

Twitter Thread by George Peretz QC



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A further thread on the EU/UK musicians/visa for paid work issue (the issue is paid work: travelling to sing or play at eg a charity event for free can be done without a visa).

Disgraceful and shabby if true: not only ideologically blinkered, but ashamed to admit its ideological blinkers and their consequences. <https://t.co/7PgOEogTIA>

— George Peretz QC (@GeorgePeretzQC) January 9, 2021

The position that we now have now (no relevant provisions under the TCA) is complicated. For EU musicians visiting the UK see <https://t.co/Z6gRtynDNH>

See here a summary of what is permitted from U.K. POV. <https://t.co/HkdRlubySr>

— Luke Piper (@Pipermigration) January 10, 2021

In essence the UK permits foreign (including EU) nationals to stay up to 30 days to carry out paid engagements, but they must (a) prove they are a professional musician and (b) be invited by an established UK business.

Either condition could be tricky for a young musician starting out and wanting to play gigs. And 30 days isn't long enough for a part in a show with a run.

Longer stays require a T5 visa - which generally requires you to be in a shortage occupation (play an instrument not played in the UK?) or to have an established international reputation.

For UK musicians visiting the EU, the answer is: it all depends where you are going. 26 different rules (Ireland is no problem because of the common travel area).

The current government tells us that the EU rejected its offer of visa-free travel for musicians under 30 days as part of the list of "Mode 4" permitted services.

Put shortly and simplifying, you find in Annex SERVIN-4 to the TCA a list of things independent professionals from the EU and UK can do in each other's territory - with qualifications.

ANNEX SERVIN-4: CONTRACTUAL SERVICE SUPPLIERS AND INDEPENDENT PROFESSIONALS

1. Each Party shall allow the supply of services in its territory by contractual service suppliers or independent professionals of the other Party through the presence of natural persons, in accordance with Article SERVIN.4.4 [Contractual Service Suppliers and Independent Professionals], for the sectors listed in this Annex and subject to the relevant limitations.

2. The list below is composed of the following elements:

- (a) the first column indicating the sector or sub-sector for which the category of contractual service suppliers and independent professionals is liberalised; and
- (b) the second column describing the applicable limitations.

3. In addition to the list of reservations in this Annex, each Party may adopt or maintain a measure relating to qualification requirements, qualification procedures, technical standards, licensing requirements or licensing procedures that does not constitute a limitation within the meaning of Article SERVIN.4.4 [Contractual Service Suppliers and Independent Professionals]. These measures, which include requirements to obtain a licence, obtain recognition of qualifications in regulated sectors or to pass specific examinations, such as language examinations, even if not listed in this Annex, apply in any case to contractual service suppliers or independent professionals of the Parties.

4. The Parties do not undertake any commitment for contractual service suppliers and independent professionals in economic activities which are not listed.

5. In identifying individual sectors and sub-sectors: CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77 CPC prov., 1991.

6. In the sectors where economic needs tests are applied, their main criteria will be assessment of:

- (a) for the United Kingdom, the relevant market situation in the United Kingdom; and
- (b) for the Union, the relevant market situation in the Member State of the European Union or the region where the service is to be provided, including with respect to the number of, and the impact on, services suppliers who are already supplying a service when the assessment is made.

7. The schedules in paragraphs 10 to 13 apply only to the territories of the United Kingdom and the European Union in accordance with Article FINPROV.1 [Territorial Scope] and Article OTH.9.2 [Geographical Scope] and are only relevant in the context of trade relations between the European Union and its Member States with the United Kingdom. They do not affect the rights and obligations of the Member States under Union law.

8. For greater certainty, for the European Union, the obligation to grant national treatment does not entail the requirement to extend to natural or legal persons of the United Kingdom the treatment granted in a Member State, in application of the Treaty on the Functioning of the European Union, or of any measure adopted pursuant to that Treaty, including their implementation in the Member States, to:

- (i) natural persons or residents of another Member State; or



Independent Professionals

11. Subject to the list of reservations in paragraphs 12 and 13, the Parties takes commitments in accordance with Article SERVIN.4.4 [Contractual Service Suppliers and Independent Professionals] with respect to the mode 4 category of Independent Professionals in the following sectors or sub-sectors:

- (a) Legal advisory services in respect of public international law and home jurisdiction law;
- (b) Architectural services and urban planning and landscape architectural services;
- (c) Engineering services and integrated engineering services;
- (d) Computer and related services;
- (e) Research and development services;
- (f) Market research and opinion polling;
- (g) Management consulting services;
- (h) Services related to management consulting;
- (i) Mining;
- (j) Translation and interpretation services;
- (k) Telecommunication services;
- (l) Postal and courier services;
- (m) Higher education services;
- (n) Insurance related services advisory and consulting services;
- (o) Other financial services advisory and consulting services;
- (p) Transport advisory and consulting services;
- (q) Manufacturing advisory and consulting services.

12. The European Union's reservations are:

Music is not there.

As I understand the current government's case, the EU refused to add it.

But we do know what the EU did offer because it is in their draft agreement published in March.

Article MOBI.4: Visa-free travel

1. The Parties shall provide for reciprocal visa-free travel for citizens of the Union and citizens of the United Kingdom when travelling to the territory of the other party for short stays of a maximum duration as defined in the Parties' domestic legislation, which shall be at least 90 days in any 180-day period.

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2. Member States may individually decide to impose a visa requirement on citizens of the United Kingdom carrying out a paid activity during their short-term visit in accordance with Article 6(3) of Regulation (EU) 2018/1806 of the European Parliament and the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

For that category of persons, the United Kingdom may decide to impose a visa requirement on the citizens of each Member State individually, in accordance with its domestic legislation.

3. This article applies to holders of a valid ordinary passport.

4. As regards the French Republic, the provisions of this Article shall apply only to the European territory of the French Republic.

5. As regards the Kingdom of the Netherlands, the provisions of this Article shall apply only to the European territory of the Kingdom of the Netherlands.

What that would have done is set out a baseline position where EU and UK citizens could have done any paid work in each other's territories for up to 90 days in any 180 days. Music covered along with everything else.

NB though that any EU State could have imposed a visa requirement on UK citizens doing paid work (music, for example) in which case the UK could have reciprocated for that state's nationals.

One can see that that was lopsided: the UK could only impose visas on citizens of eg ■■ for work of a certain type if ■■ went first.

But the UK could have worked on it and obtained a wide ability to go and do temporary work in each other's territories - including musicians.

But no: that whole section has gone. And the current government doesn't, I think, deny that it killed it for ideological reasons: an end to freedom of movement must be seen to have been achieved. Despite this, from Johnson in 2016.

<https://t.co/0p35v5CKw1>

Another bit of the killed section. Youth exchanges. And wider reciprocal residence and entry provisions.

Article MOBI.5: Provisions on mobility of students, researchers, trainees and certain categories of youth exchange

The Parties shall provide for reciprocal conditions of entry to and residence in the territory of the other party, for a period exceeding 90 days, and the rights, of citizens of the Union and citizens of the United Kingdom, and where applicable their family members, for the purpose of research, studies, training and youth exchanges as defined in the Parties' domestic legislation.

All to maintain the dogma that the EU must be treated as "foreign" for immigration purposes in the same way as any other foreign state, despite its proximity and the closeness of our links.

That dogma is not, I believe, sustainable. In the medium term, we will need and want better mobility arrangements with our closest neighbours. For musicians, young people wanting short term bar jobs, for retired people wanting to spend the whole winter in Spain and so on.

To return to music: it may well be that the failure to add music to the Annex lists is down to the EU.

But, more profoundly, the UK music sector is here a casualty (among many) of the UK's refusal to engage with the EU's offer of a broader mobility framework.

An important task for the next government will be to reopen that discussion and negotiate the broader mobility framework that is in the interests of so many UK citizens, including musicians.