

Unlocking the potential of the creative industries post Brexit

November 2021

Recommendations

1. **Greater guidance**, and **increased clarity** thereof, to be issued by government for creative practitioners looking to travel between the UK and the EU to ensure regulatory requirements are accessibly communicated. This guidance must relate to both the movement of people and goods respectively.
2. Greater **transparency** around conversations and negotiations underway with individual Member States. **Urgent prioritisation of negotiations** with Member States that are financially important to the success of the UK Creative Industries, and which do not currently offer work permit exemptions
3. Urgent negotiation with Member States that are financially important to the success of the UK Creative Industries, and which do not currently offer visa exemptions. **A Visa Waiver Agreement could offer a simplified and systemic solution**
4. Increased efforts to **inform border officers of new processes and procedures** with updated and thorough guidance issued
5. The **Eurostar must become a designated CITES port** to ensure critical goods, such as musical instruments, can be transported without undue financial and administrative burden.
6. Introduce a **cultural waiver from the road haulage limits**, covering both 'for hire and reward' and 'operating on own account'

Context

Movement of people

Work in the EU was a vital part of the success of the UK creative workforce and was made possible by ease of movement. However, under the terms of the UK's Withdrawal Agreement, freedom of movement was terminated at the end of the transition period on 31st December 2020. The UK and EU agreed on reciprocal visa-free travel within the Schengen area for the purposes of tourism, visits to family and friends, to attend business meetings, cultural or sports events, or for short-term studies or training for up to 90 days in any 180 day period.

However, both parties failed to reach agreement with the EU on a visa waiver for short-term creative work in the EU and UK citizens are now treated as non-EEA visa nationals when entering the EU to undertake paid work. The means having to navigate different regulations, requirements and visa charges across the 27 EU Member States, which is expensive, complex and time consuming. UK creatives and their teams will need visas for stays of longer than 90 days in a 180-day period and certain EU Member States will so require additional work permits on arrival. Due to a lack of specific provision catering to the Creative Industries in the Trade and Cooperation Agreement between the EU and the UK ('TCA'), creative practitioners and their teams must now comply with individual Member State regulations.

The full impact of Brexit on the creative industries has been masked by the unprecedented restrictions imposed due to the Covid-19 pandemic. However, prior to the pandemic 70% musicians travelled abroad to work and 40% visual artists travelled to Europe in the year up to July 2017. It is

vital that the success of the creative industries, which relies heavily on this ability to travel, is not lost due to the changed relationship with the EU.

Guidance

DCMS has been conducting on-going research in which EU Member States offer visa and/or work permit free routes for UK creatives. As of 16 November 2021, the department has confirmed this stands at 21 out of 27. Notably, certain major export markets for the UK Creative Industries such as Portugal, Greece and Croatia.

We welcome steps being taken to negotiate new paths into the EU, such as the recent announcement around visa-free travel in Spain. However, it remains crucial that government is precise in all its external communications, to ensure that variations between regimes are clearly differentiated. This is due in part to the risk that creative practitioners will act based on government communications without seeking legal advice.

Visas and Work permits

The UK and EU have agreed arrangements that facilitate short-term business travel and temporary placements of high-skilled employees and independent professionals. The relevant commitments are set out in Chapter 4 of Title II ‘Services and Investment’¹ and the provisions are referred to as Mode IV services.²

Chapter 4 sets out conditions for the mobility of five groups of business travellers, including both Independent Professionals and Short-Term Business Visitors (‘STBVs’). STBVs can stay within a Member State or up to 90 days in any six-month period, to carry out certain, “permitted” activities, as stipulated in ANNEX SERVIN-3. However, these permitted engagements did not include provision for the creative industries.

If work done by creatives and their support staff had been captured in the list of permitted business activities for STBVs, it could have allowed them to deliver their services in the EU more easily, without needing work permits. However, the World Trade Organization has stated that Mode IV provision ‘does not concern persons seeking access to the employment market in the host member.’³ This would suggest that renegotiation of the STBV list is an inappropriate solution for the temporary movement of UK creative workers in the EU.

However, work permit exemptions are critical to the success of the UK creative industries. It is **therefore vital that there is greater transparency around conversations with individual Member States on such exemptions and increased urgency around bilateral negotiations.** Currently, where work permit exemptions do not exist, creative practitioners and their teams will incur significant financial and administrative burdens, which may well be prohibitive for many in our sector due to resource constraints, particularly in smaller and early-stage businesses.

It is important to note that work permits and visas are separate issues. Individual Member States hold sovereign power over work permits, however Visa Waiver Agreements (‘VWAS’) exist between

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

² <https://researchbriefings.files.parliament.uk/documents/CBP-9130/CBP-9130.pdf>

³ https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm

the EU and third countries, with 28 currently already in existence.⁴ A VWA will typically allow visa-free short-term visits on a reciprocal basis.

Organisations such as the ISM have argued that a VWA between the EU and the UK:

- Would not require the TCA to be renegotiated
- Would allow government to retain control of its borders. VWAs can use precise and restrictive language, providing exemptions for only a limited number of professionals, such as “artists performing on an ad-hoc basis”
- The term “ad-hoc” as used above would be interpreted to cover creative practitioners carrying out specific engagements such as 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.⁵

The VWA could represent a systemic solution to the current challenges faced by creative practitioners – namely that they must navigate the visa regimes of all 27 Member States individually, incurring significant financial resource burdens for each, which notably will disproportionately affect early career individuals.

On 30th September, Cabinet Office confirmed to the ISM that the proposed VWA would not require the TCA to be renegotiated. It was instead indicated that the pushback was due to the political, rather than the legal landscape.

The VWA could maximise the potential of the UK creative industries in one of their largest markets, however for it to be successful, **the language must include not only creative practitioners, but also their supporting teams.**

While the Federation welcomes the laudable efforts made by organisations such as the four Arts Councils, which are working on pilot programmes to improve artist mobility and collaboration, these are small in scale and do not provide the systemic solutions that are needed to ensure the UK creative industries remain world-leading.

Inbound Travel

The UK government now treats musicians, actors and artists from the EU as ‘non-visa nationals’, which means that there is an unequal playing field between outbound UK nationals and their EU counterparts. It is easier for EU nationals travelling to the UK than it is for the opposite, disadvantaging UK creatives with a knock-on effect for the UK economy, international competitiveness and soft power. However, there remain issues for incoming EU nationals utilising specific visa routes, particularly where creative workers and their teams are using the Temporary Worker route (formerly known as Tier 5).

Under this route, an artists must: be sponsored by an employer for the duration of their stay, have no gaps in work of a period longer than two weeks, or undertake multiple engagements with different employers under the same visa. This raises challenges due to the project-based nature of creative work, e.g. where auditions or castings must take place between periods of work (which

⁴ <https://www.ism.org/images/files/ISM-briefing-a-bespoke-visa-waiver-agreement-for-the-creative-and-cultural-sector.pdf>

⁵ <https://www.ism.org/images/files/ISM-briefing-a-bespoke-visa-waiver-agreement-for-the-creative-and-cultural-sector.pdf>

often require longer than two weeks), while also preventing creative workers for undertaking multiple separate engagements under the same visa.

Anecdotally, the Federation also hears that there is significant confusion among border officers about requirements and processes for inbound creatives attending the UK for temporary work, such as requirements to activate Certificates of Sponsorship and to stamp passports. This has led to discrepancies in the treatment of different individuals and has exposed UK sponsors to legal risk. **Efforts to inform border officers of new processes and procedures must be improved and thorough updated guidance issued.** It would be helpful for this guidance to be shared with industry, to carry while travelling as a further means of security and reassurance.

Movement of Goods

It is not purely the movement of people that poses challenges. Restrictions on the movement of goods, such as through cabotage, carnets and CITES also negatively impact creative practitioners' ability to provide services across the EU.

Under the TCA, customs declarations must now be made for all UK-EU imports and exports and there are significantly increased regulatory processes to be complied with –carrying significant financial and resource burdens alongside legal risk.

- **Road haulage:** UK creatives seeking to tour, or undertake multiple engagements across the EU, now face increased challenges. UK hauliers operating within the EU are only permitted to make three internal movements before they must return to the UK. This is not workable for many UK touring companies and has resulted in some companies turning to EU haulage operators – at significant damage to the UK haulage industry. It is also important to note that **hiring EU hauliers comes at significant cost and is likely to price smaller UK creative businesses out of the market.**

However, in late September 2021, DfT stated that splitter vans were not subject to the TCA and their use is therefore subject to Member State law, as was the case before Brexit.⁶ This is welcome news for specific parts of the creative industries, as vans carrying both equipment and a maximum of nine people can move more freely around the EU.

The government must engage with specific sector bodies to ensure that the new cabotage rules do not cut the legs from under vital parts of the creative ecosystem. For example, the Association of British Orchestras, alongside the wider UK live events industry, have submitted detailed proposals for a cultural waiver from the road haulage limits imposed by the TCA for 'hire and reward' and 'operating on own account'.

- **ATA Carnets:** Required for goods entering and exiting international territories without sale, carnets are currently issued at a cost of £360 + security deposit (at 30-40% goods value). They are valid for up to 12 months and can be used multiple times throughout multiple countries during the period of validity. However, in practice this may often not be the case for the creative industries as the carnet requires the shipment to be exactly the same for each use which is highly uncommon. Though both the UK and EU have implied that exemptions for accompanied musical instruments and equipment (e.g. transported in baggage or vehicle) will prevent the need for an ATA Carnet, the practical application of this

⁶ <https://musiciansunion.org.uk/news/mu-welcomes-uk-government-announcement-that-splitter-vans%E2%80%9D-can-be-used-for-european-tours>

remains to be seen. **The Federation hears that TAXUD has confirmed that portable musical instruments can be declared orally for temporary admissions and guidance is currently under development – this is welcome and must be issued as a matter of priority.**

It is important to note that the new Carnet rules will have a dramatic negative impact on larger touring companies, with the huge additional cost in many cases threatening the viability of the whole tour.

- **CITES:** Where goods required to be moved contain protected materials such as ivory and some timber species (eg. As found in violin bows), they must be accompanied by a CITES certificate. These goods must be moved through designated ports of exit and entry when being transported. Musical Instrument Certificates (MICs) are free and last for three years, allowing instruments containing CITES specimens to cross international borders several times. However, fees may apply for the transportation of other items, such as props containing CITES specimens.⁷

The Eurostar is not currently a designated CITES port which significantly hinders creative practitioners' ability to move the goods necessary to carry out their services.

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⁷ <https://www.gov.uk/guidance/working-performing-and-touring-in-europe-guidance-for-musicians-and-accompanying-staff>