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9 June 2021

Dear Charles and Bill,

UK PROPOSALS ON TOURING PERFORMERS DURING NEGOTIATIONS ON THE TRADE AND COOPERATION AGREEMENT

1. Thank you for inviting me to appear before your committees last month. During these sessions, Members raised questions about the Government's approach to touring performers during negotiations on the UK-EU Trade and Cooperation Agreement. The Government has already set out our approach in general terms, but I thought it would be useful to provide a more detailed account in writing. Given the wider interest in these issues, I am copying this letter to the Chair of the Digital, Culture, Media and Sport Select Committee Julian Knight MP, and Lord Strasburger.

Context

2. It is important to understand first of all that the negotiation dealt with two main types of mobility restriction relevant to touring performers: (i) visas, which regulate the ability of nationals from one party to enter the territory of another party and (ii) so-called market access issues, such as work permits and economic needs tests, that place restrictions on what nationals from one party can do once they are present in the territory of the other party. Work permits and economic needs tests do not widely feature in the UK's immigration regime; our visa and visitor arrangements set out the permitted activities and what work, if any, can be done by individuals coming to the UK by the various entry routes. In many Member States, however, these issues are treated separately (i.e. work permits can be imposed independently of visa requirements).
3. In leaving the EU and ending free movement, we moved from a situation in which the right to move and work within the EU was dealt with, and guaranteed, under the EU Treaties, to one in

which the ability of a UK national to work in the EU became primarily the responsibility of each Member State individually. Whilst the EU can agree treaties that impose legally binding commitments on Member States including in respect of trade-related issues like work permit regimes (due to the Common Commercial Policy), it does not have competence for the determination of volumes of admission of third country nationals seeking to enter Member States to work, whether employed or self-employed (e.g. visas for work purposes). Consequently, in the wake of the UK's decision to end freedom of movement, Member States are now principally responsible for deciding the rules governing what work UK visitors can undertake in the EU.

Visa-free travel

4. The EU's draft text for the Trade and Cooperation Agreement included a visa waiver agreement, which would have prohibited the parties from introducing visas on visitors from the other party unless those visitors were carrying out a paid activity during their short-stay visit. Accompanying this proposal was a Joint Declaration which would have set out a common interpretation of "persons carrying out a paid activity". Under this Declaration, "sportspersons or artists performing an activity on an ad hoc basis" would have been excepted from the requirement to have a visa when being paid to perform whilst undertaking a short-stay visit.
5. From our perspective the difficulty with the Joint Declaration was twofold.
 - (i) First, the Joint Declaration was dependent on the UK accepting the EU's proposal on a permanent visa waiver. We could not agree to a permanent, legally binding commitment not to impose visit visas (including for paid engagements) because this would have been inconsistent with the Government's manifesto commitment to take back control of our borders. Moreover, the EU's proposal would have prevented the UK from introducing visit visas on any future EU Member State, not just on existing ones.
 - (ii) Even if it had not been tied to the EU's broader proposal on a visa waiver, there were still substantive problems with the Joint Declaration. The Joint Declaration would only have excepted "artists performing on an ad hoc basis" from the requirement to have a visa when being paid to perform. It would not have covered touring activity, support staff or work permits. In addition, these commitments on paid activity were declaratory - they were not legally binding on Member States. Indeed, according to the Commission's own materials, a number of Member States require visit visas for, to take one example, Canadian nationals undertaking paid activity in the EU, despite the EU-Canada visa waiver agreement.
6. Recognising the potential difficulties likely to be created by this situation, towards the end of the negotiations we proposed a time-limited agreement on mobility. This would have involved a temporary visa waiver agreement on both sides and temporary facilitations at the border for UK and EU nationals entering each others' territories (e.g. use of e-gates). In the EU's case this would have involved derogations from the Schengen Borders code. The expectation was that these temporary arrangements would expire once the EU's new border technology came online. We believe that this would have been a useful means of avoiding practical problems as travel resumed after the pandemic, without requiring us to accept a permanent commitment not to require visas. The Commission did not accept this package.
7. Accordingly there are no provisions in this area in the Trade and Cooperation Agreement, and

Member States are entitled to require visas from service providers in this or any other area.

Work permits

8. Recognising this problem with visas, we nevertheless hoped to secure legally binding commitments from Member States on work permits and other market access issues relevant to touring.
9. The EU's Free Trade Agreements normally include a standard list of activities which short-term business visitors are permitted to engage in without facing work permit requirements or other market access restrictions (this falls under the so-called "Mode 4" provisions). During the negotiations, we proposed that the EU expand this list to cover a wider range of activities to reflect the importance of the creative sector to UK-EU cultural cooperation. We specifically proposed that, for artists, entertainers and musicians and their support staff, permitted activities should include: (a) giving performances or attending rehearsals as an individual or as part of a group; (b) taking part in competitions or auditions; (c) making personal appearances; and (d) taking part in promotional activities.
10. We also proposed that some short-term business visitors could be paid 'in country' (i.e. the country in which they deliver their service) in a limited number of scenarios. These activities would represent one-off, occasional engagements (e.g. performing at a concert) in a limited number of sectors, including creative and cultural industries. We recognised this would need to be for a time-limited period to prevent distorting the local labour market. We therefore proposed 30 days – whereas all other short-term business visitor activities would be allowed for 90 days – as was consistent with the UK's existing immigration rules for incoming visitors.
11. The Commission argued that Member States had no interest in going beyond precedent on short-term business visitor activities, and that the UK's proposals on paid engagements were equivalent to replicating the free movement of service suppliers - which was a red line for the EU. Due to the strength of the EU's concerns, it became clear that we would not be able to progress with these proposals. Accordingly, the final list of permitted activities that can be carried out by short-term business visitors mirrors those agreed in the EU's most recent FTAs.

Cabotage

12. The creative industries also face a set of challenges regarding the market access granted to UK hauliers who support the touring sector. The EU's initial offer on road haulage was to allow only bilateral journeys (i.e. movements between the UK and the EU). The Commission argued that cabotage (i.e. movements by UK hauliers within a Member State) and cross-trade (i.e. movements by UK hauliers between Member States) rights should be restricted to operators established in the EU Single Market. We nevertheless were able to negotiate a set of additional rights for UK operators to enable them to both transit through the EU to a third country, and to undertake up to two additional movements within the EU (with a maximum of one cabotage movement outside Ireland).
13. While the Trade and Cooperation Agreement will ensure that the vast majority of haulage journeys are able to continue as they did before the end of the transition period, the touring sector will need to adapt to this new environment. During the negotiations the UK pressed for a special derogation from the restrictions on hauliers carrying equipment within the EU for the purpose of concert tours and similar activities, but the EU rejected this proposal. We are now engaging with the creative and haulage industries to further consider the options at our disposal.

14. I am aware of calls from the industry for a unilateral easement of cabotage rules for UK hauliers who are established in the EU. The Department for Transport is working closely with the industry alongside other government departments to examine the feasibility of introducing such measures.

Conclusion and next steps

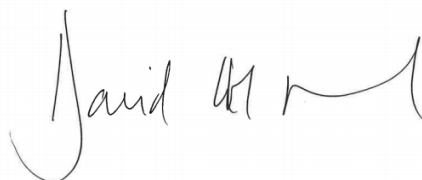
15. Ending freedom of movement was an important commitment in the Government's 2019 General Election manifesto, and accordingly this ended with the conclusion of the Transition Period. Hence, while the negotiations could never have replicated in full the mobility arrangements that existed during our membership of the EU, the proposals we tabled would have addressed many of the challenges that performers and artists currently face, and we are disappointed that the EU did not agree to them, despite the mutual benefits to the creative industries on both sides.

16. Now that the negotiations have concluded and the Trade and Cooperation Agreement has been ratified, our focus is on helping the creative industries adjust to our new relationship with the EU. Following our engagement with European capitals, we have established that some touring activities are possible in at least 17 Member States without needing visas or work permits. We will continue to engage with Member States bilaterally on the clarity of their visa and work permit requirements and Oliver Dowden and DCMS are doing everything they can to support our great creative industries.

17. We will also continue to address market access issues for the creative industries through future FTA negotiations. The agreement we have now reached with Norway, Iceland and Liechtenstein includes the permitted activities for artists, entertainers and musicians and their support staff that we tabled with the EU. To increase transparency, the agreement with Norway, Iceland and Liechtenstein will also outline the existing immigration routes, requirements, and relevant benefits for touring artists, performers and entertainers.

18. I am grateful for the contribution you have made to these discussions to date and would welcome your support in convincing EU Member States to match the generous arrangements we provide for incoming creative professionals ourselves.

With best wishes,

A handwritten signature in black ink, appearing to read 'David Frost', with a stylized flourish at the end.

Rt Hon Lord Frost CMG