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Dear Minister,



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On behalf of the Incorporated Society of Musicians (ISM), I would like to thank you for your letter of 15 June 2021. I appreciate you responding in detail to our open letter, which was signed by over 300 creative organisations calling on the Prime Minister to deliver on his pledge to fix the crisis we find ourselves in following the completion of the Trade and Cooperation Agreement (TCA).

I am pleased to hear that the Government recognises the importance of the UK's creative and cultural industries. As you will know, the creative industries are worth in excess of £116bn per annum and are the same value to the UK economy as construction or finance. The Cultural Recovery Fund has helped creative organisations to survive the pandemic but to see a return on this significant investment as we move out of lockdown, it is vital that creative professionals can continue to tour without having to overcome costly bureaucracy.

Unfortunately, working in the EU is currently financially unviable for many UK creatives. A new survey by the ISM and the Musicians' Union (MU) revealed that 77 per cent of musicians expect their earnings in Europe to decrease once restrictions are lifted due to the extra costs of touring after Brexit and 21 per cent of musicians are considering moving to the EU to pursue their careers.<sup>1</sup> With most international touring activity at a standstill due to COVID-19, the real impact is yet to be seen.

You will know that those involved from our sector in the DCMS-led Working Group have suggested a range of solutions to tackle the issues around touring, from the visa waiver agreement and bilateral agreements with key member states, to clear advice on government websites and a transitional compensation package. This is such an important industry in terms of both influence and earnings, which is why it is vital for the Government to listen to the sector and take on board these solutions.

In order to take this process forward, we feel it would be useful to unpack the points you have made in your letter regarding the four policy proposals.

### **1. UK-EU Visa Waiver Agreement (VWA)**

As you know, the creative industries are united around the urgent need for a bespoke VWA with the EU. The ISM has worked with a leading QC who has advised us that this would be highly advantageous. We have shared the draft VWA with you (annex attached). It is therefore disappointing that the Government does not believe this proposal is a viable solution which runs contrary to our legal advice.

#### ***A. "The TCA is the basis of the Government's trading relations with the EU"***

We accept that for now the TCA will not be reopened. Fortunately, the QC has advised that a VWA could easily be encompassed in a short supplementing agreement or a Joint Declaration (JD) to be 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.*<sup>iii</sup> Please can you clarify why a supplementary visa agreement is not viable given the above?

*B. "Freedom of movement has ended"*

We completely understand that freedom of movement has ended. We are not advocating for this, but instead a restricted and sector specific visa exemption.

As the Government is aware, VWAs exist between the EU and third countries allowing visa free short-term visits on a reciprocal basis for a 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.<sup>iii</sup> Analysis of the EU's legislation database shows that these agreements are common practice. Since 2009 the EU has entered into 28 Visa Waiver Agreements and Joint Declarations – including Colombia<sup>iv</sup>, UAE<sup>v</sup>, Tonga<sup>vi</sup> and St Lucia<sup>vii</sup>. This means that a musician from Tonga has greater access to work in Europe than UK musicians.

The legal text can be restricted exclusively for the creative industries, and to specific professions based entirely on what is negotiated. It is also not clear, without more information, why agreeing to an ad hoc exception for creative workers 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.

*C. "Binding non-discrimination clause"*

You have argued that a VWA is incompatible with the Government's 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.

We have been advised by the leading QC 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. Please could the Government confirm if the UK's offer to the EU regarding arrangements for musicians were reciprocal and non-discriminatory?

*D. "No major G7 economy has agreed to lock in their visa systems with the EU"*

The EU is the most important external marketplace for UK performers. Research by the ISM found that before the pandemic 44 per cent of musicians earn up to half of their earnings in the EU/EEA and 32 per cent spend more than 30 days in the EU for work a year.<sup>viii</sup> It is in the EU that early career performers build their reputations on their way to breaking into other markets such as the US.

We do not accept that a VWA would lock away our visa system. Existing VWAs 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.

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) would be created for the management of the Agreement giving the UK Government yet further control. 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.

*E. "Non-binding in practice"*

You have also argued that a VWA would not be suitable because it is "non-binding". However, we have been advised by the leading QC 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"*.<sup>ix</sup> This suggests that as far as the Visa Code Handbook is concerned, they are binding. Without more information, the Government's argument is unclear. Please could you clarify this point?

*F. "Our door is open if the EU is willing to reconsider our proposals made during negotiations"*

We acknowledge the UK Government's efforts to reach an "ambitious agreement" with the EU during the negotiations on temporary entry and stay (known as Mode IV). As you have previously acknowledged in Parliament, there is no precedent in any other Free Trade Agreement for a Mode IV agreement to facilitate touring and other creative work.<sup>x</sup> This includes the Canada-European Union Comprehensive Economic and Trade Agreement (Annex 10-D), which was the desired model for the UK Government.<sup>xi</sup> Therefore, in reality the Mode IV proposal made by the UK Government was bound to fail. It was simply not the right vehicle.

You have previously argued that "this would have allowed musicians and support staff to travel and perform in the UK and the EU more easily, without needing work-permits". This is not correct since EU Member States retain sovereign power over work permit rules, so the Mode IV proposal is highly unlikely to have extended to work permits.

Given all the above we ask that the Government explore the possibility of negotiating a bespoke VWA with the EU. This would solve one key area of cost and bureaucratic red tape, whilst taking material steps to protect the highly valuable creative industries.

**Negotiating bilateral agreements with key EU Member States**

Thank you for updating me on your work with the UK's Heads of Mission around Europe as well as the Government's efforts to identify the rules by engaging at a bilateral level with EU Member States. Finding solutions to unravel the bureaucracy associated with work permits is desperately needed. The additional paperwork and expenditure is a significant barrier for musicians and is largely incompatible with last-minute performances. These arrangements (including costs) vary greatly between country and by the length and purpose of the stay.

Through our research we have identified 17 EU countries which require work permits or similar for stays of up to 90 days. It is concerning that we have not seen any real progress from the Government to negotiate cultural exemptions for work permits with key EU States countries which are financially the most important to UK performers. We desperately need the Government to make swift progress negotiating bilateral agreements on work permits.

## **Emergency funding package**

We welcome the fact that the Government is looking closely at options for compensation. Transitional financial support is urgently needed for an industry already devastated by the pandemic. Performances are scheduled months and years in advance and musicians have diary commitments now. The Government has a limited window of opportunity to protect our industry from this crisis.

The Government has provided financial support to UK fisheries of £100 million to address the impact of lost quotas having left the EU – an industry which generated £1.4 billion per year to the UK economy.<sup>xii</sup> Similar support should be urgently offered to the creative industries and we are committed to working with the Government to develop an emergency funding package that is sufficiently tailored to our sector's needs.

## **Reducing the impact of road haulage**

The Government clearly understands the importance of finding a solution to ease the impact of the road haulage regulations. The current rules make the standard touring model of moving musical instruments and equipment by truck to multiple venues in multiple countries impossible. A specific concern for the classical music sector is that many orchestras operate their own trucks. Under the European Commission's Regulation 1072/2009<sup>xiii</sup>, operating on 'own account' is exempt from limits on 'cabotage operations'. It is unclear why this exemption was not included in the TCA.

Currently the only solution is to hire EU-registered road haulage operators. One option to find a way forward would be to seek a redefinition of the 'non-commercial' exemption from the road haulage limits, to align it with the definition of 'non-commercial' under liberalised transport exemptions for ECMT Permits. This includes transportation for theatrical or musical performances. We ask the Government to ease the impact of the road haulage regulations by negotiating a mutually beneficial exemption with the EU for the movement of goods for cultural purposes, or at the very least to exempt operating on own account.

## **Improved guidance**

Finally, in addition to the four proposals outlined in our previous letter, it is vital that the Government provides clear, unambiguous, and accurate guidance to those working in the creative industries who are engaged to work in Europe post Brexit. Six months after the TCA was concluded there continues to be significant areas of ambiguity in relation to the guidance for visas, work permits, road haulage, ATA Carnets, and CITES. The guidance in respect of visas and work permits needs to be on a country by country basis.

In response to a lack of clear, country-specific guidance for visas and work permits, the ISM produced a comprehensive guide summarising the new rules for each country.<sup>xiv</sup> This has been shared with DCMS. We welcome that the Government recently updated some of its guidance pages after the ISM identified incorrect or misleading information. However, there is still inaccurate information, which we have raised with your team.

We understand that the Government has been taking advice from Deloitte on both visas and work permits and it appears that Deloitte has misinterpreted information from a 2016 webpage which caused this error. We question why Deloitte was commissioned by the Department for Business, Energy & Industrial Strategy to produce individual country guidance for musicians when they are not specialists in this area. In fact, there are many experts in the music industry working on visas and work permits for musicians who are touring across the globe who would be far more suitable for this important task. We urge the Government to engage a specialist in this field who is better suited to provide the accurate advice which the sector needs.

## **Concluding remarks**

We are grateful for the time and commitment of the DCMS officials who we have been working with since 2018. As the UK focuses on global Britain across all spheres, we must not forget industries which have been highly successful in the past such as our world leading creative sector.

We continue to be committed to doing everything possible to work with the Government to put in place practical solutions which we believe are encapsulated in the proposals outlined above.

Best wishes



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<sup>i</sup> <https://www.ism.org/news/survey-brexit-paperwork-nightmare>

<sup>ii</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

<sup>iii</sup> Examples include Colombia: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1219%2801%29&qid=1611061742438>

UAE: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22015A0521%2801%29>

Tonga: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29>

St Lucia: <https://data.consilium.europa.eu/doc/document/ST-7107-2015-INIT/en/pdf>

<sup>iv</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1219%2801%29&qid=1611061742438>

<sup>v</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22015A0521%2801%29>

<sup>vi</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22015A1203%2801%29>

<sup>vii</sup> <https://data.consilium.europa.eu/doc/document/ST-7107-2015-INIT/en/pdf>

<sup>viii</sup> [https://www.ism.org/images/files/ISM\\_Fifth-Brexit-Report\\_May-2020\\_A4\\_Online.pdf](https://www.ism.org/images/files/ISM_Fifth-Brexit-Report_May-2020_A4_Online.pdf)

<sup>ix</sup> [https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/borders-and-visas/visa-policy/docs/20140709\\_visa\\_code\\_handbook\\_consolidated\\_en.pdf](https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/borders-and-visas/visa-policy/docs/20140709_visa_code_handbook_consolidated_en.pdf)

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<sup>x</sup> <https://committees.parliament.uk/oralevidence/1717/pdf/>

<sup>xi</sup> <https://hansard.parliament.uk/lords/2020-06-03/debates/DCC328A1-DA52-4A80-8353-93769CCD8E06/EUBritishMusicians>

<sup>xii</sup> <https://www.gov.uk/government/news/new-financial-support-for-the-uks-fishing-businesses-that-export-to-the-eu>

<sup>xiii</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1072&from=en>

<sup>xiv</sup> <https://www.ism.org/advice/eu-work-permit-requirements-for-musicians>

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