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. 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 to unravel the mountain of costly red tape. The Government has stated its opposition to negotiating a VWA with the EU, because they claim it would require the Trade and Cooperation Agreement (TCA) to be renegotiated. The Government has also argued 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.

VWAs are common practice between the EU and third countries. Since 2009 the EU has entered into 28 agreements – including Colombia, UAE, St Lucia and Tonga. Therefore, 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. 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. 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. 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). Because a VWA is not in place, there is nothing preventing these countries from imposing entry visas in the near future.

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”.

viii
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

According to the Government, a VWA is “incompatible with (its) manifesto commitment to retain control of our borders” because “the proposals would have enshrined permanent visa-free short stays for all current and future EU citizens”. However, we have been advised that this is not the case. Instead, 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.\(^x\) 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.

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 VWA 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”.\(^xii\)

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.
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". 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.

**Appendix – 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.
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.

---

1 Examples include Colombia: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22015A1219&lang=en]
3 St Lucia: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22015A1219&lang=en]
5 [https://questions-statements.parliament.uk/written-questions/detail/2021-03-19/172035](https://questions-statements.parliament.uk/written-questions/detail/2021-03-19/172035)
7 [https://hansard.parliament.uk/commons/2021-01-19/debates/7D0EB35F827/UK-Musicians-EU-Visa-Arrangements#highlight=visa#contribution-6EAA4B29-BB21-4620-ABA1DC50F702](https://hansard.parliament.uk/commons/2021-01-19/debates/7D0EB35F827/UK-Musicians-EU-Visa-Arrangements#highlight=visa#contribution-6EAA4B29-BB21-4620-ABA1DC50F702)