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Minister of State
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19 October 2021

Dear David

UK proposals on touring performers during negotiations on the Trade and Cooperation Agreement

Thank you for your letter of 9 June 2021, in which you set out the Government's approach to the issue of touring performers during the negotiations on the Trade and Cooperation Agreement. At its meeting on 14 September 2021, the European Affairs Committee took evidence on this matter from:

- Noel McClean, National Secretary of the Arts and entertainment, BBC and Independent Broadcasting Divisions at the Broadcasting, Entertainment, Communications and Theatre Union;
- Craig Stanley, Chair of LIVE Touring Group and promoted at Marshall Arts Ltd; and
- Deborah Annetts, Chief Executive of the Incorporated Society of Musicians (ISM).

Their evidence is summarised in the Annex attached to this letter.

Context

The creative industries comprise one of the UK's most important export industries. The sector is of comparable size to the UK's construction industry, with the music industry alone valued at £5.8 bn per annum and employing in excess of 100,000 people. It is a sector in which the UK excels, both in terms of our performers and musicians, and in terms of the technical and logistical support for performances. Indeed, prior to Brexit, the UK enjoyed an 80% market share of the European contemporary music haulage industry. Collectively, the UK's creative industries not only punch well above their weight in terms of their economic power, but they also form an integral part of Europe's common cultural heritage, which is entirely distinct from our membership of the European Union.

The sector has been particularly badly affected by the COVID-19 pandemic and is now in the first stages of its recovery. It was clear from the evidence provided to the Committee that this recovery is critically threatened by the restrictions on touring and performing in Europe resulting from the UK's departure from the EU and the regime introduced by the Trade and Cooperation Agreement (TCA), the impact of which has hitherto been delayed by COVID-19 restrictions.

In your letter of 9 June, you state that, following the signing of the TCA, “[the Government’s] focus is on helping the creative industries adjust to our new relationship with the EU”. All three witnesses agreed that adjustment is far from simple: there is insufficient work within the UK to sustain performers’ careers, and there is no capacity within the EU to pick up the specialist haulage work that can no longer be provided by UK hauliers. All three witnesses were clear that these restrictions posed an existential threat to the entire industry and that, for legal or viability reasons, much of the sector could no longer adhere to its pre-Brexit business models.

The Committee found the witnesses compelling and persuasive and were deeply concerned by the evidence presented. It is clear that the impact of the lack of provisions in the TCA on creative professionals is so severe as to force many performers out of the sector and to pose a serious threat to sections of the industry. We fear that this not only risks substantial damage to an important sector of the UK economy, but may also undermine the Government’s vision of a global Britain using its soft power to advance its interests internationally in the post-Brexit era. In the words of Craig Stanley, “the UK’s premier position as the exporter of great music and technical expertise is seriously at risk”.

In the view of the Committee and of the witnesses, it is important to recognise that this is a complex issue, with multiple actors. There are three main strands to the engagement work required for the Government to support the industry’s adjustment to the post-Brexit world. First, there is the work that can only be undertaken at the EU level. These are primarily issues of cabotage and cross-trade affecting the haulage industry but may also include certain visa waiver arrangements. Second, there the issues of visas and work permits, which can be resolved bilaterally with each Member State. Finally, there is work that falls entirely to the Government. This mainly concerns arrangements for creative professionals, support staff and hauliers coming to the UK to perform and tour. A lasting solution to the challenges facing the industry can only come if all three strands are given due attention.

We therefore urge the Government to use its best endeavours to work with the EU and the Member States, and on its own initiative, to find mutually beneficial solutions to the problems identified, to step up coordination across the many Government departments and agencies involved, to implement a coherent and unified approach, and to resist the temptation to overstate progress made in any discussions and negotiations with EU Member States and the members of the European Economic Area. The Committee hopes that, by doing so, the Government can rebuild trust with the creative industries and provide the support they need to adjust to the post-Brexit era.

Questions

HM Government engagement and co-ordination

On the basis of the evidence we received, the Committee is concerned that the Government is failing to engage with the industry in a constructive way, continuing to pursue headlines rather than deal with the very serious issues accurately and substantively, that it is putting performers at risk by providing inaccurate guidance, and that it is failing to take the decisions and steps necessary to support the creative industries. There is the appearance of a lack of coordination across the multiple departments and agencies involved in supporting and regulating the activities of the creative industries, and of a reluctance to engage with the industry or the government’s

counterparts in the EU to find ways to resolve these problems. These matters affect each of the main strands we refer to above.

1. Will you commit to coordinating Government announcements and guidance on these matters to ensure accuracy and transparency?
2. Will you commit to taking an active role in coordinating policy across all relevant departments to ensure that everything possible is done to take the steps necessary to support our creative industries?
3. What steps will you take to support and promote ministerial engagement with the sector across all relevant Government departments?

Visas and Work Permits

The bureaucratic burden and loss of opportunity under the post-Brexit regime is critical for the future of the industry: music is built on touring, for which the EU is an essential market. Indeed, for some sectors, such as classical musicians, it may be even more important than the domestic market. Without the opportunities provided by easy travel to the EU, and the ability to continue to participate fully in the EU's cultural life, musicians and creative professionals will be forced out of the sector. This will result in significant losses to the UK economy, and to the UK's international standing as a cultural force and the significant soft power that this affords the UK. All three witnesses disagreed strongly with your assertion that agreeing the EU's proposed visa waiver would have, in any way, undermined the UK's ability to take back control of its borders, viewing it very much as an issue of trade, rather than of immigration.

4. How would an EU-wide visa waiver scheme for touring creative professionals undermine the UK's ability to take back control of its borders?
5. What precisely was the Mode 4 proposal the Government envisaged would apply to the movement of creative professionals?
6. What steps is the Government taking to engage in bilateral discussions with the 8 EU Member States identified by DCMS as not permitting visa-free touring, in particular with Spain? What are the timelines for these discussions, and will the Government share these timelines with industry stakeholders?

Transport

All three witnesses stressed that the industry faced challenges not only from the restrictions on the movement of people, but also from the restrictions on the movement of goods, such as the requirement for carnets and cabotage rules. This is principally an EU competence so is largely an EU strand matter. The Committee urges the Government to work with the EU and Member States to find solutions to these significant problems. It is difficult to countenance a regime that not only poses potentially existential challenges to a successful UK industry, but also ensures that no alternative industry is functionally able to take its place. It is similarly unconscionable to force the UK's brightest young artists to abandon their careers because of such restrictions.

7. What steps is the Government taking to clarify whether a carnet is required to take musical instruments into the EU?
8. In your letter of 9 June 2021, you stated that the Department of Transport was "examining the feasibility" of mitigation measures such as a unilateral easement of cabotage rules. Could you provide an update on this process?

9. What progress has the Government made in putting in place arrangements to allow the dual registration of lorries in the UK and the EU?
10. What, if any, engagements have you had with the European Commission's Directorate-General for Mobility and Transport in connection with these matters?
11. Will the Government commit to assessing the feasibility of granting CITES designation to Eurostar to assist the movement of musicians' instruments?

Inbound EU Artists

The Committee found that, while the regime for creative professionals entering the UK to perform was, overall, more generous than those for UK performers heading to EU Member States, there continues to be a marked lack of clarity in the information available for such performers. In addition, the Committee heard of inconsistencies and troubling discrepancies in the approach of Border Force Officials, which exposed both EU performers and their UK sponsors to legal risk. Dealing with this area is principally part of the unilateral and/or bilateral strands we refer to above.

12. What steps is the Government taking to clarify the visa regime for incoming performers from the EU?
13. What steps will the Government take to ensure that the Home Office website is navigable for EU nationals applying for a visa to perform in the UK or seeking information to assist them with this?
14. How will the Government ensure that Border Force officials are trained to apply the regime for incoming creative professionals fairly and consistently?

We look forward to considering your response within the usual 10 working-day deadline.

I am copying this letter to Rt Hon Nadine Dorries MP, Secretary of State for Digital, Culture, Media and Sport; Rt Hon Elizabeth Truss MP, Secretary of State for Foreign, Commonwealth and Development Affairs; Rt Hon Grant Shapps MP, Secretary of State for Transport; Rt Hon Priti Patel MP, Secretary of State for the Home Department; Sir William Cash MP and Dr George Wilson, respectively Chair and Clerk of the House of Commons European Scrutiny Committee; and Julian Knight MP and Stephen McGuinness, respectively Chair and Clerk of the House of Commons Digital, Culture, Media and Sport Committee.

Yours sincerely,



Lord Kinnoull
Chair of the European Union Committee

Appendix – Summary of the witness evidence

HM Government engagement and co-ordination

1. A common perception among the witnesses was that the Government lacked a sufficient understanding of the issues facing the industry because of Brexit and the implementation of the TCA. Of particular concern was the response and level of engagement from the Department for Digital, Culture, Media and Sport. Witnesses highlighted particular concerns regarding the accuracy of the DCMS announcement on 4 August 2021 that 19 EU states had confirmed that visas and work-permits would not be required for UK performers undertaking short tours in their countries. Deborah Annetts told us that, “as far as [is the ISM is] aware, there are no new arrangements in place. All the press release did was state, quite erroneously, what DCMS considered the current position was in relation to touring.”
2. In addition to the failure of DCMS to highlight the extent to which many of these arrangements diverged from the EU’s normal practice of allowing 90 days visa-free travel in any 180-day period, a key example of the inaccuracies identified by our witnesses was the failure to distinguish the significant differences in the visa-free regimes in each of the 19 countries identified in the announcement. By way of example, Deborah Annetts explained how in Austria, there is an exemption from the requirement to obtain a work permit if the performer is employed for a single day within an overall production while, in Poland, “it is 30 days in any calendar year, and in Sweden it is 14 days in a 12-month period... Every single state is different, which is why we need to be absolutely precise.” She added that, although DCMS was now referring to the 4 August announcement as misreporting, it remained on the website without any warning, clarification, or correction.
3. Deborah Annetts expressed grave concern at the inaccuracies in the DCMS guidance regarding touring in the EU, highlighting the risk posed to performers in following the Department’s advice. She told the Committee how, in addition to writing to DCMS in detail to explain the inaccuracies and seek corrections, the ISM had felt compelled to prepare its own comprehensive guidance for performers wishing to travel to the EU for work. The Committee was concerned to learn “the findings of [the ISM’s] research do not align with some of the countries on the DCMS list of 19 countries. There are four countries on the DCMS list that we believe do not offer short-term visa and/or work permit exemptions for touring: Czech Republic, Hungary, Latvia and Slovenia.” Following DCMS’ more recent announcement on 12 October 2021, titled ‘Visa-free short-term touring allowed in 20 member states’, Deborah Annetts told us in writing that “The only difference between the two statements is the addition of Romania” and described it as “another misleading press release... despite promises having been made that such announcements would not be made again.”
4. Deborah Annetts also expressed concern at the department’s use of generalist consultants to prepare the relevant guidance, even though this was a highly technical area and there is only a very small number of specialists with the expertise necessary to get the guidance right. Craig Stanley further explained that both he and Deborah Annetts were part of a working group set up by the then Secretary of State for Digital, Culture, Media and Sport, Rt Hon Oliver Dowden MP, and chaired by the then Minister for Digital and Culture, Caroline Dinenage MP. He explained that the Minister had failed to attend recent meetings, leaving this to officials. As a result, “the fact is that [the working group goes] through the same agenda, and every single meeting is Groundhog Day”.
5. Summing up his concerns regarding DCMS’s approach to the problems faced by the industry, Noel McClean told the Committee that the Department seemed to be more concerned about managing

headlines than dealing with the issues facing the livelihoods of those in the industry, which “...just shows the lack of seriousness in tackling the issue.”

6. However, the problems with the Government’s engagement with the creative industries appear to go further than just DCMS. Craig Stanley praised the level of engagement he had received from officials at the Department for Transport since 1 January 2021. However, he bemoaned the lack of engagement at ministerial level and the Secretary of State’s continued delay in making the necessary decisions regarding reverse easement and dual registration of lorries, which would reduce the impact of the cabotage and cross-trade rules on UK specialist hauliers. The Minister’s failure to make these decisions was resulting in the disintegration of the sector, which means, in turn, “no trucks...[and]...no tours.”
7. On a similar note, Deborah Annetts spoke of her engagement with the Department of International Trade, having been appointed to its Trade Advisory Group for the Creative Industries in 2019. She spoke of continued attempts to engage with the issue of mobility and was told “not to worry because everything would be dealt with via Mode 4.” She received independent advice at that stage that Mode 4 (by which route individuals are permitted to enter a country to provide a commercial service for consumption within that country) would not work for the movement of creative professionals and this has been borne out by subsequent events. Despite repeated requests, she has still not been able to see the Government’s original Mode 4 proposal.
8. Deborah Annetts also pointed to an ongoing lack of clarity regarding merchandise and VAT, adding HMRC and HMT to the list of departments failing to provide the necessary level of support and clarity.

Visas and Work Permits

9. All three witnesses disagreed strongly with Lord Frost’s assertion that agreeing the EU’s proposed visa waiver would have undermined the UK’s ability to take back control of its borders. Deborah Annetts and the ISM did “not believe that a visa waiver agreement would undermine any of the Government’s red lines in relation to immigration”. Craig Stanley agreed with this position, adding, “it is a trade issue, not an immigration issue”.
10. This lack of a visa waiver scheme is having a significant impact on creative professionals. The new regime for travelling to the EU for performances poses considerable problems for performers and support staff. Creative professionals are now required to navigate 27 separate visa regimes on a country-by-country basis, with fees to be paid and lengthy documentation procedures for each. The greatest impact is felt by those in the early stages of their careers. Deborah Annetts spoke of the common practice for opera singers early in their careers to gain experience and a reputation through so-called “jump-ins”, where they travel overseas at extremely short notice to fill in for a performer who had been indisposed.
11. We heard that the onerous immigration processes required regularly take longer than 24 hours, making jump-ins logistically impossible, but that even where this is not the case, the cost of obtaining the necessary paperwork invariably means that the singer would make a loss. Without jump-ins and similar practices in other parts of the industry, performers and support professionals are unable either to sustain themselves or to build the reputation necessary for a career. Deborah Annetts also spoke of performers losing the ability to audition in EU countries and of others who had had their employment with EU orchestras terminated due to no longer holding an EU passport.
12. Craig Stanley was concerned not only by the complex situation facing professionals wishing to travel to the 19 countries identified by DCMS as allowing visa-free touring, but also by the fact that no

such arrangements were in place at all with the remaining 8 EU Member States, which include some of the most significant destination countries for touring musical professionals. He singled out Spain as being of particular concern, as it is the largest EU market for DJs. Professionals wishing to travel to Spain for work now face not only an onerous visa application process, but one for which different interpretations of the Spanish regulations are applied by each of the three Spanish Consulates. Mr Stanley was concerned not only by the Government's lack of progress in negotiating visa-free access with Spain (and its apparent refusal even to provide any timeline for those negotiations), but also by its failure to reach agreement with Spain for a standard, streamlined and uniform application process.

13. On the question of finding solutions to these challenges, Deborah Annetts stressed that the issue of visas could "be sorted out only at EU level", via a visa waiver agreement, whereas work permits are a Member State competence and could be dealt with on a bilateral basis.
14. While the witnesses welcomed the signing of the free trade agreement with Norway, Iceland and Liechtenstein, they stressed that it would not make up for the loss of the EU as an accessible market. As Noel McClean put it, the entire population of Liechtenstein would fill only a fraction of a concert stadium: "the scale of impact [of the agreement] is miniscule."

Transport

15. In their evidence to the Committee, all three witnesses stressed that the industry faced challenges not only from the restrictions on the movement of people, but also from the restrictions on the movement of goods. As mentioned, the UK has hitherto enjoyed an 80% share of the European contemporary music haulage market. With the introduction of the cabotage and cross trade restrictions under the TCA, no lorry would be able to transport musicians and their equipment for any tour with more than three stops. Given that most tours last weeks or months, the UK's participation in this lucrative market is rendered practically impossible.
16. The witnesses noted the government's advice for hauliers to establish subsidiaries in the EU to overcome these restrictions. However, this does little to resolve the problem as lorries registered in the EU by any such subsidiary would be caught by similar restrictions in the other direction, placing identical barriers to their operations in the UK.
17. The witnesses further explained that, in addition to the loss of market share for the UK industry, this was not a sector in which the shortfall could be picked up by EU operators. In an industry so heavily dominated by the UK, "[t]here are simply not enough trucks in Europe to pick up the slack". Thus, even if the issues surrounding the restrictions on the movement of performers are resolved or ameliorated, the touring industry still faces the loss of its logistics infrastructure, which imposes significant further barriers to the sector's continued prosperity.
18. In addition, the witnesses pointed to the continued opacity regarding the need for a carnet to take a musical instrument into the EU. Again, this exemplifies the lack of clarity and engagement coming from DCMS, whose website in respect of this issue "keeps changing, which is really unhelpful". Moreover, the cost of obtaining a carnet from the London Chamber of Commerce effectively prices out most early-career musicians, who simply cannot afford the £400-500 annual cost involved, compounding their already dire predicament in terms of the expense of obtaining work permits and visas.
19. A further problem identified by Deborah Annetts regarding the transport of musical instruments was that Eurostar was not a designated port for the purposes of export clearance under the Convention on International Trade in Endangered Species (CITES), which is required for instruments

made from materials taken from endangered species, such violins and cellos made from rosewood. This would be a simple step that would remove yet another impediment to performing in the EU for classical musicians.

Inbound EU Artists

20. Given the red lines you identify in your letter regarding agreeing to any restrictions on the UK's ability to introduce visas and work permits for inbound creative professionals, the Committee was surprised to learn from Deborah Annetts that the "touring routes in are now more favourable than they are for UK musicians in many EU states". This has created "an un-level playing field against the interests of our own UK musicians, so we have scored an own goal." However, the Committee recognises this comparative generosity on the part of the UK and agrees that it justifies Lord Frost's previous statements to the effect that Member States should aim to reciprocate the UK visa-free regime in terms of the arrangements they apply to UK performers.
21. However, Deborah Annetts and Craig Stanley pointed to confusion and inconsistencies that caused substantial issues and legal risks for inbound performers. The first was that many performers coming to the UK lawfully to take up a paid engagement lasting up to 30 days found it difficult, in practice, to persuade Border Force to grant them entry under the visa free route. This raises further questions about the government's clarity, consistency and coordination in its approach to creative professionals.
22. Perhaps of even greater concern was Craig Stanley's evidence regarding documented examples of artists attempting to enter the UK with Tier 5 visas, being forced by Border Force staff to use the electronic gates. As it is a condition of entry that the visa is endorsed at the border, Border Force's refusal to stamp invalidates the visa, rendering the performer's visit unlawful, also making the UK sponsor of the visa liable for a breach over which they have no control and which the visitor has done everything possible to avoid.