



Temporary economic legal migration

An urgent need to establish a well-functioning system responding to the operations of economic sectors that rely on third-country nationals for short stays and who are moving in and out and around the EU and the Schengen area.

The case for the live performance

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Pearle*-Live Performance Europe, the European employers federation calls upon the European Commission to address the issue of highly mobile third-country nationals temporarily staying in one or more Member States for the purpose of their professional commitments with EU based enterprises as addressed in the 2020 consultation. This is an on-going issue for the live performance sector, a sector that -by very essence- is internationally focused, where people's careers are characterised by a pattern of working around the world with consecutive short stays depending on the work, assignments, and project contracts.

For twenty years now issues have been addressed by the cultural sector with EU institutions and repeated time after time in policy papers and research undertaken.

Over the past decades the EU has been shaping visa and migration policies on which it can rely to provide solutions for the specific needs of these economic sectors and put into practice the elements which form the basis of cultural diversity to which the EU adheres.

Europe's cultural and creative industries represent a turnover of €643billion and contribute 4.4% to GDP. It has 8.4 times more people in employment than the telecommunication sector, but was severely hit in 2020 with an overall loss of 31%.

1. Introduction

The live performance sector relies on people from all over the world bringing specific skills, competences and talents to audiences attending festivals, concerts, and performances. Those invited third-country national artists often also are involved in teams composed of nationals from EU countries, which allows to bring the very best of artistic talent to the fore, supported by crew and staff that add to the experience thanks to exquisite technical arrangements for sound, light, special effects, etcetera. This ecosystem can only operate well thanks to the people who make this happen.

The EU visa and migration legislation is therefore a key factor in the realisation of events worldwide and thus also in Europe.

The characteristics of this way of working, usually referred at in terms of freelance work, are:

- It concerns temporary stays: usually (much) less than 90 days in one Member State
- It concerns often people travelling through different EU member states for their professional activity, but usually not for a stay longer than 90 days
- It concerns activities for the purpose of paid activity: self-employed or employed ('posted' by a third-national company or an EU-based company)
- It concerns third-country nationals which may need a visa or who are visa-exempt or who are normally visa-exempt but may need a visa for one or the other member state for the purpose of paid activity in the framework of a trade agreement

The EU acquis has no direct answer for such type of third-country professionals and the existing legislation falls short in providing a solution.

In the Communication of the EC of 23 September 2020 'on a New Pact on Migration and Asylum' the focus is on attracting skills and talents of third-country nationals for the purpose of reducing skills gaps and increasing the dynamism of the EU labour market and addressing the demographic evolution in Europe which puts a structural pressure on the labour market. Hence, the proposals in the Communication are focused on a static approach, that is attracting third-country nationals to fill in the gaps on the labour market for certain sectors with the aim to stay for a relatively longer period of at least a half year.

A specific policy framework for temporary legal migration to accommodate the economic sectors which rely on professionals, businesspeople, self-employed, service providers, highly mobile people including those active in artistic and creative sectors is urgent and needed.

The consultation of the Commission which concluded end December 2020 queries stakeholders on possible paths. Having [contributed](#) to the consultation, the sense of urgency on the matter was diminished due to the impact of the Corona crisis as the pandemic led to an almost complete standstill of international touring in the live performance. As cultural activities have restarted this summer and organisers, festivals, promoters, touring companies are planning programmes and tours, the problems for third-country nationals coming for a short (temporary) stay in their professional capacity still exist.

It has also become more visible with the departure of the UK and the impact of the TCA on the cultural sector, which adds an additional burden for organisers and promoters across the EU having to deal with the difficulties to invite British artists and crew.

In the frame of trade agreements, as the GATS has no specific definition for the types of service providers to whom Mode 4 can apply, it is learned that the ICT directive has triggered more advantageous provisions on Mode 4 with a number of third countries.

In the light of the review of the functioning of the WTO, the EU could consider revising (and expand) the list of service providers under Mode 4 and include artists and technical artistic professionals (such as sound and light engineers and technicians).

2. A double problem to be addressed

Touring is essential in the live performance sector, but the 90/180-day restrictions hinder the possibility to fully benefit from the economic potential to do so. On the contrary it raises costs and slows down growth. The 90/180 rule was set up when the EU counted only five member states but refrained of adapting the rule as the Union enlarged.

Third-country nationals, whether they travel as employees of a third-country national cultural organisation, as self-employed to provide a service, or when they are offered a short-term contract by a European-based employer, come to the EU to undertake a paid engagement.

Even when being offered an employment contract, it is often for the duration of a project, which may last a few weeks. In the case of longer contracts, one would rather see this with cultural organisations as opera houses, theatres, or orchestras. But even in such cases, the duration might be limited to the 'season' (9-10 months), i.e. from September till June the next year.

The Greek ministry of labour asked the EMN NCP network in February 2020 how other countries were dealing with the issue of visa/short temporary stay for work, pointing out that in the Greek legislation there was no specific provision to deal with this question. The information collected shows that there are a number of different approaches between countries. This means that it is quite complex for third-country nationals to deal with the different rules between countries on visa and labour permit conditions (and the exemptions).

3. Considerations based on EU policy and regulatory framework and initiatives

The 90/180 rule was developed at a time when the EU comprised 5 Member States.

As long ago as 2001, the Commission recognised the need to complement the general rule limiting stays to 90/180 by including an authorisation for stays of longer than three months in the Schengen area.

- In **2001**, the Commission proposed to introduce a "specific travel authorisation" for TCNs allowing travel for no more than 6 months in any given period of 12 months (without staying more than 3 months in any single MS).
 - This proposal, which covered multiple issues (including expulsion) was withdrawn in 2006. Identified concerns relate to legal basis and possible bureaucracy.
- **2007**: the definition of short stay – i.e. less than 90 days - was removed from the Lisbon Treaty
- In **2014**, the Touring Visa Proposal was tabled to introduce a new type of visa for both visa-exempt and visa-required TCNs.

European Commission, COM(2014) 163 final, April 2014:

*“Over the years, the Commission has received many complaints and request for solutions regarding this problem from third-country nationals, both those who require visas and those who are visa exempt. **The 90 day/180 day ‘limitation’ may have been appropriate for the size of the five founding members of the Schengen cooperation.** However, when the Schengen area comprises 26 Member States, it **poses a considerable barrier for many third-country nationals with legitimate interests** in traveling in the Member States. It also leads to **missed economic opportunities** for the Member States.”*

*“**This legislative gap** between the Schengen Acquis and the EU and national immigration rules means that such travellers should, in principle, leave the Schengen Area on the last day of their consecutive 90-day stay and ‘wait’ for 90 days outside the Member States before they can return for another legal stay.*

- The legal basis for the Touring Visa Proposal was TFEU Article 77(2)
- The proposal was not limited to any particular category of TCNs, but the needs of live performance artists were emphasised. Also mentioned were students, researchers, cultural professionals, pensioners, businesspeople, service providers and tourists.
- “Touring visa” was defined as an authorisation by a MS for an “intended stay in the territory of two or more Member States for a duration of more than 90 days in any 180-day period, provided that the applicant does not intent to stay for more than 90 days in any 180-day period in the territory of the same Member State.”
- The European Parliament voted in favour of the proposal but changed the duration of the intended stay to 12 months in any 15-month period.
- The proposal was withdrawn in 2018 as it had been placed behind the Visa Code Recast, which was not pursued due to issues raised as a result of the migration crisis. Concerns expressed by some Member States, during initial discussions on the Touring Visa included concerns about it being too broad (but too narrow if confined to live performance sector) and also security concerns (no checks to avoid overstays due to lack of internal border controls).
- **2017:** Regulation (EU) 2017/2226 creates a centralised Entry/Exit System (EES) for visa-exempt and visa-required non-EU nationals entering the Schengen Area for short stay
 - Data maintained 3 years for those who respect rules
 - Data maintained 5 years for travelers who overstay
 - Commission Implementing Decision 2018/1548 – list of overstay travellers

The EES will be operated by EU-Lisa and to be operational in first half of 2022. The new system will also help *bona fide* third-country nationals to travel more easily while also identifying more efficiently over-stayers as well as cases of document and identity fraud. In addition to this, the system will enable to make a wider use of automated border control checks and self-service systems.

- In **2018**, the Commission proposed certain changes to the Visa Code but did not address the 90/180 limitation.
 - The European Parliament voted in favour of revision of the Visa Code including an amendment for issuing visas for intended stays “not exceeding 90 days in any 180-days period and intended stays by Sport and Culture Professionals for up to one year without staying more than 90 days in any 180-day period in any single Member State.”
 - The Parliament’s proposed amendment to enlarge the 90/180-day limit was deleted during trilogue negotiations as a number of Member States believed that such a change needed to be the subject of separate legislation and increasing the number of days within the Schengen area was restricted by the Treaty.
 - The regulation amending the Visa Code notes that the EU’s visa policy should contribute to generating growth and be consistent with other Union policies, including external relations, trade, education, culture, and tourism: Regulation 2019/1155, Recital 1. It also states that the Union should use its visa policy in cooperation with third countries, and to ensure a better balance between migration and security concerns, economic considerations, and general external relations. See Recital 2. In general, the revisions attempt to reduce administrative burden and facilitate travel for frequent and regular travellers through multiple entry visas with long durations. Among others, Member States are urged to have particular regard for artists.
- In the [Fitness Check](#) of EU legislation on legal migration (staff working SWD(2019) 1055 final part 2 p196 it is recognised that: “a third-country national present on the EU territory needs to either be a holder of an authorisation (residence permit or of a visa, unless he/she is from a visa exempt third country), otherwise the person is staying illegally in the EU. Neither EU legal migration Directives nor EU Visa and Border legislation provide an authorisation suitable to highly mobile workers.”

The Fitness check has identified gaps between objectives and needs, including those of service providers and self-employed persons, and the need to increase interaction and complementarity with other EU policies. It also finds that there is a scope for simplifying and further harmonising procedures. Among other measures, the Commission Staff Working Document published in March 2019, suggests that consideration be given to putting forward legislative measures to tackle the inconsistencies, gaps and other shortcomings identified, so as to simplify, streamline, complete and generally improve EU legislation.

- In May **2019**, PEARLE submitted comments to the Expert Working Group on Economic Migration, which is responsible for the above-mentioned Fitness Check, and already has flagged the earlier Touring Visa proposal as part of a comprehensive solution.
- On 23 September **2020**, the Commission presented a New Pact on Migration & Asylum aiming to put in place a comprehensive and sustainable policy, providing a humane and effective long-term response to the current challenges of irregular migration, developing legal migration pathways, better integrating refugees and other newcomers, and deepening migration partnerships with countries of origin and transit for mutual benefit.

The pact also introduces the Talent partnerships and the set-up of a Talent Pool to support legal migration such as it exists in a number of countries around the world. Unfortunately, the way in which the scheme is set up would not really work for highly mobile artists, regardless of their talents and skills, as flexibility and rapid responses to needs of EU live performance organisations are a prerequisite.

- Of importance for visa-required third-country nationals is the process to digitalise the visa procedure, which is to be finalised by 2025, allowing to submit visa applications online. PEARLE provided input in November 2018 and March 2021 through stakeholder consultations.
- By the end of 2022 it is also expected for visa-exempt third country nationals that the ETIAS travel authorisation system will be in place.
- In **2020** a consultation was launched on the future of legal migration to which PEARLE replied. The report on the responses submitted shows that a very large majority are in favour of legislation for highly mobile workers and to harmonise service providers' admission and rights.

This non-exhaustive overview, combined with the initiatives that have been set up to manage and control the entry, stay, and exit and the desire shared by stakeholders in a recent consultation on legal migration to address the issue of highly mobile workers, provide a clear basis for an EU-wide initiative on highly mobile third-country nationals.

4. Elements of a possible solution for highly mobile third-country nationals, including artists and other cultural professionals

In order to support the culture and creative sectors in the EU that rely on short term stays of third-country nationals, the following points need urgent consideration by the Commission to address the issues described above in a relative short timeframe, as follows:

- 1) Amend secondary legislation to allow for a series of short stays in the Schengen Area
- 2) For a clearly defined group of persons (including artists, accompanying staff, technical experts in the field and other cultural professionals).
- 3) Who can demonstrate their reliability and integrity as well as their intent to leave following their stay through submission of contracts, itinerary and other evidence.
- 4) For a maximum of e.g., 12 months in a 15-month period (this would mean a three-month time out period being a condition for any subsequent authorized stay);
- 5) On the condition that stays do not exceed 90 days in any individual Member State.
- 6) Ensure enforcement and control compliance through the EES.

About Pearle*

Pearle* - Live Performance Europe is the European employers' federation of live performance organisations. Through our members, we represent more than 10,000 organisations in the sector across Europe, including theatres, theatre production companies, bands and music ensembles, orchestras, opera houses, ballet, dance companies, festivals, concert venues, producers, promoters, agents, comedy, variété, circus, event suppliers and others.

Pearle* is recognised as the only employers association to take part in the European sectoral social dialogue committee 'live performance', facilitated by DG Employment.