



Consultation on the future of EU legal migration

Response

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Introduction

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.

The live performance is a highly international and also a very mobile sector in the meaning of: career development of people, geographic mobility and the duration of the mobility. Recruitment or service-provision is based on the particular skills and unique talents of people that will fit in the creative product and within the team, rather than on labour shortages. However, with the impact of the COVID-19 crisis labour shortages in certain occupations might increase and become a problem for European employers due to the fact that people leave the sector or move from Europe to other parts of the world.

Both, the third-country national job seeker as well as the employer or buyer of services in the live performance sector are in demand for a framework on temporary legal and economic migration which can be handled with a minimum of administrative requirements, that avoids cumbersome or too long procedures and allows for flexibility in recruitment.

This paper complements a selection of questions addressed in the online consultation. It follows the structure and numbering of the consultation.



Additional remarks in relation to the questions in consultation

QUESTION 1. *In which **occupations** do you think that the EU will mostly need to recruit third-country nationals in the coming years, also taking into account the economic impact of the COVID-19 crisis?*

Comments of Pearle*: from a sectoral viewpoint there is always a continuous need for artistic talent, but also for specialised experts in live entertainment technics. Especially in the technical areas there is a fear that people across the world may have left the sector due to the ongoing standstill of live performances because of the Corona crisis, and so that there will be a skills shortage. It is not sure whether the solution is with immigration or with (re-)training of people to obtain the skills needed when activities restart in the live performance sector. Probably it will be a combination of both.

QUESTION 2. *In your view, what new initiatives on legal migration should the EU take in the next years?*

- a) provide **practical measures** to support Member States authorities, employers, and prospective migrants*
- b) introduce **new legislation** to harmonise at EU level the admission and rights of **those categories of workers that are not yet regulated at EU level***
- c) introduce **new legislation** to harmonise at EU level the rules for the admission of **all third-country workers** by developing a comprehensive **EU legal migration code**, replacing all existing directives on labour migration*

Comments of Pearle* to the above three sub-questions:

- a)** It is most important for Member States to provide information on the **legal pathways to migration**. This information should be easily accessible, as detailed as possible including sectoral or concern specific occupations, and be available in other languages than the official languages in the respective member state. The information should also include a description of special rules or exemptions where applicable.



Furthermore, Member States should be encouraged to **reduce administrative burdens**, not only for residence permits but also for work permits, and to better adjust the procedures between labour ministries and home affairs when it comes to issuing the single permit. Whilst the goal of the single permit to harmonise the procedures has been welcomed, it is observed that the duration to obtain the documents has become longer.

- b)** For the sector, there are two proposals in the consultation that are of interest : it concerns **highly mobile workers** (*such as workers in the transport and arts sectors who perform their work for short periods in different EU Member States*) and **service providers from outside the EU** (*persons that need to be in the EU for a limited period in the framework of a contract for the provision of services, but do not have a work contract in the EU*).

In the case of the live performance sector those two categories might fall together, as mobility is nearly always present.

High mobility in the live performance sector takes the following forms:

- **A European based employer engages a third-country national** for a contract of fix duration to take part in one or more productions. As part of the contract the third-country national will rehearse and tour in different EU Member States (Schengen or not) and possibly outside EU/Schengen.
- A European based company has a **service contract with an independent third-country national** to deliver services related to a production and to tour with the group. The nature of the independent can be artistic as well as supporting technical services (sound, light, costume, physiotherapist, ...).
- A third form of high mobility concerns **service-providers in the meaning of a third-country national touring group** (theatre, music, dance, circus, ...) that has been booked by festival organisers, promoters, venues, cities, or others to perform in a respective city and location and that in the framework of a tour will cross-national borders between Member States.

As regards the duration of stay one can distinct the following scenarios:

- Linked to an employment contract, the stay in different countries depends on the tour(s) that are planned, which can be as low as one day or several days/weeks.

- In the case of service providers that are joining a tour, the duration of stay in different countries can be between one day and several days/weeks. It could be more should this be allowed.
- In the case of service-providers as touring groups the stay can be a few days, but over a period of a year could become more than the allowed 90/180 stay.

This could be summarised in the following schematic overview:

Purpose of the legal migration	Type of contract	Type of mobility	Duration of mobility
European based employer (touring company) engaging a third-country national	Employment contract – often fix-term (weeks/months)	Touring in several countries	Short duration of stay in several countries – but in can be more than 90 days in 180-day period
Third-country national independent service provider invited for a specific service, often with a touring company	Service contract with European based organisation (or via the touring company)	Touring in several countries	Short duration of stay in several countries – but in can be more than 90 days in 180-day period
Third-country national service provider, i.e. a touring company	Service contract with one or more promoters, venues, festivals,...;	Touring in one, often more countries	Can be short duration (few days, few weeks) in one tour, but can return several times over a calendar year. Can be longer duration (up to year or more) with longer stays in one single country (stay under national visa).



In all those cases there is a need to be able to travel within Schengen and in&out Schengen. Indeed, the proposal of the Commission for a touring visa in 2014 aimed to accommodate those needs and such mobility patterns. Pearle provided evidence of how the question on security could be guaranteed, demonstrating that there is a relation with European based organisations who have contracts including tour schedules and list of cities where performances are planned. In other words the third-country nationals could demonstrate their reliability and integrity as well as their intent to leave following their stay through submission of contracts and other evidence.

As such this guarantees a clear track and trace option for Member States. Whilst the EP was following this approach it is regretful that Member States did not consider the particular issue for the cultural sector. The touring visa would also have solved a longstanding problem related to the allowed stay in the Schengen area, which is currently limited to 90 days in a 180-day period, to a maximum of e.g. 12 months in a 15 month period (i.e., a three month time out period being a condition for any subsequent authorized stay) on the condition that stays do not exceed 90 days in any individual Member State. The EES, which is expected to become operational as from 2022, would guarantee enforcement and control compliance.

It is reminded that until present situation the 90/180-day limitation leads to extremely complex planning of tours to avoid overstay. It also leads to unnecessary additional costs, a loss of working days and income.

Therefore, a legal initiative allowing for third-country nationals to tour, to work and provide services in different EU Member States would be of the benefit of the European live performance market as they could much easier book third-country national groups and contract independent service-providers. Costs could go down on the one hand and income could increase on the other hand. This would in particular reply to a longstanding need of the cultural and entertainment sector.

Finally, it should also be noted that a variety of Member States provide an exemption to the requirement of labour permit when the artist is engaged by a European based company for a short period (a few days or weeks over a certain defined period). Should a harmonised legislative initiative be taken for highly mobile service-providers (as mentioned in the above paragraph), it would be good to consider those existing national exemptions for artists and other cultural professionals as they differ in duration, type of activity of the third-country national to whom it applies and nature of the contractual situation.



c) taking into consideration the current acquis and the complexity of the different patterns of labour migration, Pearle is of the opinion that it would be difficult to achieve a framework that allows for a sufficient overarching set of rules for the admission of all third country national workers. Rather the EC should address existing gaps in personal and material scope and

QUESTION 4. *The European Commission, together with the OECD, has assessed whether the EU could be made more attractive for third-country workers with the skills Europe needs by building an **EU talent pool**, taking inspiration from 'Expression of Interest' migration management systems used by Australia, Canada and New Zealand. This would provide a platform through which skilled third-country workers would express their interest in migrating to the EU and could be selected by EU employers and migration authorities based on their needs. The Commission announced in the Pact the development of an EU talent pool. In your view, what should be its main objectives?*

Comments of Pearle*: whereas the sector is inherently based on talent, as artists have a unique set of skills expressed through their talent, the proposal to build an EU talent pool would work adversely in the way the sector functions. It may suit other sectors where there is a desire to be able to recruit third-country nationals with a specific profile (such as IT-ers, health workers ...) but an 'expression of interest' to build a talent pool would most likely even not be used or considered by third-country nationals in the live performance sector. As such, if the Commission aims to build an EU talent pool, this should not lead to a gatekeeping system or controlling mechanism for labour migration. The live performance sector, as other creative sectors, needs to be able to work with the third-country nationals it considers to be essential at a moment when it is considered to be of added value in a creative process or a production.

QUESTION 5. *Do you think that the 'EU talent pool' could use elements of a **'points-based, where applicants are ranked on the basis of points assigned **system'** to different elements (such as already having a job offer, level of education or experience, language skills, age)?***

Comments of Pearle*: should the model of EU Talent Pool be introduced, a points-based system would even make it more stringent for the live performance sector to recruit third-country nationals. As explained above in response to question 4, the sector prefers to be able to continue have full flexibility and prefers to avoid that third-country nationals would need to become part of a Talent pool though expression of interest.



QUESTION 10. *Should the EU introduce new legislation to harmonise at EU level the admission and rights of third-country **entrepreneurs** and to promote the founding of by third-country **start-up companies'** entrepreneurs (persons that enter the EU to work as self-employed or to start a new business)?*

Comments of Pearle*: if the EU takes an initiative in this regard, this would encourage all Member States to be more open to third-country entrepreneurs and/or start-up companies' entrepreneurs. However, we would advocate for a requested demonstration of link with the respective member state such as in the form of cooperation with local entrepreneurs or companies. More specifically in the live performance sector this would lead to creative work and cultural co-productions which are cross-border co-operations between EU and third-country national entrepreneurs.