



February 2021

UK Music Submission to House of Lords EU Services Sub-Committee
Future Trade in Services with the EU

1.0 Introduction

1.1 UK Music is the umbrella body representing the collective interests of the UK's music industry. UK Music exists to represent the UK's music sector, to drive economic growth and promote the benefits of music to British society (see Annex for a full list of members). Our key recommendations for Government in this paper are below.

1.2 The Trade and Cooperation Agreement (TCA) agreed with the EU was self-evidently preferable to no deal for our sector but falls short in a number of key areas. The most important of these is touring, specifically work permits and visas, haulage, social security, equipment and merchandise. Beyond that there are also issues on data adequacy and broadcasting. Given the challenges these will cause for the music sector in a major music export market in addition to the damage caused to the sector by the COVID crisis a forward-thinking strategy, including ambitious copyright standards and expanded export support, is required to create an environment conducive to future success for the music sector.

Summary of our three main asks on touring:

Gain a reciprocal UK – EU agreement covering:

- 1. Work permit and visa free touring for UK and EU musicians and crew.**
- 2. A carnet waiver.**
- 3. A derogation from cabotage rules for hauliers supporting touring musicians.**

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Focusing bilateral conversations with EU member states on the below:

- 1. Reciprocal work permit and visa free touring for musicians and their crew.**
- 2. The UK's continuing inclusion in geographic Europe for audio visual quotas.**
- 3. Social security co-operation.**

Working on the UK's own strategy for support music exports including:

- 1. Building UK copyright protections for rights holders into a global standard.**
- 2. Bolstering existing export support schemes.**
- 3. Engaging and supporting small music exporters.**

1.3 Music is a national economic and cultural asset. It employs four times as many people as the fisheries and steel industries combined (197,168 vs. 44,000).¹ It generated £5.8 billion in GVA in 2019 (up 11%) and attracted 12.6 million visitors, seeing growth well above the UK economic average.² Globally the UK has one of the busiest venues in the O2 arena, and 4 of the top 20 global tours in 2019 were by UK artists.³

1.4 Unfettered access to the EU for both music exports and live performances has been a key part of the UK music's recent success and was an advantage it had over major overseas music market competitors like the US, South Korea and Canada. The EU is one of the biggest overseas market for the UK's £2.9 billion music exports.⁴ The UK also has a 23.89% (1st in Europe) share of the overall EU recorded music market and the UK was the second-best European exporter of live music to EU member states.⁵ Europe is a springboard to global trade and boosts our position as one of only three net exporters of music, globally. This relationship has also benefited the EU

¹ UK Music, Music By Numbers 2020, <https://www.ukmusic.org/research/music-by-numbers-2020>
House of Commons Library, UK Steel Industry: Statistics and Policy, <https://commonslibrary.parliament.uk/research-briefings/cbp-7317/>
Marine Management Organisation, Fishing Industry in 2019 Statistics Published <https://www.gov.uk/government/news/fishing-industry-in-2019-statistics-published#:~:text=In%202019%2C%20there%20were%205%2C911,metres%20and%20under%20in%20length>

² UK Music, Music By Numbers 2020 <https://www.ukmusic.org/research/music-by-numbers-2020>
<https://www.ons.gov.uk/economy/grossvalueaddedgva/timeseries/abml/qna>
<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/december2019>

³ <https://www.pollstar.com/article/the-year-end-top-tours-pop-tops-record-breaking-year-143014>
<https://www.iq-mag.net/2019/01/the-o2-world-busiest-venue-2018/>

⁴ UK Music, Music By Numbers 2020 <https://www.ukmusic.org/research/music-by-numbers-2020>

⁵ European Commission, Music Moves Europe – A European music export strategy, 2020
<https://op.europa.eu/en/publication-detail/-/publication/4be2f11d-216c-11ea-95ab-01aa75ed71a1/language-en/format-PDF/source-111483830>

music sector. Given the highly competitive nature of the global market continuing this mutually beneficial relationship as far as possible could be critical to both our sectors.

1.5 In these times of uncertainty, the music industry will require financial support so that it can continue its considerable contribution to the UK economy as soon as it is safe to do so.

Touring: The Show Must Go On

2.0 Work Permits, Visas and Export Support

2.1 For performers, working in the EU is an important part of their development and a key factor in sustaining a career. Freelance musicians have been able to take up short term engagements with orchestras, in studios and at live events and festivals easily and often at short notice while the UK has been an EU member. Similarly, EU broadcasters have relied on the talent of UK composers and songwriters providing creative work opportunities within the EU which are now under threat. This has enabled artists to develop, collaborate across borders and grow their non-UK fanbase. The EU is a key economic market for established and emerging acts as well as orchestras and touring productions. This activity is supported by an economic network of crew and hauliers. The European Commission noted in 2019 that UK live acts "... dominate the European panorama." A survey by the UK based Incorporated Society of Musicians found 78% of their members visited the EU/EEA at least once a year. The Government recognised this, pledging in June 2020 to negotiate a "reciprocal arrangement" for touring musicians. There was also cross-party support for the Musicians' Union's Musicians' Passport proposal which was supported by a petition with over 115,000 signatures. Nothing along these lines was delivered in the negotiations, however.

2.2 Work visas, as distinct from work permits or tourist visas, may also be required for certain countries including the Czech Republic, Germany, Spain, Latvia, Austria, Portugal, Romania and Liechtenstein.⁶ Musicians and artists from third countries like the USA are usually exempt⁷ from requiring work visas under these terms yet the UK's reported rejection of a waiver for these purposes means this is at present unclear. UK Music is seeking clarification from relevant Embassies and Consulates on this point. We would therefore welcome urgent clarification from

⁶ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/borders-and-visas/visa-policy/22122020_information_december_2020.xlsx

⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/c-2020-395-commission-implementing-decision-annex_en.pdf

Government on a number of points, including whether or not music showcases fall under the work permit exemption for those participating conferences, trade fairs and exhibitions.⁸

2.3 There will be red tape that did not exist before, particularly for those looking to tour or work across multiple territories. This will be most difficult to navigate for individual freelancers and will lead to tours that would have gone ahead being cancelled due to costs or errors, even small per head fees can make tours uneconomical as they hit not just the performers but support staff and crew as well. Furthermore, as promoters who book venues and festivals will often be bearing a part of the administration costs UK acts will be less attractive to EU promoters when compared to an EU alternative. Even the *perception* that UK acts are more hassle will damage our sector.

2.4 These issues extend beyond work permits and visas and we feel that they are best addressed directly with the EU in a comprehensive additional, supplemental agreement to the TCA. Though we welcomed the Secretary of State for Digital, Culture, Media and Sport Oliver Dowden's assurance to us that the Government would consider financial support to help artists looking to tour the EU post-transition, we would rather the issue was resolved. This could also be achieved on a bilateral basis in extremis.

2.5 We would welcome a reciprocal agreement on touring to allow musicians and their crews to work permit and visa free across the EU and the UK for 90 in 180 days. Failing that the Government should try and achieve this on a country-by-country basis and provide a financial safety net to those in need.

3.0 Hauliers

3.1 A reciprocal agreement should also address the question of haulage. UK hauliers will now face restrictions on the number of stops they can make (cabotage), 1 initial stop, with 2 further stops before they must return to the UK.⁹ This is impractical for many music tours and will make many either unviable or artificially short. We also need clarity on many technical issues, e.g., the status of a splitter truck.

⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01)&from=EN) p. 743

⁹ <https://www.gov.uk/guidance/transporting-goods-between-great-britain-and-the-eu-from-1-january-2021-guidance-for-hauliers#:~:text=Up%20to%202%20additional%20movements,with%20a%207%2Dday%20period>

3.2 If UK hauliers move to the EU, this would have a negative effect on our sector.¹⁰ The equipment needed for large shows should be located close to the hauliers. Therefore, if hauliers were to relocate, training opportunities in the UK based on using such equipment would also be lost. If the hauliers, kit and personnel are based in the EU then that is where tours will go to start and do their rehearsals, further reducing opportunities for UK based businesses. This will also cause inconveniences for EU bands looking to tour the UK.

3.3 A reciprocal agreement on music touring should contain a derogation to cabotage rules for hauliers engaged with music tours.

4.0 Social Security

4.1 Double payment on social security is a concern for anyone looking to work in the EU. Under the TCA adherence to the Detached Workers Rules to prevent this is voluntary. This means there will be further potential for country-by-country variance.

4.2 The Government should intensify bilateral negotiations on social security arrangements.

5.0 Equipment and Merchandise

5.1 The TCA clearly provides that there should be no tariffs or quotas on goods, and the Prime Minister has also stated that there would be no non-tariff barriers to trade.¹¹ It is vital to the commercial music industry that this promise is delivered on as merchandise sales at gigs and online are an important revenue stream.

5.2 Exporters have found non-tariff barriers are in place and hindering UK competitiveness, this includes import VAT and processing charges, particularly on smaller shipments, despite a waiver for goods below €22 in value in law, these charges are making small shipments to the EU uneconomical.¹² This is further complicated by the fact that the EU will be changing its VAT

¹⁰ <https://www.theguardian.com/politics/2021/jan/23/brexit-hit-firms-advised-government-officials-set-up-shop-in-eu>

¹¹ <https://www.rev.com/blog/transcripts/u-k-pm-boris-johnson-brexit-trade-deal-speech-transcript-december-24>

¹² <https://www.gov.uk/government/publications/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021>

procedures in July 2021, UK exporters will have to adapt twice in 12 months at great expense, it should be seen if this can be avoided by holding the pre-January arrangements over till July.¹³

5.3 The vast majority of musicians travelling to the EU will now need ATA carnets (annual cost of £325.90 as long as the shipment remains the same). It is our understanding, following correspondence with the European Commission, that individual musicians carrying portable musical instruments on public transport might not need a carnet and can make use of the nothing-to-declare channel at any EU border. However, we need a cast iron guarantee that this will be the case when entering the EU, crossing borders within the EU and on return to the UK. The vast majority of musicians and crew will be touring with multiple instruments and equipment in a privately owned or hired vehicle. A reciprocal agreement could waive the need for these, reducing unnecessary costs and red tape and making touring as accessible as possible to artists and their crews. We would also welcome clarity on whether these carnets are needed for travel from Great Britain to Northern Ireland.¹⁴

5.4 The UK Government should also explore if an agreement can be reached on a reciprocal carnet waiver and to allow the pre-January 2021 VAT arrangement to be in place until July 2021. It should also step-up efforts to support and engage small music exporters.

Beyond Touring: Data Adequacy and Broadcasting

6.0 Data Adequacy

6.1 Data is the modern currency of the music sector, its continued smooth flowing will be critical to the continuing of turning the *de jure* protection for copyright provided in the TCA (based on international protection and the EU Copyright Acquis) into *de facto* protection and effective remuneration for UK based artists and songwriters.¹⁵ Prior to Brexit, this flow was underpinned by a shared data protection regime. To continue as before in the smoothest and most certain and

¹³ https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en

¹⁴ The issuer the London Chamber of Commerce has said no but the Minister Caroline Dinenage would not clarify this when asked in the Commons, we are not aware of a general Government statement clarifying this. <https://musiciansunion.org.uk/all-news-and-features/no-ata-carnet-needed-for-touring-between-ni-and-rest-of-uk>
<https://hansard.parliament.uk/commons/2021-01-19/debates/F8D5BA3A-AC00-4DCA-8168-7D0EBC5FF927/UKMusiciansEUVisaArrangements#contribution-42893A18-1FC0-40E9-9EBF-A118E26EA35C>

¹⁵ The international agreements including the Berne (1886) and Rome (1961) Conventions, TRIPS Agreement 1994 and the WIPO Treaties 1996, 2012 and 2013. Full links including the basis of the Copyright Acquis here; [https://ec.europa.eu/digital-single-market/en/eu-copyright-legislation#:~:text=The%20EU%20acquis,Directive%22\)%2C%2022%20May%202001](https://ec.europa.eu/digital-single-market/en/eu-copyright-legislation#:~:text=The%20EU%20acquis,Directive%22)%2C%2022%20May%202001)

effective way, the UK needs a positive data adequacy decision from the European Commission, as has been awarded to countries like New Zealand, Japan and Argentina.¹⁶

Worryingly instead of being resolved in the TCA negotiations, a 4 month “interim bridging mechanism” has been agreed with an option to extend this up to 6 months.¹⁷ If this is not resolved bands trying to export physical recordings and merchandise directly to EU (or EFTA) based fans will face new and potentially considerable obstacles to their handling of personal data. This risks leaving artists the choice of relocating to the EU or not exporting, harming their careers and our economy. Alternatively, UK right holders – and Collective Management Organisations (CMOs), given that efficient flow of personal data between UK and EU CMOs is a key enabler of effective, timely and accurate calculation and collection of royalties for UK creators due from the EU – will have to apply Standard Contractual Clauses which are a more resource intensive option. The Government cannot presume a positive data adequacy agreement and should move quickly and proactively to engage with the EU and take the necessary steps to ensure a positive outcome.

6.3 The UK should work proactively to gain a positive data adequacy decision.

7.0 Broadcasting

7.1 Audio visual services are outside the scope of this agreement.¹⁸ While not unexpected this will make the UK a less attractive base for broadcasting, meaning fewer opportunities for composers and performers.

7.2 The UK should engage with the EU and individual member states on the question of European quotas for the arts. These quotas are allowed given the audio visual exclusion clause. Therefore, it is important that the UK Government emphasises that the UK should be included in any geographic recognition of Europe. It is also vital that the UK remains a member of the European Convention on Transfrontier Television covering freedom of speech, right of reply and sponsorship rules for European quotas.¹⁹

¹⁶ https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en Crown Dependencies such as Jersey and the Isle of Man have been granted positive adequacy decisions.

¹⁷ <https://www.gov.uk/guidance/using-personal-data-in-your-business-or-other-organisation>

¹⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01)&from=EN) p. 130

¹⁹ <https://www.spacelegalissues.com/the-european-convention-on-transfrontier-television/>

7.3 In the absence of an overarching audio visual services agreement the UK needs to intensify bilateral efforts to ensure that any geographic expression of Europe in the audio visual sector retains the UK.

A New Music Export Strategy: Enhanced Copyright and Export Support

8.0 Copyright

8.1 The effective enforcement of copyright and the monetisation of Intellectual Property (IP) is key to a successful commercial music industry. To support the commercial music sector as it looks to recover from COVID and deal with new barriers to trade with Europe the Government should look at developing a gold standard copyright enforcement process in the UK, building on the high level of protection that the EU copyright framework has provided creators and those that invest in them to ensure these provisions are enhanced. This should be developed in consultation with the industry, and among others, address the issue of content-hosting platforms undermining IP rights by distributing music for free and build an accessible remedy system tackling issues such as “safe harbour” provisions that allow platforms to dodge liability and rip off artists and songwriters.

8.2 The UK Government should use its new-found freedom gained from leaving the EU to create its own laws and develop the strongest copyright framework in the world. Concurrently and equally importantly, look to uphold strong copyright protection in all future trade agreements. By doing so the UK could become a cultural hub and act as the global destination for composing, performing, recording and working in music. This is even more important given the strength of the UK music industry as a net exporter. The Government needs to set out how it intends to ensure online platforms behave responsibly and take action to prevent illegal content appearing on their services, and how it plans to protect artists’ and songwriters’ rights to a level which is competitive internationally, for this will be essential to a successful music industry.

8.3 The UK Government should look to work with the music industry to build a responsive copyright regime with national exhaustion, and easily accessible remedies such as website blockers to protect copyright. It should transpose this robust attitude to IP to future international free trade agreements (FTAs). It was welcome to see provision in the UK-Japan agreement for

the discussion of and firmer enforcement of music copyright.²⁰ We have set out how the UK might pursue these aims in other trade deals with the US and Australia.²¹

8.4 The UK should be ambitious in aiming to set a global gold standard in copyright, this could attract artists and songwriters to onshore their rights, alongside promoting robust IP provisions in future trade deals.

9.0 Export Support

9.1 The UK Government should also look to actively bolster efforts to promote UK music to Europe including expanding support for existing export support schemes like the Music Export Growth Scheme (MEGS) and International Showcase Funds (ISF). MEGS and ISF represent sound investments returning £12 - £15.20 on every £1.²² The Government should look at how their remit and support can be improved to ensure the best possible support for UK talent.

9.2 The UK Government should look at expanding its export support offer to both offset new barriers to accessing the EU market and to support UK acts as they look to play their role in the Government's drive to boost UK trade globally. This could include a central point of contact, potentially in the form of a Music Export Office, in Government for supporting UK music exports (navigating visas etc), a large expansion of support for existing export programmes, and further engagement with industry on both the diplomatic and financial support that could underpin a post-COVID drive in support of music exports. Some UK Music members are advocating this.

10.0 Conclusion

10.1 The TCA is, of course, preferred to leaving the EU without an agreement. However, this should not be seen as 'mission accomplished' but instead a foundation for further engagement with a key overseas market. In this paper we have raised a range of concerns of varying levels

²⁰ Department for International Trade, The UK–Japan Comprehensive Economic Partnership, Benefits for the UK
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929065/UK-Japan-Trade-Agreement-sectoral-benefits.pdf p. 11

²¹ https://www.ukmusic.org/wp-content/uploads/2020/09/UK_Music_trade_paper_-_UK_Aus_FTA_2_July_20.pdf
https://www.ukmusic.org/wp-content/uploads/2020/09/UK_Music_trade_paper_-_UK_US_FTA_4_may_20.pdf

²² <https://www.bpi.co.uk/news-analysis/music-export-growth-scheme/>
https://prsfoundation.com/wp-content/uploads/2019/09/PRSF-ISF-Report-2016-19-FINAL-DIGITAL_1.pdf

of intractability. Some are an inevitable consequence of the strategic decision to leave the EU Single Market, however many others could be resolved. For instance, the UK and the EU have expressed the desire to resolve the touring musicians' question while blaming the other for the lack of resolution.²³ We are entirely uninterested in who said what, but the will expressed should form the basis for a broad based additional agreement to tackle music touring that includes:

- 1. Work permit and visa free touring for UK and EU musicians and crew.**
- 2. A reciprocal carnet waiver.**
- 3. A derogation from cabotage rules for hauliers supporting touring musicians.**

10.2 The Government should also intensify its bilateral work with EU member states and other European countries on cultural economic issues. Key areas of focus should be:

- 1. Reciprocal work permit and visa free touring for musicians and their crew.**
- 2. The UKs continuing inclusion in geographic Europe for audio visual quotas.**
- 3. Social security co-operation.**

10.3 The UK Government should consider its own strategy to support the nationally and globally important UK commercial music sector. While leaving the EU has drawbacks for the sector it does not preclude future success, it simply makes a firmer strategy for encouraging commercial music more important. This could include:

- 1. Building UK copyright protections for rights holders into a global standard.**
- 2. Bolstering existing export support schemes.**
- 3. Engaging and supporting small music exporters.**

10.4 A robust strategy can deliver the environment for future music success, this is particularly urgent given the sector will be looking to recover from the COVID-19 crisis.²⁴

²³ <https://www.nme.com/news/music/culture-secretary-oliver-dowden-brex-it-eu-touring-2855581>

²⁴ You can find the work UK Music has done on this massive crisis below;
https://www.ukmusic.org/wp-content/uploads/2020/09/UK_Music_Submission_to_DCMS_Select_Committee_ImpactCOVID_7_May2020.pdf

Annex

UK Music's membership comprises: -

- AIM – The Association of Independent Music – the trade body for the independent music community, representing over 850 small and medium sized independent record labels and associated music businesses.
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition is the UK trade body representing the specific rights and interests of music artists. A not-for-profit organisation, they represent a diverse, global membership of creators at all stages of their careers and provide a strong, collective voice for artists.
- The Ivors Academy - The Ivors Academy is an independent association representing professional songwriters and composers. As champions of music creators for over 70 years, the organisation works to support, protect and celebrate music creators including its internationally respected Ivors Awards.
- MMF – Music Managers Forum - representing over 900 UK managers of artists, songwriters and producers across the music industry with global businesses.
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including music studios, producers, engineers, mixers, remixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union - Representing over 32,000 musicians from all genres, both featured and non-featured.
- PPL is the music licensing company which works on behalf of over 100,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK. PPL also collects royalties for members when their recorded music is played around the world through a network of international agreements with other collective management organisations (CMOs).
- PRS for Music is responsible for the collective licensing of rights in the musical works of over 150,000 composers, songwriters and publishers from around the world and an international repertoire of more than 10 million works and 2 million rightsholders.
- UK Live Music Group, representing of the live music sector with a membership consisting of: Agents' Association (AA), Association for Electronic Music (AFEM), Association of Festival Organisers (AFO), Association of Independent Festivals (AIF), Concert Promoters Association (CPA), International Live Music Conference (ILMC), National Arenas Association (NAA),

Production Services Association (PSA), Music Venue Trust (MVT), with contributions from PRS Foundation, MU, MMF, FAC and BPI.