

Newsletter

News about UK artist visas in Spain. BREXIT touring solution ☺ .

We inform that on November 12th, the agreement reached by the Council of Ministers was published in the BOE (Official Bulletin of the Estate) in order to facilitate the entry and stay in Spain of third-country nationals to carry out activities in the audiovisual sector. The measures are extended to foreign artists and technicians who participate in any **"artistic activity in front of the public"**, which represents a **solution for the field of live music and other shows in the face of the problems caused by BREXIT**, but also **the visa bureaucratic limitations procedures for the rest of the countries**.

The measures included in the Council of Ministers agreement (Order of the Ministry of the Presidency 1238/2021, of November 12th) are very focused on the field of the audiovisual sector, as it was one of the main measures contemplated in the "Plan to Promote the Sector Audiovisual" (Spain Audiovisual Hub) presented a few months ago by the government. The aim is to facilitate the arrival of foreign artists and technicians to participate in productions made in Spain (from any country, although the specific bottleneck problem generated with BREXIT was solved in the process).

Despite not being contemplated at the beginning given the specificity of the measure, finally **the music, theater and dance sector has also been included**:

<< The purpose of these instructions is to establish the form, requirements and deadlines to authorize the stay and residence of foreigners who meet

*the requirements established in these instructions and who carry out activities in the audiovisual sector **or artistic activity in front of the public** or intended for the recording of any kind for dissemination by different mass media. >>*

Below there is a **summary about the set of rules for foreign artists and professionals who carry out international tours in Spain:**

Perfiles profesionales que pueden acogerse

Es aplicable a los artistas, pero también a técnicos y profesionales extranjeros siempre que vayan a ejercer:

- actividades enmarcadas en el sector audiovisual,
- actividades artísticas ante el público o
- actividades destinadas a la grabación de cualquier tipo para su difusión por diferentes medios masivos.

Professional profiles accepted

It is applicable to artists, but also to foreign technicians and professionals as long as they are going to practice:

- activities framed in the audiovisual sector,
- artistic activities in front of the public or
- activities destined to the recording of any type for its diffusion by different mass media.

Requirements for the foreign artist or professional

The Government's instructions include a series of requirements that, although it seems like an extensive list, it simplifies a lot the usual artist visa procedure (we will explain this below). These are the requirements established by the Council of Ministers' agreement:

- a) Not being found irregularly in Spanish territory.
- b) Not appear as rejectable in the territorial space of countries with which Spain has signed an Agreement in this regard.
- c) Pay the fee for the visa or the corresponding authorization. The amount of the latter will be determined by Order ESS/1571/2014, of August 29th, which establishes the fees for processing administrative authorizations in relation to international mobility.

- d) Have an employment or professional relationship with the company that transfers or hires the professional in Spain within the scope of section one and two of the second instruction.
- e) In the case of stays of up to 90 days, comply with the conditions of entry into the Schengen area, provided for in Regulation (EU) 2016/399, which establishes a set of EU regulations for the crossing of people through the borders (Schengen Borders Code), and have travel medical insurance.
- f) For stays of more than 90 days, have medical insurance that covers the entire period of stay or residence, with coverage similar to those offered by the Public Health System, unless an activity is to be carried out for which is going to have the status of insured in the National Health System.
- g) Have sufficient financial resources for themselves and for the members of their family who accompany them, where appropriate, during their period of stay or residence in Spain, which can be justified, where appropriate, through the employment contract or the supporting documentation of a professional relationship.

Requirements for the Spanish company that hires the foreign artist or professional

- a) Being part of the production project in the audiovisual sector or artistic activity in front of the public or destined to the recording of any type for its diffusion by different mass media.
- b) Be registered in the Social Security system and be up to date with the fulfillment of their obligations vis-à-vis Social Security and the State Tax Administration Agency

So, is it necessary to obtain a visa?

For stays of up to 90 days in any 180-day period (which occurs in the vast majority of cases in the field of musical tours), we interpret that thanks to these instructions from the government **it is no longer necessary to apply for the so-called "artist visa" in origin** (exception of work authorization, articles 117 and 118 Royal Decree 557/2011).

From now on, and provided that the requirements that we have indicated are met, foreign artists and professionals who are going to participate in the shows can access and carry out their work in Spanish territory as long as they do not exceed this 90-day stay period (in in case of exceeding it there is an additional visa procedure).

For the latter, it is necessary to meet the requirements listed above. The most important are 2:

- a) have a performance contract with the promoter or Spanish agency (in the live music sector normally is professional-commercial relationship, not labor),
- b) have medical insurance.

Among those requirements, it is mentioned a uniform visa according to the country of origin (Schengen uniform visa). In fact, it would be the same visa that a person has to apply for if they come for tourism, and for many countries it is not even mandatory. For example, **UK nationals do NOT have to apply for this Schengen visa**. In this link it is available the list of countries whose nationals are subject to the obligation to apply for the Schengen visa, and also the list of countries whose nationals are exempt from applying: <http://www.exteriores.gob.es/portal/es/serviciosalciudadano/informacionparaextranjeros/documents/listapaisesvisado.pdf>

Apart from visas and immigration issues, it is important to remember two fundamental issues for the correct regulatory compliance on international tours (and that are not altered by the new measures):

- Social Security. In the case of a commercial and non-employment relationship, it is important to confirm that the person is registered with the social security of their country and that it covers to work in Spain (requesting the corresponding certificates, whose name varies depending on the country: A1, TAJA1, ..).
- Taxation. It is also important to comply with the tax obligations as a payer with respect to IRNR or the so-called withholding tax.

Breakthrough for the industry

This is a very positive measure for **promoters, festivals, venues and art agencies that work with international music artists**. It also provides facilities for the recording and phonographic production processes with artists and professionals from other countries, and for other companies and music professionals that develop projects related to the audiovisual world.

At a technical level, the solution has been complex, since two different laws had to be combined (*Law 14/2013, of September 27, to support entrepreneurs and their internationalization, and Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and its social integration*). In this sense, the technical premise raised before the Government from the music sector has been to **insist and justify that live music and artistic shows should receive the same treatment as the one announced a few months ago for the audiovisual sector**, and that should be included in the agreement of the Council of Ministers recently published in the Official Bulletin of the Estate, **something finally achieved**.

The dialogue with the public powers in this matter was intensified due to the effect that Brexit was causing for a part of live music in Spain. This dialogue has been promoted by the Association of Musical Promoters -APM- (which has also maintained direct coordination with the British lobby -LIVE-), the Association of the Technical Representatives -A.R.T.E.- and the Federation of Music of Spain Es_Música.

The streamlining of procedures on international tours (including the problems arising from Brexit) is one of the issues included in the strategies for the music sector promoted by the Federation of Music of Spain (Es_Música), within the sector's internationalization axis.

This information was prepared by the law firm Sympathy for the Lawyer. This newsletter is an interpretation made by the team of professionals at Sympathy for the Lawyer of the text officially published. The content of this document is for informational purposes only, regarding the novelty in the legal framework applicable to live music. Under no circumstances can it be understood as legal advice.