



Lord Frost CMG
Minister of State
Cabinet Office
70 Whitehall
London
SW1A 2AS

18 November 2021

Dear David,

Thank you for your letter dated 2 November 2021, which was considered at the meeting of the European Affairs Committee on 17 November 2021.

Your letter provided some reassurance with respect to the exclusion of so-called “splitter” vehicles (those carrying both goods and passengers) from the cabotage regime created by the Trade and Cooperation Agreement (TCA). The Committee also welcomes the Government’s ongoing engagement with the question of designating St Pancras Eurostar as a designated Point of Entry/Exit under the Convention on the Trade in Endangered Species.

However, the Committee remains concerned that a number of areas identified in the evidence it heard during its meeting on 14 September 2021, as set out in the annex to our letter of 19 October, have not been addressed. We attach that annex again to this letter. Specific areas of continued concern are set out below. However, as a general point, we are keen to stress our belief that remedial action is needed not only by pursuing bilateral negotiations with individual member states but also by making full use of the institutional provisions of the Trade and Cooperation Agreement to raise these issues with the EU as a whole.

1. Visa and work permit-free arrangements

First, we note that, while you reassert the Government’s position that 20 EU Member States have visa- and work permit-free arrangements for touring professionals, you have not responded to the evidence that many of these arrangements will not work for creative professionals and that some Member States included within this number do not actually have visa-free regimes at all. Indeed, a strong thrust of the evidence we heard was that Government guidance was frequently inaccurate or exaggerated. We urge you to coordinate the withdrawal of the misleading guidance published by DCMS and commit to conducting an urgent comprehensive review and analysis of the visa and work-permit regimes applicable to creative professionals visiting EU Member States and using this to provide full and accurate information.

2. Mode 4 proposals

We note also your reference to your discussion of the Government’s Mode 4 proposals in your original letter of 9 June this year. We remain unclear about the exact nature of these proposals and reiterate our request for you to explain what they were and how you would envisage them working within a Single-Market context, given the unequivocal evidence we heard that Mode 4

would be an unworkable solution to the short-term movement of creative professionals across the English Channel.

3. Young classical musicians

We further note that your response does not make any reference to the extremely concerning evidence we heard to the effect that young classical musicians were being forced out of the profession as a result of the new travel restrictions, which had made most of their bread-and-butter work, such as “jump-in” performances in Europe, impossible. What avenues is the Government exploring to ensure that we do not lose a generation of classical musicians due to the fact that the UK cannot provide enough work to sustain the profession?

4. Specialist musical haulage and cabotage rules

In a similar vein, the evidence clearly set out how the specialist musical haulage sector in the UK is rapidly becoming unsustainable as cabotage and cross-trade rules make touring impossible (very few tours visit fewer than three locations – most last for several months and attend tens of different performance venues). Again, this is a sector in which UK companies hold an 80% market share, but which will be severely damaged (with no short- to medium-term replacement within the EU) if the current restrictions continue. What further steps will the Government commit to taking to save the sector and its highly specialised jobs?

Given that this issue is complex and cross-cutting, involving input from so many departments, we very much hope that you will continue to commit to exercising your coordinating function regarding matters concerning the operation of the TCA in future responses to the Committee. Where you are unable to respond directly to a question yourself, we invite you to seek a contribution or supplementary response from the relevant department to ensure that the information this Committee receives is as comprehensive and accurate as possible.

We retain an interest in this subject and 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 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 as 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.