

**MODERNISING THE EU'S POLICY ON SHORT-STAY 'SCHENGEN'
VISA
RESPONSE TO PUBLIC CONSULTATION**

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1. Introduction

Following the Communication on the delivery of the European Agenda on Migration of 27 September 2017, the Commission is inviting stakeholders to give their view on a modernization of the EU's common visa policy and gather input regarding the process of applying for Schengen visas.

Pearle* welcomes this initiative of the Commission and the opportunity to present views which are of specific interest to the live performance sector, in particular for artists and cultural professionals travelling to one or more countries in the Schengen zone or Member States of the EU which do not belong to the Schengen.

The online survey addresses questions to individual travelers and allows organizations to add additional comments and views. It is underlined that the issues raised in this paper also reflect the input and views of the members of Pearle from countries which form part of the Schengen zone but do not belong to the EU member states in the Schengen zone. The paper takes also account of issues raised by non-European live performance organizations that (regularly) tour to Europe.

2. General remarks to Commission approach

A key element mentioned in the modernization of the EU policy is striking a balance between security, business and external relations.

The EU has undertaken various initiatives in recent years against illegal travelling and prevention of travels by third-country nationals who could form a threat for security. Besides, the EU has taken initiatives to also gather data of legitimate travelers through regulations on passenger name records (by airlines), or ETIAS. Third-country nationals who enter for the purpose of employment, study, research or business are also requested to provide proof and employers in the EU employing illegally third-country nationals are subject to important sanctions.

As the EU focused the recent years on the aspect of security it is essential to maintain Europe's goals formulated in the EU 2020 Strategy on jobs and growth. Whilst recovering from the financial crisis of 2008 and consolidating the Eurozone through the monitoring by the European Semester, the EU has to maintain its place in the world as a leading trading partner and an economic player. Easy travel between EU citizens and third-country nationals and the attractiveness of the EU for tourism and cultural purposes is a condition to realize those goals.

In this respect EU's external relations including trade and policies related to development, diplomacy and culture must be taken into account when reviewing the EU visa policy. To deliver upon the agendas, set out in those policy areas, easy visa applications or specific targeted rules are the key to unlock the relations between the EU and its partners in third-countries. International conventions and agreements including the Sustainable development goals and the Unesco-convention on Cultural diversity provide a basis for EU's policies.

The visa package proposal of 2014 including a Recast of the visa code and a proposal of a Touring visa formed already a good basis to address the goals of the EU in terms of balancing security, business, external relations.

Pearle regrets that the proposal for a Touring visa did not stand. The EU has missed the opportunity in times of economic recovery to reap the benefits of a modernized visa policy to contribute to the economy in Europe, whilst claiming its place in the world in promoting cultural external relations. The proposal for a touring visa was part of this and provided a solution to an existing legal gap for those third country nationals who would require to stay longer than 90 days in the period of 180 days, whilst respecting a maximum of 90 days stay in the same Member State.

3. Specific remarks

3.1 Characteristics of the live performance sector

In the live performance sector, third country nationals visit Europe for the purpose of taking part in artistic and cultural activities whether of a non-profit or profit nature.

Typology: it concerns artists (musicians, dancers, actors and other performers) as well as technical staff, touring managers, promoters, agents, and other cultural professionals. Some travel as individual, some travel as part of a touring group.

Duration: the duration of the stay may range from just as little as one or two days but can also concern long tours with stays of several weeks and months in EU member states (this the case for touring circus).

Reason for coming: Some cultural professional come for business purposes, to undertake prospection or to attend trade fairs or conferences. Some artists come to attend workshops and auditions. Others will come to become employed by a European based production company of theatre, dance or music. When part of the touring company, they will come at the invitation of a festival, a concert hall or venue, or organizer of events.

Travel pattern: although there is often a clear country of destination or more countries, it is common that there is travel in- and out the Schengen zone, which requires the possibility for multiple entry visa.

Mixture of nationalities: within touring groups it happens that there are several different nationalities who do not all require a visa. For longer European tours this may lead to particular problems on stays. The touring visa aimed to address this problem.

3.2. Reference to relevant EU cultural policy

In the context of the Schengen visa policy, Pearle wishes to refer to the Joint Communication of 8 June 2016 'Towards an EU Strategy for international cultural relations'¹ and to the 2006 Unesco convention on cultural diversity ratified by all EU Member States, which includes a provision in article 16 on preferential treatment to artists and other cultural professionals from developing countries.

3.3. Economic weight

As described in the Communication on an EU strategy for international cultural relations: 'Cultural exchanges can also bring economic benefits. Global trade in creative products has more than doubled between 2004 and 2013, whilst culture is a central element in the new economy driven by creativity, innovation and access to knowledge. Cultural and creative industries represent around 3 % of the global GDP and 30 million jobs. In the EU alone, these industries account for over 7 million jobs. Likewise, in developing countries, the cultural and creative sectors contribute to promoting sustainable development and inclusive growth. Culture can therefore help promote job creation and competitiveness both inside the EU and beyond its borders. This is recognized in the UN's 2030 Agenda for Sustainable Development, which underlines that culture, including world cultural heritage and creative industries, can have a significant role in achieving inclusive and sustainable development. Culture is therefore one of the important sectors promoted as part of the EU's development cooperation'.

Culture is also a vector for tourism². The Tourism sector³ currently makes a total contribution of 10.2% of EU-28 GDP while supporting 11.6% of total employment (26.5 million jobs).

¹ JOIN (2016) 29 final

² See European Tourism manifesto stakeholders group

³ World Travel & Tourism Council (2017), Travel & Tourism Economic Impact 2017 European Union, WTTC, London.

4. Particular issues in relation to the visa procedures

(1) administrative burdens and procedural requirements

As it was proposed in 2014 on the recast visa code, a main improvement for applicants is related to the place where the application can be lodged (see articles 5-6-7). It is important that applicants do not have to travel long distances as this means a substantial investment of (working) time, travel costs and overnight stays to go to the competent member state in the jurisdiction where the applicant resides or is legally present.

It is helpful if the applicant can lodge the application to one of the Schengen member states of destination or any member state present in the applicant's jurisdiction.

Furthermore, for several reasons, it should be possible to lodge an application already several months in advance: a period of six or even nine months before travelling would respond to needs of highly mobile cultural professionals and artists.

On the other hand, for justified cases, such as live performance groups that need to replace one of the artists or other members of the staff or crew because of illness or other reasons at the last minute, fast track procedures should be possible with decisions that can be taken as quickly as within 24h and option to obtain the visa at the border before entry in the Schengen zone.

In terms of processing of decision, thanks to the technological developments (incl. biometric information) and access to databases by member state authorities, it should be possible to reduce the time of decision to less than ten calendar days. In this regard, and given the context of the cultural activities, a greater weight can be given to the company or organization inviting the third country national. The concept of reliable company or bona fide employer is already used in other areas of employment of third country nationals or in other EU policy areas (e.g. VAT).

For bona fide travelers and regular visitors, the process of decision should even be shorter: five days would be desirable. This is particularly important in case the third country national also needs a work permit⁴.

⁴ Various countries (e.g. Belgium, France, Germany, Hungary, Poland, Spain) have special rules for third-country national artists or provide an exemption to the requirement for a work permit

In general, the sector would prefer and benefit from more transparency and clear information on the list of supporting documents that are requested. It must be avoided at all costs that applicants should bring additional documents which are not initially requested.

(2) harmonization of practices on multiple-entry visas, criteria and validity

For third-country nationals it is highly confusing that there exist differences between Member States on the issuance of MEV with long validity and therefore as a principle harmonized implementation of MEV would be welcome. However, at the same time, different practices between Member States do also provide solutions for the often already complex planning of tours live performance organizations. This is not so much a matter of visa shopping or competition among Member States, rather a way to solve problems arising from the 90/180-day rule which determines restrictions to the travelling within the Schengen zone.

Bona fide travelers which should therefore also be automatically considered as a VIS registered applicant, without a condition of prior having obtained one or more visas before, should be able to obtain a MEV if that shows from the planned visits in the next 6 or 12 months.

If the screening of the applicant for a single visit or for multiple visits is the same, it should not be necessary to add other criteria. The European Commission and the Member States have in the past years undertaken important efforts to collect and exchange data and information on third-country nationals travelling to Europe, that it allows to simplify the process for bona fide travelers that regularly visit Schengen countries.

The validity of a MEV when issued a first time could be up to three years, with options for renewal, or in the case of a new application be valid for a period of five years.

(3) Level of the fee

The visa code foresees that representatives of non-profit organizations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organized by non-profit organizations are waived the visa fee (art 16, par 4(d)), but only in an optional manner that the visa fee may be waived for participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organized by non-profit organizations (art 16, par 5 (c)). Pearle would like to see the visa fee waiver to be mandatory applicable for both types of travelers. This way one is no longer subject to the discretion of the member state where the visa application is lodged.

In addition, it would be welcomed could the age be 28 or even 30 years, as this is more in line with other approaches across EU countries to the definition of age category of young people. Furthermore, it should not be a condition that they are a representative of a non-profit organization as this limit highly the chance to benefit from a visa fee waiver.

Secondly, the current fee of 60 € is proportionate as it is often the organizers or employers in Europe that are paying or reimbursing the costs to the third-country national. It is underlined that in the sector it often concerns touring groups with as high a hundred or more artist and crew travelling to Europe to give performances. For example, the promoter that invests to bring more than 100 circus artists for a tour to Europe, takes an important financial risk. This means that the fee is to be multiplied by the number of people that take part in the tour, which signifies an important extra cost. In this regard, Pearle urges to consider a reduced fee in the event of larger groups travelling together.

It should be noted that for public authorities, whilst the fee of 60€ may perhaps not cover the actual cost, that amount is largely poured back in the European economy, already simply by the fact of the costs paid to the European travel agencies, hotels, restaurants and others.

On the other hand, Pearle could accept a higher fee for fast track procedure in case of urgency, for example 100€.

(4) External service providers (ESP)

It can be beneficial to be able to process the application through ESP, but not all artists can afford to pay for the use of ESP, therefore the option to visit the consulate should remain possible at all times. Not in all cases ESP have proven their role as facilitating visa processing so that applicants still had to follow up with the consulate about the specificities of their artistic practice.

It's been mentioned at seminars organized by the sector that consulates and external agencies should receive training on the specificities of mobile artists and cultural professionals. In this regard monitoring of ESPs is recommendable.

(5) Online applications

As it is already happening in other countries in the world, and as the EU also sets goals to develop a digital agenda for e-government, it would be welcomed to also develop a visa application system should that one could apply online and upload requested documents. As the ETIAS system foresees an online application for visa-exempt travelers, the Commission may consider using the system as a basis with an extended IT-application for those third-country nationals that come from visa-required countries.

Especially regular visitors and bona fide travelers should have the option to easy and fast online applications. It could also be a cost-saving option.

Pearle would very much support an initiative of the Commission in this regard.

(6) Visa-free and visa-required countries

Since the initiative for increased border management control on also visa-free travelers by the proposal of ETIAS, a step in the direction of reducing the distinction between visa-free and visa-required countries has been taken. A more flexible approach could result in less cumbersome procedures for some travellers, without jeopardising the clarity and harmonisation of the process. However, the conditions and request for evidence for reasons of visit are still very different. An innovative approach from the EU towards individuals travelling from third-countries whereby the requirement of an ETIAS registration for all third-country nationals would coincide with a visa application procedure, no matter the difference between visa-required or visa-free countries would bring great benefits if it eases the travel of those coming from visa-required countries.

The issue of limitation to the 90 days stay in a 180-day period still puts obstacles to the economic potential of Europe. However, the visa code allows for solutions, such as through the issuance of a visa with limited territoriality (art 25) or such as in the case a Member State hosts the Olympic games (recital 27). Moreover the Treaty no longer defines that 90 days or three months are to be considered as 'short stay'.

In addition, bilateral visa waiver agreements which still exist today demonstrate that Member States do give access to individual travelers to stay for longer period than the 90/180 rule. If the Commission takes this practice into account and would extend the possibility for any of the Schengen states to allow to revise (or amend) the current 90 days upward to 90+90 days (approximately 6 months) to increase economic and cultural benefits from live performance tours and to correspond with tour schedules of travelling groups.

It would allow for the live performance sector to schedule more performances of successful productions. In the context of the proposal for a touring visa, Pearle had calculated that the visa processing and structure of the Schengen visa, because of the 90/180-day rule and the distinction between visa-required and visa-exempt third-country nationals, would result in an economic impact of about 1 bln €, which could be overcome should there be a more flexible approach to the type of travelers. Touring is the livelihood for the live performance sector and a flexible visa system would support this economic necessity for the professionals in this sector.

Whereas Member States expressed reservation in the context of the proposal for a Touring Visa of April 2014 and in particular expressed fears of not being able to manage control over stays exceeding three months, the existence of bilateral waiver agreements for certain nationals demonstrate that Member States see the benefits for granting longer stays to bona fide travelers from third-countries. In the live performance sector, as a tour schedule is provided, when a group travels to the next country it can be easily controlled by authorities if the group arrives as indicated in the tour plan and with the people concerned. As it concerns public events which are announced often already well in advance and visited by officials, should they wish, upon the start of the performances, there is clearly proof of evidence. This process and way of working allows to give high transparency as regarding the security.

5. Conclusion

Pearle*-Live Performance Europe which is the European employers association in the music and performance sector welcomes the Commission's initiative to review its visa policy.

in Pearle's view a general and harmonized approach for legitimate third-country national travelers has to be the basis in order to provide transparency and clear rules. However, the EU can also respond to the specific needs of sectors, such as it has done to accommodate needs by employers for highly qualified or for seasonal work, or in the case of research and education purposes, and in the context of the visa code for seafarers or in the case of Olympic games.

The visa waiver fee for cultural purposes is much appreciated, but only provides a very limited and partial answer to the needs of the cultural sector.

Pearle* therefore urges the Commission to present an ambitious modernized EU policy on visa bearing in mind the needs of the sectors which rely on relations with third-countries.

PEARLE* - Live Performance Europe, is the European employers' federation of performing arts organizations. Pearle* represents through its members associations the interests of more than 10,000 theatres, theatre production companies, bands and music ensembles, orchestras, opera houses, ballet, dance companies, festivals, concert venues, producers, promoters, agents, comedy, variété, circus and others within the performing arts and music sector across Europe. The Live Performance sector is the biggest employer of the cultural industries with over 1,2 million employees.