A bespoke visa waiver agreement for the creative and cultural sector

Briefing by the Incorporated Society of Musicians

This briefing was prepared by the Incorporated Society of Musicians (ISM), the UK’s oldest professional representative body for musicians. For more information please contact Liam Budd, Senior External Affairs & Policy Manager at liam.budd@ism.org.

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Introduction

With the completion of the EU–UK Trade and Cooperation Agreement at the end of last year, the adverse impact on the creative industry has become clear. Loss of income and work, and the inability to tour due to the new visa and work permit rules are common experiences amongst our members.

Senior leaders across our sector have had numerous meetings with civil servants, where we have presented a range of workable solutions. We have consistently called on the UK Government to:

1. negotiate a bespoke Visa Waiver Agreement (WVA) for the creative sector with the EU that is separate to the Trade and Cooperation Agreement exempting creative professionals from needing to obtain a visa when seeking paid work;
2. negotiate bilateral agreements with individual EU Member States that do not offer cultural exemptions for work permits, as well as those which are financially the most important for the creative industry;
3. provide an emergency funding package for the creative sector to compensate for the additional costs associated with working in the EU and the loss of work;
4. ease the impact of the new cabotage regulations;
5. publish the relevant correspondence and information relating to the Brexit negotiations.

We are extremely concerned by the lack of progress that has been achieved over the last three months. Whilst it is positive that the Prime Minister has stated that the Government is working ‘flat out’ with individual EU member states to improve their guidance around entry and work requirements, we have not yet seen any progress to unravel the mountain of costly red tape. The Government has also stated its opposition to negotiating a VWA with the EU, despite it being backed by industry bodies across the creative industry including the Musicians’ Union, One Dance UK, Equity, BECTU, Fashion Roundtable, Society of London Theatre, the Association of British Orchestras and many others.

The Government has argued that a VWA is not be suitable because it would require the Trade and Cooperation Agreement (TCA) to be renegotiated.
The Government has also stated that:

- it would be incompatible with its manifesto commitment to take back control of our borders;
- would not be legally binding;
- only cover ad hoc performances,
- not benefit technical or support staff; and
- not address the issue of work permits.

However, the ISM has taken legal advice from a leading QC on the latest response from the Government and we have been advised that a VWA between the UK and the EU would in fact be highly advantageous. The purpose of this briefing is to update all of those in the creative sector on what we believe the position to be in accordance with the QC’s advice.

**What is a VWA?**

VWAs between the EU and third countries allow visa-free short-term visits on a reciprocal basis. In this context, "short-term" generally means 90 out of 180 days. Standard VWAs state, “persons travelling for the purpose of carrying out a paid activity during their short stay are not covered by this Agreement”, and therefore cannot travel visa-free. However, this does not include “artists performing an activity on an ad-hoc basis” as well as sportspersons, businesspersons, journalists and intra-corporate trainees. It appears that during the trade negotiations, the EU made a standard offer to the UK for a VWA. We have been advised by a leading QC that an agreement of this nature between the UK and the EU would be highly advantageous.

Analysis of the EU’s legislation database shows that these agreements are common practice between the EU and third countries. Since 2009 the EU has entered into 28 Visa Waiver Agreements and Joint Declarations – including Colombia, UAE, Tonga and St Lucia. All, except that for China, work in the way described above, although different scope and wording was negotiated in the case of Brazil. This means that a musician from Tonga has greater access to work in Europe than UK musicians.

**What is the current regulatory landscape?**

All UK nationals holding a valid passport (with at least six months’ validity) can travel for up to 90 days in a 180-day period in the Schengen area without a visa. However, because the UK rejected the EU’s offer during the Brexit negotiations for a VWA for artist, both parties can choose to treat the other party’s citizens as ‘visa nationals’ when entering for paid work.

A visa is a document which gives a person the right to enter or leave the country or territory for which it was issued. This is different to a work permit, which is a generic term for any legal authorisation which allows a person to take up work which can be freelance or employed in a given country or territory. Some countries use the terms ‘visa’ and ‘work permit’ interchangeably.

The UK Government has already decided to treat musicians, artists and entertainers from EU Member States as ‘non-visa nationals’, and there are several different routes available. For example, EU musicians can stay for up to one month for paid work without a visa under the Permitted Paid Engagement entry route. Alternatively, they can stay in the UK for paid engagements for up to three months under the Creative and Sporting Visa Concession (T5) route, and six months under the Permit Free Festival (PFF) route.

However, because a VWA with the EU is not in place, a patchwork of rules exists amongst Member States with some countries requiring a visa. This does not include work permit requirement which also vary amongst Member States who retain sovereign power over these rules. Therefore, the situation of EU musicians entering the UK for paid work is more beneficial than that of UK national musicians seeking similar paid work in the EU.
Which EU countries require a visa?

In response to a lack of country-specific guidance, the ISM produced the most comprehensive document in the music sector outlining the new rules for every country in Europe. VI Portugal, Spain, Austria, Latvia, Greece, and the Czech Republic are six countries we have so far identified as requiring UK musicians to obtain a visa for paid work. This was confirmed by the relevant embassies and Mobility Information Points. However, the situation in many other countries remains unclear. A number of countries listed as not requiring a visa in the Visa Code Handbook have outlined that the situation may change depending on the relationship with the EU (Belgium, Hungary, Italy). VII Because a VWA is not in place, there is nothing preventing these countries from imposing entry visas in the near future.

What are the challenges obtaining a visa?

Musicians face an array of challenges when obtaining visas. For example, applications can take up to three months to process, which is incompatible with last-minute performances. Many UK embassies and consulates are currently closed due to Covid-19. As a result, documents are only being processed for health care workers and emergency travel. Many countries are currently not allowing entry to UK citizens due to the emergence of new Covid-19 variants.

In addition to the costs, applications often require additional paperwork and expenditure that may not be immediately clear. These include multiple copies of documents, translation of documents, certification of documents, police certificates, proof of higher education qualifications, proof of income and health insurance. The current cost of a police certificate from the ACRO Criminal Records Office is £55 within 10 days and £95 for a 2-day service. As applications have to be made in person, travel costs and time off work and rehearsals also have to be taken into consideration. If a visa and/or work permit application requires the passport to be sent off, this prevents musicians travelling to other countries to work whilst the application is being processed. Some musicians have told us that when trying to get a visa to work in Spain, they received incorrect information from the embassy and were then refused. VIII The rules can also differ for musicians and support staff.

What are the benefits of a VWA?

1. The TCA does not need to be re-opened

A critical argument made by the Government for opposing a VWA is that it “would require the Trade and Cooperation Agreement (TCA) to be renegotiated”. According to the Government, “the TCA is the basis of our trading relations with the EU, and this is not going to be renegotiated”. IX

We completely accept that the TCA will not be reopened. However, we are advised by the QC that a VWA could easily be encompassed in a short supplementing agreement or a Joint Declaration (JD) added to the TCA. The possibility of other bilateral agreements between the UK and EU is clearly outlined in the TCA. For example, Article COMPROV.2 states:

"Where the Union and the United Kingdom conclude other bilateral agreements between them, such agreements shall constitute supplementing agreements to this Agreement, unless otherwise provided for in those agreements. Such supplementing agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of the overall framework." IX

2. VWAs allow the UK Government to maintain control of its borders

Another key argument presented by the Government is that a VWA is “incompatible with our manifesto commitment to retain control of (its) borders”. According to the Government, “the
proposals would have enshrined permanent visa-free short stays for all current and future EU citizens in the agreement”. However, we have been advised that with VWAs this is not the case. Instead, as noted above, standard VWAs provide an exemption only for limited number of professions, such as “artists performing an activity on an ad-hoc basis” as well as sportspersons, businesspersons, journalists and intra-corporate trainees. The legal text of any visa waiver agreement can be restricted further, for example exclusively for the creative industry, and to specific professions based entirely on what is negotiated. The ISM has worked with a leading QC to draft a bespoke VWA for the cultural sector (see appendix) which we have shared with Government.

The Government has also argued that a VWA is incompatible with its manifesto commitment because “the Commission would be likely to argue that any EU-wide visa waiver agreement can only be part of a wider package with a binding non-discrimination clause and a reciprocal visa waiver agreement covering all current and future Member States”. This is unsurprising given the EU’s long-standing principle of non-discrimination amongst Member States. The QC has advised that the logic of this argument is unclear when proposals agreed in the TCA itself are also reciprocal and non-discriminatory (with the exception of the specific conditions and reservations in Annex SERVIN-3 and -4). Without knowing its precise terms, we have been advised that it is likely that the UK’s offer in the draft TCA would itself have been reciprocal and non-discriminatory as between Member States and treating citizens of the EU equally.

Another important benefit identified in the legal advice is that under the terms of a VWA, a Joint Committee of experts composed of representatives from both parties (the EU being represented by the European Commission) is created for the management of the Agreement. The Committee is tasked to monitor the implementation, suggest amendments, settle disputes arising from the interpretation or application, and carry out other agreed tasks. This would provide musicians with definite provisions to refer to when seeking to enter the EU, or when seeking to appeal a refusal by a Member State. Existing VWAs also allow for termination on 90 days written notice by either party. However, this period could be shortened or extended. These mechanisms would provide the UK Government with control over its implementation and the protection of being able to terminate any arrangement that was not proving satisfactory. It is therefore not clear, without more information, why agreeing to an ad hoc exception for artists and other creative workers (of which is terminable and managed) would not allow the UK Government to maintain control of its borders, especially when the UK Government has repeatedly stated that its offer was “more generous” than the EU’s.

3. VWAs are legally binding

The Government has argued that a WVA would not be suitable because it is “non-binding”. In a recent PQ response, the Minister of State for the Department for Digital, Culture, Media and Sport stated, “while the EU has visa-waiver deals with some other third countries, this does not bind Member States and many continue to apply visas on paid activity, while some Member States offer the same waiver regime to those with whom they don’t have deals”. However, we have been advised that VWAs are in fact legally binding once ratified. According to the QC, this is in accordance with the respective internal procedures of the Contracting Parties. Any failure to implement, including by Member States, can be raised before the Joint Committees of Experts set up to monitor their implementation. Crucially, VWAs are approved by legislative decisions of the EU Council. Therefore, we have been advised that a commitment in a VWA would be no less binding than those in the TCA.

In addition, the Visa Code Handbook paragraph 3.2.1, shows that an exception for artists should be applied where countries have decided to impose visas on those travelling for the purpose of paid activity: “In that sense, and in accordance with the Visa Waiver Agreements concluded by the EU with certain third countries, this exception should not cover…. - sports persons and artists
performing an activity on an ad-hoc basis”. xv This suggests that as far as the Visa Code Handbook is concerned, they are binding. Without more information, the Government’s argument is unclear.

4. Creative professions, including technical and support staff, could benefit

The Government has objected to a VWA because it only covers “ad hoc performances” and therefore only “a very small number of paid activities”. XVI However, we are advised that the term “ad hoc basis” is interpreted to cover artists carrying out specific engagements such as a short, temporary work or a series of performances. In practice, it may be similar to the Permitted Paid Engagement (“PPE”) route operated by the UK. Crucially, we have been advised that guidelines could be agreed with the EU to provide further clarity on what is meant by the term ‘ad hoc’. Alternatively, a bespoke agreement could replace this terminology with a clear definition of the scope of permitted activities and eligible professionals (such as technical or support staff). Clearly artists stand to benefit in some from this exemption. It is unclear why the sector was not informed about the EU’s offers during the negotiations and why this was rejected by the UK Government.

5. Visas and work permits are separate issues

Finally, the Government objected to a VWA because it does “not cover work permits, which EU member states can put in place unilaterally”. It is true that a VWA deals only with the position regarding visas; work permits are a separate issue. VWAs exist between the EU and third countries whereas EU Member States retain sovereign power over work permit rules. This is therefore not a sufficient argument for refusing a VWA when it would solve one key area of red tape and add a greater level of certainty for the future. A VWA would protect businesses and livelihoods for UK creatives and send a strong message that the UK Government is doing everything it can to protect our world leading creative and cultural sector.

Value of music and touring

The UK music industry is a global success story, contributing £5.8 billion to the economy, generating £2.9 billion in export revenue and sustaining over 197,000 full-time jobs. Music tourism contributed £4.7 billion of spending to the UK economy in 2019. There were 12.6 million music tourists going to live music events and 45,600 jobs were sustained.xvii

The music sector generates a significant amount for economies across Europe, adding €81.9 billion to GDP in the EU27 and UK in 2018.xviii Music plays a vital role in the UK’s soft power and the UK is currently ranked second in the Portland Soft Power 30 Index.xix

There is a strong demand oversees for streaming UK music. The following represents the top EEA countries of UK music artists market share: (1) Belgium – 17.2%; (2) Netherlands – 14.6%; (3) Switzerland – 13%; (4) Austria - 11.6%; (5) Germany - 9.7%; (6) Sweden - 8.5%; (7) Spain - 7.4%; (8) Italy – 7.3%.xx

In May 2020 the ISM published its 5th Brexit report, which found that 44% of musicians earn up to half of their earnings in the EU (54% in 2016); 43% travelled to the EU more than five times a year (39% in 2018); and 32% spend more than 30 days in the EU for work (41% in 2018).xxi
Appendix 1 - Personal testimonies from musicians

We recently published a report with personal testimonies from music professionals revealing how new visa requirements are preventing UK musicians from touring as Europe begins to reopen after coronavirus. Some of the comments included:

Simon Halsey, conductor, teacher and academic

"Since 2016, I have been principal conductor of Orfeó Catala, the glorious 7 choir set-up in the iconic Palau de la Música, Barcelona. At present, I’ll need 4 x 90 day visas to do my job because I live in England and work at the LSO. I earn 2/3 of my income in Euros, pay tax on those Euros in the UK - quite a significant sum. My first Visa is applied for but has cost £490.50 so far; it hasn’t arrived but I’m sure it will one day. The later visas may be cheaper once Covid allows one to go to the Consulate in person?"

Since Simon shared his initial experience, he was turned down for his visa despite being principal conductor of a major Spanish organisation since 2016. The Spanish Consulate have been unable to say which visa should be applied for.

Ben Papworth, Musical Director, vocal coach and piano vocalist

'I am a self-employed musician living in Ealing, London. I recently applied for a Schengen Business Visa in preparation to return to Sitges, Barcelona to work at the Institute of The Arts Barcelona as Musical Director for their 2nd and 3rd year Musicals. I have been working at the IAB since March 2019 and always look forward to returning to work with the school. I have been rejected, not once, but twice for my visa to return to work... I simply cannot afford to keep spending money on visa applications, for the information provided to me by both the application centre and Consulate to be both below standard and incorrect. I have since lost £236.90 of my own money that I have struggled to earn during COVID-19 and as of yesterday morning I have lost my work opportunity with the IAB and have lost £3250. This is totally unacceptable and incredibly hard to process.’

Joseph Middleton, classical pianists

'An email from my agent, the first post-Brexit correspondence relating to work in Spain, explaining that a recital for which I signed a contract two years ago, would now cost me £600 in visa-related bills. Even though I would only spend 24 hours there, my agent would be required to work on a raft of extra paper-work, my accountant to furnish me with documents giving proof of income, and my bank would need to provide me with recent certified bank statements (no pesky home print-offs here, thank you). My passport would need to be submitted to the Spanish Embassy and held there until the visa was processed, causing problems for when I had to travel for other work. Apparently the 'normal' visa cost would be nearer £150, but with the Embassy only currently open one day a week, the promoter had told my agent the only option would be to pay out for the £600 fast-track. The concert in Spain, one of the few remaining non-Covid cancellations in my diary, is part of a tour that also takes in recitals in France and Denmark. Pull out of one engagement because the numbers don't stack up, and risk losing the work in the other countries as well. Too many visas, even at £150 each (and that figure obviously doesn't include cost of travel to the embassies, the lost work time, or the extra costs to agents and accountants) and it’s clear that your livelihood is going to take a nosedive.
Appendix 2 – Draft bespoke Visa Waiver Agreement

AGREEMENT between the European Union and the United Kingdom on the application of their short-stay visa waivers to activities in the cultural sector

THE EUROPEAN UNION, hereinafter referred to as ‘the Union’ or ‘the EU’, and THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, hereinafter referred to as ‘the UK’, hereinafter referred to jointly as the ‘Contracting Parties’, …

HAVE AGREED AS FOLLOWS:

Article 1
Objective
The purpose of this Agreement is to promote cultural exchange between the Parties and the development of their cultural sectors.

Article 2
Scope
1. The Contracting Parties recall Article VSTV.1.1 of the Trade and Cooperation Agreement and note that on the date of entry into force of this Agreement both Parties provide for visa-free travel for short-term visits in respect of their nationals in accordance with their domestic law.

2. The Contracting Parties further note that, subject to Article VSTV.1.1, each of the Contracting Parties are free to impose a visa requirement for short-term visits by nationals of the other Party. The present Agreement is without prejudice to that position.

3. This Agreement is without prejudice to any arrangements made between the United Kingdom and Ireland concerning the Common Travel Area.

Article 3
Definitions
For the purpose of this Agreement:
(a) ‘Member State’ means any Member State of the Union, with the exception of Ireland;
(b) ‘citizen of the Union’ means a national of a Member State as defined in point (a);
(c) ‘British citizen’ means a British citizen as defined by the national law of the UK;
(d) ‘Schengen area’ shall mean the area without internal borders comprising the territories of the Member States as defined in point (a) applying the Schengen acquis in full
(e) ‘cultural activity’ means the activity of artists (including actors and musicians and technical crew) [performing an activity on an ad-hoc basis], and includes paid activity.

(f) ['ad-hoc basis’ means ... ]

Article 4
Visa requirements for persons travelling for the purpose of carrying out cultural activities
1. Where a Party permits visa-free travel for short-term visits in respect of nationals of the other Party, that Party shall permit visa-free travel, for such nationals carrying out a cultural activity, for at least the duration specified in Article 5.
2. Paragraph 1 shall apply without prejudice to the laws of the Contracting Parties relating to the conditions of entry and short stay. The Member States and the UK reserve the right to refuse entry into and short stay in their territories if one or more of these conditions is not met.

Article 5  
**Duration of stay for the purpose of cultural activity**

1. As regards citizens of the Union travelling to the territory of the UK for the purpose of carrying on a cultural activity, the specified duration is 90 days in any 180-day period.
2. As regards British citizens travelling to the territory of the Member States fully applying the Schengen **acquis** for the purpose of carrying on a cultural activity the specified duration is 90 days in any 180-day period. That period shall be calculated independently of any stay in a Member State which does not yet apply the Schengen **acquis** in full.

As regards British citizens travelling to the territory of each of the Member States that does not yet apply the Schengen **acquis** in full, the specified duration is 90 days in any 180-day period. That period shall be calculated independently of the period of stay calculated for the territory of the Member States fully applying the Schengen **acquis**.
3. Nothing in this Agreement prevents the UK or the Member States from extending the period of stay beyond 90 days in accordance with their respective national laws and Union law.

Article 6  
**Territorial application**

1. As regards the French Republic, the provisions of this Agreement shall apply only to the European territory of the French Republic.
2. As regards the Kingdom of the Netherlands, the provisions of this Agreement shall apply only to the European territory of the Kingdom of the Netherlands.

Article 7  
**Management of the Agreement**

1. The Contracting Parties shall set up a Joint Committee of experts (hereinafter referred to as the “Committee”), composed of representatives of the Union and representatives of the UK. The Union shall be represented by the European Commission.
2. The Committee shall have the following tasks:
   (a) monitoring the implementation of this Agreement;
   (b) suggesting amendments or additions to this Agreement;
   (c) settling disputes arising from the interpretation or application of this Agreement;
   (d) any other task agreed upon by the Contracting Parties.
3. The Committee shall be convened whenever necessary at the request of one of the Contracting Parties.
4. The Committee shall establish its rules of procedure.

Article 8  
**Final provisions**

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on the first day of the second month following the date of the later of the two notifications by which the Contracting Parties notify each other that those procedures have been completed. This Agreement shall be applied on a provisional basis as from the date of signature thereof.
2. This Agreement is concluded for an indefinite period, unless terminated in accordance with paragraph 5.
3. This Agreement may be amended by written agreement of the Contracting Parties. Amendments shall enter into force after the Contracting Parties have notified each other of the completion of their internal procedures necessary for this purpose.
4. Each Contracting Party may suspend in whole or in part this Agreement, in particular, for reasons of public policy, the protection of national security or the protection of public health, illegal immigration or upon the decision of either Contracting Party to require visas for short-term visits by nationals of the other Party. The decision on suspension shall be notified to the other Contracting Party not later than two months before its planned entry into force. A Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party should the reasons for that suspension cease to exist and shall lift that suspension.

5. Each Contracting Party may terminate this Agreement by giving written notice to the other Party. This Agreement shall cease to be in force 90 days thereafter.

6. The UK may suspend or terminate this Agreement only in respect of all the Member States.

7. The Union may suspend or terminate this Agreement only in respect of all of its Member States.

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i Examples include Colombia: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1219%2801%29&qid=1611061742438](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1219%2801%29&qid=1611061742438)

Tonga: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29)


iii [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29)


v [https://www.ism.org/advice/eu-work-permit-requirements-for-musicians](https://www.ism.org/advice/eu-work-permit-requirements-for-musicians)


viii [https://questions-statements.parliament.uk/written-questions/detail/2021-03-19/172035](https://questions-statements.parliament.uk/written-questions/detail/2021-03-19/172035)


