aspects of the livelihoods of UK musicians, as well as being vital culturally. A hard Brexit would be devastating for an industry worth £5.2 billion, without even taking into account the destructive effect that Covid is already having on musicians’ incomes. Do the Government recognise that it is therefore crucial that they negotiate a mobility framework advantageous to British musicians, including an EU-wide multi-entry touring visa valid for two years, and that this framework needs to be in place before the end of the transition period?

Baroness Barran
We absolutely recognise that musicians, and the performing arts more broadly, are a crucial part of our culture and our economy. We are working towards a reciprocal arrangement for a touring visa based on best precedent, so that UK musicians could work short term within the EU. However, we do not currently believe that a touring visa, such as the noble Earl suggests, is legally possible.

In a written PQ following the debate the Government then stated that it was negotiating reciprocal provisions for the music industry based on best precedent.

Question by Earl of Clancarty:
To ask Her Majesty's Government, further to the answer by Baroness Barran on 3 June (HL Deb, col 1360), on what basis they consider that a touring visa is not "legally possible".

Answered by Baroness Barran
In my response to The Earl of Clancarty in Parliament on 3 June, I said that a touring visa as he proposed was not “legally possible”.

I am afraid that this could have been phrased more accurately. While a visa of the kind he proposed is not legally impossible, the legal arrangements of the EU make it less negotiable, and each individual EU member state retains the right to caveat the third-party mobility arrangements negotiated at an EU-wide level. We are not asking for a special, bespoke, or unique deal. We are looking for a deal like the free trade agreements the EU has previously struck with other friendly countries such as Canada.
We recognise that music and the performing arts are culturally and economically crucial industries. Through negotiations with the EU on Mobility and Mode IV we are exploring how we can provide greater certainty to these industries in the future through reciprocal provisions based on best precedent.

In a response to Lord Whitty’s question in a debate on the music industry (10 September) about what negotiations were taking place to ensure free movement of musicians, their equipment and support teams could continue, Baroness Barran stated:

‘... we aim to negotiate reciprocal arrangements which will facilitate businesses, including musicians and groups of musicians, to deliver their services within the EU.’

This was later reemphasised by Baroness Barran in a written answer to a tabled question on 22 September:

**Question by Earl of Clancarty:**
To ask Her Majesty's Government, further to the remarks by Baroness Barran on 10 September (HL Deb, col 911), what plans they have to seek a Mode IV agreement with the EU to cover musicians and music professionals; and whether any such agreement would enable musicians to travel between the UK and the EU for performing, recording, teaching, or collaborating at short notice and for short periods of time. (HL8110)
Tabled on: 15 September 2020

**Answer by Baroness Barran:**
Our cultural and creative sectors are one of the UK’s greatest success stories and the music industry is a major contributor to this. The Government recognises the importance of the continued mobility of musicians and music professionals.

As set out in Our approach to the Future Relationship with the EU, the Government is seeking reciprocal mobility arrangements with the EU in a defined number of areas. For example, to allow business professionals to provide certain services, visa-free. This is in line with the arrangements that the UK might want to offer other close trading partners in future, where they support new and deep trade deals.

Although we cannot preempt the outcome of ongoing negotiations, we will continue our close dialogue with the sector to ensure that the Government is kept well informed of the needs of the music sector.

In addition to this, Lord True confirmed the government's recognition of the importance of touring to the music profession on 21 October in a debate on EU: Visa-free Short-term Travel Mobility:

"...the Government certainly recognise the importance of tourism and travel for the creative industries. We set out our position on Mode IV in the approach publication at the start of negotiations and we are committed to seeking protection for exactly the kind of persons the noble Earl refers to."

This was followed up in a written answer by Lord True on 2 November 2020:

**Question by Earl of Clancarty:**
To ask Her Majesty's Government, further to the answer by Lord True on 21 October (HL Deb, col 1538), whether their offer on mode 4 includes expanding the list of permitted activities to enable musicians' performing and touring activities.
**Answer by Lord True:**
The Government is currently negotiating commitments with EU member states on ‘Mode 4’. A reciprocal agreement based on best precedence would mean that UK citizens will be able to undertake some business activities in EU member states without a work permit, on a short-term basis. The precise details, including range of activities, documentation needed, and the time limit, are under negotiation. **The Government recognises the importance of touring for UK musicians and appreciates the significant contribution of the UK music industry.**

On 22 December the government stated again via another written PQ that it had proposed to seek to agree reciprocal mobility arrangements for musicians.

**7 December 2020**

**Question by Lord Jones of Cheltenham**
To ask Her Majesty’s Government what plans they have to introduce reciprocal arrangements for musicians from the UK to tour the EU following the end of the transition period for the UK's departure from the EU.

**Answer by Baroness Barran:**
DCMS has engaged extensively with union bodies, companies, orchestras, individual musical practitioners and cultural organisations. We understand the importance of being able to tour. We recognise that this depends on musicians and crew being able to move quickly and easily between countries, taking necessary equipment with them.

Recognising the depth of the UK-EU relationship, the Government has proposed that we seek to agree reciprocal mobility arrangements with the EU. These will support businesses to provide services and to move their talented people. On temporary entry for business purposes (Mode IV), a reciprocal agreement based on best precedent will mean that UK citizens will be able to undertake some business activities in the EU without a work permit, on a short-term basis. The same would apply for EU citizens making business visits to the UK. The precise details, including range of activities, documentation needed, and the time limit, will be negotiated.

On 30 December the government stated that these proposals were rejected by the EU when debating the European Union (Future Relationship) Bill.

**Lord True, Minister of State at the Cabinet Office**
The UK pushed for a more ambitious agreement with the European Union on the temporary movement of business travellers that would have covered musicians and others, but our proposals were rejected by the European Union.

On 04 December civil servants working on trade and investment negotiations wrote the following....

The Government is acutely aware of the importance of short-term business visits, including for our cultural sector. This is why we have been pushing for an ambitious agreement on temporary entry and stay in our negotiations with the EU. The EU’s free trade agreements (FTAs) with Canada and Japan currently cover a limited range of business travel activities, such as attending meetings and events. Although the UK has sought to explore building on this precedent, where it is mutually beneficial to do so, the EU does not traditionally include musicians and touring activities as part of these activities. Should an agreement with the EU not cover these activities, then the rules will vary depending on the Member State you are travelling to.