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# The status and working conditions of artists and cultural and creative professionals

## European Expert Network on Culture and Audiovisual (EENCA)



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## Abbreviations

EU abbreviation	Member State	EU abbreviation	Member State
AT	Austria	IE	Ireland
BE	Belgium	IT	Italy
BG	Bulgaria	LT	Lithuania
CY	Cyprus	LU	Luxembourg
CZ	Czechia	LV	Latvia
DE	Germany	MT	Malta
DK	Denmark	NL	The Netherlands
EE	Estonia	PL	Poland
EL	Greece	PT	Portugal
ES	Spain	RO	Romania
FI	Finland	SE	Sweden
FR	France	SI	Slovenia
HR	Croatia	SK	Slovakia
HU	Hungary	UK	United Kingdom

<b>B2B</b>	business to business
<b>B2C</b>	business to consumer
<b>CCI</b>	cultural and creative industry
<b>CCS</b>	cultural and creative sector
<b>CoE</b>	Council of Europe
<b>C&amp;O</b>	Cultuur & Ondernemen
<b>DG EAC</b>	Directorate-General for Education, Youth, Sport and Culture
<b>ECHR</b>	European Convention on Human Rights
<b>ECJ</b>	Court of Justice of the European Union
<b>ECTC</b>	European Counter Terrorism Centre
<b>EEA</b>	European Economic Area
<b>EENCA</b>	European Expert Network on Culture and Audiovisual
<b>EENC</b>	European Expert Network on Culture
<b>EIF</b>	European Investment Fund
<b>EU</b>	European Union
<b>FIA</b>	International Federation of Actors
<b>HZSU</b>	Croatian Freelance Artists Association
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICT</b>	information and communications technology
<b>IFCIC</b>	Institut pour le Financement du Cinéma et des Industries Culturelles
<b>ILO</b>	International Labour Organization
<b>IP</b>	Intellectual property
<b>KSK</b>	Künstlersozialkasse
<b>KSV</b>	Künstlersozialversicherung
<b>LGBTI</b>	lesbian, gay, bisexual, transgender and intersex
<b>LGBTQ+</b>	lesbian, gay, bisexual, transgender and queer
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>OMC</b>	Open Method of Coordination
<b>PE</b>	permanent establishment
<b>PEARLE</b>	The Performing Arts Employers' Association League Europe

<b>QPR</b>	Quadrennial Period Reports
<b>R&amp;D</b>	research and development
<b>SDGs</b>	Sustainable Development Goals
<b>SMEs</b>	small and medium-sized enterprises
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>UN</b>	United Nations
<b>UNCITRAL</b>	The United Nations Commission on International Trade Law
<b>UNESCO</b>	The United Nations Educational, Scientific and Cultural Organization
<b>VAT</b>	Value Added Tax
<b>WIPO</b>	World Intellectual Property Organization

# Executive summary

## Background to the study

One of the five priority themes of the Council Work Plan for Culture 2019-2022 is 'An **ecosystem supporting artists, cultural and creative professionals and European content**'. The objective of this study is to explore the concept of artist status and the working conditions and career paths of artists and creative professionals.

This study has been conducted during what are **extremely challenging times for the cultural and creative sectors amidst the COVID-19 pandemic**. At the time of writing, European countries are deploying unprecedented emergency responses to address the challenges facing the public health and social security systems across the continent. COVID-19 has already had a dramatic effect on the cultural and creative sectors, and the closure of cultural venues, along with the cancellation of performances, exhibitions and festivals is resulting in catastrophic economic, social, cultural and human consequences. As the following sections of this report will show, cultural and creative sector professionals are often already in a precarious situation (self-employed, freelancers, irregular contracts...), and with the additional circumstances related to COVID-19, many are left without any regular sources of income.

## Background on working conditions and employment for artists and cultural and creative professionals

Those who work as **artists and professionals within the cultural and creative sectors work in a wide variety of ways**. Some spend the majority of their careers within the same structure or collaboration, while many others operate in a number of different environments through freelance or other precarious statuses. Artists and cultural and creative professionals are **highly likely to be self-employed, freelancers, work part-time, combine two or more jobs, or do not have a permanent contract**, which means that they are often excluded or only partially covered by social security protection.

Many artists and cultural professionals therefore have a **secondary job in either an arts- or non-arts-related field**, motivated either by (artistic) interest, or by (financial) necessity, which provide access to a certain degree of (social) security. One of the biggest challenges for such artists is to ensure that there is enough time to devote to their art or creative endeavours.

Artists and creative professionals tend to **get involved in cross-border mobility**, which is often a central component of the professional trajectory of their careers. Mobility patterns can be unpredictable and very often depend on the type of projects and opportunities that are available to an artist or creative professional.

Increasingly, there is a **shift away from the standard model of employment to more insecure forms of work**. The rise of the platform economy is having significant repercussions on the cultural and creative sectors, impacting artists and professionals as well as traditional intermediaries such as publishers and record labels.

## European and international policy framework

The **New European Agenda for Culture adopted by the European Commission** in May 2018, together with the Council **Work Plan for Culture 2019-2022** provide the framework for actions and cultural cooperation at EU level. The Agenda has three strategic objectives with social, economic and external dimensions. One of the concrete actions is to support Member States in ensuring fair remuneration for artists and creators through general and sector-specific dialogues. The Council **Work Plan for Culture 2019-2022** identifies an “ecosystem supporting artists, cultural and creative professionals and European content” as one of the five main priorities for European cooperation in cultural policy-making.

The European Commission has initiated a series of **legislative and policy instruments** that have an impact on some aspects of the status and working conditions of artists and creative professionals discussed in this report. For instance, the 2017 **European Pillar of Social Rights** serves as a guide for the renewed process of convergence towards better working and living conditions in Europe. It sets out 20 key principles and rights essential for fair and well-functioning labour market and welfare systems in the 21st century. Other relevant EU legislation includes Regulation (EC) No 883/2004 on the coordination of social security systems, Directive 2010/41/EU on the application of the principle of equal treatment between men and women who are self-employed and the 2006 VAT Directive 2006/112/EC.

In addition, the European Parliament adopted a **resolution on 7 June 2007 on the social status of artists**, drawing attention to artists' social security and revenues problems, as well as their often precarious employment situation. In June 2016, the European Commission adopted a communication<sup>1</sup> on the collaborative economy. In June 2017, the European Parliament adopted the **resolution for a European Agenda on the collaborative economy** as a “first step towards a well-balanced, more comprehensive and ambitious EU strategy on the collaborative economy”. Whilst recognising the various opportunities which the sharing economy may create, the Agenda outlines the important challenges and risks arising, such as consumer protection and employment relations between collaborative platforms and workers.

The **EU Gender Equality Strategy 2020-25** was adopted on 5 March 2020. The EU Gender Equality Strategy is comprised of policy objectives and actions aiming at achieving significant progress by 2025 and moving towards a gender-equal Union. The primary goal of this strategy is to ensure that within the EU, women and men, girls and boys are free to pursue their own paths in life, have access to equal opportunities to thrive and can equally participate in and lead the European society.<sup>2</sup>

At international level, the 1980 **UNESCO Recommendation concerning the Status of Artists**<sup>3</sup> “calls upon **Member States to improve the professional, social and economic status of artists** through the implementation of policies and measures related to training, social security, employment, income and tax conditions, mobility and freedom of expression”. The 1980 Recommendation does not call on states to grant artists specific privileges, but rather to grant them analogous rights to any other socio-professional group whose work has specific characteristics that need to be addressed through special measures.

<sup>1</sup> Commission Communication on the collaborative economy - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A356%3AFIN>

<sup>2</sup> European Commission, “Gender equality strategy”, available at: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en)

<sup>3</sup> <https://en.unesco.org/creativity/governance/status-artist>

The **OECD Model Tax Convention** is a model for countries concluding bilateral tax conventions, and plays a crucial role in removing tax-related barriers to cross border trade and investments. The rules outlined in this model treaty have implications for artists and creative professionals who work across borders.

## **National legal and regulatory frameworks**

### **Artist status**

The Status of the Artist is a transversal issue that draws on several legal areas and numerous institutional competencies. An important reference here is the 1980 UNESCO Recommendation concerning the Status of the Artist. The **improvement of the legal and social status of artists** is one of the objectives of many stakeholder organisations working within the cultural and creative sectors.

Laws in Member States that provide status and recognition to artists can help regularise their status as a professionals and acknowledge the atypical way in which they work. Approaches vary across the EU and in some cases there are no measures at all. The most comprehensive laws include a wide range of concrete policies and measures that address specific issues and challenges faced by artists. Having a dedicated law specifically relating to the status of the artist can be useful and should be encouraged, but some stakeholders point to measures not necessarily being the most effective means of addressing the issues faced by artists.

Due to COVID-19 and the resulting income losses, it has proven to be extremely difficult for artists to prove that they have been working as artists and to prove their eligibility for the status of artists and the subsequent social security benefits. The **outbreak of COVID-19 has exposed the fragility of a labour market increasingly shaped by the growing gig economy, zero-hour contracts and self-employment**. New forms of work lack traditional employment benefits such as paid sick leave, social security and health insurance, maternity leave and other benefits.

### **Minimum wage and basic income**

Most EU Member States have either an hourly or monthly minimum wage for employed workers, yet **many workers are currently not protected by adequate minimum wages in the EU**, with major gaps in the coverage of minimum wages across the EU. Within the CCS, the status of self-employment and/or freelance is highly prevalent, and it is usually the case that minimum wage does not apply to this group of workers/people.

Opinions within the sector on the value of minimum wages set for the CCS are mixed. A common practice within the CCS in some Member States is that artists and creative professionals are often contracted for less time than they actually work, as employers can rely on the rest being paid out of unemployment benefits. Hence, artists and creative professionals are often charged/paid for less hours than actually worked. For some artistic professions, it is **difficult to set minimum rates of pay**.

Member States have started to take **initiatives for fair pay of artists and cultural professionals**. Some Member States prefer to speak about "fair practice", rather than "fair pay" in order to go beyond salary and to link up to 'good governance' and policies for diversity and inclusion. Work on this issue is ongoing and should further be discussed at EU-level, including sharing of experiences and good practice.

There have been calls for a **universal basic income** as a way of encouraging a more diverse range of people to think about the potential of developing a career in the arts through the creation of economic stability. The conversation around universal basic income has resurged during the COVID-19 crisis to help buffer its catastrophic economic and social effects for artists and creative professionals.

### **Social security**

Non-standard workers, including many artists and creative professionals, often have **less access to the social security benefits of salaried employees**. It is estimated that 32% of the European cultural workforce works on a self-employed basis, compared to 14% for total employment.<sup>4</sup> Whereas an employee receives a salary which is paid net with the tax and social security costs deducted at source, a self-employed artist submits invoices for fees, is paid gross and is responsible for paying their own taxes and social security costs. This can lead to a financial burden for self-employed artists and creative professionals.

Many artists and creative professionals are highly mobile across borders compared to the general workforce, which also creates **issues from a social security perspective**. Such artists and cultural and creative professionals may encounter difficulties when trying to access unemployment schemes or pension benefits as requirements vary in different Member State.

In some Member States, **specific rules and schemes exist for self-employed artists** (AT, BE, BG, HR, EE, FI, FR, DE, HU, LV, LT, NL). However, in practice, such provisions can be a mixed blessing as artists with low revenues can find it challenging to pay their obligatory monthly social security payments. While specific legislation for artists provides for a more appropriate social security protection, in some countries the measures taken focus on the special status of artists only to a certain extent. Some Member States have specific **unemployment benefit regimes**. Although beneficial for artists, it has also been widely criticised, and in some cases, organisations are underpaying artists and creative professionals because they know that the social security system is complementing the revenues. Member States' legislation also differs with respect to having/not having specific **legislation for self-employed artists**. The challenges in relation to artist and creative professionals having access to social security benefits have been brought to the fore recently in light of the COVID-19 pandemic.

### **Taxation and VAT**

In some Member States, there are **tax exemptions or special rates for artistic income**, such as grants paid to artists from public agencies and arts' councils being specifically exempt from income tax. In other countries, all public grants, including those received by artists, enjoy an exemption depending on their purpose and duration.

The income of artists can fluctuate greatly from year to year, and artists may spend significant amounts of time developing work that will generate income only later. Therefore, **income averaging can be a valuable mechanism to reduce the tax burden of artists and creative professionals**, and addresses the atypical manner in which some artists earn their income.

Similar to social security provisions, artists often face **challenges in relation to taxation when working temporarily in a Member State other than the country**

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<sup>4</sup> European Commission, Joint Research Centre, based on 2018 data from Eurostat (online data code: cult\_emp\_wsta).

**of their residence.** Some of the predominant difficulties artists encounter when carrying out artistic activities cross-border include those caused by a multiple employment status in terms of income tax calculations and payments and the continued tax placed on irregular income. The **complex and non-uniform legislation across EU Member States may often lead to excessive taxation and discriminatory application of legislation.** Many organisations and artists report that often they find themselves confused regarding the precise application of taxation legislation, as a result of the different national rules on withholding taxes.

The **application of EU Member States' VAT legislation is among the challenges to cross-border artistic activity** often mentioned by creative professionals. Administrative procedures for VAT registration often puts a large burden on artists and cultural and creative professionals. Legal uncertainties may arise when artists from one EU Member State perform in another EU Member State as a result of the differences in the rates and the type of exemption (full, partial, none). As from 1 January 2021, a simplification will enter into force whereby VAT due on services by artists in various Member States can be declared via a single VAT registration ("One-Stop-Shop").

## **The nature of income and access to external finance**

### **Nature of income for artists and cultural and creative professionals**

Flexible working practices can lead to situations of **low income.** In the CCS, those who work from project to project inevitably face periods of inactivity in which no income is received. Artists often live in existential uncertainty and **only established artists can afford to live entirely from their income as an artist.** Income opportunities are unpredictable and artists and creative professionals that are working as self-employed or in atypical working patterns are more likely to earn less, have larger gaps between jobs and operate under partly reduced working times, with this precarious nature of the work having an impact on their ability to save money for retirement.

A common feature in the professional lives of artists and creative professionals is that the **revenues that are generated from their artistic or cultural creation are not entirely transferred to them,** in particular in the digital environment. Moreover, a number of different parties also have a stake in the revenue generated through sale or exploitation of the artist's works. **Strong copyright provisions are a means to ensure that artists are fairly compensated for their work,** which is becoming increasingly important for some sub-sectors given today's digital environment, such as music.

### **Support ecosystems for artists and cultural and creative professionals**

Access to external finance is one of the key obstacles of self-employed and small enterprises in general and even more in the cultural and creative sectors. There are some support measures available that are specifically aimed at artists and creative professionals. Grants are considered as the most effective and most widely used public policy tool. In addition, there are also other instruments available, such as loans, guarantee schemes, tax advantages for donations, sponsorship or crowdfunding.

### **Career development of artists and creative professionals**

Careers in the cultural and creative sectors may happen by chance and are often beyond rational planning and some artists have a steep career path, whereas for most artists this remains a remote dream and they struggle for most of their life. The main focus for many CCS professionals is often on the intrinsic value of culture or creative core and not so much on economic growth or revenues. The artist's "career choice" therefore is

very often centred on the intrinsic value of culture and creation, and economic sacrifices and uncertainty are part of this choice of life.

**Certain artists and professionals have to transition in their careers for various reasons** such as limitation of physical capacities or change in personal situation that requires a different lifestyle. Artists and professionals often transition within their sub-sector, and stakeholders state that that governments often focus vocational training on retraining to other professions rather than the sector the professional is active in.

**A number of artists and creative and cultural professionals start their own enterprise.** Art schools and other institutions that educate artists and cultural and creative professionals more and more provide courses and training schemes on entrepreneurship. These courses over the years have become integrated in a number of curricula, and for most formally trained artists and professionals, form the basis for their entrepreneurial knowledge and a starting point for the development of their career as an entrepreneur. However, once these artists and professionals leave the supporting structures of a school or institution, they are pretty much on their own. The same goes for self-taught artists and professionals, who never had the supporting structures of a formal education.

Next to information on training options and provision of training against reasonable costs, more information and data need to become available on the training and career development needs in the different sectors, at national and EU level.

### **Artistic freedom and expression**

Freedom of Artistic expression is a **key component of European culture**. There is growing concern among international bodies and civil society organisations that the **universality of human rights is currently under attack from governments, political ideologies and some non-state actors around the world and in Europe**. The **rise of nationalism and populism is limiting the artistic freedom**. The promotion of "traditional values" is becoming more and more vocal in the world and in the region.

Some European states are increasingly restricting artistic works and expressions. Public morality is frequently being used as a justification for the restrictions of artistic expression. Restrictions on the basis of this criteria are often arbitrary, and are resulting in the censorship of artworks, and the persecution, imprisonment of artists as well as threats to artists by governments for creating art that is subjectively considered a danger to "public morality". Some European countries (EU and non-EU) have used prison sentences and measures to criminalise artists. Moreover, court cases have been issued, creative works have been withdrawn on the order of public authorities and state bodies have exercised undue control over cultural programmes. Other restrictions relate to religious values overriding artistic freedom, insult to the state and its symbols, undue government influence on museums and arts institutions. LGBTI artists and artworks targeted as well as challenges for women and minorities remain **a danger in undermining Europe's cultural diversity**.

Unnecessary and illegitimate restrictions can often be placed on fundamental rights and freedom of expression in times of uncertainty and securitisation, most recently also through COVID-19 (as voiced by Freemuse)<sup>5</sup> or through anti-terror legislation.

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<sup>5</sup> <https://freemuse.org/news/hungary-must-not-misuse-the-covid-19-crisis-to-erode-democratic-values-freemuse/>

While most artists depend on public or semi-public support to survive, **artists and organisations working in the sector tend to self-censor their work** in order to keep access to funding and the ability to exhibit their work in public.

### **General conclusion and recommendations**

Artists and cultural and creative professionals often work in precarious circumstances, and have been highly affected by the recent COVID-19 pandemic. Due to their often complicated employment status (often self-employed/freelance) and relatively low incomes compared to other sectors, provisions, to ensure that self-employed artists and cultural and creative professionals are able to earn a decent living and are covered by full access to social security benefits, need to be pursued.

In relation to the ongoing COVID-19 pandemic, Member States and the European Commission should carry out an inventory of existing good practices and examine together policies that acknowledge and improve the working conditions of those working in the CCS. Given the timing and the current need for action to improve the situation in the short-term, it is highly important that the implementation and impact of these measures is monitored and evaluated. A situation such as the current COVID-related one in which policy makers provide support to the CCS sectors is unprecedented and the support is temporary. It offers, however, opportunities to assess which type of support is the most beneficial to the sector and which type of support has the most positive impact on the working conditions of artists and cultural and creative proposals.

# 1 Introduction

## 1.1 Background EENCA

This study is carried out by the European Expert Network on Culture and Audiovisual (EENCA). The European Expert Network on Culture and Audiovisual (EENCA) was established in December 2015 by a consortium of Panteia and iMinds-SMIT (VUB) on behalf of the Directorate-General for Education, Youth, Sport and Culture (DG EAC) of the European Commission. With a view to improving cultural and audiovisual policy development in Europe, the main objectives of EENCA are:

- To *contribute* to the continuous development of cultural and audiovisual policies by providing high-quality analysis and advice to the European Commission, and enhancing the in-depth understanding of the European Commission's services of culture and the threats and opportunities faced by the cultural, creative and audiovisual sectors.
- To *promote* decision-making based on solid, evidence-based and data-driven research, being of a descriptive, analytical, evaluative, and prescriptive nature regarding relevant topics in the field of cultural and audiovisual; and being of a comparative nature, including expertise covering different sectors, different policy areas, and different territories.

For these purposes a multi-disciplinary network of leading European experts on culture and of the audiovisual industry was set-up. The Core Expert Team consists of a number of high level experts who have been carefully selected to cover a wide thematic, sectoral and geographical range. The Core Expert Team is complemented by a solid team of associated experts and forms part of a comprehensive international network.

EENCA engages in the analysis of the cultural and creative sectors and the audiovisual markets, and the analysis of cultural and creative sectors' policies and audiovisual policies. The main underlying and guiding questions in this respect are: what has happened, what is happening and what will happen at local, national and European level, why is it happening, and what can be done to improve cultural and audiovisual policy development in Europe?

Information on the authors of this study can be found in Chapter 11.

## 1.2 Objective of the Study

The objective of this study is to explore the status and the working conditions of artists and creative professionals. This includes examination of the career paths of artists and cultural and creative professionals, including entrepreneurship, nature of income, and influence of the market, access to finance, social security and cross-border mobility. Working conditions of artists and CCS professionals is understood in a larger sense, including artistic freedom/restrictions to creation, the aspect of working conditions of disadvantaged groups, and the specific working conditions of young people (in particular with view to the gig/platform economy, precariousness due to project-oriented jobs and self-employment). The study also considers aspects of creative professions as hidden unemployment (creative entrepreneur not out of free will but due to the impossibility to get another job and part-time employment traps for women with children, etc.), as well as the physical places and conditions where work of artists and CCS professionals takes place.

It should be mentioned that some of the work conducted in the context of this study took place during the COVID-19 pandemic. More information regarding the context of this study is presented in section 2.1.

### 1.3 Methodology

Several research methods were utilised to be able to conduct this study. Firstly an in-depth **desk research** was carried out, taking into account the most relevant and useful policy documents and academic publications that have been developed in the past years. As an additional key part of this study, it was essential to consult with experts, stakeholders and representative sectoral groups working in these relevant areas in order to provide an understanding of the present situation and the key challenges affecting artists and creative professionals in Europe.

**Culture Action Europe** has set up a **Working Group on Welfare and Work Conditions in the Cultural Field**. Its **first meeting** took place with the presence of the experts of this study. To this end, a **stakeholder workshop** took place at Bozar in Brussels on the 28th of February 2020.

In addition, information was also gathered through **in-depth interviews with stakeholders and artists and cultural and creative professionals**. The interviews were conducted in the period between January 2020 and March 2020. Stakeholders included representatives of European representative organisations and national experts. Artists from a selection of eight different EU countries were interviewed.

The stakeholders and artists were also asked to give their own suggestions on how to address the perceived problematic areas in order to improve the situation. Findings of the research provided a deeper understanding of main problems and challenges related to working conditions of artists in the European Union from the perspective of artists themselves, as well as representative bodies operating at national and European levels.

### 1.4 Steering committee

This study has been made in close collaboration with several sectoral stakeholder organisations, who each have contributed as part of the steering committee:

- Culture Action Europe (CAE);
- The International Network for Contemporary Performing Arts (IETM);
- On The Move;
- PEARLE - Live Performance Europe;
- Freemuse.

### 1.5 Structure of the report

This report is structured within eight main chapters. The following chapter provides a background on the employment characteristics of artists and creative professionals. Chapter 3 outlines the relevant European and international policy framework. Chapter 4 provides the regulatory and legal framework related to artist status and working conditions with specific focus on the status of artist, the access to social security benefit system and taxation. This chapter examines national provisions relating to these topics. Chapter 5, focusses on the nature of income for artists and cultural and creative professions as well as access to finance. The topic of chapter 6 is career development of artist and chapter 7 focusses on restrictions to artistic freedom and expression. Finally, chapter 8 presents the conclusions and provides recommendations.

## 2 Background to working conditions of artists and cultural and creative professionals

The following section provides the relevant **background and context for this study in regards to the working conditions of artists and cultural and creative professionals**. This chapter begins by providing the relevant context for this study, and the remainder of this section provides an overview of employment in the CCS (including figures), as well as a summary of the main characteristics of employment within the CCS that have an effect on artists and cultural and creative professionals. This section is important in regards to understanding the relevant policy and regulatory frameworks presented in chapters 3 and 4, as well as providing the relevant context regarding the nature of income of artists and creative professionals in chapter 5.

### 2.1 Context of the study

The **New European Agenda for Culture** adopted by the European Commission in May 2018 has three strategic objectives with social, economic and external dimensions. One of the concrete actions is to support Member States in ensuring fair remuneration for artists and creators through general and sector-specific dialogues. The **Council Work Plan for Culture 2019-2022**<sup>6</sup> identifies an **'ecosystem supporting artists, cultural and creative professionals and European content'** as one of the five main priorities for European cooperation in cultural policy-making. Within this priority theme, the Work Plan provides for a study followed by an OMC group (Open Method of Coordination) on the status and working conditions of artists and cultural and creative professionals.

The Work Plan emphasises that artistic freedom is closely linked to the social and economic conditions of cultural professionals and institutions. The cultural and creative sectors in Europe are characterised by self-employment, small- and micro-enterprises, and cultural and linguistic diversity. Artists and cultural and creative professionals tend to have project-based careers and a high degree of mobility, while they often have an irregular and unpredictable income and combine several jobs to earn a living. Innovation is particularly driven by individual artists, creators and small cultural institutions, whose value creation is mainly based on intangible assets, such as original ideas, know-how and creativity.

**EU Member States experts from the OMC Group on Innovation and Entrepreneurship in Cultural and Creative sectors in their report** pointed to "the lack of social security coverage for many CCS professionals. Despite awareness of the positive effects that the cultural and creative sectors are able to generate for innovation, social cohesion and 'inclusive growth', these sectors face challenges concerning:

- an increase in non-standard jobs;
- low and irregular income;
- relatively inappropriate social security cover;
- exclusion from conventional banking services;
- difficulties in accessing lifelong education.

A characteristic feature of the sector, which is dominated by non-standard forms of employment, is 'project-based' working conditions, which makes it hard to benefit from

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<sup>6</sup> Note from the General Secretariat of the Council to the Council, "Draft Council conclusions on the Work Plan for Culture 2019-2022" (2018), available at: <http://data.consilium.europa.eu/doc/document/ST-13948-2018-INIT/en/pdf#http://data.consilium.europa.eu/doc/document/ST-13948-2018-INIT/en/pdf>

social security coverage, given that paid working periods are limited, while income is not continuous and often low.”<sup>7</sup>

In order to increase Europe's competitiveness and to stimulate innovation, Europe must build on its creative and cultural assets. The mobility of artists and cultural and creative professionals, the circulation and translation of European content, training and talent development, fair pay and working conditions, access to finance and cross-border cooperation are issues of specific interest for research and exchange at European level.

This study has been conducted during extremely challenging times for the cultural and creative sectors amidst the COVID-19 pandemic. At the time of writing, European countries are deploying unprecedented emergency measures to address the challenges faced by the public health and social security systems across the continent. COVID-19 has already had a dramatic effect on the cultural and creative sectors, and the closure of cultural venues, along with the cancellation of performances, exhibitions and festivals is resulting in catastrophic economic, social, societal, cultural and human consequences. As the following sections of this report will show, cultural and creative sector professionals are often already in a precarious situation (self-employed, freelancers, irregular contracts), and with the circumstances related to COVID-19, are left without any regular sources of income.

## 2.2 Overview and figures

Data from Eurostat show that in 2019 there were **approximately 7.3 million people working in cultural sectors and occupations in the EU-27 – around 3.7% of total employment**<sup>8</sup>; 32% of which were self-employed.<sup>9</sup> The cultural and creative sectors are comprised of all sectors whose activities are based on cultural values, or other artistic individual or collective creative expressions.<sup>10</sup> Defining exactly what is considered part of the cultural and creative sectors is a difficult task. Cultural activity can either be profitable or a non-profit activity related to self-expression, identity, a way of expressing something deeply human and of importance to society, as something essential for human beings.<sup>11</sup> Aspects of culture are referred to as art while others are deemed entertainment.

**Those who work within the cultural and creative sectors do not form a homogeneous group<sup>12</sup>, with artists and cultural professionals working in a wide variety of ways.** For instance, some work primarily, and preferably, as individuals, whereas others work within collectives.<sup>13</sup> Some artists and creative professionals spend the majority of their careers within the same structure or collaboration, while others operate in a number of different environments through freelance status. Additionally, some artists and creative professionals remain stationary, operating out of the same

<sup>7</sup> EU OMC report « The role of Public Policies in Developing Entrepreneurial and Innovation Potential of the Cultural and Creative Sectors (2018), <https://op.europa.eu/en/publication-detail/-/publication/5d33c8a7-2e56-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-68820857>, page 36

<sup>8</sup> Eurostat, Cultural employment by sex, available at: <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

<sup>9</sup> Eurostat, Cultural employment by sex and selected labour market characteristics, available at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=cult\\_emp\\_wsta&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=cult_emp_wsta&lang=en)

<sup>10</sup> Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1295>

<sup>11</sup> European Parliament, Briefing, “Employment in the cultural and creative sectors”, available at: <http://catalogus.boekman.nl/pub/P19-0647.pdf>

<sup>12</sup> Van Liemt, G.; “Employment Relationships Arts and Culture” (2014), available at: [https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

<sup>13</sup> Hesters, D. “Kunstenpocket #3 – D.I.T. (Do It Together)” (2019), available at: [https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket\\_3\\_en](https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket_3_en)

location for a number of years, whereas some lead nomadic lives, jumping from project to project over a number of different countries. Some set up their own company, and some are employed.

This relates to some extent to the variety in types of professions that exist within the cultural and creative sectors. Regarding the variety within sub-sectors, some assumptions can be made. For instance, it is noted that authors and visual artists tend to work more on an individual basis, whereas within the performing arts, music or film sectors, collaboration is more prominent<sup>14</sup> However, over time, changes have taken place in the way artists and creative professionals within all of these disciplines are working, and these stereotypical distinctions no longer portray the accurate reality of the ways in which artists and creative professionals in the various disciplines are working today.

### **2.3 Characteristics of employment of artists and cultural and creative professionals**

#### ***Self-employment and atypical working patterns are a common occurrence for artists and cultural and creative professionals***

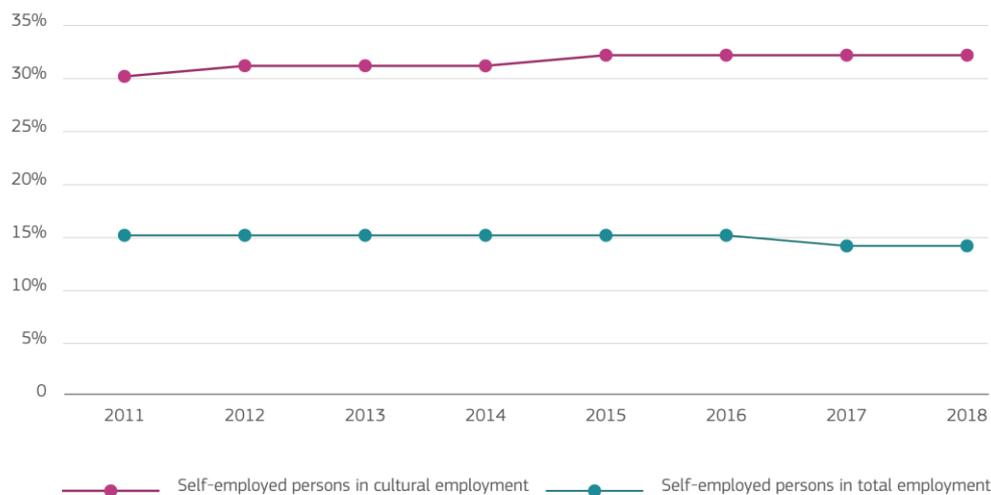
The **status of self-employment and/or freelance is highly prevalent amongst artists and cultural and creative professionals**. The percentage of self-employed cultural workers is considerably higher (32%) than in employment for the total economy (14%) and this difference has remained almost stable over time (see figure 1). This is important because, in principle, persons in self-employment are excluded from labour and employment protection and have different social security treatments compared to employees, since traditionally they were assumed to be able to protect themselves on the relevant market. This is not unique to the cultural and creative sectors, as the number of self-employed in the EU has been steadily increasing within European labour markets over the last decade.<sup>15</sup> However, those working in the cultural and creative sectors have been some of the most affected by recent changes in the labour market.

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<sup>14</sup> *Ibid.*

<sup>15</sup> Film Musicians, "The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working", available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

figure 1 Self-employed persons in cultural employment and in total employment.



Source: European Commission Joint Research Centre, European Cultural and Creative Cities in COVID-19 times, based on 2018 data from Eurostat (online data code: cult\_emp\_wsta).

Cultural workers are more often self-employed, work part-time, combine two or more jobs, and do not have a permanent job, while being better educated than workers employed in other sectors. This type of employment is often described as 'atypical work' or non-standard work, which refers to employment relationships that do not conform to the standard or 'typical' model of full-time, open-ended employment with a single employer over a long time span.<sup>16</sup> The 'typical' (or standard) employment can be considered a socially secure, full-time job of unlimited duration, with standard working hours guaranteeing a regular income and, via social security systems geared towards wage earners, securing pension payments and protection against ill-health and unemployment. More information on social security aspects can be found in section 4.3.

Due to a quest in recent years for increased flexibility in an increasingly competitive economic environment, the **standard employment relationship is being eroded due to the emergence of new business models that favour classifying workers as self-employed instead of salaried employees**. While in some cases, the self-employed status is justified by a genuine autonomy and economic independence of the workers, in many cases workers are only bogus self-employed and their relationship is therefore misclassified. Even if they are not entirely misclassified, they could sometime be considered 'dependent self-employed', which are self-employed workers whose income mainly depend from one or a small number of clients. This makes it difficult to distinguish between employment and self-employment. **Atypical work patterns are more frequent in the cultural and creative sectors**, particularly among core professions for the sector: artists, writers, creators, musicians, translators and interpreters; and consist of on-call, short-term or fixed term contracts, project or task-

<sup>16</sup> Eurofound (European Foundation for the Improvement of Living and Working Conditions), "Atypical work" (2017), available at: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/atypical-work>

based work, agency work (more and more often via digital platforms), false self-employment, etc.<sup>17</sup>

Therefore, those working in the sector are likely to have a complicated employment status, and are **more likely to be self-employed, employed part-time, or in a combination of employment and self-employment**. As an example, a 2011 survey by the International Federation of Actors (FIA) found that in the EU, many dancers work predominantly under long-term or short-term employment contracts as employees, but there was a clear trend towards increasing use of short-term contracts in several countries and increasing numbers of self-employed.<sup>18</sup> The term 'portfolio careers' is often used to describe this way of working, and these 'portfolio workers' will mix different types of employment status, often due to the fact that they have no choice.

There tends to be a **lack of consistency in the working patterns of artists and creative professionals**, where within a short space of time they can be casual or part-time employed, self-employed, unemployed (with or without unemployment benefit) and engaged in unpaid activities such as volunteer work, retraining, study and family life.<sup>19</sup> Different patterns can exist within each sub-sector, highlighting a rather fractured labour market. For instance, within the music sector, it is often the case that musicians operating within the popular and jazz genres may operate on a 'gig' to 'gig' basis with a range of employment and remuneration arrangements from one venue to the next. However, some traditional, large cultural establishments owned or funded by the State may employ musicians on regular, long-term employment contracts, which guarantee them stable social protection.<sup>20</sup> Some types of creative professional, such as visual artists, have little choice but to work on a freelance basis. Artists often choose to be free-lancers, generally due to the unavailability of jobs with permanent contracts (lacking tradition in a concrete country or limited number of permanent jobs on the market).<sup>21</sup>

### **Artists and cultural and creative professionals often take on secondary jobs**

Many artists and cultural professionals therefore have a **secondary job in either an arts or non-arts related fields**, either motivated by (artistic) interest, or by (financial) necessity. Figure 2 shows the percentage of people working on a full-time basis in cultural employment in the EU-27. Data from Eurostat shows that in 2019, 82% of men in cultural employment worked on a full-time basis compared to an average of 91% for the whole EU-27 economy. By contrast, the share of women working on a full-time basis in the field of culture was 68 % compared to an average of 69 % for the whole EU-27 economy.<sup>22</sup>

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<sup>17</sup> Eurofound (European Foundation for the Improvement of Living and Working Conditions), "Atypical work" (2017), available at: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/atypical-work>

<sup>18</sup> FIA, "Dancers' Career Transition: A EuroFIA Handbook" (2011), available at: [http://www.fia-actors.com/uploads/Dancers\\_Handbook\\_EN.pdf](http://www.fia-actors.com/uploads/Dancers_Handbook_EN.pdf)

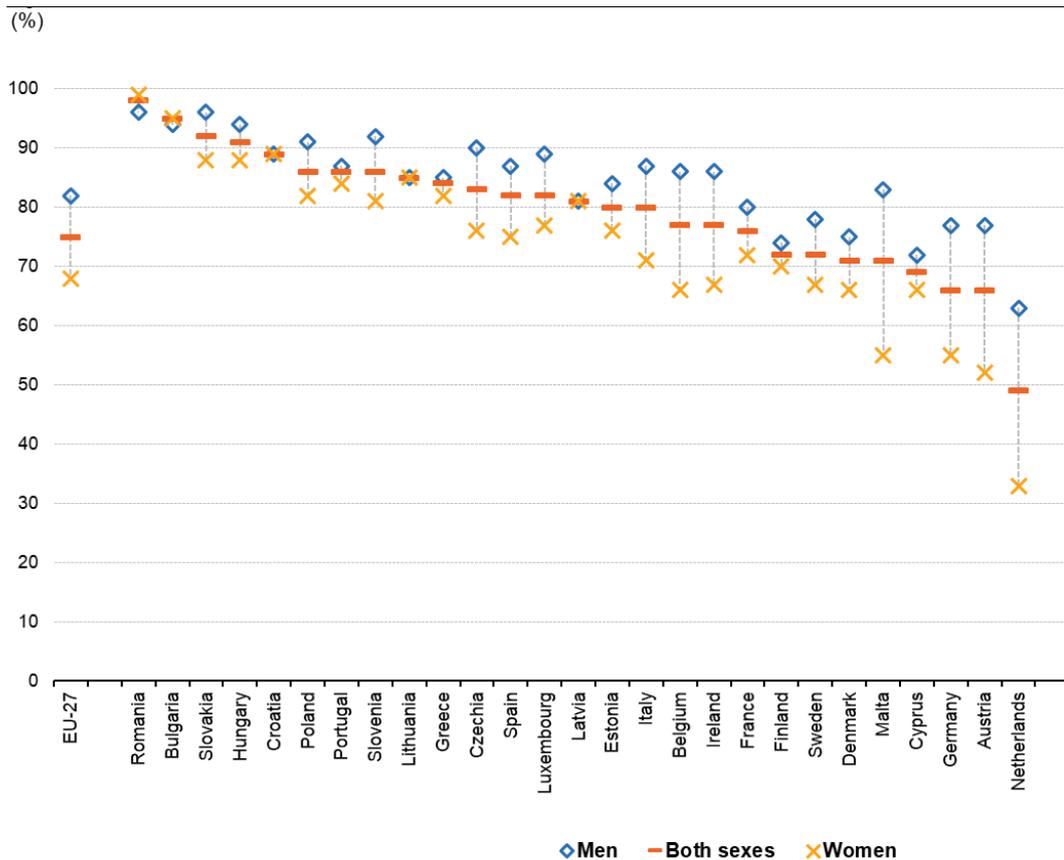
<sup>19</sup> Van Liemt, G.; "Employment Relationships Arts and Culture" (2014), available at: [https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

<sup>20</sup> Eurofound (European Foundation for the Improvement of Living and Working Conditions), "Representativeness of the European social partner organisations: Live performance Industry" (2013), available at: <https://www.eurofound.europa.eu/publications/report/2013/representativeness-of-the-european-social-partner-organisations-live-performance-industry>

<sup>21</sup> Analysis of interviews with artists.

<sup>22</sup> Eurostat, Culture statistics - cultural employment (2020), available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Culture\\_statistics\\_-\\_cultural\\_employment#Full-time\\_work](https://ec.europa.eu/eurostat/statistics-explained/index.php/Culture_statistics_-_cultural_employment#Full-time_work)

figure 2 Share of people working on a full-time basis in cultural employment by sex 2019 (%)



Source: Eurostat (cult\_emp\_wsta), 2019

A 2016 study in Flanders provided some interesting insights into this multiple job phenomenon, surveying artists in the visual arts, music, performing arts, literature and film sectors in regards to their social demographic profiles, activities, how they spend their time, income, professional expenses, statutes and job satisfaction.<sup>23</sup> This research considered four types of activities that respondents engaged in during the year 2014: artistic activities in their own primary artistic disciplines; activities associated with or related to those disciplines (such as teaching or coaching, production, administrative work and communications); artistic activities in other disciplines; and jobs that are not related to the arts. A high percentage of the artists responding to the questionnaire stated that their work crossed several of these categories, evidence of the combination of different activities carried out by artists. For instance, in the performing arts, about 75% indicated that they either worked on or performed their own creations, with 60% taking part in creations by other artists, 60% conducted research and 40% worked on the production or management side. 25% of those working in live performance had paid jobs outside the arts sector, with these figures being similar in the music and visual arts sectors (around 33% and 40%, respectively).

A 2018 survey among actors, musicians and dancers in the UK found that almost two-thirds of these performers earned less than £5,000 (EUR 6,000) from their profession in the last year, around half took on unpaid roles and 60% had to take second jobs

<sup>23</sup> This investigation was conducted by the CUDOS research group at the University of Ghent, commissioned by Flanders Arts Institute, the CJM department of the Flemish Community, Kunstenloket, Sociaal Fonds Podiumkunsten, ACOD, VFL, VAF and oKo

outside entertainment to make ends meet.<sup>24</sup> One in five had not had a paid job in the entertainment industry in the past six months, while just 13% took home more than £20,000 (EUR 24,000) per year from performing. These figures show the necessity of artists to take on additional jobs to secure a living, and highlights the precarious situation that artists and creative professionals are working in. A study in the United States of America came to similar conclusions, in addition to finding that most people who work as artists alongside other employment sustain a longer work week of 46 hours, whereas those who are employed primarily as artists work 37 hours a week.<sup>25</sup>

It is important to note however that these **secondary jobs also provide access to a degree of (social) security for artists and creative professionals**. This potentially includes access to sick leave, maternity leave and holiday pay. The percentage of people in an employment relationship is typically higher in their secondary employment than it is in their primary job.<sup>26</sup>

In spite of this, **one of the biggest challenges for artists is ensuring that there is enough time to devote to their art or creative endeavours**.<sup>27</sup> A study from The Netherlands estimates that on average, purely artistic activities take up slightly more than half of artists' total working time, and the combination to these various activities can be the result of the various interests of the artist themselves. However, a study from Flanders shows that for most artists, it is mostly due to the case of financial necessity, and these additional activities are carried out in order to earn an income that makes it possible for them to make their artistic work whenever that work is not enough to generate sufficient income and/or requires extra investment. Therefore, artists tend to subsidise their own practices.<sup>28</sup>

### **Artists and cultural and creative professionals tend to be highly educated**

Although those working within the cultural and creative sectors tend to work less in regular employment and have a high incidence of atypical working patterns, such as self-employment, underemployment and some combinations of these, **the cultural and creative sectors are also characterised by a highly educated workforce**.<sup>29</sup> In nearly all EU countries, jobs in the cultural field are held predominantly by people with tertiary education. As shown in figure 3, in 2019, 59% of the EU-27 workforce in the field of culture had a tertiary level of educational attainment, while only 8 % completed at most a lower secondary level of educational attainment. One third (34%) of the EU-27's cultural workforce had an upper secondary or post-secondary non-tertiary level of educational attainment. In the total employment market, the equivalent figure was only 34%, thus signalling a very strong correlation between tertiary education and cultural employment. The trend can be observed in all EU Member States. .<sup>30</sup>

<sup>24</sup> BBC News, "Low pay and high stress: Survey lifts lid on life as a struggling performer" (2018), available at: <https://www.bbc.com/news/entertainment-arts-46356689>

<sup>25</sup> National Endowment for the Arts, "Arts Data Profile Series – Keeping my Day Job: Identifying U.S. Workers Who Have Dual Careers as Artists" (2013), available at: <https://www.arts.gov/artistic-fields/research-analysis/arts-data-profiles/arts-data-profile-3>

<sup>26</sup> Van Liemt, G.; "Employment Relationships Arts and Culture" (2014), available at: [https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

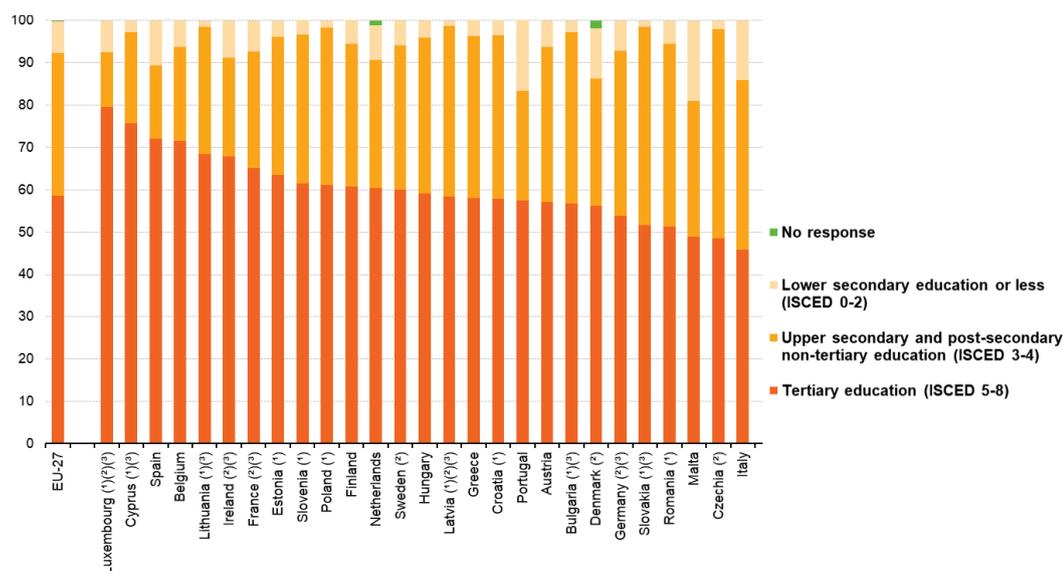
<sup>27</sup> van Winkel, C.; Gielen, P.; & Zwaan, K. "De hybride kunstenaar. De organisatie van de artistieke praktijk in het postindustriële tijdperk" (2012) (Breda: Avans Hogeschool, AKV St. Joost Expertisecentrum Kunst en Vormgeving), available at: <https://www.inholland.nl/media/10709/eindrapporthybridiseringdef.pdf>

<sup>28</sup> Hesters, D. "Kunstenpocket #3 – D.I.T. (Do It Together)" (2019), available at: [https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket\\_3\\_en](https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket_3_en)

<sup>29</sup> Baltà, J.; Floch, Y.; Fol, M.; Sert, M., "Operational Study – Mobility for Artists and Culture Professionals in Creative Europe countries" (On the Move) (2019), available at: <https://www.i-portunus.eu/wp-fuut/wp-content/uploads/2019/09/OS-final.pdf>

<sup>30</sup> *Ibid.*

figure 3 Cultural employment by level of educational attainment 2019 (% of cultural employment)



(1) Lower secondary education or less; lower reliability. (2) Low response; low reliability (3) Lower secondary education

Source: Eurostat (cult\_emp\_edu), 2019

Highly educated people are therefore attracted to work within the cultural and creative sectors despite the oversupply and the associated possibility of ending up in intermittent employment, periods of unemployment and low earnings.

### **Artists and cultural and creative professionals often engage in cross border mobility**

Due to the nature of the cultural and creative sectors, **artists and creative professionals tend to be subject to a high degree of cross border mobility**. Mobility has been defined as a central component of the professional trajectory of artists and culture professionals, involving a temporary cross border movement, often for educational, capacity-building, networking, or working purposes, that may have tangible or intangible outputs in the short term, and/or be part of a long-term professional development process. Mobility is a conscious process, and those involved in it, whether by directly engaging in it or by supporting it, should take into consideration its cultural, social, political, environmental, ethical and economic implications'.<sup>31</sup>

In recent years, **the ways in which cultural mobility takes place have changed**, including through an increase in cross-disciplinary collaborations and creative partnerships involving players outside of the CCS. **Mobility is also increasingly mainstreamed in the regular work of cultural organisations**, as proven by European cultural networks that prioritise mobility with a view to facilitating the development of international cultural projects and cross-border cultural cooperation projects.<sup>32</sup> Working internationally is a natural process for today's generations in different professional areas, although social changes such as rising nationalism and

<sup>31</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at: [https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>32</sup> Baltà, J.; Floch, Y.; Fol, M.; Sert, M., "Operational Study – Mobility for Artists and Culture Professionals in Creative Europe countries" (On the Move) (2019), available at: <https://www.i-portunus.eu/wp-fuut/wp-content/uploads/2019/09/OS-final.pdf>

xenophobia, and the perception of migration, can be seen as a threat to mobility as well as a threat to freedom of artistic expression.<sup>33</sup> The modalities of mobility take place within a legal context that is still mainly the competence of the Member States of the EU.

**Mobility patterns can be unpredictable, and are very much dependent upon the type of projects and opportunities that are available** to an artist or creative professional. Therefore, mobility can be short-term (ranging from a day or few days to a few weeks or months) to longer-term mobility (up to and more than a year), the latter of which is increasingly becoming more frequent.<sup>34</sup> It should be noted that mobility of artists and cultural and creative professionals is not limited to the territory of the EU, and many artistic opportunities arise outside the EU.

There are **several different ways in which workers can be mobile**. Firstly, they can take up employment as an 'employee' with an organisation in another EU country. Secondly, they can be 'posted' as an employee with an organisation when this organisation is performing in other EU countries. Finally, they can take up a service contract as a self-employed person in another EU country. Workers in the cultural and creative sectors (particularly those working in the field of live performance) often have several statuses at the same time, in particular in a context of mobility. For example a self-employed worker may decide to take up an employment as an 'employee' for a short period of time in another EU country or could have several employment contracts in several EU countries at the same time.

In addition to individual workers, companies and organisations of artists and creative professionals can also be mobile. This is particularly evident in the live performance sector, where organisations such as drama companies, ballet and dance companies, music ensembles, choirs or orchestras can be mobile with individual live performance workers who work for them temporarily or permanently as employees or as self-employed persons. Venues and festivals also play a big role in facilitating this mobility, as these can host live performance workers and live performance organisations.

The **live performance sector is a particularly mobile branch of the cultural and creative sectors**, and mobility is an important aspect in the everyday activity of live performance companies, venues and artists, not only as an artistic need but also as an economic necessity. For many EU live performance companies, especially in smaller countries, a large majority of their activity is being mobile in other countries (both inside the EU and outside).

Apart from obstacles to travel linked to the COVID-19 pandemic, **mobility obstacles for the live performance sector relate to visas, social security regulations, taxation and intellectual property rules**.<sup>35</sup> There is a lack of harmonised administrative measures on these matters across EU Member States, as well as the fact that, even when approaches have been harmonised or coordinated in legislation, they are not always properly implemented in practice.<sup>36</sup> More explanation on the aspects related to social security can be found in section 5.2, and taxation in section 5.3. Further challenges for artists and creative professionals in relation to being mobile is the lack of information available on the applicable legislation and other rules, mobility

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at: [https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>36</sup> *Ibid.*

opportunities, and resources related to mobility. **The Performing Arts Employers' Associations League Europe (PEARLE) has created a number of supporting measures for artists and creative professionals that support cross-border mobility** and explain the administrative and legal aspects that artists and cultural managers need to know in relation to mobility in or to the Schengen area and/or the European Union. On top of this, many artists – particularly women – cannot fully profit from mobility opportunities because of their childcare needs. Therefore, artist's residencies and mobility schemes should provide childcare to ensure equal access for women and men.

Access to verified, up-to-date and relevant information regarding mobility is an important means to address the challenges that artists and creative professionals face in regards to mobility. The **Cultural Mobility Information Network (On the Move), is an organisation that helps facilitate cross-border mobility in Europe and internationally mostly through information provision, capacity building activities and advocacy.** On the Move includes 8 Mobility Information Points (MIPs) in Europe which provide information and assistance on administrative challenges faced by artists and cultural professionals, who live in or are planning to travel to Belgium, the Czechia, Finland, France, Germany, Portugal, The Netherlands, the United States of America and the United Kingdom (Slovenia also plans to join).<sup>37 38</sup> These Mobility Info Points originate from the PRACTICS project first supported by the European Commission in 2010-2011, although not all of the organisations included in this project were able to continue following the end of funding.<sup>39</sup> Mobility Information Points differ in terms of structure or organisation, and can be stand-alone organisations or part of existing public and/or locally funded cultural organisations. These organisations usually have strong connections with ministries and administrations in their respective countries and work with legal experts and consultants.<sup>40</sup> The Mobility Info Points usually benefit from support from national public organisations (and in the case of Portugal, the city of Lisbon) but this is not enough to fulfil all their missions.<sup>41</sup>

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<sup>37</sup> Neil Garry, "Culture & working conditions for artists: implementing the 1980 Recommendation concerning the Status of the Artist" (UNESCO)(2019), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000371790>

<sup>38</sup> Slovenia plans to join in Autumn through the organisation Motovila

<sup>39</sup> On the Move, Practics Infotools, available at: <http://on-the-move.org/practicsinfotools/>

<sup>40</sup> Creative Europe, i-Portunus, "Mobility Information Points", available at: <https://www.i-portunus.eu/initiative/mobility-information-points-mip/>

<sup>41</sup> Stakeholder interview.

### **Best practice of a Mobility Information Point - Touring Artists (DE)**

Touring Artists is an information portal for artists and creatives working internationally, providing information on visas, residence, artist status and contracts, transport, customs, taxes, social security, other insurances, and copyright issues. It was developed through a joint project between the German Center of the International Theatre Institute (ITI) and the Internationale Gesellschaft der Bildenden Künste (IGBK), and is used by artists and creative professionals in the CCS.

Touring Artists primarily maps the circumstances, legal regulations, and administrative procedures in Germany – for foreign artists and creative professionals who work in Germany temporarily, as well as for German artists and creative professionals who live in Germany and who work abroad for a limited time. It also considers the perspective of Germany-based organisers. The website is available in English and German.

The website provides easily accessible and comprehensible information concerning legal and administrative issues, and presents checklists, references to further reading, contacts, and relevant departments in their respective administrations. Experts in each area were involved in providing this information and the contents have been checked at ministerial level. There is also a Touring Artists helpdesk, which is a free of charge service for individual questions.

Source: *Touring Artists* <https://www.touring-artists.info/en/home/>

In 2019, the European Commission funded the **i-Portunus**<sup>42</sup> project, which supports short-term mobility of artists and culture professionals.<sup>43</sup> Between April and September 2019, **i-Portunus** issued three Calls for Applications, providing support for the international mobility of artists and culture professionals active in the fields of the performing or visual arts and residing in countries that are eligible under the Creative Europe programme. Upcoming projects will seek to improve the scheme and to expand the scope to cover all cultural sectors (other than audio-visual). The results of all projects will be taken into account by the European Commission in developing a permanent action under the Creative Europe Programme 2021-2027 dedicated to supporting the mobility of artists and cultural professionals.

### ***Challenges regarding the physical spaces in which artists work***

There are a number of **issues that artists and creative professionals have to face with regards to the physical spaces in which they work**. Although these issues differ depending on subsector, they are evident throughout the CCS. These range from the availability of suitable work spaces, to health and safety concerns (such as those related to actual performance spaces, as well as rehearsal spaces and studios). Some types of artists and creative professionals do not have a dedicated space in which to work, and therefore have to work from home or utilise public spaces.

In many cities, **artists' studios and creative workspaces are crowded out by intense competition in the property market**. A 2016 UK study highlighted this issue, noting that despite the economic, social and cultural value of creative workspaces and studios, recent changes in funding regimes and market developments are threatening the future sustainability of the sector.<sup>44</sup> Artists have traditionally settled in locations

<sup>42</sup> [https://ec.europa.eu/programmes/creative-europe/content/commission-publishes-report-artists-abroad-i-portunus\\_en](https://ec.europa.eu/programmes/creative-europe/content/commission-publishes-report-artists-abroad-i-portunus_en)

<sup>43</sup> Creative Europe, i-Portunus, available at: <https://www.i-portunus.eu/>

<sup>44</sup> Allen, S.; O'Hara, E.; Henry, N.; Eisen, N., "Making Space: Developing and Sustaining Affordable Artists' Studios and Creative Workspaces" (Creative United) (2016), available at:

that are lower in value or are less desirable, which has supported regeneration activity in many cities, and artists tend to occupy under-invested sites and have supported the redevelopment of previously deprived areas. This cycle however leaves many workspaces and communities vulnerable – on short-term leases, undesignated and exposed to the broader dynamics of the property development process. Artists are therefore being driven out of the areas that they have helped to regenerate.

**Arts studios often do not meet health and safety requirements.**<sup>45</sup> For instance, these buildings are often unsupervised, and persons are often working alone. These spaces also tend to be older buildings that maybe lack safety features such as sprinkler systems or smoke /fire detectors. This is all the more dangerous considering that the materials and processes used by artists often involve chemicals such as paint, solvents and acids, and can involve sawdust, scraps, welding and cutting.<sup>46</sup>

Those working in the performance arts have to contend with a number of challenges regarding their working environment and occupational safety and health, whose protection also principally extends to the self-employed in the EU. Potential harmful aspects of the layout of artistic premises include the hall itself (acoustics, access, workshop, boxes, rehearsal room, administrative offices, etc.), the stage (floor, set, fixed lighting, catwalks and accesses, pits, traps, clearances, hoisting systems, etc.), the loading and unloading docks, and finally the big tops and other outdoor facilities. For example, navigating busy scenic environments during set-up and takedown and moving around in the dark backstage can lead to injuries, musicians are exposed to high sound levels and there is also the possibility for toxic products to be used in manufacturing sets and costumes.<sup>47</sup> Rehearsal and practice spaces that are used are often not meant for their activity and do not meet the requirements needed.

***Women, young people and disabled persons particularly suffer from specific challenges in the cultural and creative sectors***

**Women artists and cultural and creative professionals face specific challenges.** According to Eurostat, in 2018 women accounted for a lower share (46.1 %) of EU-28 cultural employment than men, which is nearly the same as the average share of women in employment across the whole of the economy (46.0 %).<sup>48</sup> In 2018, women accounted for a majority of cultural employment in nine Member States, with the Baltic Member States recording the highest shares, with a peak of 68 % in Latvia, followed by 61 % in Lithuania and 59 % in Estonia.<sup>49</sup>

**A number of trends around gender stereotyping can be observed which have an impact on the working conditions of these women.** Gender stereotypes are cultural and societal constructs which all individuals in society become ingrained with to do some degree. Gendered expectations for men and women are propagated by society from a young age. A particularly prevalent and dominant social expectation concerns motherhood and the fact that women are still assumed to take on the lion's share of

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[https://gallery.mailchimp.com/f460d188717952a71c76f6315/files/Making\\_Space\\_Executive\\_Summary\\_FINAL.01.pdf](https://gallery.mailchimp.com/f460d188717952a71c76f6315/files/Making_Space_Executive_Summary_FINAL.01.pdf)

<sup>45</sup> Stakeholder interview.

<sup>46</sup> Zuskin, E.; Schachter, E.; Mustajbegović, J.; Pucarín-Cvetković, J.; Lipoženić, J., "Occupational health hazards of artists" (Acta dermatovenerologia Croatica: ADC) (2007), available at: [https://www.researchgate.net/publication/5971288\\_Occupational\\_health\\_hazards\\_of\\_artists/link/0fcfd50a2e337b4d8100000/download](https://www.researchgate.net/publication/5971288_Occupational_health_hazards_of_artists/link/0fcfd50a2e337b4d8100000/download)

<sup>47</sup> Ledoux, E.; Cloutier, E.; Ouellet, F.; Gagnon, I.; Thuillier, C.; Ross, J., "Occupation Risks in the Performing Arts" (Institut de recherche Robert-Sauvé en santé et en sécurité du travail) (2009), available at:

<sup>48</sup> Eurostat, Culture Statistics 2019, available at: <https://ec.europa.eu/eurostat/documents/3217494/10177894/KS-01-19-712-EN-N.pdf/915f828b-daae-1cca-ba54-a87e90d6b68b>

<sup>49</sup> *Ibid.*

home care responsibilities. Combined with the working practices in the cultural and creative sectors, and the expectations and norms within these sectors, certain gendered occupations and roles arise. Given that women have certain capacities and attributes, they are thought to be better in certain professions and occupations. The phenomena of “glass walls”, i.e. segregation of certain activities according to gender, and of a “glass ceiling”, i.e. limited participation of women in decision making positions, are apparent throughout the sector.

The reality of the cultural and creative sectors is that the informal way of working, importance of networking, self-promotion, project based and instable employment, as well as the travel usually involved and high competition, helps to give way to gendered trends in employment. Men also tend to be more prevalent in more prestigious, decision-making, and creative leadership positions, whilst also more likely to be in charge of more commercially important or famous cultural institutions (even in sectors where women outnumber men in absolute numbers). This is despite that fact that across sectors there tends to be more women in the educational trajectories for their sector of choice when compared to men.<sup>50</sup> The mechanism of the ‘glass escalator’, referring to a phenomenon where men enter higher ranked positions quickly when entering a women-dominated profession (especially cultural heritage professions, dance), can possibly play a role here.

However, in most cases, there are ultimately less women present in employment in those sectors, and as age increases, the proportion of women present in a sector declines. Amongst other factors, motherhood is thought to have a negative impact on career progression and may lead to women opting out or working part-time.

The **gender pay gap also exists in the cultural and creative sectors**, which is to some degree closely tied to the fact that women, on average, have less access to higher or more senior positions. Furthermore, the **creative outputs produced by women tend to be less valued and appreciated compared to men** across the cultural and creative industries, and it is more difficult for women artists to exhibit or perform in renowned cultural institutions (galleries, theatres and opera stages etc.). This means that besides the gap in pay, women also receive less payment and acclaim for their creative pieces and contributions. These factors and the fact that **women are subject to gender stereotyping, gendered occupations, and less likely to grow vertically in their occupation, the access to the full artistic labour market tends to be more limited for women in the CCSs**. The gender distribution of employment, working time and earnings is influenced by the question of who looks after the children, and how domestic responsibilities are being distributed.<sup>51</sup> The ability for parents (both women and men) to be mobile is a key challenge, as for instance, many residencies are not open to people with children.

**Both sexism and sexual harassment is also appears to be a fairly pervasive if barely visible form of gender inequality** across many of the cultural and creative sectors. This is contrary to the cool, informal, accessible and egalitarian reputation of the cultural and creative sectors, where there are in fact more hidden hierarchies and power relations. It is because of this that sexism and sexual harassment happens in the cultural and creative industries, and seems to be more prevalent in these sectors than

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<sup>50</sup> European Expert Network on Culture and Audiovisual (EENCA), “Gender Gaps in the Cultural and Creative Sectors” (2019), available at: <http://www.eenca.com/index.cfm/publications/gender-gaps-in-the-cultural-and-creative-sectors/>

<sup>51</sup> Van Liemt, G.; “Employment Relationships Arts and Culture” (2014), available at: [https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

in other economic sectors.<sup>52</sup> Movements such as the #MeToo have helped by making individual experiences of sexual harassment visible and given attention to the sheer numbers of women coming forward.

In general, a broader intersectional “lens” should be applied looking at the disparities, as often various social factors (age, race, origin, sexual orientation, disability etc.) overlap and actively contribute to the systemic discrimination on the grounds of gender.

**Young people and graduates are also potentially vulnerable in regards to working within the cultural and creative sectors.** They often struggle to find a foothold within their chosen sector, and may enrol in an unpaid work experience or internship schemes, which may involve months of work and might not lead to paid employment.<sup>53</sup> As well as entering employment, staying in employment for these groups is also considered a challenge in Europe.<sup>54</sup> Artists under 30 are more likely to be jobless and since many creative jobs require physical flexibility, their options and opportunities are limited and may last for a short period of time.

Often **students who have studied within the cultural and creative sectors face many difficulties to find a job in their field of study** after their graduation, realising that their skills and interests are not in demand. Ensuring that supply matches the labour demand is important in ensuring sustainable employment in the cultural and creative sectors.<sup>55</sup> In this respect, information should be made available to students in relation to career and skills development in order to help young people to promote themselves and sustain a career within the cultural and creative sectors.<sup>56</sup>

Moreover, the **careers of young artists and creative professionals are suffering from certain exploitative practices and working circumstances that create an unstable and unhealthy environment.**<sup>57</sup> Unstable contracts or unpaid salaries are forms of manipulation, yet both are generally accepted in a highly competitive community.<sup>58</sup> Other exploitative practices are evidenced, for instance in some cases young visual artists are paying money in order to exhibit their creations, which for many is impossible to afford. Therefore, this results in a change in profession or field of study in order to earn more, as few artists can survive entirely on their creations.

Another issue is that young artists in some cultural sub sectors often do not have a famous profile on which to promote their performances or exhibitions, as their image takes time and effort to be built. They have spent time and money on their creations in order for them to be disseminated and promoted.<sup>59</sup> In the visual arts sector, certain galleries face a high financial pressure which creates a lack of availability and access

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<sup>52</sup> European Expert Network on Culture and Audiovisual (EENCA), “Gender Gaps in the Cultural and Creative Sectors” (2019), available at: <http://www.eenca.com/index.cfm/publications/gender-gaps-in-the-cultural-and-creative-sectors/>

<sup>53</sup> Film Musicians, “The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working”, available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

<sup>54</sup> EU Policy Lab, Culture and Creative Sectors in Youth Employment, available at: <https://blogs.ec.europa.eu/eupolicylab/culture-and-creative-sectors-in-youth-employment/>

<sup>55</sup> The School of Life, “The Book of Life, Chapter 2. Work: Purpose – On Being an Unemployed Arts Graduate”, available at: <https://www.theschooloflife.com/thebookoflife/arts-unemployment/>

<sup>56</sup> Stakeholder interview.

<sup>57</sup> Sirovátka, T.; Spies, H.; “Effective Interventions for Unemployed Young People in Europe: Social Innovation or Paradigm Shift?” (2017)

<sup>58</sup> *Ibid.*

<sup>59</sup> James, M.; “Young artists are paying for gallery exposure: ‘You just have to cop it on the chin’” (2018) (ABC News), available at: <https://www.abc.net.au/news/2018-01-30/young-artists-paying-for-gallery-exposure/9348364>

for young artists to be showcased. Instead of getting paid for their creations or work, artists even end up having to pay for exhibiting their work

**Disabled artists and creative professionals often face a unique set of challenges.** Firstly, arts and culture are often not considered within the context of disability policy, and culture policy often does not consider disabilities. Although many working in the CCS have difficulties accessing funds due to complicated procedures, this can be even more challenging for disabled persons, whereby their disability has an impact on being able to understand the requirements for funding and completing applications. **Mobility is also a challenge for disabled artists and creative professionals.** Disabled artists may find it difficult to travel independently. This means that additional persons may be required to accompany disabled artists who are travelling, which increases travel costs.

### ***New forms of employment are having an impact on artists and cultural and creative professionals***

There is an increasing shift away from the standard model of employment to more insecure forms of work. The **'platform economy'** is seen as one of the disruptive models of employment that can create job opportunities and new, flexible forms of work, but can also result in precarious working conditions and gaps in protection for workers.<sup>60</sup> Despite lacking a precise definition, the platform economy may be understood as an economy within itself, comprised of, involving and resulting from various digital platforms.<sup>61</sup> In such digital platforms users can obtain information or interact socially or economically.<sup>62</sup> According to the European Commission, digital/online platforms are comprised of search engines, social media, e-commerce platforms, app stores, price comparison websites and ad networks.<sup>63</sup> In short, the platform economy can be understood to form part of the broader digital economy, while being characterised by the role of online platforms in various parts of the economic 'value chain'.<sup>64</sup>

It is unknown exactly how many people work within the platform economy – alternatively termed "sharing", "collaborative" or "gig" economy – but it is estimated that in 2020, around 11% of the EU workforce have provided on-location or online services via platforms at least once. Around 1.4% of the EU workforce works in the platform economy as their main job.<sup>65</sup>

It is widely expected that these numbers will increase significantly. Artists and cultural and creative professionals are particularly vulnerable to these changes, and therefore can be seen as the first ones to suffer from the negative effects of any changes, with their precarious social and economic situation becoming more evident. Concerns have therefore arisen regarding the social sustainability of the current model, and in particular, how these contractual relations have led to situations in which artists face insufficient pensions, female creators are penalised during and after maternity leaves, and public support between contracts is often absent.<sup>66</sup> This is in spite of the fact that

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<sup>60</sup> European Parliament Resolution of 15 June 2017 on a European Agenda for the Collaborative Economy (2017/2003(INI), available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0271\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0271_EN.html)

<sup>61</sup> European Agency for Safety and Health at Work (EU-OSHA), "Protecting Workers in the Online Platform Economy: An overview of regulatory and policy developments in the EU" (2017), available at: <https://osha.europa.eu/en/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments> p. 10

<sup>62</sup> *Ibid*, p. 9

<sup>63</sup> *Ibid*, p. 10

<sup>64</sup> *Ibid*.

<sup>65</sup> JRC (2020) report on Colleem 2nd wave survey (available online), based on 16 surveyed Member States.

<sup>66</sup> Culture action Europe, A cultural response to the White Paper on the Future of Europe

in some Member States the professionalisation of the arts sector continues to rise, subsidies are increasing, and several sub-sectors (for instance the art market and the music industry) are currently in a strong position.<sup>67</sup>

The recent **'digital shift' has had a large impact on the cultural and creative sectors**, in relation to content, and as a means of production, distribution, promotion and monetisation. Digital technologies have the power to allow artists and creative professionals to reach audiences and disseminate works, yet it also has a substantial impact on the labour market. For instance, artists and cultural and creative professionals have set a pattern of discontinuous employment that expanded to the 'gig economy', where people are employed on a temporary basis or provide separate pieces of work, each paid separately.

**Most platform workers have another job or other source of income and tend to be low paid, but with a few earning relatively good incomes.** Workers in the platform economy tend to be younger and more highly educated than the wider population, yet have less access to social protection schemes such as maternity, childcare, and housing benefits.<sup>68</sup> Previous studies have established a broad consensus concerning the advantages and disadvantages of working in the area. The main advantages for workers are flexibility (especially over hours of work) and ease of access (especially for online work carried out from home), even if sometimes a certain rigidity of schedules is required by the need to secure a meaningful income and by the fact that certain jobs are only posted at certain times of the day or week.<sup>69</sup>

The platform economy is **having a significant impact on the cultural and creative sectors, impacting artists and professionals as well as traditional intermediaries such as publishers and record labels.** In the case of the latter, for example book authors no longer exclusively rely on publishing houses since they can deal directly with digital platforms to self-publish: For example, Amazon's Kindle platform has created a mechanism for authors to publish their work without having to go through a publisher, forcing many smaller publishers to close.<sup>70</sup> However, self-publishing is not necessarily cutting out traditional players' altogether. In fact, this seems to be an option usually applied by less popular, non-best-selling authors. These authors in many cases may end up in a more traditional relationship after self-publication of their works, which is used as a sort of market testing tool<sup>71</sup>.

On the other hand, for artists, platforms are having **an effect on their levels of remuneration**, in that platforms are not doing enough to return value to them, even if the platform economy has brought new opportunities such as democratising access to the content market and enables artists to interact directly with their fans. The business model for platforms is to exploit the creative ecosystem's resources while pushing all the risk back to the ecosystem, which leads to falling revenues for creators. Also the negotiating power of artists is low: for instance in the above-mentioned example of self-publishing in the book sector, writers may not find increased bargaining power in

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and the accompanying reflection papers, available at:

[https://cultureactioneurope.org/files/2017/07/CAE\\_FutureofEurope\\_ReflectionPaper.pdf](https://cultureactioneurope.org/files/2017/07/CAE_FutureofEurope_ReflectionPaper.pdf)

<sup>67</sup> Hesters, D. "Kunstenpocket #3 – D.I.T. (Do It Together)" (2019), available at:

[https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket\\_3\\_en](https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket_3_en)

<sup>68</sup> *Ibid.*

<sup>69</sup> Berg, J.; "Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers" (Comparative Labor Law and Policy Journal, Vol. 37, No. 3) (2016)

<sup>70</sup> Jewell, C.; "Creative industries in the platform economy" (2018) (World Intellectual Property Organization Magazine), available at: [https://www.wipo.int/wipo\\_magazine/en/2018/06/article\\_0001.html](https://www.wipo.int/wipo_magazine/en/2018/06/article_0001.html)

<sup>71</sup> Price waterhouse Coopers (2016). Turning the page : the future of e-book

particular when conditions are unilaterally decided by online platforms<sup>72</sup>. In the digital context, a few large powerful players are able to make decisions that work against the creative communities.<sup>73</sup> These large and powerful platforms need to ensure fair value to artists and strong efforts in tackling online piracy.

### **Collective bargaining rights for artists and cultural and creative professionals**

Social dialogue and collective bargaining can play an important role in addressing the situation of self-employed workers in the cultural and creative sectors, however, in many EU Member States **social dialogue and collective bargaining covering the CCS is highly fragmented**. The lack of collective bargaining practices in the CCS contribute to poor job quality, low income and limited social protection, and focus normally only on employees and not on self-employed. Freedom of association in trade unions and the right to collective bargaining are guaranteed in numerous international treaties and instruments in view of the particular links between these rights and the ability of workers to secure fair economic return from their work and access to social protection.<sup>74</sup>

New forms of employment have contributed to labour market segmentation, that has led to **poor job quality, low income and limited social protection**. This has contributed to the rapid decline of coverage rates, as well as regulatory changes in relation to a number of collective bargaining practices and processes, particularly with regard to the extension of collective agreements, and the growing importance of company-based bargaining processes. Additionally, there has been a significant shift towards more de-centralised and sometimes fragmented and individual bargaining systems.<sup>75</sup>

There are a **number of initiatives or frameworks that have been used globally to strengthen the functioning of collective bargaining mechanisms for atypical workers**, such as collective bargaining outside workplaces, single and multi-employer bargaining as well as extension of collective agreements to include atypical workers.<sup>76</sup> One of the traditional approaches to reaching out to non-trade union members is the extension of all or part of collective agreements concluded between single employers or their representative organisations and the representative organisations of workers, such as trade unions, to workers and employers who are not represented by the social partners signing the agreement. This means that the negotiated outcomes becomes applicable to non-standard workers who are not organised, in cases where bargaining itself does not take place in an inclusive manner. This extension seems to benefit certain categories of non-standard workers associated with employment relationships who are excluded from collective bargaining coverage.

These issues have the tendency to affect those working in the cultural and creative sectors hard, given the fact they frequently work in atypical working patterns. A number of approaches have been used to address issues related to extending social protection

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<sup>72</sup> EC (2017) :Mapping the creative value chains A study on the economy of culture in the digital age

<sup>73</sup> *Ibid.*

<sup>74</sup> Film Musicians, "The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working", available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

<sup>75</sup> Voss, E.; Schöneberg, K.; Rodriguez Contreras, R.; "Collective Bargaining in Europe in the 21st Century" (2015) (Eurofound), available at: <https://www.eurofound.europa.eu/publications/report/2015/industrial-relations/collective-bargaining-in-europe-in-the-21st-century>

<sup>76</sup> International Labour Organization Working Paper No. 36 "Non-standard workers: Good practices of Social Dialogue and Collective Bargaining" (2012), available at: <https://pdfs.semanticscholar.org/424e/c29f18fbc12cacdbe686a08f978c172ddef.pdf>

to workers in this sector. **Trade union membership and collective bargaining has an important role reducing imbalances and improving the position of those working in these sectors.**<sup>77</sup> For instance, a 2015 European Commission Study on the Remuneration of Authors and Performers noted that measures at national or EU level could contribute to the reinforcement of the authors' and performers' contractual position in relation to the exploiters, and to reduce information asymmetries. One particular solution would be to encourage more support for the role of trade unions.<sup>78</sup>

**Collective bargaining and trade union membership delivers benefits for these workers.**<sup>79</sup> Trade unions can indeed support authors and performers in at least three different ways that are most useful for securing remuneration, the supply of information, collective negotiation and enforcement.<sup>80</sup> At European level, a sectoral social dialogue committee has existed for the Live Performance sector since 1999. Overall, collective bargaining coverage in the Live Performance sector is relatively low, but tends to be higher in the public and state-funded segment of the sector than in the commercial one.<sup>81</sup> Eurofound figures from 2013 show that there is a big difference between the degree of coverage in different Member States, ranging from around 80% in Belgium to 20% or below in Spain.<sup>82,83</sup> Although sector-related social partner organisations on both sides of industry have been established in the vast majority of countries, they usually cover only particular niches of the sector; this is especially true in the private/commercial segment. The high fragmentation of the associational 'landscape' and thus the collective bargaining structures in the sector, are among the main factors making it difficult or even impossible to even roughly estimate the collective bargaining coverage rate for the entire Live Performance sector in several EU Member States.<sup>84</sup> While self-employed performing arts workers have a long tradition of unionisation in many EU Member States, they often lack coverage by collective agreements as they are increasingly not considered to be employees. As a result of the evolution of the labour market workforce profile and because of the long tradition of atypical work arrangements that prevail in the cultural and creative sectors, trade unions have started to grapple with the problem of how to better protect such workers through the mechanisms of social dialogue and collective bargaining. Given the number of freelancers and self-employed workers in the sectors, one issue to consider is the extent to which collective agreements also cover this category of workers. In some countries, specific schemes have been developed to provide coverage to artists and cultural professionals, such as the social security insurance fund for artists and writers in Germany, which covers self-employed and freelance artists and writers, and the unemployment benefit for intermittent entertainment workers in France.<sup>85</sup> These are

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<sup>77</sup> Film Musicians, "The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working", available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

<sup>78</sup> DG Communications Networks, Content & Technology "Remuneration of authors and performance for the use of their works and the fixations of their performances" (2015), available at: <https://www.ivir.nl/publicaties/download/1593.pdf>

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Film Musicians, "The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working", available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

<sup>82</sup> Eurofound (European Foundation for the Improvement of Living and Working Conditions), "Representativeness of the European social partner organisations: Live performance Industry" (2013), available at: <https://www.eurofound.europa.eu/publications/report/2013/representativeness-of-the-european-social-partner-organisations-live-performance-industry>

<sup>83</sup> This study is currently being updated.

<sup>84</sup> Film Musicians, "The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working", available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

<sup>85</sup> International Labour Organization, "Employment relationships in the media and culture industries, Issues paper for the Global Dialogue Forum on employment relationships in the media and culture sector" (2014), available at: [https://www.ilo.org/sector/Resources/publications/WCMS\\_240701/lang--en/index.htm](https://www.ilo.org/sector/Resources/publications/WCMS_240701/lang--en/index.htm)

only a few examples however, and more progress is needed to help ensure social protection for workers in the sector who currently lack coverage. More information regarding social security can be found in section 4.3.

Regarding minimum fees for freelancers in the cultural and creative sectors, trade unions and professional associations often offer advisory recommended minimum fees or rates lists in instances where collective bargaining cannot be accessed.<sup>86</sup> For instance, the Dutch professional association of graphic designers (BNO) developed guidelines for minimum fees, and its Italian counterpart (AIAP) set up a fee guide.<sup>87</sup>

There are also issues regarding the **conflict between labour rights and competition law**, which need to be resolved in order to enable self-employed and freelance workers to enjoy the right to freedom of association and collective representation. In some countries, such as the Netherlands and Ireland, efforts by freelancers to organise and bargain collectively have in some cases been hindered by competition law. This extends from the complex relationship that exists between the protection of fundamental social rights and EU competition rules. In several Member States unions are legally unable to recruit and organise freelance workers and unions of freelance workers are not recognised.<sup>88</sup> Competition law theory indicates that freedom of association may be seen as creating a concentration of power within one party (the self-employee workers regarded as individual entrepreneurs or 'undertakings', in this case) against the other, which might have an impact on free competition and open market balance, which means that it could potentially fall under rules relating to cartels and/or price fixing.<sup>89</sup> Considering that most Member States do not exclude collective bargaining from the scope of competition law and given that there is a high incidence of freelancing and atypical working conditions in the cultural and creative sectors, competition authorities in some Member States have used their powers to target certain categories of dependent self-employed who have concluded collective bargaining agreements on pay rates, on the grounds that such standardised rates could restrict competition from other providers.

This situation has now been challenged by legal scholars and workers' organisation<sup>90</sup>, as well as by the European Commission. In October 2019, the then-designated Vice-President of the EU Commission and Commissioner for Competition, Ms Margrethe Vestager declared: "We need to make sure that there is nothing in the competition rules to stop those platform workers from forming a union, to negotiate proper wages as you would do in any other business,". She added: "Platform workers should be able to team up, to defend their rights", and that "The fact that their employers label those workers as "self-employed" doesn't make those collective agreements into cartels, when that label is just a way to disguise that they are really employees."<sup>91</sup> Allowing some self-

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<sup>86</sup> ILO, 'Employment relationships in the media and culture industries, International Labour Office, Sectoral Activities Department' (2014) available at: <http://www.ilo.org/publns>

<sup>87</sup> Gherardini, A., So many, so different! Industrial relations in the creative sectors, IR-CREA report for the European Commission (2017), available at: [https://www.researchgate.net/publication/337622178\\_So\\_many\\_so\\_different\\_Industrial\\_relations\\_in\\_creative\\_sectors](https://www.researchgate.net/publication/337622178_So_many_so_different_Industrial_relations_in_creative_sectors)

<sup>88</sup> Film Musicians, "The Future of Work in the Media, Arts & Entertainment Sector – Meeting the Challenge of Atypical Working", available at: <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

<sup>89</sup> Rubiano, C.; "Collective Bargaining and Competition law: A comparative Study on the Media, Arts and Entertainment sectors" (2013), available at: [https://www.fim-musicians.org/wp-content/uploads/fim\\_study\\_competition.pdf](https://www.fim-musicians.org/wp-content/uploads/fim_study_competition.pdf)

<sup>90</sup> Lianos, I.; Countouris, N.; De Stefano, V., "Re-Thinking the Competition Law/Labour Law Interaction Promoting a Fairer Labour Market" (2019), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3465996](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3465996)

<sup>91</sup> Competition Policy International, "EU: Vestager says collective bargaining in gig economy would not be cartel-like behavior" (2019), available at: <https://www.competitionpolicyinternational.com/eu-vestager-says-collective-bargaining-in-gig-economy-would-not-be-cartel-like-behavior/>

employed workers, such as platform-based ones, to participate in collective bargaining, thus, seems like a possible option at the moment.

## 3 European and International policy framework

The following section provides the relevant **legislative and policy background** relating to the working conditions of artists and cultural and creative professionals. In this section, the focus is on the European and international policy context. The national context is explained in chapter 4, whereby various schemes and approaches at national level relating to social security, taxation and artist status are included.

### 3.1 EU Level policy developments and instruments

#### *EU cultural and creative sector developments*

The European Commission adopted the **New European Agenda for Culture** in May 2018. Together with the Council Work plan for Culture, it provides the framework for the current phase of cultural actions and cooperation at EU level.<sup>92</sup> The new agenda has three strategic objectives with social, economic and external dimensions. Within these different dimensions, a series of different actions has been taken. For example, within the social dimension, which aims to harness the power of culture and cultural diversity to support social cohesion and wellbeing, social inclusion have been made part of the selection criteria of large EU programmes.

From an economic perspective, one of the concrete actions is to support Member States in ensuring fair remuneration for artists and creators through general and sector-specific dialogues, in line with the Digital Single Market Strategy (2019).<sup>93</sup> The external dimension of the strategy focuses on countries outside the EU (third countries) and contains action areas which are related to strengthening civil society and promoting gender equality.

In line with the New European Agenda for Culture, the Council of Ministers adopted the **Work Plan for Culture 2019-2022** in November 2018<sup>94</sup>, which outlines five main priorities for European cooperation in cultural policy-making:

- Sustainability in cultural heritage;
- Cohesion and well-being;
- An ecosystem supporting artists, cultural and creative professionals and European content;
- Gender equality;
- International cultural relations.

These priorities are supplemented by 17 concrete actions with clearly defined working methods and target outputs, six of which concerns supporting artists, cultural and creative professionals and European content.<sup>95</sup> Under the Open Method of Coordination (OMC), a number of working groups are being set up in order to implement the Work

<sup>92</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, "A New European Agenda for Culture" (SWD(2018) 167 final), available at: [https://ec.europa.eu/culture/sites/culture/files/commission\\_communication\\_-\\_a\\_new\\_european\\_agenda\\_for\\_culture\\_2018.pdf](https://ec.europa.eu/culture/sites/culture/files/commission_communication_-_a_new_european_agenda_for_culture_2018.pdf)

<sup>93</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Digital Single Market Strategy for Europe" (SWD(2015) 100 final), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192>

<sup>94</sup> Note from the General Secretariat of the Council to the Council, "Draft Council conclusions on the Work Plan for Culture 2019-2022" (2018), available at: <http://data.consilium.europa.eu/doc/document/ST-13948-2018-INIT/en/pdf#http://data.consilium.europa.eu/doc/document/ST-13948-2018-INIT/en/pdf>

<sup>95</sup> European Commission, Strategic framework – European Agenda for Culture, available at: [https://ec.europa.eu/culture/policy/strategic-framework\\_en](https://ec.europa.eu/culture/policy/strategic-framework_en)

Plan. The **2015-18 Work Plan for Culture** focused on accessible and inclusive culture, cultural heritage, cultural and creative sectors (creative economy and innovation), promotion of cultural diversity, culture in EU external relations and mobility.<sup>96</sup>

The 2019-2022 Work Plan acknowledges that artistic freedom is closely linked to the social and economic conditions of cultural professionals and institutions, and that the cultural and creative sectors are characterised by self-employment, small- and micro-enterprises, and cultural and linguistic diversity. Artists and cultural and creative professionals tend to have project-based careers and a high degree of mobility, while they often have an irregular and unpredictable income and combine several jobs to earn a living. Innovation is particularly driven by individual artists, creators and small cultural institutions, whose value creation is mainly based on intangible assets, such as original ideas, know-how and creativity. In order to increase Europe's competitiveness and to stimulate innovation, Europe must build on its creative and cultural assets. The mobility of artists and cultural and creative professionals, the circulation and translation of European content, training and talent development, fair pay and working conditions, access to finance and cross-border cooperation are issues of specific interest for research and exchange at European level.

### ***EU policies and developments in relation to the status and working conditions of artists and creative professionals***

Most issues relating to the status and working conditions of artists and creative professionals are within EU Member States' exclusive competences. Additionally, the European Union does not have the competence to legislate in the field of culture and the principle of subsidiarity applies. Yet, the European Commission has initiated a series of legislative and policy instruments that have an impact on or are related to the aspects on the status and working conditions of artists and creative professionals discussed in this report.

According to **Article 167 of the Treaty on the Functioning of the European Union** (TFEU),<sup>97</sup> "the Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore"... "Action by the Union shall be aimed at encouraging cooperation between Member States..." According to Article 167, only "incentive measures, excluding any harmonisation of the laws and regulations of the Member States" can be adopted at EU level.

Important for the concept of mobility, **Article 45 of the TFEU** provides for the freedom of movement for workers, and is a fundamental right, complementing the free movement of goods, capital and services within the European single market. **Article 13 of the EU Charter of Fundamental Rights** attached to the TFEU focuses on artistic freedom. Article 15 provides the freedom to choose an occupation and the right to engage in work.

The **European Pillar of Social Rights**<sup>98</sup> has been launched by the European Commission in 2017, and serves as a guide for the renewed process of convergence towards better working and living conditions in Europe. It sets out 20 key principles and

<sup>96</sup> Draft Conclusions from the Council and of the Representatives of the Representatives of the Governments of the Member States, meeting within the Council, on a Work Plan for Culture (2015-2018), available at: <https://data.consilium.europa.eu/doc/document/ST-16094-2014-INIT/en/pdf>

<sup>97</sup> Consolidated version of the Treaty on the Functioning of the European Union (TFEU), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

<sup>98</sup> The European Parliament, the Council and the European Commission, European Pillar of Social Rights, available at: [https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf)

rights essential for fair and well-functioning labour market and welfare systems in the 21st century. Relevant provisions include active support to employment, the right to fair and equal treatment regarding working conditions, access to social protection and training, right to fair wages, social dialogue and involvement of workers and regardless of the type and duration of their employment relationship, adequate social protection for workers and self-employed.

A relevant piece of EU legislation is **Regulation (EC) No 883/2004 on the coordination of social security systems**<sup>99</sup>. While the Regulation does not harmonise national social security systems and each Member State is free to determine the details of its own system, the Regulation does lay down common rules and principles that Member States must respect, such as equality of treatment. These ensure that differences between the national systems do not adversely affect persons who exercise their right to free movement.

Regarding the free movement of workers, the **Posted Workers Directive 96/71/EC**<sup>100</sup> aims at protecting workers when sent abroad to another Member State by their employer in order to execute certain tasks. These workers are still protected by the rules of the sending Member State throughout their staying in the foreign land. Also, prevention of social dumping by establishing a series of working conditions under which employees should perform is envisaged in the Directive (minimum paid annual leave, maximum work periods, health and safety rules, etc.). Directive 2014/67/EU supports and further elaborates on the application of the Posted Workers Directive by providing greater control.

Directive 2010/41/EU on the application of the **principle of equal treatment between men and women who are self-employed**<sup>101</sup> provides principles of equal protection and treatment between self-employed men and women. The instrument encourages Member States to take initiatives in order to strengthen gender-based equality, stimulating business incentives as a good practice between women so as to achieve greater equality and equal working conditions between the two genders.

The 2006 **VAT Directive 2006/112/EC**<sup>102</sup> relates to the common system of Value Added Tax (VAT). Although the application of VAT is decided by national tax authorities, there are some standard EU rules that apply. The transaction of the goods and services is the centre of the Directive, as certain transactions are taxed according to their nature. On 21 November 2019, the Council adopted new detailed measures that will pave the way for a smooth transition to new VAT (Value-Added Tax) rules for e-commerce that come into force in January 2021.<sup>103</sup>

In April 2019, new legislation was adopted which will provide for minimum rights for all employment relationships and more specifically, the ones considered as the most

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<sup>99</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02004R0883-20140101>

<sup>100</sup> Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31991L0383>

<sup>101</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0041>

<sup>102</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32006L0112>

<sup>103</sup> European Commission, "Modernising VAT for cross-border e-commerce", available at: [https://ec.europa.eu/taxation\\_customs/business/vat/modernising-vat-cross-border-ecommerce\\_en](https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en)

vulnerable – atypical workers occupying non-standard jobs (e.g. on demand workers or gig economy workers)<sup>104</sup>. The main measures included in **Directive (EU) 2019/1152 on transparent and predictable working conditions**<sup>105</sup> provide for improved minimum standards such as:

- An obligation of employers to provide essential information about the job within a week;
- Workers with unpredictable working schedules determined by the employer (i.e. on-demand work) should know in advance within which time slots they can be requested to work;
- The right of workers to receive compensation when the employer cancels a work assignment after a specific deadline;
- Limitation of the probation period to six months, unless objectively justified;
- A ban on exclusivity clauses, thus prohibiting employers from preventing workers to take on another job,
- Prevention of abusive practices regarding on-demand contracts; and;
- The right of workers to receive free of charge mandatory training.<sup>106</sup>

As there has been a significant increase in atypical jobs and the necessary flexible work contracts, the Directive covers employees who have worked for a minimum of 12 hours per month, and any on-demand worker. In contrast, genuinely self-employed workers are excluded from the scope of the new Directive, as they do not fulfil the criteria for determining the status of a worker, as established by the Court of Justice of the European Union in the founding 'Lawrie-Blum'<sup>107</sup> case.

In March 2018, the European Commission adopted a proposal for a Council **Recommendation on Access to Social Protection for workers and the self-employed**.<sup>108</sup> The Recommendation was formally adopted by the Council in November 2019. The aim is to support all people who, due to their employment status or duration, are not enough covered by social security and thus are exposed to higher economic precariousness and instability.

The European Union has responded to the need to facilitate the mobility of artists within and outside its borders. The 2015-18 and the 2011-2014 Work Plans for Culture had mobility as one of the key priority areas, with a number of activities, including an OMC working group in 2011-2014, and a report and stock taking meeting in 2015-2018. In 2016, the Commission and the European External Action Service (EEAS) put forward a Joint Communication '**Towards an EU strategy for international cultural relations**'.<sup>109</sup> In this text, the Commission recognised the need to establish mechanisms to facilitate access to visas for artists and cultural professionals and call for the development of a visa policy specifically for them. The Communication also called for the creation of a cultural visa programme, along the lines of the existing Scientific Visa

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<sup>104</sup> Council of Ministers of the EU and European Parliament

<sup>105</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152>

<sup>106</sup> European Parliament News, "Gig economy : EU law to improve workers' rights (infographic)" (2019), available at: <http://www.europarl.europa.eu/news/en/headlines/society/20190404STO35070/gig-economy-eu-law-to-improve-workers-rights-infographic>

<sup>107</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152> Recital 8

<sup>108</sup> Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2019.387.01.0001.01.ENG&toc=OJ:C:2019:387:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2019.387.01.0001.01.ENG&toc=OJ:C:2019:387:TOC)

<sup>109</sup> European Commission, 'Joint Communication to the European Parliament and the Council towards an EU strategy for international cultural relations JOIN/2016/029, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2016%3A29%3AFIN>

Programme, for third-country nationals, artists and other professionals in the cultural field.

In 2014, the European Commission proposed important changes to the Schengen Area visa rules that aimed to reducing the deadline for processing and taking a decision on a visa application, boost consular cooperation, and establish the Touring Visa, which allows non-EU nationals entering the Schengen area to travel within this zone for up to one year (without staying in one country for more than 90 days in any 180-day period).<sup>110</sup> This benefits performance artists, as well as tourists, researchers, and students who want to spend more time in Europe. Following the European Commission's proposal, a 2016 report by the European Parliament's LIBE Committee<sup>111</sup> was published which laid down new proposals for changes in the Commission's proposal for a Touring Visa. Some of the elements upon which this report focused amongst others include the need to limit visas' scope to performing artists/elite sports persons and their support staff and establishing stringent conditions and procedures for issuing touring visas.<sup>112</sup> In addition to proposing amendments to the proposal for a Touring Visa, the LIBE Committee also proposed amendments for the proposal on the Union Code on Visas.<sup>113</sup> However, in its 2018 working programme, the European Commission announced the withdrawal of the proposals for the Visa Code and the Touring Visa.<sup>114</sup>

In 2007, the **European Parliament adopted a resolution on the social status of artists**,<sup>115</sup> drawing attention to artists' social security and revenues problems, as well as their often precarious employment situation. Member States were called to implement a legal and institutional framework for creative artistic activity via a detailed framework of measures that includes contracts, social security, sickness insurance, direct and indirect taxation and obedience to European legislation. Protection of artists is also vital through a Euro pass-type "European professional register "of artists.

The collaborative economy, also referred to as the sharing economy, has spread rapidly across various sectors in Europe<sup>116</sup>. This type of an economy in a country refers to business models like Uber and Airbnb, where goods and services are often provided by private individuals through collaborative platforms which connect them with customers.<sup>117</sup> On one hand, the collaborative economy provides a wide range of new opportunities for consumers and entrepreneurs. On the other hand however, it has sparked tensions between service providers and existing market operators.

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<sup>110</sup> European Commission, "Simplifying visa rules", available at:

[https://ec.europa.eu/growth/sectors/tourism/promoting-europe/visa\\_en](https://ec.europa.eu/growth/sectors/tourism/promoting-europe/visa_en)

<sup>111</sup> European Parliament, "Report on the proposal for a regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 561/2006 and (EC) No 767/2008" (2016), available at:

[https://www.europarl.europa.eu/doceo/document/A-8-2016-0079\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2016-0079_EN.pdf)

<sup>112</sup> *Ibid*, pp. 34-35

<sup>113</sup> European Parliament, "Report on the proposal for a regulation of the European Parliament of the Council on the Union Code on Visas (Visa Code) (recast)" (2016), available at:

[https://www.europarl.europa.eu/doceo/document/A-8-2016-0145\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2016-0145_EN.pdf)

<sup>114</sup> European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Commission Work Programme 2018" (2017), available at: [https://ec.europa.eu/info/sites/info/files/cwp\\_2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2018_en.pdf) p. 9

<sup>115</sup> European Parliament Resolution of 7 June 2007 on the social status of artists (2006/2249(INI)), available at: <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0236+0+DOC+XML+V0//EN>

<sup>116</sup> European Commission, Collaborative economy, available at: [https://ec.europa.eu/growth/single-market/services/collaborative-economy\\_ro](https://ec.europa.eu/growth/single-market/services/collaborative-economy_ro)

<sup>117</sup> European Commission, Single Market Scoreboard, Collaborative Economy (2013-2017), available at: [https://ec.europa.eu/internal\\_market/scoreboard/performance\\_per\\_policy\\_area/collaborative-economy/index\\_en.htm](https://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/collaborative-economy/index_en.htm)

In June 2016, the European Commission adopted a Communication<sup>118</sup> on the collaborative economy. In June 2017, the **European Parliament adopted its resolution for a European Agenda on the collaborative economy** as a “first step towards a well-balanced, more comprehensive and ambitious EU strategy on the collaborative economy”<sup>119</sup>. The European Parliament recognised the various opportunities which the sharing economy may create for consumers, entrepreneurs, citizens, and also the new jobs which may be generated.<sup>120</sup> Moreover, the Agenda outlines the important challenges and risks arising, such as consumer protection and employment relations between collaborative platforms and workers.<sup>121</sup> A question raised by the Parliament worth noting is whether existing EU legislation is fit for purpose to provide the needed clarity, empowerment and protection for different actors within this economy.<sup>122</sup>

### 3.2 International level recommendations and instruments

At the international level, the main relevant organisations in this context are the Council of Europe, the United Nations (UN), specifically UNESCO, the International Labour Organisation (ILO) and the Organisation for Economic Co-operation and Development (OECD).

#### **International level cultural and creative sector developments**

Through **UNESCO**, the UN has had a specific policy focus on cultural heritage since the 1950s. UNESCO’s well-known cultural conventions protect and safeguard the world’s cultural and natural heritage including ancient archaeological sites, intangible and underwater heritage, museum collections, oral traditions and other forms of heritage. UNESCO also supports creativity, innovation and the emergence of dynamic cultural sectors.<sup>123</sup>

UNESCO has a series of conventions and declarations related to culture and cultural heritage protection from The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005). One of the most recent developments in this sense was the **Memorandum of Understanding** between the EU and UNESCO regarding education, culture, media and science. The EU and UNESCO issued a joint statement in 2013 referring to the signing of a Memorandum of Understanding a year earlier indicating a desire to cooperate along these different policy areas. The EU and all its Member States are parties to the 2005 UNESCO Convention on the Diversity of Cultural Expressions, which serves as a framework for EU policy on culture in its external relations, including trade and development cooperation. UNESCO published a report in 2018 on the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>124</sup> This Convention, which celebrates the cultural as well economic value of the cultural and creative sectors, was a landmark agreement for the international community.

<sup>118</sup> Commission Communication on the collaborative economy - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A356%3AFIN>

<sup>119</sup> European Parliament resolution of 15 June 2017 on a European Agenda for the collaborative economy (2017/2003/INI), available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0271\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0271_EN.pdf) para 1

<sup>120</sup> European Parliament, Committee on the Internal Market and Consumer Protection, “Report on a European Agenda for the collaborative economy”(2017/2003(INI)), available at: [https://www.europarl.europa.eu/doceo/document/A-8-2017-0195\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2017-0195_EN.pdf) Section 3.1

<sup>121</sup> *Ibid*, Section 3.2

<sup>122</sup> *Ibid*, Section 3.3

<sup>123</sup> UNESCO, Protecting Our Heritage and Fostering Creativity, available at:

<https://en.unesco.org/themes/protecting-our-heritage-and-fostering-creativity>

<sup>124</sup> UNESCO, Reshaping cultural policies: advancing creativity for development, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000260592>

**The Council of Europe** also plays a role in the cultural and creative sectors. The **European Cultural Convention**<sup>125</sup> was adopted by the Council in 1954, and committed to develop mutual understanding among the peoples of Europe and reciprocal appreciation of their cultural diversity, to safeguard European culture, to promote national contributions to Europe's common cultural heritage respecting the same fundamental values and to encourage in particular the study of the languages, history and civilisation of the Parties to the Convention.

***International level developments related to the working conditions and status of artists and creative professionals***

The **UNESCO Recommendation concerning the Status of the Artists, 1980**<sup>126</sup> was approved by the 21<sup>st</sup> General Conference of UNESCO with a non-binding nature and is strictly correlated with the status of the artists. It highlights the importance of artists to be regarded as cultural workers and benefit from all the advantages available, both economic and social. In detail, the recommendation strives to provide artists effective social security protection and urges the public authorities to take actions so as to compensate alarming situation that artists might deal, supporting also the fundamental freedom of creation and put all the appropriate safeguards in order to protect them as employees. This document provides a broad definition of who is considered an artist, although in the view of some professionals in the sector, this definition is rather outdated.<sup>127</sup>

The **OECD Model Tax Convention**,<sup>128</sup> is a model for countries concluding bilateral tax conventions, and plays a crucial role in removing tax related barriers to cross border trade and investment. It is the basis for negotiation and application of bilateral tax treaties between countries, designed to assist business while helping to prevent tax evasion and avoidance. The OECD Model also provides a means for settling on a uniform basis the most common problems that arise in the field of international double taxation.

The **International Labour Organisation (ILO)** focuses on working conditions and the labour market across sectors, including in the media, culture and graphics sectors. In these sectors, the ILO centres on the employment effects of technological and market developments in media and entertainment industries and their impact on the future of the press, public service broadcasting, the music and film industry and other segments. The main focus is on fundamental labour rights, the role of employment regulation and their impact on decent work in the sector.

Most recently, in January 2019, the ILO published a **working paper** on '**Challenges and opportunities for decent work in the culture and media sectors**'.<sup>129</sup> This report maps the legal and political landscape in which culture and media workers operate and explores policy options for expanding and promoting decent work and the formalisation of labour relations in these sectors. The ILO identified 18 countries from four regions for the purpose of this study (**not including the USA or any European**

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<sup>125</sup> Council of Europe, European Cultural Convention (1995), available at:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/018>

<sup>126</sup> UNESCO, Recommendation concerning the Status of the Artists (1980), a summary is available at:

<https://culturalrights.net/en/documentos.php?c=18&p=194>

<sup>127</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

<sup>128</sup> OECD Model Tax Convention on Income and on Capital: Condensed Version 2017, available at:

<https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>

<sup>129</sup> International Labour Organization, Working Paper No. 324, "Challenges and opportunities for decent work in the culture and media sectors" (2019), available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/publication/wcms\\_661953.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_661953.pdf)

**countries**).<sup>130</sup> This report points out a lack of comprehensive data on the status of workers and the nature of employment relationships. It lists four main subjects of data collection that would be useful in this regard: the number of workers; the distribution of these workers by employment relationship and access to social benefits; the sector's awareness of issues such as gender equality, youth employment and ethnic diversity; and market dynamics, in order to compensate for data fragmentation between industries or enterprises. Moreover, data that would enable trend monitoring of wages, fees and royalties is highlighted. Lastly, new research methods to measure the impact of digitalisation over the short, medium and long term is deemed to be of importance.

The **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations**<sup>131</sup> was accepted by members of the United International Bureaux for the Protection of Intellectual Property (BIRPI), the predecessor to the modern World Intellectual Property Organisation (WIPO), on 26 October 1961. The convention secures the safety in performances of artists, in phonograms for producers of phonograms and in broadcasts for broadcasting organisations. All performers, such as actors, singers, musicians, dancers and any other individual who performs literary or artistic tasks, are given protection against certain acts that they have not consented. For instance, the announcement and exposure of a live performance to the public. WIPO, the ILO and UNESCO are responsible organisations for the administration of the Rome Convention.

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<sup>130</sup> The countries included in the report are: Argentina, Brazil, Canada, Colombia, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Indonesia, Japan, Kenya, Lebanon, Malaysia, Morocco, New Zealand, Peru, Republic of Korea, Senegal, South Africa

<sup>131</sup> International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961), available at: <https://wipolex.wipo.int/en/text/289795>

## 4 National legal and regulatory frameworks

Whereas chapter 3 focusses on the European and international policy framework, this chapter will look more in detail at EU Member States' national legal and regulatory frameworks relevant for artists' working conditions.

As mentioned in chapter 2, **artists and cultural and creative professionals often work in precarious circumstances**. They often work on a contractual, (allegedly) freelance and intermittent basis, which can result in lower income that also has the tendency to fluctuate and remain uncertain. The end result of this is often lower tax contributions, and less access to social protection, such as pension supplements, unemployment assistance and/or insurance, disability benefits and health insurance. Artists are also highly mobile, often working across borders, which also leads to issues surrounding access to social protection. Therefore there is a need for extending and improving access to social protection for artists, while taking into account the unique and atypical manner in which artists work.

This is **even more relevant given the COVID-19 pandemic**. Sectoral stakeholders are urging Member States and the Commission to take action in relation to accessing full sick pay for freelance workers, public health insurance coverage and guaranteed basic income such as welfare benefits aimed at people without any income who do not have rights to unemployment benefits.<sup>132</sup>

Recently, some Member States have started to take initiatives for fair pay of artists and cultural professionals. Other countries prefer to speak about "fair practice", rather than "fair pay" in order to go beyond salary and to link up to 'good governance' and policies for diversity and inclusion. Works are ongoing and could provide interesting elements for discussion at the European level.

This chapter will explore these issues mentioned above, looking specifically at status provided to artists, social security, taxation and VAT and minimum wage.

At the end of the chapter, a total overview table is presented.

### 4.1 Artist status and entitlements

In this section, the concept of artist status will be explored, specifically looking at measures to define artist status within EU Member States. As a brief introduction to the concept of artist status, the point of reference is the **1980 Recommendation of UNESCO concerning the Status of the Artist. It calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment, income and tax conditions, mobility and freedom of expression**. It also recognises the right of artists to be organised in trade unions or professional organisations that can represent and defend the interests of their members.

The 1980 Recommendation does not call on States to grant artists specific privileges, but rather to grant them analogous rights as any other socio-professional group whose

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<sup>132</sup> For example, see Authors' Organisations, "Joint Statement on COVID-19 Crisis" (2020), available at: <https://www.filmneweurope.com/press-releases/item/119762-authors-organisations-joint-statement-on-covid-19-crisis>

work has specific characteristics that need to be addressed through special measures.<sup>133</sup> UNESCO's recommendation on the status of the artist proposes a formal definition for all artists. An 'artist' is understood as any person who creates or gives creative expression to, or re-creates works of art, who considers his [sic] artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association<sup>134</sup>.

In many Member States, the de facto definition of an artist is determined internally, and the definition of an artist in Europe is in no way uniform. However, there are some common approaches, despite the wide variation between Member States' criteria used to define artists for tax and benefit purposes. A 2013 study by the Slovak Coalition for Cultural Diversity identified five common approaches, although it was acknowledged that often a mixture of these approaches is adopted.<sup>135</sup>

1. **Definition through membership:** a person is defined as an artist through membership of a recognised artist association (e.g. an association of professional artists). Although administratively simple, this approach leaves open which associations are to be officially recognised.
2. **Definition by a committee:** artistic status is determined by a committee, such as a committee of 'experts' or of artistic peers. In the Netherlands, an 'independent advisory body' determines the professional status of artists applying for eligibility under the Income Provision for Artists Act, or 'WIK'.
3. **Definition by authority:** the taxing authority determines eligibility.
4. **Definition through artistic output:** the definition of an artist derives from the definition of artistic output; i.e., an artist is someone who produces art (artworks, copyrighted materials and so on). This type of definition exists in France and in the UK.
5. **Definition by the nature of arts activity:** an artist is deemed professional if his/her artwork is undertaken in a 'business-like' manner. This type of definition is particularly evident for retail sales tax systems, such as Value Added Tax (VAT) and Goods and Services Tax (GST), and for tax averaging schemes.

Laws in Member States that provide status and recognition to artists can help regularise their status as a professional and acknowledge the atypical way in which they work. Most contain provisions that recognise artists' associations and authorise the negotiation of agreements on compensation and working conditions. The most comprehensive laws include a wide range of concrete policies and measures that address specific issues and challenges faced by artists. There are different means in which this is carried out. In some instances, Member States explicitly target artists under omnibus legislation dealing entirely with the status of the artist, whilst others opt for targeted legislation establishing specific provisions for professional artists, and many devote distinct sections of their cultural policies to this issue. Having a dedicated law specifically relating to the status of the artist provides a greater level of importance to the status of artists. More information relating to specific areas of provisions (such as social security and taxation measures) are provided in subsequent sections of this chapter (sections 4.3 and 4.3, respectively).

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<sup>133</sup> UNESCO, 1980 Recommendation concerning the status of the Artist, available at: <https://en.unesco.org/creativity/governance/status-artist>

<sup>134</sup> *Ibid.*

<sup>135</sup> Slovak Coalition for Cultural Diversity, 'Status Of The Artist: Working Document For A General International Debate' (2013), available at: <https://www.aiap-iaa.org/Status%20of%20the%20Artist.%202014.pdf>

The following table provides an overview of where Member States have implemented legislation that provides a degree of status to artists.

table 1 Overview of legislation recognising artist status in the EU

Country	Legislation recognising artist status	Brief description
<b>Austria</b>	<i>Law on Social Security for Artists (2001)</i>	<i>The law treats freelance artists as self-employed artists. As a result, they are subject to mandatory social security contributions and have access to a pension supplement and voluntary unemployment insurance.</i>
<b>Belgium</b>	<i>The Finance Act of 24 December 2002</i>	<i>The Act publishes a new status of artists in relation to the social security system, enabling them to make a choice between the salaried worker's status and self-employed status, depending on proof of their socio-economic independence. This enables artists who receive unemployment benefits to practise their art more freely, which hitherto had been prohibited by law</i>
<b>Bulgaria</b>	<i>Labour Code, Ordinance on Social Security of Persons who Practice a Liberal Profession and of the Bulgarian Citizens Working Abroad (2000)</i>	<i>The code states that artists (practicing a liberal profession) are to be treated in the same manner and equally as those who have registered companies as sole traders or partners in commercial collaborations in regards to social security.</i>
<b>Croatia</b>	<i>Law on the Rights of Independent Artists and Promotion of Cultural and Artistic Creativity (1996, amended 2000)</i>	<i>This legislation governs the rights of independent artists, the founding and operation of arts organisations and measures to promote cultural and artistic creativity. The definition of an independent artist comprises self-employed artists who engage in artistic creation and operation as their only and main occupation. This act gives independent artists access to pension, disability and health insurance.</i>
<b>Cyprus</b>	<i>No law covering the status of Artists. Legislation is currently being developed</i>	<i>N/A</i>
<b>Czechia</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Denmark</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Estonia</b>	<i>Act on Creative Artists and Creative Artists' Unions (2004)</i>	<i>The legislation provides individual self-employed artists and freelancers with the right to obtain tax deductions of documented expenses related to</i>

		<i>their creative activities. Moreover, freelance artists with no other source of income can apply for a monthly support.</i>
<b>Finland</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>France</b>	<i>Intermittence du spectacle (1936, with multiple amendments over the years)</i>	<i>Under this statute, artists benefit from the presumption that they are salaried workers and thus, have access to measures for social security coverage, despite having discontinued their employment during a given period. This entitles artists to unemployment benefits during their periods when they are not performing, but creating.</i>
<b>Germany</b>	<i>Artists' Social Insurance Act (1981)</i>	<i>The law aims to ensure the same protection enjoyed by other employees in regards to social security, also for independent artists and publicists. As a result, they are subject to mandatory social security contributions and have access to a pension supplement and voluntary unemployment insurance.</i>
<b>Greece</b>	<i>No law covering the status of Artists. A draft scheme for the Status of Artists is under preparation</i>	<i>N/A</i>
<b>Hungary</b>	<i>The EKHO law (1995)</i>	<i>The legislation provides more favourable conditions and simplified procedures in relation to social security for a list of professions, typically in the cultural sector.</i>
<b>Ireland</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Italy</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Latvia</b>	<i>Law on the Status of Creative Persons and Professional Creative Organisations (2004)</i>	<i>The law provides support to artists who due to the specific nature of their employment do not generate regular income or are experiencing temporary loss of capacity to work. Moreover, assistance is provided freelance artists.</i>
<b>Lithuania</b>	<i>The Law on the Status of Art Creators and their Organisations (2004) and The Law on Professional Performing Arts (2004)</i>	<i>The legislation lays down the provisions regulating procedures and requirements for obtaining the professional status of "art creator". The Law on Professional Performing Arts (2004) provides legal provisions for social security coverage for personnel working in these sectors.</i>

<b>Luxembourg</b>	<i>Law of 19 December 2014 on social measures for the benefit of independent professional artists and intermittent performers, and the promotion of artistic creation (amended 2020)</i>	<i>Provides social measures for the benefit of independent professional artists and intermittent entertainment workers and introduces a social aid scheme for independent professional and intermittent performing artists in the event that an event occurs.</i>
<b>Malta</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>The Netherlands</b>	<i>Artist Work and Income Act (1998)</i>	<i>Under the Artist Work and Income Act artists may be granted financial support in the form of basic income for period of maximum 48 months, spread over a maximum period of 10 years.</i>
<b>Poland</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Portugal</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Romania</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>
<b>Slovakia</b>	<i>Act on Art Fund (2002)</i>	<i>The Act establishes the official status of professional artists in Slovakia. The main mission of the Art Fund is to support creative literary, scientific and artistic activity. Does not includes social security.</i>
<b>Slovenia</b>	<i>Decree on self-employed professionals in culture (2004)</i>	<i>The legislation recognises that self-employed persons/freelancers in the CCS are given a special status which grants them more favourable conditions in relation to taxation and social security, whereby the Ministry of Culture pays social and health insurance contributions for artists and journalists listed on the Register.</i>
<b>Spain</b>	<i>El Estatuto del Artista (2018)</i>	<i>Recognises artistic work and functions through 75 measures that were adopted that aim to improve the status of artists and other cultural professionals with regard to tax, labour and social protection issues. Recognises the intermittence, heterogeneity and instability of artistic professions; addresses fiscal (including the reduction of the VAT rate) and social security measures by regulating contributions during periods of inactivity.</i>
<b>Sweden</b>	<i>No specific legislation covering artists' entitlements</i>	<i>N/A</i>

The following section provides further explanation on some of the developments taking place in Europe regarding the status of the artist, in addition to more information on some of the provisions referred to in the above table. More in-depth explanation regarding social security related provisions are provided in section 4.3.

A recent example of where a Member State has adopted measures that together make up an artist statute to improve the status of artists can be found in Spain (*el Estatuto del Artista*).<sup>136</sup> In 2018, 75 measures were adopted that aim to improve the status of artists and other cultural professionals, particularly with regard to tax, labour and social protection issues. Royal Decrees 26/2018 and 302/2019 established urgent measures for artistic creation and cinematography. While Royal Decree 26/2018 recognises the intermittence, heterogeneity and instability of artistic professions; addresses fiscal (including the reduction of the VAT rate) and social security measures by regulating contributions during periods of inactivity and providing protection to pregnant women or breastfeeding mothers, up to nine months after birth; Royal Decree 302/2019 establishes compatibility between the retirement pension and the collection of rights derived from intellectual property.<sup>137</sup>

Lithuania has implemented a range of legislative acts and programmes specifically targeting artists. These include tax relief for a studio/workshop, access to social benefits, creative idle time payment, the right to qualify for a special pension and the right to be sponsored by tax-free income from permanent residents in Lithuania.

In Belgium in 1969, an article was inserted into the Royal Decree of 28 November providing social security for certain performing artists working under certain conditions equivalent to the social security scheme for salaried workers (known as the Statut d'artiste). This article, revolutionary in principle, has however been rarely applied for several reasons: the cost of social protection as well as the administrative procedures generated by this system on the part of those who hire and the difficulty in designating, in certain cases, the person which hires the performing artist and is therefore the alleged employer from the point of view of social security. Since these artists could not be self-employed (due to the irrefutable presumption), they found themselves without social protection. To overcome these drawbacks, these artists sometimes created their own non-profit organization, of which they became employees. This system also had certain drawbacks. Article 170 of the program law of December 24, 2002 extended the application of this presumption of 1969 to all artists (whether performers or creators) and made this presumption rebuttable (which allows artists who wish to choose to be subject to social security for the self-employed subject to compliance with certain conditions).<sup>138</sup>

In France, the "Intermittents du Spectacle" scheme has been in place since 1936. This scheme acknowledges that working in the arts (both as artists and technicians) can be highly precarious and subject to long fallow periods. Therefore, if artists are able to find a certain amount of paid work a year (equating to 507 hours over 10 months), the

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<sup>136</sup> Boletín Oficial de las Cortes Generales, Congreso de los Diputados "Informe de la Subcomisión para la Elaboración de un Estatuto del Artista" (2018), available at: [http://www.congreso.es/backoffice\\_doc/prensa/notas\\_prensa/61825\\_1536230939806.pdf](http://www.congreso.es/backoffice_doc/prensa/notas_prensa/61825_1536230939806.pdf)

<sup>137</sup> Boletín Oficial de las Cortes Generales, Congreso de los Diputados "Informe de la Subcomisión para la Elaboración de un Estatuto del Artista" (2018), available at: [http://www.congreso.es/backoffice\\_doc/prensa/notas\\_prensa/61825\\_1536230939806.pdf](http://www.congreso.es/backoffice_doc/prensa/notas_prensa/61825_1536230939806.pdf)

<sup>138</sup> SMartbe, 'Le "statut" social de l'artiste', available at: [https://smartbe.be/wp-content/uploads/2013/10/le\\_statut\\_social\\_de\\_l\\_artiste.pdf](https://smartbe.be/wp-content/uploads/2013/10/le_statut_social_de_l_artiste.pdf)

French state will match what they earn and pay them during periods of unemployment. In response to the COVID-19 pandemic, and the impact on those working in the cultural and creative sectors, the French government granted those under the scheme a blank year on Wednesday May 6. Therefore, even if an artist or technician does not work 507 compulsory hours, they will still have the right to unemployment insurance until August 2021. This is an important development in France, given that the culture sector supports 1.3 million people and represents 2.2 % of GDP.<sup>139</sup>

**Artists do not enjoy the same benefits and rights as other workers in all Member States.** The prosperity of the cultural sector requires that the wellbeing of artists be considered. This is occurring in some Member States, where for example, the Finnish Ministry of Education and Culture issued a report in 2019 on the Indicative Guidelines for Arts and Artists Policy, with a key message being that “art is work and it must be treated as such”.<sup>140</sup> The report’s proposals to improve the status of the artist include: progressively moving from a grants scheme to an employment scheme, increasing the number of artists entitled to a pension, facilitating the compatibility of income from different sources, and promoting life-long opportunities, including in matters related to copyright.<sup>141</sup>

Further developments are taking place within Europe. For instance, in France in 2019 the Minister of Culture entrusted the master adviser at the Court of Auditors to provide a report on the state of changes that creative activities have experienced over the past thirty years. The purpose of this reflection being to consider the possible adaptations to existing public policies in favour of artists, authors and creators. His report on the status of artist-authors, “The author and the act of creation”, was delivered to the Minister in January 2020. The report concluded that the State must ‘assert itself in its triple role of regulator and guarantor of balance, promoter of excellence, diversity and risk-taking, while showing itself an exemplary player’.<sup>142</sup> To do this, the report presented 23 recommendations that take into account the request for status of artists and authors through better recognition of their professionalism, to define a new framework for consultation in which they would be better represented and to strengthen public policies in support of artists and authors.<sup>143</sup>

The examples provided above, as well as the overview table, show that there is a no uniform definition of artist under a single employment status in Europe, which brings about challenges in relation to the unpredictable employment patterns of artists and potentially leads to weakened social protection. As is the case for many types of professionals, the lack of harmonised definition of these professions in the context of being employed under a single employment status as either employed or self-employed is problematic considering the unpredictability of artists’ professional career patterns.<sup>144</sup> The Status of the Artist is a transversal issue that draws on several legal areas and numerous institutional competences. In particular, artist status has very serious

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<sup>139</sup> Franceinfo, ‘Coronavirus : une année blanche pour les intermittents du spectacle’ (2020), available at: [https://www.francetvinfo.fr/sante/maladie/coronavirus/coronavirus-une-annee-blanche-pour-les-intermittents-du-spectacle\\_3952851.html](https://www.francetvinfo.fr/sante/maladie/coronavirus/coronavirus-une-annee-blanche-pour-les-intermittents-du-spectacle_3952851.html)

<sup>140</sup> Ministry of Education and Culture, “Indicative Guidelines for Arts – Proposal by working group on the key objectives for arts and artist policy” (2019), available at: <http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161370/okm05.pdf>

<sup>141</sup> Ministry of Education and Culture, “Indicative Guidelines for Arts – Proposal by working group on the key objectives for arts and artist policy” (2019), available at: <http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161370/okm05.pdf>

<sup>142</sup> Racine, B., “L’auteur et l’acte de création” (2020), available at: <https://www.culture.gouv.fr/Espace-documentation/Rapports/L-auteur-et-l-acte-de-creation>

<sup>143</sup> *Ibid.*

<sup>144</sup> Demartin, M.; Le Sourd, M.; Di Federico, E., “Artists’ mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)” (EENC) (2013), available at: <http://archive.interarts.net/descargas/interarts2582.pdf>

implications on access to the social security system.<sup>145</sup> Even though an artist may be recognised as such, authorities in a given Member State may not accept that an individual is an artist and works as such for a living for the purpose of the social security system in that country. The majority of legislation that provides some form of status in Member States refers to social security measures, which are explained in more depth in section 4.3.

**Due to COVID-19 and the resulting income losses, it has proven to be extremely difficult for artists to prove that they have been working as artists and to prove their eligibility for the status of artists and the subsequent social security benefits.** In Belgium for instance, many artists have been unable to claim the necessary support during these times. A specific law adopted in July 2020 with the intention to temporarily make it easier for artists and technicians to access unemployment benefits has apparently made the situation even more complicated.<sup>146</sup> In cases where when an assignment or project has been cancelled due to COVID-19, and an employment contract has not yet been signed, artists and cultural and creative professionals are unable to fall back on temporary unemployment or other compensations. In cases where they are not entitled to regular unemployment benefits (due to the fact that they might not have worked enough as an employee in the past), ultimately they will end up empty-handed.<sup>147</sup>

Recently, there have been calls for a **“European Artists’ Status”**. For example, in its **Policy statement on the Cultural Recovery of Europe**<sup>148</sup>, IETM calls for *“an EU Framework for working conditions of artists and creative workers”*, whereby *“the European institutions should launch a European Framework for working conditions of artists and creative workers, providing a set of principles and recommendations, which would trigger legislative and non-legislative activity at the Member States level, on most crucial issues related to socio-economic conditions of artists, such as contracts, taxes, wages, social benefits, mobility issues, and many more. Such a framework would be based on the recognition of the atypical nature of artists’ work and the acknowledgement that their situation requires improvement.”*

On the 14<sup>th</sup> September 2020, a majority of the Members of the European Parliament adopted the Resolution on **Cultural Recovery of Europe**, which sets the vision on how the European institutions and the Member States should address the recovery of the cultural and creative sectors, and how culture can be a key driver in the recovery of Europe.<sup>149</sup> It particularly highlights the social and intrinsic values of culture in addition to its economic assets, recognises the atypical nature of work in the cultural and creative sectors (specific economic models, mixed and irregular incomes, etc.) and the impact of the COVID-19 pandemic on the cultural sector. However, the text also looks into the social rights and working conditions of artist and vulnerabilities that were in place prior to the pandemic. Overall, the Resolution brings to the spotlight the urgent need to improve the working conditions of the people working in the cultural and creative sectors, and proposes the creation of a European framework for working conditions in the cultural and creative sector and industries, with a particular attention to transnational employment.

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<sup>145</sup> Stakeholders’ workshop Culture Action Europe (CAE), 28 February 2020.

<sup>146</sup> <https://www.vrt.be/vrtnws/nl/2020/06/19/artiesten-werkloosheid/> and Le Soir of 01/09/2020: <https://plus.lesoir.be/322077/article/2020-08-31/social-les-artistes-imaginent-leur-futur-statut>

<sup>148</sup> Policy Statement on the Cultural Recovery of Europe, IETM, 04-09-2020, <https://mailchi.mp/15bb8995aaeb/life-off-stage-survival-guide-for-creative-arts-professionals-1236558?e=88bdbad6ff>

<sup>149</sup> European parliament, Joint motion for a resolution on the cultural recovery of Europe (2020/2708(RSP)), available at: [https://www.europarl.europa.eu/doceo/document/RC-9-2020-0246\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/RC-9-2020-0246_EN.pdf)

## 4.2 Minimum wage and basic income

In 2019, Commission President von der Leyen announced that by 2024, every worker in the EU shall have a 'fair' minimum wage and herewith have put minimum wage on the EU Agenda again. **Most EU Member States have either an hourly or monthly minimum wage for employed workers**, often only employees (22 Member States have statutory national minimum wage and 6 others have wages determined via collective bargaining, in some cases including minimum wages).<sup>150</sup> Many workers are currently not protected by adequate minimum wages in the EU, and in some countries there are major gaps in the coverage of minimum wages. The setting of a statutory minimum wage can be challenging in countries where there is an insufficient involvement of social partners or a lack of a clear framework for minimum wage. Collective bargaining is central to wage-setting as it sets the terms of employment and working conditions of a large share of workers and tends to reduce wage dispersion, although coverage has decreased in the last decades. Countries with a higher collective bargaining coverage tend to have a lower proportion of low paid workers.

Consultation is currently taking place with the social partners, in accordance with Article 154(2) of the Treaty on the Functioning of the European Union (TFEU), on the possible direction of EU action to address the challenge of ensuring fair minimum wages for workers in the Union.<sup>151</sup> Currently, the European Commission has not raised the issue of self-employment in the context of minimum wages. **Within the CCS, the status of self-employment and/or freelance is highly prevalent, and it is usually the case that minimum wage does not apply to this group.**

**Some Member States have considered to include a minimum wage for self-employed.** For instance, in The Netherlands in 2019, the government started discussions regarding the introduction of a minimum rate that self-employed persons must earn.<sup>152</sup> According to the proposal, the minimum rate (125% of the minimum wage for standard employees or 16 euro per hour) would only be applicable to self-employed hired by business clients (B2B), with the intention to protect workers against bogus self-employment. However, in June 2020 it was announced that this proposal was cancelled, one of the main reasons being the administrative burden for self-employed persons.

**Opinions on the value of minimum wage within the cultural sector are mixed.** A common practice within the arts and the cultural and creative industries is that as there is often a lack of funding in the CCS, artists and creative professions are therefore often contracted for less time than actually worked, as employers can rely on the rest being paid out of unemployment benefits in periods when they are not working. Minimum wage would mean that if there is not more money available, employers/clients will simply allow to be charged for less hours than the artists actually work.<sup>153</sup> This also occurs in other sectors of the economy (e.g. travel time in construction, on-call payments in health care).

The **rise in minimum wage is contentious in some countries.** For instance, in Spain (as in other countries) there is a trend in the increase of the minimum wage for employees, but a number of organisations representing self-employed workers are also

<sup>150</sup> European Commission, "First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages" (C(2020) 83 final), available at: <https://ec.europa.eu/social/BlobServlet?docId=22219&langId=en>

<sup>151</sup> *Ibid.*

<sup>152</sup> WIBA-IT, Minimum rate for self-employed: there are still many questions, available at: <https://wiba-it.com/news/minimum-rate-self-employed/>

<sup>153</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

very critical regarding the increase to minimum wages, believing it would substantially raise the amount of social security contributions paid by this group.<sup>154</sup> Other concerns relate to the non-compliance with the minimum wage (e.g. Czechia), with the most frequent violation being the failure to provide the guaranteed wages.<sup>155</sup> In some countries (e.g. UK) minimum wages led to an increase in self-employment and thus, an increase in the population which is not covered by a minimum wage<sup>156</sup>. Lower pay is a more common trend amongst the self-employed with about 50% of workers considered as low paid in 2015-2016<sup>157</sup>.

**For some artistic professions, it is difficult to set minimum rates of pay.** For example, determining fees that should be paid for the payment of artistic works (such as a painting). There are measures being taken though to address some aspects of minimum levels of remuneration for artists. In some countries there are guidelines on the minimum fees that artists should receive. For instance, regarding exhibition fees in the visual arts, a guideline for artists' fees was jointly developed by various organisations and associations in the art world in the Netherlands, the members of which are faced with fees for visual artists on a daily basis.<sup>158</sup> The guideline addresses the fact that the current way of remunerating visual artists is often not professional enough and that the negotiating position of artists is weak.

The guideline aims to develop more professional contract and negotiation practices relating to non-selling exhibitions. The aim of the guideline is to pay artists for the work they do for the purpose of exhibitions and other presentations, apart from their expense allowance, and everyone who works within visual art, as an artist, institute, commissioner or as a representative of the sector, can make use of the calculation model and the checklist, which form part of the guideline. An online calculator has been developed, which computes the minimum fee per artist per exhibition, depending on the duration of the exhibition, the number of participating artists, and the question whether it is a new or existing artwork that is presented. For any situation, the calculator computes the minimum amount from which negotiations can be reasonably conducted.

Apart from minimum wages, there **have been calls for a universal basic income**<sup>159</sup>, which has **gained momentum in the current COVID crisis**. Universal basic income refers to periodic, unconditional cash payments (i.e. without means-test and activation requirements) available for everyone, regardless of their income and employment situation. It is a proposal that is triggering increasing attention by academia and policy makers and fostering public debate.

There have been different trials with universal basic income in different countries. For example, Finland tested a government-backed unconditional basic income scheme, which gave people a regular stipend with no strings attached as a means of seeing whether a guaranteed income might incentivise people to take up more low-paid or temporary work by removing their concerns about losing benefits. There have been recent discussions on universal basic income in Scotland<sup>160</sup> and local and regional tests

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<sup>154</sup> Eurofound, "Minimum wages in 2019: Annual review, available at: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef19028en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19028en.pdf) p. 18

<sup>155</sup> Ibid, p. 29

<sup>156</sup> D'Arcy, C., "The minimum required? Minimum wages and the self-employed" (Resolution Foundation) (2017), available at: <https://www.resolutionfoundation.org/app/uploads/2017/07/The-minimum-required.pdf> p. 4

<sup>157</sup> Ibid, p. 5

<sup>158</sup> Kunstenaars Honorarium, "Richtlijn kunstenaarshonoraria", available at: <https://kunstenaarshonorarium.nl/en/guideline-for-artists-fees/>

<sup>159</sup> [https://en.wikipedia.org/wiki/Basic\\_income](https://en.wikipedia.org/wiki/Basic_income)

<sup>160</sup> <https://www.independent.co.uk/news/uk/home-news/universal-basic-income-scotland-week-cash-payment-life-nicola-sturgeon-first-minister-snp-a7934131.html>

in Italy and The Netherlands.<sup>161</sup> In Barcelona, the 'B-Mincome' experiment has been implemented with the support of the European Commission's Urban Innovative Actions (UIA) initiative between 2017 and 2019. It intended to study the effect of several types of income schemes, providing cash subsidies to 1,000 randomly selected households from one of Barcelona's most economically disadvantaged areas to ensure their earnings exceed the poverty lines. Germany is experimenting with universal basic income, with a three-year study beginning in August 2020 to understand how it affects the economy and recipients' well-being. 120 people will receive €1,200 each month for three years — an amount just above Germany's poverty line — and researchers will compare their experiences with another group of 1,380 people who will not receive these payments.<sup>162</sup>

Universal basic income could be a way of encouraging a more diverse range of people to think about the potential of developing a career in the arts, providing the support to be able to take risks with failure, secure in the knowledge that at least in part their economic stability is predictable. In Ireland, another example of a limited basic income scheme (the Cnuas) is provided.

#### **Cnuas: Stipend for artists provided by Aosdána (Ireland)**

In Ireland, a limited basic income scheme to support working artists exists through Aosdána, which is an Irish association of artists. Aosdána was created in 1981 on the initiative of a group of writers with support from the Arts Council of Ireland. Membership, which is by invitation from current members, is limited to 250 individuals. Some members of Aosdána receive a stipend from the Arts Council of Ireland called the Cnuas, which is a multi-annual bursary that restricted to Aosdána members allowing recipients to work full-time on their art. It is granted over the course of 5 years (20 quarterly payments) to members who fulfil certain conditions. As of June 2019, the annual amount received is 17,180 euro.

*Source: **Aosdána** (<http://aosdana.artscouncil.ie/wp-content/uploads/2019/07/Aosdana-Introduction-for-New-Members.pdf>)*

The **outbreak of COVID-19 has exposed the fragility of a labour market increasingly shaped by the growing gig economy, zero-hour contracts<sup>163</sup> and self-employment.** These new forms of work lack traditional employment benefits such as paid sick leave, social security and health insurance, maternity leave and other benefits. The conversations around universal basic income have rearsen during the COVID-19 crisis to help to buffer its catastrophic economic and social effects for artists and creative professionals<sup>164</sup>.

### **4.3 Social security**

This section focuses on social security schemes relevant for artists, who are often vulnerable due to the prevalence of freelance and self-employed working arrangements and other profession related (income and employment) particularities as discussed in Chapter 2.

The 'Mutual Information System on Social Protection' (MISSOC), which was established in 1990 to promote a continuous exchange of information on social protection among

<sup>161</sup> <https://www.businessinsider.com/basic-income-experiments-in-2017-2017-1?international=true&r=US&IR=T#uganda-8>

<sup>162</sup> <https://www.weforum.org/agenda/2020/08/germany-universal-basic-income-trial-citizens/>

<sup>163</sup> A zero-hour contract refers to a contract under which the employer does not have to provide regular work for the employee, but rather the employee is on call in case he/she is needed to work.

<sup>164</sup> <https://www.ft.com/content/927d28e0-6847-11ea-a6ac-9122541af204>

the EU Member States, provides a comprehensive information on social security schemes in all EU Member States.<sup>165</sup> In this section, the focus will be on measures that specifically relate to artists and creative professionals. This is not to say that Member States which have special schemes for artists are in a better position than those without such schemes, who have to rely on general provisions on social security for self-employed workers.

Social security programmes tend to be structured according to classic employment models, which can often have negative effects for professional artists<sup>166</sup>:

- for certain benefits, such as unemployment insurance or pension funds, specific pre-defined criteria must be met, which differ from country to country and have a different impact on professionals working in different sectors. One example concerns dancers, who due to the physical nature of the profession tend to retire well before the normal age of retirement defined in social security legislation;
- often low levels of income that are below the minimum which is required by, for example, pension schemes;
- the exclusion of certain types of income from pension calculations;
- unrecognised occupational diseases and employment injuries which are unique to certain professionals such as musicians, dancers or visual artists;
- unrecognised periods of research or training in the calculation of certain social security benefits such as unemployment insurance, sickness-disability, pension; and
- the payment of unemployment benefits pre-supposes that the artist is looking for work which is available on the labour market – a criteria which does not reflect of the nature of artistic work.

As previously discussed, artists and creative professionals often work in atypical forms of employment, which means that they often have less access to social security benefits of salaried employees. This situation is not unique to artists and creative professionals, and also affects other professionals or service providers who pursue a self-employed activity. However, as acknowledged in previous chapters, the percentage of the cultural workforce working on a self-employed basis is higher than in other sectors and accounted for 33% in 2018<sup>167</sup>. Whereas an employee receives a salary which is paid net with the tax and social security costs deducted at source (although in some countries, some or all tax is payable on an annual basis), a self-employed worker (which in this instance refers to an artist or creative professional) submits invoices for fees, is paid gross and is responsible for paying their own taxes and social security costs. Given the precarious nature of the work of artists and cultural and creative professionals, it can be a challenge for some to be able to money aside to cover social security contributions. Although this is the case for many self-employed workers in other professions/sectors too, the other particularities mentioned above strengthen the impact for artists when compared to most self-employed.

Additionally, some artists and creative professionals are highly mobile, which also creates specific issues from a social security perspective. Cross-border work, international touring and collaborations nowadays are the characteristics of a normal

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<sup>165</sup> Mutual Information System on Social Protection (MISSOC), Comparative tables, available at: <https://www.missoc.org/missoc-database/comparative-tables/>

<sup>166</sup> European Parliament Policy Department Structural and Cohesion Policies, *The Status of Artists in Europe*, (2006), available at: [https://www.andea.fr/doc\\_root/ressources/enquetes-et-rapports/51b5afb01bb8d\\_The\\_status\\_of\\_artists\\_in\\_EU.pdf](https://www.andea.fr/doc_root/ressources/enquetes-et-rapports/51b5afb01bb8d_The_status_of_artists_in_EU.pdf)

<sup>167</sup> Eurostat, *Culture statistics, 2019 edition (2019)*, available at: <https://ec.europa.eu/eurostat/documents/3217494/10177894/KS-01-19-712-EN-N.pdf/915f828b-daae-1cca-ba54-a87e90d6b68b>

working life for many artists and cultural and creative professionals. For example, dancers can perform on different stages in various EU Member States for weeks at a time, or visual artists can showcase their work in several countries. Each EU country has a different system and rules. So when an artist works in several EU countries he/she has to deal with several different situations. Artists are very rarely carrying out their artistic activities within the borders of one country. Social security is one the key problematic issues faced by artists involved in cross border mobility is access to social security, and hence why Regulation 883 establishes specific provisions to determine the applicable legislation in case of workers carrying out their activities in more than one Member State.

This first part of this section provides a simplified overview of the social security systems in different Member States that are specific to artists and creative professionals and briefly explains the content of the measures and how they affect artists and cultural and creative professionals. Following this, the section explores social security issues from the perspective of cross border mobility of artists and creative professionals.

### ***Member State rules and schemes relating to social security***

As a rule, for artists working as an employee the general rules and schemes available to all employees are applicable. For self-employed artists, many Member States appear to apply the general rules and schemes applicable to all self-employed workers – which can be very limited. In some Member States specific rules and schemes exist for self-employed artists. The below table provides an overview of specific social security laws/comprehensive public schemes in Member States for self-employed artists.

As shown in previous chapters, artists tend to earn less and on an irregular basis, which impacts contribution-based benefits. Some artists and creative professionals are in regular employment, and these employed artists have benefits comparable to other employed workers for purposes of health care, insurance, income interruption and pensions. In cases where universal public benefit schemes require significant and regular contributions, a large number of professional artists, whose income is inconsistent, may be excluded. The social & health insurance fees for artists can be extremely high, and complicated systems do not really reflect the needs of artists.

There are a number of ways in which benefits are extended to independent, contractual or freelance artists. In some Member States, the existing public social benefits schemes are adapted to account for an artist's unique circumstances. Some Member States have developed or sponsor a comprehensive parallel programme, or implement special provisions for artists. A complementary non-State system can also be implemented, usually by artists' associations or copyright collecting societies.

The following table developed by the Compendium of Cultural Policies and Trends in Europe<sup>168</sup> in 2019, outlines the rules and schemes that are in effect in 25 EU countries for which there is data.

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<sup>168</sup> The Compendium of Cultural Policies & Trends, available at: <https://www.culturalpolicies.net/>

table 2 Social security legislation specifically aimed at self-employed artists in EU Member States

Country	Social Laws/Comprehensive Schemes	Security Public	Unemployment Assistance	Pension Supplements
<b>Austria</b>	<i>Law on Social Security for Artists (2001)</i>		Yes*	Yes
<b>Belgium</b>	July 2003 new measures to improve the social security system for artists were passed.		Yes	Yes
<b>Bulgaria</b>	<i>Ordinance on Social Security of Persons who Practice a Liberal Profession and of the Bulgarian Citizens Working Abroad (2000)</i>		Yes	Yes
<b>Croatia</b>	Rights of Self-Employed Artists and Promotion of Cultural and Artistic Work (1996, amended 2000)		No	Yes
<b>Cyprus</b>	No law for self-employed artists.		No	No
<b>Czechia</b>	No law for self-employed artists.		No	No
<b>Denmark</b>	No law for self-employed artists.		No	No
<b>Estonia</b>	<i>Act on Creative Artists and Creative Artists' Unions (2004)</i>		Yes	No
<b>Finland</b>	<i>Act on the Pensions of Artists and Some Particular Groups of Short -Time Workers (1985, basically not for self-employed artists, who are expected to start working as entrepreneurs and register for the respective pension scheme).</i>		Yes**	Yes***
<b>France</b>	<i>Social Security Scheme for Self-Employed Artists (1977)</i>		No	Yes
<b>Germany</b>	<i>Artists' Social Insurance Act (1981)</i>		No	Yes
<b>Greece</b>	No law for self-employed artists.		No	Yes
<b>Hungary</b>	<i>The EKHO law ( Act CXX/1995 )</i>		No	Yes
<b>Ireland</b>	No law for self-employed artists.		Yes	No
<b>Italy</b>	No law for self-employed artists.		No	No
<b>Latvia</b>	In 2004 a Law was adopted on "Long-service pensions for performing artists employed by state and local government professional orchestras, choirs, concert organisations, circuses and theatres".		No	No
<b>Lithuania</b>	<i>The Law on the Status of Art Creators and their Organizations (2004)</i>		No	Yes
<b>Luxembourg</b>	<i>Law of 19 December 2014 on social measures for the benefit of independent professional artists and intermittent performers, and the promotion of artistic creation.</i>		Yes	No
<b>Malta</b>	No law for self-employed artists.		No	No
<b>The Netherlands</b>	<i>Artists Income Scheme Act (1998)</i>		Yes	No
<b>Poland</b>	No law for self-employed artists.		No	Yes
<b>Portugal</b>	No law for self-employed artists.		No	No

<b>Romania</b>	No law for self-employed artists.	No	No
<b>Slovakia</b>	No law for self-employed artists.	No	No
<b>Slovenia</b>	There are some specific measures for self-employed artists.	No	Yes
<b>Spain</b>	No law for self-employed artists	No	No
<b>Sweden</b>	No law for self-employed artists	No	Yes

Notes:

*Voluntary for freelance and self-employed persons in Austria; since 2008 the artists' social insurance contains also health and accidents.*

\* *also health and accidents.*

\*\* *But self-employed artists or grant receivers have had problems in proving their unemployment status.*

*There is an extraordinary pension system for artists and journalists; the pension is given selectively and must*

\*\*\* *be applied.*

Source: *The Compendium of Cultural Policies and Trends (2019)*

From the overview it can be seen that several Member States have put in place specific mechanisms aimed at addressing some of the social protection challenges faced by artists and cultural and creative professionals. While such legislation provides for a more appropriate social protection, in some countries the measures taken focus on the special status of artists only to a certain extent.

In Austria, for example, since 2011 freelance artists are accorded the same treatment as other self-employed professionals, meaning they have an obligation to pay statutory social security insurance if they earn more than EUR 6,453 annually. If an artist's income does not exceed EUR 29,042 annually, this artist can benefit from a subsidy for social security contributions of up to EUR 158 monthly under the Social Security Insurance Fund for Artists. Moreover, Austria has implemented other mechanisms aimed at artists and cultural and creative professionals – voluntary unemployment insurance for self-employed artists and a service for artists (Social Insurance Institute) providing support and advice in relation to social security. However, this measure did not consider the specific nature of artistic professions, as artists often have more than one job in order to support themselves. If this additional income from part-time employment exceeds EUR 5,361 per year, they have to pay contributions not only for their freelance work, but also for their part-time employment activities. In addition, this measure is applied uniformly to all artists regardless of where they come from, and regardless of whether they are insured in another EU country.<sup>169</sup>

Since December 2013, artists in Belgium are treated either as employees or self-employed. In order to encourage salaried work for artists, the system provides for a discount for employers on their share of social security contributions. However, some critics point out that an 'artist status' does not exist, as an artist does not have a separate social status.<sup>170</sup> As has recently been expressed by the artists' union, who see the current "artists' status" in Belgium rather as some sort of "unemployment status", not even a "social status", or even less an "economic status", since artists in Belgium nowadays are only distinguished by some passages in the unemployment regulation. They argue that what is needed is to "try to get the artist out of the unemployment status". Contrary to the cultural institutions, who received some protection during COVID lockdown, the mostly independent artists and technicians did not – this is why "a reform of the socio-economic status of artists" was urgently needed.<sup>171</sup>

<sup>169</sup> Interviews with artists.

<sup>170</sup> Amplo, 'Tout savoir sur le statut d'artiste (2020), available at: <https://amplo.be/fr/blog/tout-savoir-sur-le-statut-dartiste#:~:text=Tout%20d'abord%20%3A%20%C2%AB%20le,cela%20s'arr%C3%AAte%20%C3%A0>

<sup>171</sup> <https://plus.lesoir.be/322077/article/2020-08-31/social-les-artistes-imaginent-leur-futur-statut>

Another EU Member State which has adopted certain measures and mechanisms to acknowledge the special status of artists is Croatia. Artists are entitled to pension supplements, disability insurance and health insurance. Moreover, freelance artists can become members of the Croatian Freelance Artists Association (HZSU) on the basis of their work and can apply to have their social security contributions paid from the national budget, provided they meet the requirements laid down in legislation.

One of the most comprehensive social security systems specifically aimed at artists is the one in place in Germany. Self-employed artists are under an obligation to join the Artists' Social Insurance Fund (KSK). Under the Artists' Social Insurance Act artists are subject to statutory health, long-term or old age care and pension insurance, and moreover, pay only about 40% of social contributions. The other 60% are paid by companies that regularly make use of artists and cultural and creative professional's work. The following box outlines the approach in more detail.

**The Artists' Social Security Fund: Health, pension and long-term care social insurance coverage for self-employed artists freelance artists, publicists and journalists in Germany**

Since 1 January 1983, self-employed artists and writers have been included as mandatory members of the statutory health insurance and pension schemes under the Artists' Social Security Act (Künstlersozialversicherungsgesetz of 27 July 1981). Insurance coverage was extended on 1 January 1995 to include long-term care insurance. The new law was based on the idea that the special character of artists' and writers' work makes them heavily dependent on users of their services – marketing and sales people – in a way that is similar to the relationship between employers and employees. Companies that make use of artistic services have thus been obliged to make a contribution to the Artists' Social Security Fund (Künstlersozialkasse). To compensate for the difficulties of collecting contributions from private users of artistic services, the state pays an additional federal subsidy. Self-employed artists and writers are thus left having to pay only half of their contributions to the statutory health insurance, pension and long-term care insurance schemes.

All self-employed artists and writers are obliged to join the Artists' Fund if they fulfil three main conditions:

- They are practising their artistic profession commercially, not just temporarily, and do not have more than one employee;
- Applicants' artistic work fits into the occupational definitions: The Artists' Social Security Act defines artists as those who create, practise or teach music, or applied or visual arts. Writers are defined as those who work as authors, journalists, publish in any other form or teach journalism;
- They earn at least EUR 3,900 from their artistic or publishing work per year, with the exception of recent market entrants who pay low fixed monthly contributions for the first three years.

All those covered by the Artists' Social Security Fund have full entitlement to insurance for the three main social security risks:

- Statutory pension insurance, covering old age, invalidity and surviving dependents;
- Statutory health insurance, including maternity allowance (Mutterschaftsgeld);
- Statutory long-term care insurance.

Like other self-employed workers, artists are not entitled to unemployment insurance unless they apply within the first three months of starting their self-employed work and

have made unemployment insurance contributions for at least 12 months within the last two years, either as dependent employees or while receiving unemployment benefit (Arbeitslosengeld I). But self-employed artists and writers as well as other self-employed people are entitled to the tax-financed standard jobseeker allowance (Arbeitslosengeld II) if they become unemployed, if their household has insufficient income or disposable assets.

Source: OECD, *The Future of Social Protection: What Works for Non-standard Workers? Chapter 5. Germany: Social insurance for artists and writers*, available at: <https://www.oecd-ilibrary.org/sites/9789264306943-8-en/index.html?itemId=/content/component/9789264306943-8-en>

In Hungary the EKHO Law provides for more favourable conditions and much more simplified procedures to a specified list of professions which often include artists and cultural and creative professionals. For the EKHO Law to be applicable to an artist, his/her annual income must not exceed EUR 100,000. If the requirement is met, the minimum mandatory tax base for social security contributions is the minimum wage, while the income of other citizens outside the specified list of professions is to be taxed according to the rules of EKHO. However, freelancers (independents) cannot obtain access and cannot claim unemployment benefits.

Some Member States have specific **unemployment benefit regimes**. In France or Belgium, for example, the 'Intermittents du Spectacle' and the 'Statut d'artiste' allow artists to be paid for all the personal work, preparation and other actions inherent to his/her profession. These include research, new creation and residencies being part of the work that are very rarely paid or only by means of covering expenses. Since periods of creation, practice and performing presentations are usually non-paid, this more or less equals being unemployed. In these instances unemployment is usually short term, occurring several times during the year. Questions have been raised as to whether these exceptions for artists should continue given that the relevance for application goes well beyond artists and creative professionals.<sup>172</sup> The relevance and application of these schemes go beyond the field of arts and are often abused by non-artists and therefore, one challenge rising is the need for a stricter definition of an artists which at the same time is as inclusive as possible.<sup>173</sup>

#### **Intermittent du spectacle (France)**

The 'intermittent du spectacle' addresses both artists and technicians that alternate between periods of employment and unemployment regularly because of the nature of their work, and will be considered presumptively to be salaried employees. This means that artists and technicians have access to the social security benefits that salaried employees receive, like unemployment pay. Artists under the statute shall fall under an advantageous regime for unemployment insurance. Their insurance differs from traditional unemployment insurance in several ways of which the most significant is that the working days requirement prior to registration as unemployed to receive unemployment pay is lower. To obtain unemployment pay they must prove to have worked a total of 507 hours during 319 days before registration (or during 304 days before registration for technicians.)

Although beneficial for artists, it has also been widely criticised.<sup>174</sup> The main criticisms this regime faces is that system gives a benefit to artists because of a problem that has

<sup>172</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

<sup>173</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

<sup>174</sup> Chrisafis, A.; "European arts cuts: threatens to pull plug on creatives' special benefits" (2012), available at: <https://www.theguardian.com/world/2012/jul/30/review-threatens-french-creatives-benefits>

become a lot more common across many different sectors.<sup>175</sup> Although in practice, it allows people to be active as artists without having a salaried job and it offers time for such artists, they are considered to be a burden to the system whilst they are also contributing to the system and to society. Organisations are underpaying artists and creative professionals because they know that the social security system is complementing the revenues.<sup>176</sup> Additionally, although this scheme offers a social security safety net, it is low and does not equate to the amount of income that would be paid through employment.

The **Swedish alliance system** illustrates a good example in relation to maintaining the employment status of artists. The alliances have been established by social partners to ensure that artists who are momentarily out of work continue receiving a wage until they get a new project. Currently these Alliances exist in the theatre, dance and music sectors, with the purpose of decreasing the differences between permanent employment and freelance activities in terms of social security and financial stability. Freelance actors, musicians and dancers are continuously employed by the three respective alliances and work in publicly supported activities. However, these alliances are not to be equated to unemployment schemes, but rather share common aspects with jobseekers' allowances. For example, dancers employed by the Dance Alliance continue to work as freelancers, but during periods of employment at other employers, they take a leave of absence from the Alliance and at the end of the other employment period, are reinstated as employees of the Alliance. This type of employment is often referred to as a third type of employment. The salary which artists receive is related to the compensation that employed artists receive when they are on leave from the Alliance. When artists work for other clients, their salary is counted down in accordance with a system closely linked to earned gifts.

Besides ensuring that artists remain employed and have access to social security protection, the Alliances also aim to increase the circulation of actors, musicians and dancers across the country, encourage career development and networking, and provide education and training. Since 2012 Norway has also established a Dance Alliance, which at first started as a three-year project, but has since 2016 been a permanent establishment.

#### **The Theatre Alliance (Sweden)**

In 1999, the Swedish Theatre Employers' Organisation, the Swedish Actors' Trade Union, and the Employment Security Council established the Theatre Alliance. The underlying idea behind this project is that state-supported theatre belongs to the public sector. Thus, the communities should take responsibility for the basic security and continuity of established freelance actors working in publicly supported theatres. One of the main goals of the alliance is to increase the circulation of actors in theatres across Sweden and encourage career development and growth.

Actors employed by the Theatre Alliance are provided somewhat of a home base and they are surrounded by a network of colleagues. Another very important goal for the alliance is increasing the social security of freelance actors that are not permanently employed, find employment opportunities for actors and help them negotiate contracts. Some of the advantages of the Alliance are that actors are able to gain access to all the benefits that stem from fixed-term employment – for example, as employees, actors

<sup>175</sup> *Ibid.*

<sup>176</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

have access to the national retirement plan. This type of employment is sometimes also referred as third type of employment. Moreover, they are offered a long-term education program which is also available even to actors that are not employed by the Theatre Alliance. Lastly, the Alliance becomes an important and effective resource for new engagements and networking.

Source: <https://teateralliansen.se/om-teateralliansen/>

### **The Music Alliance (Sweden)**

The Music Alliance is a public limited company which receives financial support from the Swedish Ministry of Culture through the Swedish National Arts Council. Similarly to the Theatre Alliance, the Music Alliance is the main employers of freelance musicians which enables them to continue working in their profession, generate regular income and benefit from social security protection.

The Music Alliance's main task is providing freelance musicians with the so-called third type of employment, where musicians continue to carrying out their artistic activities as freelancers. The salary which they receive is related to the compensation that employed musicians receive when they are on leave from the Alliance. When musicians work for other clients, their salary is counted down in accordance with a system closely linked to earned gifts.

The Music Alliance aims to give musicians the necessary the opportunity for gaining access to more and better jobs, inspiring new audiences, new scenes, new forms of concert, and so on. Moreover, the Alliance works towards the promotion and improvement of working conditions in the labour market for freelance musicians, stimulating the development and mobility in the sector and spreading awareness and knowledge.

Source: <https://www.musikalliansen.se/content/om-musikalliansen>

For instance, other innovative methods are being utilised to adress the need of self-employed in the cultural and creative sectors to have access to social protection. In particular, providing self-employed with the same rights as an employee. An interesting example of such a scheme is the Société Mutuelle pour Artistes (SMart).

### **The Société Mutuelle pour Artistes (SMart)**

The Société Mutuelle pour Artistes (SMart) was founded in Brussels in 1998 and was initially an organisation that assisted creatives in the complex administrative management of their artistic activities in Belgium. It is active in nine countries (Belgium, France, Italy, Spain, Sweden, Germany, The Netherlands, Hungary and Austria), and although initially started in the creative sector, it also covers other sectors such as administration, communication, technology and transport. It is run as a cooperative that aims to improve the social security of freelancers, enabling them to set up and develop their economic activities independently within a shared company. SMart members benefit from the status of a salaried employee and can access the social protection linked to the employee status. Additionally, the SMart cooperative provides a number of different services, such as financing, invoicing tools, a mutual guarantee fund, insurance, debt collection are aimed at securing financial stability. The SMart cooperative also provides individual career advice, legal advice, training sessions and network opportunities to create a thriving ecosystem of entrepreneurship.

Source: <https://smartbe.be/fr/>

In contrast to Member States which have adopted specific legislation as a result of acknowledging the special status of artists, there are countries that do not provide for legislation clearly aimed at self-employed artists, but nonetheless have certain measures in place. Having specific legislation for artists could receive a negative reaction from some parts of society, whereby these special measures should be made available to all society. This also reflects to some extent the way in which artists are perceived by society, and that their work is not appropriately valued. However, in other countries, there are absolutely no specific measures targeted at artists, which means that rules do not necessarily take into consideration the challenges faced by artist (e.g. Denmark, Italy, Malta, Portugal, Romania). However, this is not to say that the situation is better in Member States with specific targeted measures, as other Member States may have non-specific provisions that protect self-employed workers generally.

### ***Cross border mobility and social security***

Cross border mobility causes a number of challenges from a social security perspective for workers in general. Artists and creative professionals in certain sub-sectors are on average highly likely to deal with these issues due to the highly mobile cross border nature of their work. This means that artists and creative professionals often have to pay multiple social and health insurances in several EU countries, without being able to benefit from them. This is due to the specific nature of artistic employments characterised by numerous short-term contracts frequently in different EU Member States. EU Regulations on social security coordination aim to overcome this challenge (see section 3.1), although consultations with stakeholders and artists reveal there are still pending issues.

The central and most important principle when it comes to social security contributions is that the social security legislation of only one Member State at the same time is applicable or in other words, the basic principle, in theory, provides for the elimination of double payment of social security contributions. This principle is also known as the unity of legislation principle. The second principle relates to the country of employment. Under this principle the entitlement to social security benefits is linked to the obligation to pay contributions to the social security system related to the occupation an artist is holding. Thus, the social security system of the country in which an artist is carrying out artistic activity is applicable.

The determining constants here are the European coordination rules and national legislation of Member States. Some Member States have had legislation in place for a very long time, while others not so long. When the EU adopted the coordinating rules it did so not with the aim of harmonising national legislation, but coordinating the rules in ensuring that social protection of workers is guaranteed. The EU has laid down 5 basic principles:

- Principle of equality of treatment (principle of non-discrimination);
- Principle of equality of benefits, income, facts or events, according to which the receipt of benefits and other income and facts or events occurring in one Member State have legal effects;
- Principle of aggregation of periods, which guarantees that periods of insurance, employment, including self-employment or residence built up in one of the Member States, should be recognised and taken into account when calculating benefits and entitlements in another Member State;
- Principle of single applicable legislation, which, as a general rule, requires that persons should be subject to legislation of a single Member State;

- Principle of exportability, which makes clear that the persons are allowed to 'export' and receive their cash benefits in any other Member State.<sup>177</sup>

These principles are applicable also to the European Economic Area (EEA) and United Kingdom during the transition period, however some of the countries part of the EEA apply certain exceptions to these principles. Denmark, the United Kingdom and the EEA countries do not apply these rules to third country nationals.<sup>178</sup> In Switzerland the regulations are applicable only to EU and Swiss nationals.

Whenever artists are carrying out professional artistic activities in another Member State, they are to be subject to the social security system of this Member State. However, this could lead to administrative burdens. The solution to such challenges is the **posting of workers**. If an artist is sent abroad by his employer, for a defined limited period and remains under the authority of his/her employer, this artist is posted and his social security coverage continues in the home state. If a self-employed artist works abroad for a limited period and to perform a specific task, while maintaining in his/her home state the means to carry on his/her artistic activity upon return, this artist will still be subject to social security protection in his/her home state.

In order for employed artists to obtain the status of a posted worker and remain under the social security protection of the home state, artists need to meet several requirements. These include the following:

- Direct relationship between the artists and the employer from the sending (home) state; the artistic activities must be carried out under the exclusive authority of this employer;
- Maximum duration of the posting is 24 months;
- Affiliation with the social security system of the sending (home) state for a minimum of 30 days before the posting;
- Artists must not be posted abroad in order to replace another posted worker.

Similarly to employed artists and creative professionals, those working on a self-employed basis must also meet certain requirements in order to obtain the status of a posted worker and remain under the social security protection of the home state:

- Artists must have carried out artistic activities as self-employed for a certain period of time before being posted (usually a period of 2 months is considered satisfactory);
- The artistic activity in the receiving Member State must be of a similar character to the one carried out in the home state;
- The predicted duration of the posting must be no more than 24 months;
- Artists must be affiliated with the social security system of the sending state for a minimum of 2 months before posting;
- Artists must continue to fulfil the necessary requirements for their normal artistic activities in the sending (home) state in order to be able to continue carrying out these upon their return.

There is a very important administrative aspect of posting which relates to the A1 form. The A1 is a portable document certifying that an artist is to remain under the social security protection of the sending (home) Member State up to a specified date. In order

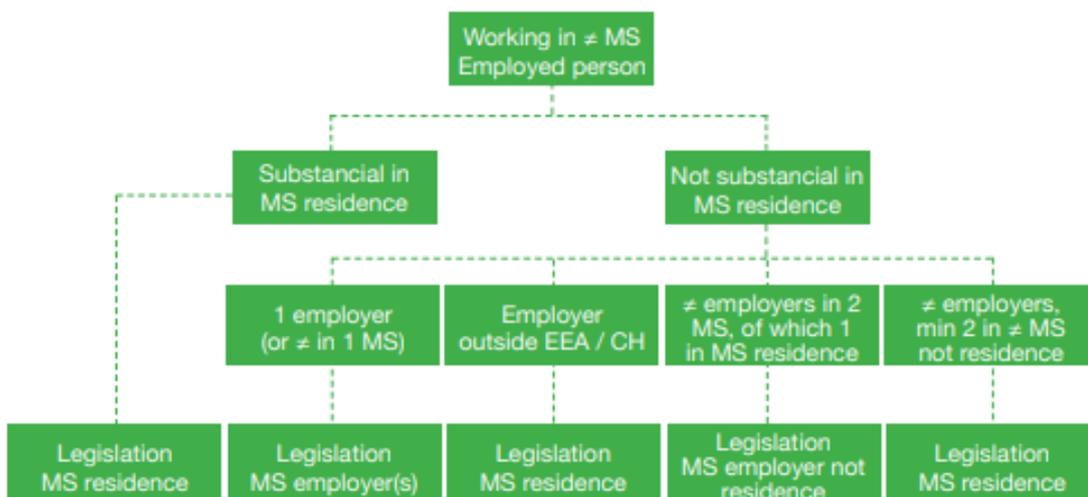
<sup>177</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02004R0883-20140101>

<sup>178</sup> Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, available at: <https://op.europa.eu/en/publication-detail/-/publication/4acb9bc4-1a5b-4851-a957-15a86f351696/language-en>

to obtain this document employers wishing to post a worker or self-employed artists wishing to post themselves abroad must contact the competent social security institution in the sending Member State. Generally, if an artist satisfies all the requirements of posting but cannot obtain the A1 form, he/she is not precluded from being posted. However, a challenge arises from the fact that the receiving state does not have the means to prove that all the requirements are met which may result in the need to pay contributions in that Member State. Certain Member States may have stricter requirements for touring artists (e.g. France and Italy) and each of the local organisers may request an A1 form.

As the **nature of their employment often requires it, artists may be involved in artistic activity in more than one Member State**. For example, a musician may work with an ensemble in one Member State but also on a regular basis perform with an orchestra in another Member State. Such artistic activities are also often known as simultaneous or alternating activities in different Member States. Simultaneous activities are carried out in different Member States simultaneously under the same or different employment contracts. For example, a singer who has an employment contract with a band in one Member State, but also holds a teaching position at a conservatory in another Member State. In contrast, alternating activities consist of successive work projects carried out in different Member States, one after the other. For example, a musician who often works with a few orchestras in a Member State, but every spring participates in music festivals in different Member States.

The key determining constant in establishing whether an artist falls under one of these situations is the predictability of their activities. This however, may pose a challenge due to the constantly changing employment and career patterns of artists and cultural and creative professionals. The Belgian National Social Security Office has created a chart explaining the rules determining which Member State is the responsible one for an artist's social security protection.



Source: PEARLE, the Ultimate Cookbook for Cultural Managers – Social Security in an International Context

An important aspect of determining which Member State is responsible for the social security protection of an artist, is the substantiality of work performed in a given country. An indicator that a worker carries out substantial artistic activity in a Member State is if this artist spends at least 25% of his/her working time and/or earns 25% of

his/her total remuneration in that State. However, if an artist does not perform substantial amount of work in a given Member State, several other scenarios arise as possible and there are several relevant aspects to be considered.

Firstly, artists will be subject to the social security system of the Member State in which his/her employer has the business' offices registered. For example, a dancer lives in France and has an employment contract with a theatre in Germany. However, this dancer spends 20% of her working time touring in France, but for 80% of her time she tours in other Member States. As the dancer does not spend a substantial proportion of her time in her state of residence, and her employer is established in Germany, she will be subject to the social security system and rules of Germany.

Secondly, if the employer is established outside the borders of the EEA and Switzerland, artists will have to pay contributions in the Member State of residence. For example, a musician lives in The Netherlands and works for an Indian music company. He is often busy touring several EU Member States for a full year and spends only two months of this tour in The Netherlands. As he does not work substantially in The Netherlands and his employer is established in India, the musician will have access to the social security schemes in The Netherlands.

Thirdly, if an artist's employers are established in two Member States, one of which is the artist's state of residence, that artist cannot be subject to the legislation of the country in which he/she is a resident. For example, a painter lives in Italy and also has a contract for 20% of her time with a gallery in Italy. About 80% of her work is carried out in Austria and therefore, she does not work substantially in Italy. In addition, as she has one employer established in the Member State of her residence (Italy) and another in a different Member State (Austria), the painter will be subject to the social security legislation of Austria.

Lastly, if an artist has employers in more than two different Member States (none of which are established in the artist's state of residence), the artist will form part of the social security system of his/her Member State of residence. A film maker lives in Bulgaria and has a contract of 20% with a production company in Romania. The film maker has also taken on an additional work assignment in Slovakia with a Slovakian production company for 80% of his working time. Due to the fact that the film maker does not work substantially in Bulgaria and has two employers established outside the state of residency, he will be covered by the social security legislation of Bulgaria.

When it comes to determining the legislation of which Member State applies to self-employed workers, it is important to point that if a self-employed artist works substantially in his/her Member State of residence, the social security coverage of this country will apply. When deciding on substantiality, turnover, working, number of services provided and/or income from professional artistic activities in Member State of residence are taken into consideration. All of these criteria must be above the threshold of 25%. For example, a self-employed musician works and lives in Poland. Annually, she spends around 40% of her average time in Poland. However, she often performs with several orchestras abroad as a guest musician. As the musician spends a substantial part of her professional artistic activities in Poland, she is to be protected under the social security system of her country of residence – Poland. If the requirement of substantiality is not met, then the legislation of the country in which the centre of interest of her activities is, will apply to be applicable in terms of social security.

As explained, artists often engage in activities taking place not only within one Member State, but also outside its borders and in several other countries. This cross-border mobility often leads to particular challenges in relation to social security. In addition, issues concerning social security often arise from the employment status of an artist.<sup>179</sup> This employment status may also change when cultural professionals work across borders.<sup>180</sup> Some Member States have implemented alternative measures and specific legislation targeted at artists and cultural and creative professionals – for example, social security funds for all self-employed artists (as shown in Germany) or voluntary unemployment insurance for self-employed (Denmark)<sup>181</sup>. In contrast, in other Member States social security programmes, structured in accordance with the typical/classic form of employment, apply also to artists which leads to increasing number of cross-border challenges for cultural and creative professionals. Examples of some of the challenges faced by artists and cultural and creative professionals which lead to a so-called penalty in certain Member States without specific measures include:

- The inability to qualify for certain benefits (e.g. unemployment insurance) due to the fact that artists' working conditions do not meet the predefined requirements (e.g. length of work or average retirement age, in the case of dancers);
- Levels of income which are lower than the minimum required for pension schemes;
- Exclusion of certain types of income;
- The lack of recognition for certain occupational diseases and employment injuries;
- Work is not always available at all times on the labour market for artists and creative and cultural professionals which leads to them not being able to have access to unemployment benefits.<sup>182</sup>

**Double payment of social contributions is often one of the most prevalent challenges faced by artists.** Such a situation may often arise as a result of the refusal of host Member States to recognise the status of a self-employed artist from another EU Member State. As an example, often challenges arise when German artists who are considered self-employed in Germany go work for a certain period of time in France where they are considered as employees. The ECJ has ruled on this issue in the *Théâtre Royal de la Monnaie* case, where the Court decided in favour of the rights of self-employed live performance artists who were employed by the Brussels opera house. The artists concerned were self-employed in the UK and had temporary contracts with the Belgian opera house. Belgian authorities treated the artists as employees of the Belgian opera house despite them being able to provide an E101 form. The Court ruled that they are to be repaid the social security contributions paid in Belgium.<sup>183</sup>

The European Expert Network on Culture (EENC) in its study conducted with On The move and Pearle\* from July 2014 summarised the obstacles faced by artists and cultural and creative professionals in relation to social security in three main categories – regulatory obstacles, administrative obstacles and practical obstacles<sup>184</sup>. Within the

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<sup>179</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at:

[https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>180</sup> *Ibid.*

<sup>181</sup> Directorate-General for Internal Policies of the Union, "The Status of Artists in Europe" (2006), available at:

[https://www.andea.fr/doc\\_root/ressources/enquetes-et-rapports/51b5afb01bb8d\\_The\\_status\\_of\\_artists\\_in\\_EU.pdf](https://www.andea.fr/doc_root/ressources/enquetes-et-rapports/51b5afb01bb8d_The_status_of_artists_in_EU.pdf)

<sup>182</sup> *Ibid.*

<sup>183</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at:

[https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>184</sup> European Expert Network on Culture (EENC), "Artists' Mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)" (2014), available at:

<http://archive.interarts.net/descargas/interarts2582.pdf>

category of regulatory obstacles lack of a specific definition of the status of artists, short-term posting, the conditionality of unemployment and pension benefits and exportability of benefits have been identified as the main challenges faced by artists and cultural and creative professionals.

### **Regulatory obstacles**

The lack of a uniform definition of the artists under a single employment status amongst EU Member States brings about further challenges in relation to the unpredictable employment patterns of artists and leads to a weakened social protection. Furthermore, it results in a fragmentation of social security regimes, making it almost impossible for cultural and creative professionals to obtain all benefits of social security protection.<sup>185</sup>

Artists and cultural and creative professionals may encounter difficulties when trying to access unemployment schemes or pension benefits as a result of requirements which may vary per Member State.<sup>186</sup> In relation to the duration of the posting of artists and cultural and creative professionals in another Member State, often the very short stays in other EU countries make it difficult for them to build up rights in the specific Member States and therefore, they would not have the ability to gain access to the social security of that country.<sup>187</sup> However, when they do manage to gain access to the social security systems in Member States and build up certain rights, the change in their employment status between different countries may affect them in relation to how much artists benefit in practice from the social security contributions paid. It can be stated that artists either face difficulties transferring back to their home country the rights to which they are entitled as a result of a certain period of employment in another EU Member States, or often the employment period in another country is way too short and artists cannot meet certain requirements in order to benefit from their rights.

Moreover, often periods spent in other countries are not even recognised which leads to difficulties in obtaining unemployment benefits.<sup>188</sup> This is particularly relevant in live performance artists residing in France and wish to carry out artistic activity in another EU Member State. Within their country of residence, France, artists are entitled to a specific unemployment scheme for a limited period of time, given that they meet the criteria of having worked a certain period of time. This unemployment scheme is financed by the individual artist and the live performance organisation. The challenge to working across borders arises from the fact that the time spent in another EU Member State does not fully count for the required working hours under the criteria for the unemployment scheme. In order for the periods of time spent working abroad to be recognised, artists must undergo a burdensome and time-consuming administrative procedure. Thus, a significant amount of live performance artists are discouraged from taking up employment in other EU Member States, thereby generating less income to sustain themselves and their families.

Another regulatory obstacle faced by artists is the entitlement to social benefits in different Member States and their exportability. If an artists is not entitled to social benefits in his/her home country, then that artists will also not be entitled to take any benefits made in the host country. Moreover, in contrast to employed artists who benefit from a full social security coverage in most EU Member States, self-employed artists

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<sup>185</sup> *Ibid.*

<sup>186</sup> European Expert Network on Culture (EENC), "Artists' Mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)" (2014), available at: <http://archive.interarts.net/descargas/interarts2582.pdf>

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

are not always covered by social security or benefit from only an insufficient minimum coverage and are forced to subscribe to a private insurance.<sup>189</sup>

### **Administrative obstacles**

Often as a result of a slow release of certain documents artists have to pay social security contributions in both the residing country and host country<sup>190</sup>, resulting in double payment of social contributions as mentioned previously. EU Regulations on social security coordination aim to overcome this challenge, although consultations with stakeholders and artists reveal there are still pending issues.

In addition, the requirement of separate portable documents (such as the A1 form) for each job an artist obtains abroad, often brings about time-consuming and burdensome procedures, although from 2023 onwards, the Single Digital Gateway will facilitate online access to the information, administrative procedures and assistance services that citizens and businesses need to get active in another EU country.<sup>191</sup> Moreover, in certain cases these procedures are not completed in time and this results in costs related to the lack of portable documents.<sup>192</sup>

An essential document which allows artists and cultural professionals to apply for a special exemption from social security contributions in the host country is the A1 form. These forms are necessary to demonstrate that in relation to mobility, a posted employee or a self-employed artist from one EU Member State is carrying out artistic activity for a temporary period of time in another EU Member State, and is thereby, covered subject to pay social security contributions in his/her country of residence.<sup>193</sup> Artists from several Member States have reported difficulties in relation to obtaining such A1 forms (e.g. France, Belgium, and Czechia). Some of the main challenges faced in relation to these forms include bureaucratic and time-consuming procedures and difficulties in obtaining the form for certain types of live performance professionals. Looking at the procedures for obtaining these forms, artists often report that struggles arise when they are looking for an expert on A1 matters and the whole procedure of obtaining the forms is bureaucratic and time-consuming. This is relevant in the case of live performance organisations that have planned their tours in several Member States and thus, have to fill in A1 forms for each one of the countries they will be performing in. Another issue that artists face is that often such administrative procedures are not adapted to the particular nature of their employment and as a result, A1 forms are also difficult to obtain in situations where a live performance artist is replaced last minute.

In some cases even national administrative bodies of the host country may refuse to recognise the status of a self-employed artists from another EU Member State and imposing on that artists the status of an employee.

### **Practical obstacles**

The two most common practical challenges faced by artists relate to the language barriers and information provision. Legislation of Member State may only be available in the national language of the country and this may pose a difficulty for an artists or a cultural and creative professional in informing himself/herself sufficiently about the

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<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> European Commission, The single digital gateway, available at: [https://ec.europa.eu/growth/single-market/single-digital-gateway\\_en](https://ec.europa.eu/growth/single-market/single-digital-gateway_en)

<sup>192</sup> European Expert Network on Culture (EENC), "Artists' Mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)" (2014), available at:

<http://archive.interarts.net/descargas/interarts2582.pdf>

<sup>193</sup> *Ibid.*

applicable provisions on social security. Moreover, artist and cultural professionals have cited that obtaining the necessary information about their rights and obligations in another Member State is the main challenge when moving abroad.

As mentioned above, certain EU Member States have implemented alternative and innovative measures specifically targeting the situation of artists and cultural and creative professionals. Examples of such legislative measures include:

- Extension of the general social security system for all salaried workers to self-employed artists covering all benefits (Belgium);
- A social security system for self-employed artists covering health and pension (Kunstlerssozialkasse, Germany);
- Unemployment insurance for “intermittent artists” and special social security scheme for writers and creative artists covering health, family and old age pension (France);
- Social security coverage for performing artists (Italy);
- Social assistance programmes for artists with low income (Luxembourg and The Netherlands)<sup>194</sup>;
- Creative support grants (Croatia)<sup>195</sup>.

#### **4.4 Taxation including VAT**

This section provides a simplified overview of the taxation rules applicable to artists in different Member States and how they affect artists and cultural and creative professionals.

##### ***Member State rules and schemes relating to taxation***

The 1980 Recommendation of UNESCO concerning the Status of the Artist invites States “to take into account, in their taxation system, the particular conditions of artists’ work and activity” in response to the “uncertainty of artists’ incomes and their sudden fluctuations, [...] the special features of artistic activity and [...] the fact that many artistic callings can be followed only for a relatively short period of life”. The following table addresses some of the possible measures that EU Member States have taken regarding taxation measures that benefit artists and creative professionals.

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<sup>194</sup> European Expert Network on Culture (EENC), “Artists’ Mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)” (2014), available at: <http://archive.interarts.net/descargas/interarts2582.pdf>

<sup>195</sup> *Ibid.*

table 3 Tax measures impacting self-employed artists and creative professionals in EU Member States

Country	Income Tax Deductions	Income Averaging
Austria	Yes	Yes
Belgium	No	No
Bulgaria	Yes	Yes
Croatia	Yes	No
Cyprus	._**	._**
Czechia	._**	._**
Denmark	No	No
Estonia	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	No
Hungary	Yes	No
Ireland	Yes	No
Italy	No	No
Latvia	Yes*	No
Lithuania	No	No
Luxembourg	._**	._**
Malta	No	No
The Netherlands	No	Yes
Poland	Yes	No
Portugal	No	No
Romania	No	No
Slovakia	Yes	Yes
Slovenia	Yes	No
Spain	Yes	Yes
Sweden	Yes	Yes

Notes:

*The income tax excludes expenses that are connected with the creation and publication of art works if*

- \* *the author receives payment for his work.*
- *Flat expenses 40% of income (copyright royalties)*
- \*\* *Information not available for Cyprus, Czechia and Luxembourg.*

Source: *The Compendium of Cultural Policies and Trends (2019)*

In some countries, **income averaging** measures exist. This is a way of calculating personal income taxes where taxable income is calculated by an average of the current year's income plus income from the preceding years (which can differ per country). For example, in Austria, measures have been taken to acknowledge that an artists' income fluctuates throughout the years, and since 2000 they have been able to spread such income over a period of 3 years with one third of the surplus of the current year being assigned to the current year of each of the two previous years.<sup>196</sup>

<sup>196</sup> Compendium of Cultural Policies and Trends, Country Report Austria, available at: <https://www.culturalpolicies.net/covid-19/country-reports/austria/>

In Denmark since 2002, some artists have been able to split their income over different tax years (up to 10 years). For example artists with a maximum income of up to 539,000 DKK per year can store the amount for up to 10 years for later taxation. However, performing artists do not benefit from this measure.<sup>197</sup>

In Bulgaria, taxation of artists is regulated under the Personal Income Tax Act which states that artists can deduct 50% of their expenses from taxable income received for the creation of works of art, science and culture, folk arts and crafts, and copyright royalties. The legislation also allows for income averaging of income stemming from artistic activities in the course of more than one year, but not exceeding four years.<sup>198</sup>

In Croatia, freelance artists have a right to receive specific tax benefits. The annual income of artists which is below approximately EUR 2,740 is not subject to taxation and in addition, compensation for per diems and travel expenses is not considered as forming part of that income.

Some Member States have implemented **income tax deduction measures**. For instance, in 1991 Poland implemented a 50% income tax-free for artists. However, in 2012, tax legislation in the country was amended and this privilege significantly reduced. Tax payers whose income from creative activities exceeds the so-called first tax threshold of 85,528 PLN (approximately EUR 19,095) do not benefit from the 50% deduction. Individuals with lower income do benefit from this deduction but on changed terms and conditions. Employers do not take this provision into account when paying salaries and thus, individuals pay higher tax-advances and a deduction is possible only during the yearly tax returns. Therefore, this scheme works as a form of tax allowance.<sup>199</sup>

In Slovakia there is a flat tax rate in the range between 19%-25% (which does not include social and health insurance which together with the tax can reach up to 55 % of the artist's gross income). Artists are treated as other self-employed workers. Recently, some positive changes have been adopted allowing for more flexibility for artists in terms of the type of taxation (taxed at source vs. paid in full) and cost deductions (60% fixed cost deduction vs. declaring real expenses).

In Slovenia, the new Income Tax Act that came into force in 2013 significantly changed the situation for those self-employed in culture. Until then the individual self-employed artist calculated their income tax with inclusion of 25% of "normed costs" (average of his/her costs; accounts do not need to be officially audited) and several allowances: general; special; for maintained children; for maintained children, needing special care and protection; for any other maintained family member; for 100% invalidity; and an age allowance. In 2013 and after, the law allows 70% of "normed costs", while cancelling all the allowances. It was calculated in a study by Asociacija (the Association of Slovenian Journalists and Open Chamber for Contemporary Art) that this system will lead to significant additional costs for those self-employed in culture, reducing their average yearly income by approximately 600 EUR. Despite several attempts by those self-employed to change the propositions of the law, the law remained unchanged, until the Minister for Culture, Uroš Grilc, in his 2013 Changes to the Act Regulating the Realisation of the Public Interest in the Field of Culture, adopted two measures to reduce

<sup>197</sup> Compendium of Cultural Policies and Trends, Country Report Denmark, available at: <https://www.culturalpolicies.net/database/search-by-country/country-profile?id=10>

<sup>198</sup> Compendium of Cultural Policies and Trends, Country Report Poland, available at: <https://www.culturalpolicies.net/database/search-by-country/country-profile?id=30>

<sup>199</sup> Compendium of Cultural Policies and Trends, Country Report Bulgaria, available at: <https://www.culturalpolicies.net/database/search-by-country/country-profile?id=6>

the effects of these measures: the possibility of free accountancy for those self-employed in culture; and so-called "pocket money" – special small grants to (a small group of) those self-employed to improve their material conditions. The real effects of those small-scale measures remain to be seen and it remains unclear whether they contributed anything at all to the situation of those self-employed in culture.

### ***Artist taxation of income earned abroad***

As mentioned in the previous chapter, artists' activities are rarely exercised in only one EU Member State. High mobility and engagements in several countries are amongst the characteristics defining artistic activity. This can be a complicated situation for artists who are a citizen of one EU country, and who resides and works in several other EU countries. Then it is very difficult to determine the tax domicile and it requires a lot of formalities. In this situation, if the artist is taxed at source it is complicated to get the tax returned.

Legislation on taxation is primarily the competence of Member States which arrange the conditions for taxation through national tax rules and bilateral tax agreements which are coordinated by the OECD. The founding treaties of the EU give it the power to act only in cases of infringements of EU law by such national rules or bilateral agreements. The OECD member countries agreed on the Model Tax Convention which provides a model for the conclusion of bilateral tax agreements and also plays a very significant role in the removal of tax barriers to cross-border trade and investment.<sup>200</sup>

Two main aspects of foreign taxation (tax on income earned abroad) are crucial for understanding how taxation systems work and how artists' income is going to be taxed. The first principle concerns residents of the Member State whose income, irrespectively of where it has been earned, is taxed in the country of residence. The second principle concerns non-residents whose income is only taxable in the source country, meaning the country in which the artist undertakes such taxable activity.

The second aspect of foreign taxation focuses on the interpretation of bilateral tax treaties/agreements, which are coordinated by the OECD Model Tax Convention. Bilateral treaties set out the rights of taxing various types of income and certain exemptions aimed at eliminating double taxation. The OECD Model Tax Convention contains a special set of rules for performing artists are also incorporated in many bilateral tax treaties.

Residence is a key factor when determining which taxation regulations are applicable to an artist. However, rules relating to residence most often differ in different Member States, but also most often include a common factor – having a home at one's disposal for more than temporary use. Another factor to consider is having an address in a Member State and being registered in the national database of this Member State (also known as domiciliation). In certain cases there might be a situation in which an artist has double residence, which may cause challenges relating to double taxation. However, Art. 4 of the OECD Model Tax Convention is the so-called tie-breaker rule, solving any potential issues relating to such situations. Under this rule, an artist is considered as a resident of one Member State (and for taxation purposes, a resident in only one country) and therefore, a non-resident in the other country. Moreover, in order to determine in which country the artist is to be considered as a resident, Art. 4 takes into consideration several factors:

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<sup>200</sup> OECD Model Tax Convention on Income and on Capital: Condensed Version 2017, available at: <https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>

- A person is a resident in a Member State where he/she has a **permanent home**;
- If a person is to have permanent homes in both Member States, he/she is to be deemed as a resident in the country with which he has closer personal and economic relations or also referred to as the country in which the **centre of his/her vital interests is**;
- If the country in which a person has his/her centre of vital interests cannot be determined, that person is considered a resident of the Member State in which he/she has his/her **place of abode**;
- If a person has a principal place of abode in both EU Member States or in neither, he/she is deemed a resident of the country of which he/she is a **national**;
- If a person is/is not a national of either of the Member States, the competent authorities of the countries in question are to settle the question by mutual agreement.

Following the determination of residency of an artist, the allocation of taxing rights is to be made following rules laid down in the OECD Tax Model Convention and bilateral tax agreements between Member States. The most relevant provisions of the Convention for artists are those relating to business profits (Article 7), royalties (Article 12), income from employment (Article 15) and entertainers and sportspersons (Article 17).

**Article 7 provides that countries are to agree on the rights for taxation of business profits**, including companies and self-employed and how these rights are to be shared out. The primary rule is that such profits are taxable only in the resident country of a worker, meaning that the source country cannot raise any tax unless there is a permanent establishment (PE) in that country. **Article 12 lays down the rules and principles governing royalties**. Generally, taxation of royalties is left to the country of residence of the beneficiary/owner of the royalties. However, the Commentary of the Convention provides for the option of countries deciding to give the source country the right of taxing royalties at a low percentage (e.g. 5% or 10-15%). This exception has indeed been applied in practices in Italy, Portugal and a large number of developing countries. Under **Article 15 income gained from employment is to be taxed only in the country of residence**, unless the work is carried out in another country. This rule is not applicable if an artist has worked for an employer based in an OECD state, but has spent less than 183 days in the other country and the salary is not borne by the permanent establishment in that other country. In such a situation, the right of tax lies with the employer's country of residence. **Article 17 lays down more specific taxing rules aimed at entertainers and sportspeople**. In accordance with this provision the taxing right is allocated to the country where work is carried out, irrespective of whether the artist has carried out artistic activities as an employee or self-employed.

Besides the specific rule for entertainers, the Convention also provides for a distinction between performing artists and visual artists. Performing artists are covered by the rule laid down in Article 17, while visual artists fall under the general rule laid down in Article 7.

What?	Where taxed?	Who For example	Comment
Business profits (art 7)	Country of residence	Visual artists	EXCEPT when permanent establishment in source country
Royalties (such as copyrights) (art 12)	Country of residence of beneficiary/ owner of the royalties	Visual artists	ALTHOUGH can also be taxed at low tax rate
Employment (art 15)	Country of residence	Technicians, touring personnel, management	UNLESS work is done in another country; BUT this does not apply when less than 183 days (and not by a PE in the other country)
Entertainers and sportspeople (art 17)	Source country, this is the country of the performance	Performing artists The performing arts company/agent/ ...	DOUBLE TAXATION can occur. Therefore tax exemption or tax credit (art 23) => further explanations in chapter 4 and 5

Source: PEARLE, *The Ultimate Cookbook for Cultural Managers – Taxation in an International Context*

The OECD Tax Model Convention also provides provisions aimed at avoiding double taxation, through tax exemptions or credits. The rule is laid down in Article 23 and states that **an exemption can be given by the source country when this country does not have a taxing right under a tax treaty rule**. In such a situation the country of residence of an artist has the right to tax his/her income. There are differences in the application of this rule in different Member States. Some countries (e.g. The Netherlands) allow for this exemption to be applied for any type of income, while others (e.g. Belgium) only apply it to specific types of income. Moreover, other countries like Germany provide the exemption to non-resident artists only upon completion of an application procedure.

- A German artist has earned EUR 10,000 in France. The income was taxed at 15% = EUR 1,500 French tax.
- In Germany he had to deduct his expenses of EUR 3,000, which gives his profit as EUR 7,000.
- His total German income was EUR 40,000, from which he paid EUR 8,000 German tax (under the progressive tax rates).
- His tax exemption for foreign income will be: EUR 7,000 foreign profit / EUR 40,000 total income = 17.5% exemption x EUR 8,000 German tax = EUR 1,400 exemption from German tax.
- This leads to a net loss of EUR 1,400 exemption minus EUR 1,500 foreign tax = - EUR 100

Source: PEARLE, *The Ultimate Cookbook for Cultural Managers – Taxation in an International Context*

Issues of **double taxation** may arise as a result of the allocation of taxing rights to the source country as the country of residence can tax artists' income worldwide. This challenge can be avoided and eliminated in two possible ways. Firstly, the exemption method for active income covered by Articles 7 and 15 can be applied. The second method which can be utilised to avoid double taxation is tax credit for passive income covered by Article 12. The OECD recommends the use of the tax credit method in the country of residence of an artist. Regarding tax exemption, such an exemption can be absolute/full as the income will be completely taken out of the taxable base. This would

happen if for example, the country in which a dancer performs does not have the right to tax the income. Moreover, there can also be situations of “exemption with progression” which is possible in the country of residence of an artist, where the active income has been taxed abroad and Article 23 of the Convention provides for the method of exemption with progression. This type of exemption encompasses that the average rate of tax in the country of residence is applicable. The reason behind this type of exemption is that in very few and almost no cases is the country of residence going to allow for the full exemption of foreign income

In the following paragraphs the focus will be on the provisions of the OECD Tax Model Convention which are particularly addressed to entertainers (artistes). Article 17(1) of the Convention provides a non-exhaustive list of professions which fall under the term ‘entertainers’ and include: theatre, motion picture, radio, musicians, television artiste, etc. Article 17(2) clarifies that income gained from artistic activities and taken by another person (e.g. manager) may be taxed as well. The Commentary to the Convention also provides more clarity as to when Article 17 is applicable and when it is not. Article 17 is to be applied in the following situations:

- entertainer who acts for a single event;
- remuneration for advertising or interviews that are closely connected with a performance;
- preparation, such as rehearsal and training, if an entertainer is remunerated for time spent on preparation, rehearsal or similar preparation in a State;
- advertising or sponsorship income, etc. which is related directly or indirectly to performances or appearances in a given State.

In contrast the provision is not applicable to:

- administrative or support staff (e.g. cameramen for a film, producers, directors, choreographers, technical staff, road crew for a pop group, etcetera);
- the income of a number of enterprises that are involved in the production of entertainment (or sports event) (e.g. the income derived by the independent promoter of a concert from the sale of tickets and allocation of advertising space);
- payments for the simultaneous broadcasting of a performance by an entertainer (or sportsperson) made to a third party.

Looking at specific creative sectors, while Article 17 of the Model Convention provides coverage for performing artists, it also creates complications in terms of cross-border taxation for income from performances. It is important to fully grasp the broad spectrum of this provision. The reason behind the introduction of such a catch-all rule in various bilateral tax agreements is ensuring that tax avoidance by top artists and sportsmen, who have their residence in tax favourable countries, such as Monaco, are eliminated. As previously mentioned, Article 17 is a so-called catch-all provision as it places the taxing right with the country of performance on any income, irrespective of whether this is paid to the artist or another person such as his/her manager. Later on, the OECD recognised the negative effects on cultural exchanges which this provision may lead to and included in the Commentary an option to exclude from the scope of Article 17 performances which are mainly financed by government resources (those which are more than 50% subsidised)<sup>201</sup>. However, in order for this exemption to be applied, often application procedures are imposed which demand evidence of earnings and expenses, as well as confirmation of the subsidy from the relevant governmental body.

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<sup>201</sup> OECD Model Tax Convention on Income and on Capital: Condensed Version 2017, Art. 17(3), available at: <https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>

In contrast to performing artists, visual artists do not fall under the special rule of Article 17, but under Article 7 which concerns business profits. This is due to the common type of employment visual artists have – they are usually self-employed or individual entrepreneurs. As a result, income from countries other than one of residence is very often earned following short-term visits and may fall under the national tax rules of the source country. Thus, withholding tax can be applied, but also such income is to be fully exempted under Article 7. However, complications may arise as a result of the artists having a workshop or home in the source country for a longer period, during which artists are working and/or living in that country.

Therefore, it is of significant importance that the resident status of such an artist is determined firstly. Accordingly, the visual artist would be a non-resident in the source country, in which his/her workshop or house can be categorised as a permanent establishment (PE), and the profits from this permanent establishment are to be taxed in the source country. Moreover, the country of residence of the artist also has the taxing right for income arising from the PE (as a part of worldwide income of an artist), but may also apply a tax exemption with progression in order to eliminate double taxation. National tax rules of the source country may also apply to royalties from copyright received by visual artists. However, bilateral tax agreements most commonly state that only the country of residence of an artist may tax royalty income, but it also sometimes the case that the source country also holds this right at a low percentage. If the latter does have the right to tax royalty income, the country of residence would grant ordinary tax credit for the purposes of avoiding double taxation. Article 12 of the bilateral tax agreement would provide further clarification as to whether the source country can in practice use this tax right.

Many artists may be involved in teaching practices and may be earning income from employment such as teaching, composing, writing, etc. The rules relating to taxation applicable in cases where such work is carried out cross-border are that the source country has the right to tax the salary earned. In addition, the country of residence of an artist will also tax this salary as a part of the taxation of a person's worldwide income. While Article 15 of the OECD Model Tax Convention allocates the taxing right with the source country, the artist is entitled to a tax exemption or credit in the country of residence.

### **Overview of Member States' rules on taxation on income**

Many countries have adopted a scheme under which they determine the gross income as the basis for taxation (without deducting expenses), but at a lower tax rate than usual. Around 2002 most of these States raised tax for non-resident artists on a gross basis, at tax rates of 30% (Italy), 25% (Spain) and 15% (France).<sup>202</sup>

Regarding taxation rules, national laws of Member States must respect the principles of EU law guaranteed by the treaties, including the principle of non-discrimination principle and freedom of movement. Following the decisions of the European Court of Justice (ECJ) in the *Gerritse* and *Scorpio* cases of 2003 and 2006, respectively, EU Member States were obliged to introduce rules for deduction of expenses into their tax systems. The case of *Gerritse* concerned a Dutch drummer performing in Germany, where he was unable to deduct his expenses. His income was taxed on his gross fee at a rate of 25% and in addition, he was not permitted to file a normal income tax return. The Court

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<sup>202</sup> Performing Arts Employers' Associations League Europe (PEARLE), "The Ultimate Cookbook for Cultural Managers – Artist Taxation in an International Context" (2016), available at: <https://www.pearle.eu/publication/the-ultimate-cookbook-for-cultural-managers-artist-taxation-in-an-international-context>

ruled that such practices hinder his freedom to provide services and Germany was ordered to open up the possibility for foreign artists to deduct their expenses and obtain a normal income tax settlement. The *Scorpio* decision of the Court elaborated further on this issue by stating that direct expenses should be deductible at the time of the performance of an artist – tax can only be levied on the resulting sum. Moreover, indirect expenses would in this situation be deductible in a normal income tax return. These two decisions of the Court have stimulated various changes in the taxation systems and rules of Member States,

Three EU Member States have adopted an interesting approach to artistic activity and have adopted rules which do not provide for withholding tax on foreign artists performing in their countries. The countries in question are Denmark, Ireland and The Netherlands. For example, The Netherlands has laid down a condition that if an artist comes from a country with which The Netherlands has concluded a bilateral tax agreement, the artist is to be taxed in his/her country of residence. In order for double non-taxation to be avoided, this unilateral exemption must be combined with the tax credit method as this would stipulate that no foreign withholding tax also means no tax credit in the country of residence, result in normal taxation there.

Based on information that is available, the following table provides information as to whether a selection of EU Member States (and Norway and the UK) have introduced Article 17 in bilateral tax agreements, whether deduction of expenses has been approved, and provides an overview of the applicable rate of taxation in the country in question of a performance.

figure 4 EU Member States that have introduced Article 17 in bilateral tax agreements (2016)

Country	Artist/Sportsman Tax	Deduction of Expenses	Withholding tax rate	Tax return afterwards
<b>Austria</b>	Yes	Yes	20%	Yes
<b>Belgium</b>	Yes	Yes, restricted	18%	Yes
<b>Bulgaria</b>	Yes	Yes	10%	Yes
<b>Croatia</b>			-*	
<b>Cyprus</b>	Yes	Yes	10%	Yes
<b>Czechia</b>			-*	
<b>Denmark</b>	No	-*	-*	-*
<b>Estonia</b>	Yes	No	10%	No
<b>Finland</b>	Yes	Only EU	15%	Yes
<b>France</b>	Yes	No	15%	Yes
<b>Germany</b>	Yes	Yes	15.825%	Yes
<b>Greece</b>	Yes	No	0-25%	No
<b>Hungary</b>	Yes	Yes	18-36%	Yes
<b>Ireland</b>	No	--	--	--
<b>Italy</b>	Yes	No	30%	No
<b>Latvia</b>			-*	
<b>Lithuania</b>			-*	
<b>Luxemburg</b>			-*	
<b>Malta</b>			-*	
<b>The Netherlands</b>	No	Yes	20%	Yes
<b>Poland</b>			-*	
<b>Portugal</b>	Yes	No	25%	No
<b>Romania</b>			-*	

<b>Slovakia</b>	Yes	No	19%	No
<b>Slovenia</b>	Yes	No	15%	Yes
<b>Spain</b>	Yes	No	20%	Yes
<b>Sweden</b>	Yes	No	15%	Yes

Source: PEARLE, *The Ultimate Cookbook for Cultural Managers – Taxation in an International Context*, 2016

\*Information not available

### **Challenges for artists and creative professionals stemming from taxation rules**

As previously mentioned, a main feature of artistic activity is cross-border movement. Similarly to social security provisions, artists often face challenges in relation to taxation when working temporarily in a Member State other than the country of their residence. The OECD Model Tax Convention and certain Member States have recognised these challenges and issues and have therefore, adapted their national legislation and **bilateral tax agreements** to take into account the situation of artists and creative professionals. However, challenges still remain. Some of the predominant difficulties artists encounter when carrying out artistic activities cross-border include:

- difficulties caused by a multiple employment status in terms of income tax calculations and payments;
- the total or partial absence of deductions for business expenses;
- the continued tax placed on irregular income (as opposed to providing income averaging for artists as is done for seasonal workers);
- the status of royalties and copyright compensation as 'income'.

In addition to the abovementioned challenges and difficulties, the complex and non-uniform legislation across EU Member States may often lead to excessive taxation and discriminatory application of legislation. Many organisations and artists report that often they find themselves confused regarding the precise application of taxation legislation, as a result of the different national rules on withholding taxes.<sup>203</sup> Discriminatory situations and sometimes excessive taxation may arise as a result of several factors:

- lack of a clear standard and definition of an 'artist';
- lack of a uniform EU-wide definition of the precise items of income qualifying as taxable performance income;
- lack of a specific and clear basis for the calculation of taxable income and rules on deductibility of expenses;
- significant differences in Member States' legislation regarding withholding tax rates;
- lack of uniform rules on the exemptions of such withholding tax;
- significant differences in the rules and procedures applicable to income tax returns;
- lack of a standardised at EU-level forms.<sup>204</sup>

Artists have identified double taxation and VAT as one of the most persistent challenges faced by them when performing across borders.<sup>205</sup> Artists have found somewhat of a solution to these challenges as it is reported that often performance organisations and artists negotiate a so-called net fee with a promoter or a venue in order to avoid paying additional taxes in the country of performance.<sup>206</sup> Therefore, the payment of withholding

<sup>203</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at:

[https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

<sup>206</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at:

[https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

taxes is dealt with by the promoters or venues, which is understandable as usually these would be more aware and informed about applicable national legislation.

The inability to deduct business expenses and income averaging are often cited as some of the most common challenges encountered. Artists often do not have the possibility of **deducting business expenses** in relation to their artistic activity, such expenses are seen as relating more to leisure activities and costs concerning equipment or training are not considered part of business expenses.<sup>207</sup> The inability to deduct business expenses also lowers the competitiveness of foreign artists as they must raise their fees in order to cover costs.<sup>208</sup> However, there are examples of good practices in several countries across Europe. For example, since 2007 the Netherlands, the United Kingdom, Norway, Hungary and Switzerland have all allowed for the deduction of expenses.<sup>209</sup> Germany and Belgium have adopted a threshold for the application of taxation legislation to non-resident artists who produce a lower income.<sup>210</sup> Moreover, larger live performance organisations may often seek advice from tax advisors which specialise precisely in double taxation in the performing arts field.<sup>211</sup> However, small companies and individual artists may not have the necessary budget to be able to consult such tax specialists.

A significant amount of EU Member States do not give artists the possibility of **averaging their income** and spreading it over a period of time. In addition to this, the irregular flow of income of artists, results in them not being able to achieve satisfactory levels of pension allowances, sick-leave compensations or unemployment benefits.<sup>212</sup>

Artists also face **administrative challenges and difficulties resulting from language barriers**. For example, across the EU, tax certificates are not standardised and often such documents are available only in the national language of the country of performance.<sup>213</sup> In addition, procedures for obtaining a tax exemption may be prolonged up to several months but in advance of the performance and thus, if an artist does not submit all forms necessary in time, he/she may lose the right to tax exemption.<sup>214</sup>

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<sup>207</sup> *Ibid*,

<sup>208</sup> European Expert Network on Culture (EENC), "Artists' Mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)" (2014), available at: <http://archive.interarts.net/descargas/interarts2582.pdf>

<sup>209</sup> *Ibid*.

<sup>210</sup> *Ibid*.

<sup>211</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at:

[https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>212</sup> Directorate-General for Internal Policies of the Union, "The Status of Artists in Europe" (2006), available at:

[https://www.andea.fr/doc\\_root/ressources/enquetes-et-rapports/51b5afb01bb8d\\_The\\_status\\_of\\_artists\\_in\\_EU.pdf](https://www.andea.fr/doc_root/ressources/enquetes-et-rapports/51b5afb01bb8d_The_status_of_artists_in_EU.pdf)

<sup>213</sup> European Expert Network on Culture (EENC), "Artists' Mobility and Administrative Practices related to Social Security and Taxation in the European Union (EU)" (2014), available at:

<http://archive.interarts.net/descargas/interarts2582.pdf>

<sup>214</sup> *Ibid*.

Moreover, **legal factors** may hinder the ability of artists to perform and showcase their work cross-border and generate an income. As Article 17(3) of the OECD Model Tax Convention is an exception containing vague criteria, Member States have the possibility of interpreting it quite broadly which may in the end result in double taxation of artists.<sup>215</sup> An example of challenges arising from the interpretation of this provision can be seen in the case study of a French classical Orchestra.

#### **Case study – Interpretation of Article 17(3)**

In Spain, tax authorities do not comply with the bilateral tax treaty that links them to France and systemically tax French ensembles touring in Spain, even though it is stipulated in Art. 17.3 of the treaty that artists (or artist companies) mainly financed by public funds are exempted from withholding tax in the country of performance. Spanish tax authorities consider that the term “mainly financed by public funds” is too vague and apply therefore a withholding tax of 25% to any French ensemble. It gets harder and harder to perform in Spain since they have to adapt their fees and become too costly.

*Source: EENC, Artists’ Mobility and Administrative Practices related to Social Security and Taxation in the*

The cultural sector has provided various examples of challenges faced by artists. The organisation for live performance, PEARLE, provided an interesting case study of an English music ensemble which exemplifies the administrative struggles faced by artists.

#### **Case study - Administrative struggles faced by artists**

“In December 2011 the ensemble received a draft contract stating that 15% withholding tax would be deducted. Asking whether this could be avoided, the promoter of the event advised the ensemble to send them a tax residency certificate. As most promoters do not accept tax residency certificates referring to the previous year, but request that the tax certificate delivered corresponds to the year that the concert takes place, the ensemble waited until the New Year to apply for one from HMRC (the tax authority in the UK). This took a while, because in the meantime the ensemble moved offices and needed first to register the charity change of address with HMRC. As a result the certificate finally arrived at the beginning of June.

The Swedish promoter then sent the certificate to the Swedish Internal Revenue Service (IRS) to check if it would waive the tax deduction. On the 31 July 2012, the ensemble was told by the Swedish promoter that the Swedish IRS still required the ensemble to pay 15% withholding tax in Sweden and that the tax residency certificate provided was not accepted. According to the promoter there are formulations in the tax treaty between Sweden and the UK implying that tax should not be levied. The ensemble was asked whether it could help with more information to strengthen the case. The ensemble then contacted HMRC for further advice. It was answered that the only document that could be provided by the English authorities was the tax residency certificate. The ensemble manager looked for more information on the Internet but could not find clear notes on the subject. The only advisors who could help him were willing to charge money for the advice. It was also difficult for him to understand clearly the reach and content of the double taxation treaty.

On 31 August Swedish authorities informed the ensemble that they could not avoid the withholding tax but that they could still declare it in the UK. The promoter of the event

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<sup>215</sup> *Ibid.*

then informed the ensemble that it could deduct expenses and that the tax would only apply to the fee in itself. In order to do so, the festival offered to issue 23 individual withholding tax certificates for each musician and the ensemble had to breakdown to total fee in order for the musicians to put together their tax certificate. It resulted in extra paperwork for the venue and the ensemble and the obligation for the musicians to apply individually for tax credit in the UK even if it concerns UK residents paying their taxes in the UK.”

*Source: EENC, Artists' Mobility and Administrative Practices related to Social Security and Taxation in the European Union 2014*

While all of the above aspects of taxation in general pose challenges to artists, as there is a need for a taxation system which recognises the special status and nature of employment of artists, **lack of information may be an even more significant challenge** which however, may be way easier to tackle. A significant amount of organisations have reported that it is extremely complicated to obtain sufficient information regarding the rules on withholding tax.<sup>216</sup> In addition, artists and artistic organisations may also not be informed about sudden changes in rules on taxation, which elevates this category of difficulties even more.

### **Value Added Tax (VAT) in an international context**

Another important aspect of taxation of artists' income is Value Added Tax (VAT). VAT is a tax added when goods or services are sold. If an artist is self-employed, then the artist will have to collect and pay VAT. A musician touring in different countries or an actor performing in theatres across EU Member States for several months may therefore face different challenges related to VAT, and it is important that artists are aware of how VAT works. There can be:

- Output VAT – the value added tax a person calculates and charges on their own sale of goods and services;
- Input VAT – the value added tax added to the price when one purchases goods or services liable to VAT.

VAT is calculated on the value added to goods and services by a trader at each stage of the production and distribution chain. Such tax is collected through a system of partial payments, allowing taxable entities to deduct from the VAT due, and the amounts which they paid out for business purchases in the production stage.

**In the European Union VAT has been largely harmonised by the VAT Directive (Directive 2006/112/EC).** Nevertheless, the Directive allows room for exceptions and interpretation by national legislators and therefore, there may be some differences in the national VAT legislation of Member States. The VAT Directive defines a “taxable person” as any person who, independently, carries out in any place economic activity. The concept of any person includes a physical person, legal person, incorporate, non-incorporate, firm, association, etc. “Independent” encompasses that this person is not employed or linked to an employer by an employment contract. Lastly, the concept of economic activity entails that such sale/purchase of goods or services is undertaken by a person as a producer, trader, supplier, etc. After value added tax has been calculated and imposed, it is for the final consumer to pay the tax – e.g. the manufacturer charges VAT on what he supplies and is able to claim back VAT that he has paid on his purchases, while the final consumer pays the tax and cannot claim it back.

<sup>216</sup> Poláček, R.; “Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions”, available at: [https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

**In terms of the live performance sector, specific parts of VAT legislation are highly relevant when it comes to festivals, event organisers, and production companies.** In relation to cross-border supply of services, the place of supply is the determining constant for the tax jurisdiction allowed to levy VAT. While the VAT Directive provides for a comparison of the cross-border rules for goods and services, there are also specific differences in national legislation. This is due to the fact that while services are not usually physically transferred from one country to another, foreign services are still used for goods and services sold to consumers in that other country. Therefore, the VAT should be transferred to that country in order to remain in line with the principle of consumer tax. The basic rules for the place of supply are that services to:

- Companies (other taxable persons) in another country are deemed to be rendered in that other country<sup>217</sup> – business to business (B2B), and;
- Non-taxable persons are deemed to be rendered in the country of the supplier, without a threshold – business to consumer (B2C).

The **administrative requirements and procedures for return of VAT on the sale of services are the same as those for the sale of goods.** The supplier of services within the EU must specify the turnover in his/her VAT return in order for the tax administration in his/her country to be informed about the cross-border sale of services. In addition to this, the supplier must provide the so-called 'listing' (EC Sales List) with which he/she provides details about the sale of services to other VAT registered companies in other EU Member States. This listing is of significant importance as the tax authorities will then confirm that VAT is being properly and fully declared by all parties to the cross-border sale of services. The recipient of services from other EU countries must also mention the foreign invoices in the VAT return form, as VAT is due when the services come from the other country.

As with most rules laid down in legislation, there are several exceptions. The exceptions relating to the place of supply are the following:

- The place of services supplied to non-taxable persons by intermediaries is the place where the underlying transaction is supplied (Art 46);
- The place of services related to immovable property is the place where the immovable property is located (Art 47);
- The place of supply for passenger transport is the location where the transport takes place, proportionate to the distances covered (Art 48);
- The place of supply when it comes to B2B admission to cultural, artistic, sporting, scientific, educational, entertainment, etc. events is the place where the actual events take place (Art 53);
- The place of supply for services relating to cultural, artistic, sporting, scientific, educational, fairs, exhibitions, to a non-taxable person is the also the actual place where the activities take place (Art 54).<sup>218</sup>

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<sup>217</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Art. 44, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0112>

<sup>218</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Art. 46, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0112>

The following table provides some practical examples:

**Article 47**

A Swedish theatre touring company books 20 rooms for a performance in Spain. The touring company will pay the VAT in Spain, because that is the country where the hotel is based. Once the touring company is back in Sweden it can reclaim the VAT by sending the hotel invoice to the administration responsible for refund of VAT to non-residents.

**Article 53**

An Italian theatre has a sponsor from France (the sponsorship deal includes 200 tickets to performances for business relations). The Italian theatre will charge the tickets with VAT applicable in Italy. A cultural manager attends a conference organised from an organiser's office in the UK while the conference itself takes place in The Netherlands. The British organiser has to charge VAT on the entrance tickets at the rate applicable in the Netherlands.

*Source: PEARLE, The Ultimate Cookbook for Cultural Managers – VAT in an International Context*

When looking at the applicable VAT rate, Member States usually have a 'normal' VAT rate, but the VAT Directive provides for the possibility of imposing a lower VAT rate on specific goods and services.<sup>219</sup> Concerning the cultural sector, there are two scenarios in which lower VAT may be applied:

- Admission to shows, theatres, circuses, fairs, amusement parts, concerts, museums, cinemas, exhibitions and similar cultural events and facilities, and;
- Supply of services by writers, composers and performing artists, or of the royalties due to them.

The **VAT Directive contains various exemptions for the value added tax of goods and services**. The underlying reason behind the exemptions laid down in the Directive is that EU citizens should not be prevented from making use of such goods and services through the levy of VAT. The exemptions are listed in Title IX of the Directive and more precisely, those relevant for the cultural sector are laid down in Article 132(1)(n) which states the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies are to be exempt from VAT. Goods and services falling within the scope of this provision includes ticket sales, publicity, catering and sales of books or CDs.

There are **advantages and disadvantages of such a VAT exemption**. EU Member States would often apply the aforementioned exemption to subsidised concert halls, theatres, museums and other cultural institutions. As a result of the application of an exemption, the institutions do not need to charge VAT to visitors and thus, ticket prices may be lower. On one hand, this results in a more affordable entrance fee, but on the other, this effect is mitigated by the loss of the deductibility of the input tax. Therefore, the costs are going to increase for an exempted cultural institution as opposed to what these would have been if such entities were liable to pay VAT. Even though that an exemption brings about more financial advantages than VAT at the normal rate, it is also often less advantageous than VAT at a lower rate as in where there is a lower VAT, input tax can still be deducted.

<sup>219</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Art. 98, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0112>

### Overview of Member States' legislation on VAT

The following table provides an overview of VAT-Rates on the Earnings from the Creative Works of Self-Employed Authors and Visual Artists in Europe in 2017 (for Member States where the information is available). As the table shows some countries, there are a number of countries which have exemptions such Denmark and Finland, and some apply lower rates.

figure 5 Overview of Member States legislation on VAT

Country	Standard VAT Rate	Writers, Composers	Visual Artists	Remarks
Austria	20	20	20	
Belgium	21	6	6	Performing arts: 6% or EX
Bulgaria	20	20	20	
Croatia	25	25	25	
Denmark	25	EX	EX/5*	*Reduction of the regular rate.
Cyprus	19	19	19	
Czechia	21	21	21	
Estonia	20	20	20	
Finland	24	EX*	8	*Income generated from individual authors rights.
France	20	5.5*	5.5*	*With option for EX
Germany	19	7*	7*	*For works protected by authors' rights. Option for EX if turnover below 17 500 EUR in previous year
Greece	24	13	13	
Hungary	27	5*/25	25**	* Artistic and literary creations. ** Out of scope for occasional sales.
Ireland	23	23*	13.5**	*Allowances for authors contracts. **"Parking rate".
Italy	22	22	10/20*	*"Occasional sales".
Latvia	21	EX*	EX*	*Income generated from individual authors rights.
Lithuania	21	15*	15*	*For works protected by authors rights, performers etc.
Luxembourg	17	3	8	
Malta	18	5	18	No
The Netherlands	21	EX*/6	6**/21	*EX: artists' services. **Artist's first sales.
Poland	23	Ex*/7**/23**	7**/23***	*EX: some artistic services (Art. 9, VAT code). **Artistic work, publications. ***Trade w. other goods.
Portugal	23	EX*/5**/23*	5**/23***	*EX: some artistic services (Art. 9, VAT code). **Artistic work, publications. ***Trade w. other goods.
Romania	19	19*	19	*No special provisions for artists. Reduced rate of 7% for sales of books and periodicals

<b>Slovakia</b>	20	20*	20*	*Compulsory VAT on turnover above ca. 45.000 EUR (1.5 million SKK) within 12 months. (Optional VAT on turnover up to 45,000 EUR)
<b>Slovenia</b>	22	9.5*	9.5	* + performing artists, e.g. actors, singers, dancers... Option for EX if expected turnover is below 25,000 EUR.
<b>Spain</b>	21	EX*	EX/7*	*EX for professional services of artists/authors (Art. 20.1.26 VAT Act); sales of works of art subject to tax.
<b>Sweden</b>	25	6	12*	*VAT optional up to sales of 300,000 SEK p.a.

EX = Exempt from VAT (In several countries, earnings up to a certain threshold may be exempt from VAT)

Source: *Compendium of Cultural Policies and Trends (2020)*

### **Challenges stemming from VAT rules**

The **application of EU Member States legislation on VAT is amongst the challenges to cross-border artistic activity often mentioned by creative professionals**. Some of the main differences in the application of Member States' legislation on VAT include:

- Different VAT rates for the same type of live performance organisation and for different activities within such organisations;
- In some Member States certain live performance organisations and venues are exempt from VAT in accordance with national rules;
- Difference in the understanding and application of national VAT rules to foreign live performance organisations within the same Member State.<sup>220</sup>

**Administrative procedures for VAT registration also often put a large burden on artists and cultural and creative professionals.**<sup>221</sup> For example, in the context of the live performance sector, legislation in certain Member States may impose an obligation on mobile live performance companies and artists to register for a VAT number in the country of performance even if the artistic activity is to be carried out within a short timeframe. Moreover, legal uncertainties may arise when artists from one EU Member State perform in another EU Member State as a result of the differences in the rates and the type of exemption (full, partial, none).<sup>222</sup>

As from 1 January 2021 a simplification will enter into force whereby VAT due on services by artists in various Member States can be **declared via a single VAT registration (the so called One Stop Shop, OSS)**.<sup>223</sup> The VAT Mini One Stop Shop (MOSS) is a scheme which allows artists to account for their VAT in just one EU Member State instead of multiple countries. The One Stop Shop scheme is essentially a digital online portal hosted by a Member State's national tax administration. Following the implementation of the new rules in 2021, artists would not have to register with the tax authorities of each EU Member State where they carry out artistic activity or supply artwork, but instead, can register for VAT, file VAT returns and make payments in one single country. The national VAT authority is responsible for forwarding taxes to appropriate countries. It is important to point out that this is an optional scheme and artists are not by any means obliged to make use of the OSS changes. The

<sup>220</sup> Poláček, R.; "Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions", available at:

[https://www.ietm.org/en/system/files/publications/study\\_on\\_impediments\\_to\\_mobility\\_1.pdf](https://www.ietm.org/en/system/files/publications/study_on_impediments_to_mobility_1.pdf)

<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid.*

<sup>223</sup> [https://ec.europa.eu/taxation\\_customs/business/vat/modernising-vat-cross-border-ecommerce\\_en](https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en)

implementation of the OSS scheme is expected to decrease compliance costs regarding registration and declaration of VAT.<sup>224</sup>

#### **4.5 Overview of measures to support self-employed artists and cultural and creative professionals**

The following table provides an overview of the information provided in this chapter in the form of an overview table outlining where measures are provided for self-employed artists and cultural and creative professionals in the Member States. The table takes into account the information provided in the various tables in the above sections.

An additional consideration included within this table is health coverage for self-employed workers. Although there are no specific measures directed specifically at self-employed artists and cultural and creative professionals in this regard, information is provided as to whether self-employed artists are able to benefit from general schemes in the Member States regarding health coverage. The table also identifies where self-employed artists and cultural and creative professionals are covered by general schemes related to pension supplements and unemployment benefits in the Member States in case there is no specific scheme for artists. The information regarding this supplementary information is taken from the MISSOC database<sup>225</sup>.

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<sup>224</sup> European Commission, "Impact Assessment – Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax" (2018), available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/18012018\\_impactassessment\\_proposal\\_vat\\_rates\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/18012018_impactassessment_proposal_vat_rates_en.pdf)

<sup>225</sup> <https://www.missoc.org/>

table 4 Overview of measures for self-employed artists/creative professionals in the EU

Country	Unemployment schemes for self-employed artists/creative professionals	Pension supplements for self-employed artists/creative professionals	Specific income tax provisions for artists/creative professionals	Health coverage for self-employed	Specific VAT provisions for artists/creative professionals
<b>Austria</b>	Yes	Yes	Yes	Yes - Compulsory insurance for self-employed persons <i>Freelancers (freie Dienstnehmer): Persons who do not have a formal employment contract but essentially work like an employee (e.g. no own organisational structure, perform their services themselves)</i>	No
<b>Belgium</b>	Yes	Yes	No	Yes - Compulsory insurance for self-employed persons	Yes
<b>Bulgaria</b>	Yes	Yes	Yes	Yes - Compulsory insurance for permanent or long-term residents	No
<b>Croatia</b>	No – but general measures for self-employed	Yes	Yes	Yes - Compulsory insurance for self-employed persons	No
<b>Cyprus</b>	No	No – but general measures for self-employed	-*	Yes - Compulsory insurance for self-employed persons	-*
<b>Czechia</b>	No – but general measures for self-employed	No – but general measures for self-employed	-*	Yes - Compulsory insurance of permanent residents and employees of employers with its registered office or permanent residence in Czechia	-*
<b>Denmark</b>	No – but general measures for self-employed	No – but general measures for self-employed	No	Yes – Universal system	Yes
<b>Estonia</b>	Yes	No – but general measures for self-employed	Yes	Yes - Insurance-based compulsory scheme for self-employed who have paid Social Tax themselves	No
<b>Finland</b>	Yes	Yes	Yes	Yes – Compulsory insurance for all residents	Yes
<b>France</b>	Yes	Yes	Yes	Yes - Compulsory insurance for all persons with gainfully employment or with a permanent regular residence in France	Yes
<b>Germany</b>	No – but general measures for self-employed	Yes	Yes	Yes - Compulsory health insurance system, coverage either provided by statutory or private health insurance	Yes
<b>Greece</b>	No – but specific scheme for the self-employed	Yes	Yes	Yes - Compulsory insurance for self-employed persons	Yes
<b>Hungary</b>	No – but general measures for self-employed	Yes	Yes	Yes - Compulsory insurance for gainfully employed persons (employees and self-employed)	Yes
<b>Ireland</b>	Yes	No – but general measures for self-employed	Yes	Yes - Universal system funded through general taxation. All persons ordinarily resident in Ireland are eligible for public health services	Yes

<b>Italy</b>	No	No - pension is covered under the self-employed special scheme of the General Compulsory Insurance (AGO)	No	Yes - The healthcare system/scheme for the self-employed is universal and residence based. The system is compulsory and financed by taxes.	Yes
<b>Latvia</b>	No	No - but general measures for self-employed	Yes	Yes - Universal system.	Yes
<b>Lithuania</b>	No	Yes	No	Yes - Compulsory insurance for Self-employed	Yes
<b>Luxembourg</b>	Yes	but general measures for self-employed	-*	Yes - Compulsory insurance for all persons in paid employment (employed or self-employed worker)	-*
<b>Malta</b>	No – but general measures for self-employed	No – but general measures for self-employed	No	Yes – Universal system	Yes
<b>The Netherlands</b>	Yes	No - Self-employed are covered by the general scheme (first-pillar pension)	No	Yes - The system is insurance-based and compulsory for all, including the self-employed.	Yes
<b>Poland</b>	No – but general measures for self-employed	Yes	Yes	Yes - Compulsory insurance for self-employed persons,	Yes
<b>Portugal</b>	No – but are covered by the social security scheme of the self-employed (protection in case of unemployment only for a few categories)	No – but general measures for self-employed	No	Yes – Universal system	Yes
<b>Romania</b>	No	No – but general measures for self-employed	No	Yes - Compulsory insurance for self-employed persons. All Romanian citizens resident in Romania; entitled EU citizens; other citizens who live temporarily or permanently in Romania and pay contributions to the insurance fund as the law stipulates	No
<b>Slovakia</b>	No – but general measures for self-employed	No – but general measures for self-employed	Yes	Yes - Compulsory insurance-based system covering all residents (self-employed non-residents from outside the EU are not covered).	No
<b>Slovenia</b>	No – but general measures for self-employed	Yes	Yes	Yes - Compulsory insurance for self-employed persons	Yes
<b>Spain</b>	No – but general measures for self-employed	No – but general measures for self-employed	Yes	Yes - Universal/Residence based system	Yes
<b>Sweden</b>	No – but general measures for self-employed	Yes	Yes	Yes – Self-employed are covered by the compulsory general healthcare system which is universal and residence based	Yes

-\* Information not available

Source: Compendium of Cultural Policies (2020), Panteia (2020) and MISSOC (2020)

## 5 The nature of income and access to external finance

**Artists tend to live in existential uncertainty**, and **only established artists can afford to live entirely from their income** as an artist. Income opportunities are unpredictable, and even highly acclaimed artistic productions do not ensure artist's financial stability. Due to the unpredictability, irregularity and seasonality of the artistic profession the planning of income is extremely difficult. Even in good times, an unexpected illness or cancellation of a production can completely change the artists' income situation – this has been exacerbated by the COVID-19 crisis and the cancellation of artistic events. The lack of funds of public and private cultural organisations often do not provide for an adequate compensation to the artists (unpaid rehearsals and badly paid performances).

This chapter will provide a brief summary of the nature of income of artists and creative professionals, looking at examples by sector where relevant. It will briefly explore the various ways in which artists make a living and explores the different challenges in linked to this.

### 5.1 Nature of income for artists and cultural and creative professionals

***Employment patterns of artists and creative professionals can lead to situations of low income***

**Relative incomes and opportunities for stable employment in the cultural and creative sectors have been deteriorating for a number of years.**<sup>226</sup> For instance, in the music sector state funding for music decreased in many European Member States following the 2008 financial crisis, which in turn made it more difficult for a professionally trained musician to get a permanent position in a music school or a performance ensemble, such as a symphony orchestra or an opera house. This reduced funding in general has led to a casualisation of the cultural workforce, where short-term contracts are a frequent occurrence.<sup>227</sup> As mentioned in the previous section, self-employment is becoming more apparent in the cultural and creative sectors, and in 2001, the International Federation of Actors found that self-employment amongst dancers increased, with employment status being influenced or determined by the available budget of the employer. Since funding and grants are becoming increasingly limited or project-based, these dancers are being employed on short-term contracts, compared to previously when permanent and long-term contracts were the norm in national ballets, operas or companies.<sup>228</sup>

The **increase in the number self-employed cultural workers has had an effect on the nature of income of artists and creative professionals**. On the basis of this, trade unions have tried to address this situation by attempting to organise the self-employed. For example, the Dutch trade union *Kunstenbond* is advocating on behalf of self-employed artists in the Netherlands on a number of different issues. However, this

<sup>226</sup> Van Liemt, G.; "Employment Relationships Arts and Culture" (2014), available at:

[https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

<sup>227</sup> Capiou, A. S.; Wiesand, A. J.; "The Status of Artists in Europe" (2006) (European Institute for Comparative Cultural Research (ERICarts), available at:

[https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-CULT\\_ET\(2006\)375321%20](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-CULT_ET(2006)375321%20)

<sup>228</sup> FIA, "Dancers' Career Transition: A EuroFIA Handbook" (2011), available at: [http://www.fia-actors.com/uploads/Dancers\\_Handbook\\_EN.pdf](http://www.fia-actors.com/uploads/Dancers_Handbook_EN.pdf)

is not the case throughout the EU Member States. This section outlines some of the key characteristics and challenges surrounding the nature of and ability of artists to earn a sufficient income.

**Artists and creative professionals earn their income in a number of different ways**, although it is difficult to understand the real situation without access to better data on the subject. The lack of information on this is due to the nature of work for artists and cultural professionals, as explained in the previous sections. In addition to regular employment, a large amount of artists and creative professionals receive their income from self-employment. This can mean a particular payment for a single performance through an arbitrary lump sum payment by the operator of the venue from the proceeds of a gig rather than a pre-arranged and negotiated fee. Payment in the informal circuit may be far from a wage or salary arrangement, with payment in kind, tips and other forms of payment.<sup>229</sup>

**Non-standard working practices can lead to situations of low income**, and particularly for the cultural and creative sectors, those who work from project to project inevitably face periods of inactivity.<sup>230</sup> There will therefore be times where artists will not receive any income. In the live performance sector for instance, the starting point is payment for work rendered, but the periods of work can be short and remuneration generally hovers at the lowest minima of collective labour agreement regulations. In the visual arts, the situation is even more precarious, with creation as such rarely having any financier – unless one includes the artists themselves. Moreover, it remains a daily reality that visual artists have to fight the case that artistic work made on commission, or exhibited, deserves any recompense at all.

The **source of income for artists and creative professionals depends very much on the sector or occupation within a particular sector**. For instance, with authors the proportion of income from salaries and wages tend to be lower than some other sectors, whereas they tend to benefit more from royalties, advances and other copyright earnings as well as income from grants and awards.<sup>231</sup> Additionally, a 2016 research study in Flanders showed that if one compares the income of the self-employed artists with the income of the employee-artists, median incomes are higher in film, music and the performing arts, and consistently lower in visual art and literature.<sup>232</sup> This is because in film, music and the performing arts there is more likelihood of an employer-employee relationship, and becoming self-employed is one that the artists can make themselves if and when it is financially advantageous for them to do so. In literature or the visual arts, this choice is less apparent, where salaried employment does not generally present itself and self-employment is the default option.<sup>233</sup> For instance, in the visual arts in Sweden, although visual artists work an average of 47 hours per week (134% of full time), 64% make less than 1,300 EUR per month and 67% are not covered by an unemployment benefit.<sup>234</sup>

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<sup>229</sup> Van Liemt, G. "Employment Relationships Arts and Culture" (2014), available at:

[https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

<sup>230</sup> Hesters, D. "Kunstenpocket #3 – D.I.T. (Do It Together)" (2019), available at:

[https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket\\_3\\_en](https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket_3_en)

<sup>231</sup> Van Liemt, G.; "Employment Relationships Arts and Culture" (2014), available at:

[https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

<sup>232</sup> Siongers, J.; Van Steen, A.; Lievens, J.; "Loont passie? Een onderzoek naar de sociaaleconomische positie van professionele kunstenaars in Vlaanderen" (2016), available at: <https://biblio.ugent.be/publication/8174138>

<sup>233</sup> Hesters, D. "Kunstenpocket #3 – D.I.T. (Do It Together)" (2019), available at:

[https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket\\_3\\_en](https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket_3_en)

<sup>234</sup> Norling, K.; Söderlund, M.; Konstnärernas Riksorganisation, KRO, Sweden, "Workshop Social Security and Mobility of Visual Artists in Europe" (2016) (IAA Europe)

**The 2016 Flanders study also highlighted that apart from a few professions, the majority of those working in the cultural and creative sectors do not reach the average income when compared to all Belgian taxpayers.<sup>235</sup> What is interesting also is that 85% of these artists had higher education degrees when compared to around 40% of the overall population.** Therefore it can be said that artists' incomes are generally relatively low, and due to the uncertainty that surrounds employment and earning a living in the artistic professions, can lead to many deciding to leave the sector.

Awards and private and public sponsoring can be possible sources of income. But given the willingness of many to accept a modest lifestyle, the largest subsidy to the arts may well come from artists themselves. Many artists actually subsidise their artistic activities (auditions, concerts, costs related to artistic productions before being paid) by their earnings from their often parallel non-artistic "bread winning" jobs, and some would not be able to perform their artistic professions without the financial support by their families.<sup>236</sup> As previously stated, it is common for artists and creative professionals to have a secondary job that may or may not be related to their primary artistic activity.

### ***Artists and creative professionals often go unpaid for their work***

**Some artists and creative professionals will work for free, or almost nothing in order to gain exposure, and it is becoming more of a common occurrence that artists are actually paying to play or to exhibit at certain venues, festivals or showcases.** It is an assumption that those working in the cultural sector do so for their passion for the arts, and in particular at the start of their artistic careers often not fully aware of the realities and the difficulties to earn a living from their artistic work.<sup>237</sup> The nature of working in the cultural and creative sectors can be very labour intensive. Depending on the contract, the preparation work that goes into creation and development of work, as well as the time required for the promotion of the work is often not included in the contract or salaries earned. Most of the time all the work needed to develop the creative idea into being is not remunerated nor taken into account.<sup>238</sup>

Interviews with artists in the context of this study revealed that **unpaid artistic work is very common in the arts sector.** Their approach varied from never accepting the work without a payment, through a partial acceptance in charity cases (with a relevant cause), to the sporadic acceptance of unpaid work with a perspective for potential future employment opportunities. Some of them claimed that in the past, they had to accept unpaid work, but at the current stage of their careers they did not need to accept it anymore. In general, artists consider a situation where they are forced to work without being paid as exploitation.

Nevertheless, **there are several reasons why artists agree to unpaid work – for example, as part of their studies, in order to gain experiences, to enhance their professional CV or to stay active in their artistic profession** (in particular in periods when no paid opportunities arise). However, the promised or perceived potential future benefits rarely come true and many artists feel misled or used. Sadly, these practices are common not only in the non-for-profit and charity environment, but also within the business environment. Many of the interviewed artists would welcome some

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<sup>235</sup> Siongers, J.; Van Steen, A.; Lievens, J.; "Loont passie? Een onderzoek naar de sociaaleconomische positie van professionele kunstenaars in Vlaanderen" (2016), available at: <https://biblio.ugent.be/publication/8174138>

<sup>236</sup> Interviews with artists.

<sup>237</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

<sup>238</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

regulation to prevent them from being exploited. They feel that the profession of artist is not treated with the right respect and dignity equal to other professions.

In some sectors, **employers seem to use self-employment as a means to not provide employees with fair remuneration**. For example, in the audiovisual sector, there are instances of producers having a preference for crews to work on a self-employed basis, in order to waive the number of working hours. This means that some crew members can work up to 60 hours per week. This may lead to an increased output for employers, but has a large impact on working conditions. This practice can also have an impact on mental and physical health and result in people leaving the cultural and creative sectors because the income and working conditions are unsustainable.

In the field of visual arts, it is **often the case that visual artists showing their work in prominent galleries and museums do not get paid to exhibit their works of art**, with the understanding that in return, the artist receives recognition and exposure.<sup>239</sup> This occurs in spite of the fact that their works of art are in fact the very reason for most people to visit museums and galleries in the first place. It is common practice that these artists pay for all the costs through the whole process of art production, from the initial idea to the finished work of art. A 2015 study showed that 71% of artists exhibiting in publicly funded galleries received no fee for their work, and 59% did not receive payment for their expenses, which therefore means that the artist actually pay to exhibit work.<sup>240</sup> It is also common practice for visual artists exhibiting in some art galleries or art fairs actually pay for being able to exhibit and very often cannot cover these expenses through the revenues of sold artwork. They thus “subsidise” the exposure of their work in the hope of rising from anonymity and to be “discovered” – a dream which seldom comes true (this is also true for other sectors, such as music, for example).

A recent survey in the context of the Creative FLIP project indicates that **ensuring fair remuneration is considered as an important means to further improve the working conditions in the CCS**.<sup>241</sup> This should also involve simplified but effective instruments for IPR protection and enforcement’ as a tool to improve the working conditions of creatives.

### ***The income of artists can fluctuate greatly from year to year***

The **income of artists can fluctuate greatly from year to year**, dependent on the work that has been carried out in a particular year. Artists can also spend a great deal of time in the creation of works, for which they are often not paid at the time, and will receive remuneration from at a later date. While this income is compensation for many years of research and writing, in many Member States it is fully taxed in the year the income is received.<sup>242</sup> Income averaging is therefore a useful mechanism to reduce the tax burden, in response to the atypical manner in which some artists earn their income. More information can be found in Chapter 5.3 on this.

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<sup>239</sup> IAA Europe, “Exhibition Remuneration Right in Europe: Pay the artist now” (2018), available at:

[https://www.iaa-europe.eu/images/Campaign2019/Position\\_Paper\\_Exhibition\\_Remuneration\\_Pay\\_the\\_artist\\_now\\_IAA\\_Europe.pdf](https://www.iaa-europe.eu/images/Campaign2019/Position_Paper_Exhibition_Remuneration_Pay_the_artist_now_IAA_Europe.pdf)

<sup>240</sup> EY, “Cultural Times” (2015), available at:

[https://en.unesco.org/creativity/sites/creativity/files/cultural\\_times\\_the\\_first\\_global\\_map\\_of\\_cultural\\_and\\_creative\\_industries.pdf](https://en.unesco.org/creativity/sites/creativity/files/cultural_times_the_first_global_map_of_cultural_and_creative_industries.pdf)

<sup>241</sup> Amann, S.; De Voldere, I., “Policy Makers Focus Group” (presentation) (2020), available at:

[http://creativeflip.creativehubs.net/FLIPPING\\_ODDS\\_PDFS/Focus%20group%20policy%20makers\\_ppt%20website.pdf](http://creativeflip.creativehubs.net/FLIPPING_ODDS_PDFS/Focus%20group%20policy%20makers_ppt%20website.pdf)

<sup>242</sup> Neil Garry, “Culture & working conditions for artists: implementing the 1980 Recommendation concerning the Status of the Artist” (UNESCO)(2019), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000371790>

### ***Cross-border mobility and the nature of income***

Artists interviewed in the context of this study identified positive and negative impact of cross-border mobility on the nature of their income. In the first case, the **cross-border mobility provides more working opportunities and thus more possibilities to ensure a continuous income**. On the other hand, **cross-border mobility is connected with higher costs (travel and accommodation) while the pay is not considerably higher, so actually in many cases, the artist earns less**. In some cases the pay is even lower compared to if the artist worked in his/her own country (consider new EU Member States vs. old EU Member States). Moreover, since each EU country applies different rules in taxation, social and health insurance, cross-border jobs makes the income structure of an artist far more complicated. Yet, some artists did not notice any impact of cross-border mobility on the nature of their income as an artist.

### ***Artists and creative professionals often have low retirement savings***

Being an artist means that there is no official retirement age. Artists and creative professionals that are working as self-employed or in atypical working patterns are more likely to earn less, have larger gaps between jobs and operate under partly reduced working times. Being self-employed also means that artists can carry on for as long as they are able to, assuming that they are physically and mentally able to do so. The atypical and sometime precarious nature of the work has an impact on their ability to save money for retirement.<sup>243</sup> If an artist or creative professional earns modestly throughout their active careers, this tends to result in lower earnings in retirement.

### ***Income from works or exploitation of works – how much actually remains for the artist?***

A common feature in the professional lives of artists and creative professionals is that the **revenues that are generated from their artistic or cultural creation are not entirely transferred to them**. As explained in the previous chapter, artists and creative professionals often have issues arising from taxation, which often does not take into account the specific conditions in which artists and creative professionals work (that their income can fluctuate greatly from year to year, time spent researching, developing, writing etc.). Artists can therefore be subject to paying more taxes. Additionally, when working abroad, artists can also be subject to withholding taxes which have an impact on their income.

The **payment of social security contributions also has an impact on revenues received by artists and creative professionals**, which is complicated by the fact that self-employment is highly prevalent in the CCS. From a cross-border perspective, double payment of social contributions is a common occurrence, impacting on income earner.

There are **different parties who also have a stake in the revenues generated through sale or exploitation of artists' works**. These include intermediaries, agencies, art galleries, platforms, sales agents, retailers, publishing houses, and studios, various actors involved in the production, reproduction, and distribution of the work in the value chain.<sup>244</sup>

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<sup>243</sup> Van Liemt, G.; "Employment Relationships Arts and Culture" (2014), available at: [https://www.researchgate.net/publication/286379535\\_employment\\_relationships\\_arts\\_and\\_culture](https://www.researchgate.net/publication/286379535_employment_relationships_arts_and_culture)

<sup>244</sup> European Parliament, Briefing, "Employment in the cultural and creative sectors", available at: <http://catalogus.boekman.nl/pub/P19-0647.pdf>

In its 2017 study on creative value chains, the European Commission provides examples of revenue sharing in various sectors.<sup>245</sup> It is shown that **authors and creators working in the cultural and creative sectors do not benefit from most of the wealth that is generated by the works they produce or contribute to.**<sup>246</sup> For example, in the music sector the value monetisation of music works through streaming services is subject to criticism. A French report stated that out of a monthly subscription to Spotify with a value of EUR 9.99 per month, the artist's share is only 46 cents.<sup>247</sup>

### **Artists require strong copyright protection to ensure fair remuneration**

Having **strong copyright provisions is a means to ensure that artists are fairly compensated for their work.** This is becoming increasingly important given today's digital environment. In the music sector for instance, digitalisation has generated huge shifts in the way people listen to music, and consequently also in the distribution channels and means of earning money on the parts of musicians. For many working in the sector, the digital shift has meant that it is difficult for some to earn anything through music.<sup>248</sup> There is evidence that improving laws around copyright increases income for artists.<sup>249</sup> There is a growing interest in this issue, and there has been a spike in advocacy and awareness-raising programmes for artists, consumers and legislators on what copyright laws mean for the use and distribution of cultural content on the Internet and how they can be used to promote fair remuneration for artists.

Recent efforts seek to strengthen the bargaining power of artists in order to help them be fairly remunerated for the commercial exploitation of their works. In particular, **the European Directive on copyright and related rights in the Digital Single Market**, which was adopted in April 2019, clarifies that online content sharing platforms giving access to large amounts of creative works (such as Facebook, YouTube, Daily Motion and many other similar platforms) need the authorisation of copyright holders for the use of such works on their service. In the absence of a license, to avoid liability these platforms have to comply with a best effort obligation to prevent unauthorised copyright material being made available online.<sup>250</sup> Furthermore another major breakthrough is represented by the measures of the Directive aiming to rebalance individual artists' positions in the contractual arrangements with the partners on whom they rely for the exploitation of their works. The Directive enshrines the principle of an appropriate and proportionate remuneration for authors and performers for the first time in European copyright law. Authors and performers will enjoy access to transparent information on how their works and performances are exploited by their counterparts. This should make it easier for them to negotiate future contracts and to receive a fairer share of the generated revenues. Many sectoral stakeholders expect the Directive to help artists secure a remuneration that is proportionate to the revenues generated by the exploitation of their work.

**Piracy is also an ongoing problem for artist's income.** Although figures show that piracy is declining (between 2017 and 2018 overall access to pirated content declined

<sup>245</sup> DG EAC, IDEA Consult, imec-SMIT-VUB, KEA, "Mapping the creative value chains" (2017), available at: <https://op.europa.eu/en/publication-detail/-/publication/4737f41d-45ac-11e7-aea8-01aa75ed71a1>

<sup>246</sup> *Ibid.*

<sup>247</sup> *Ibid.*

<sup>248</sup> Hesters, D. "Kunstenpocket #3 – D.I.T. (Do It Together)" (2019), available at: [https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket\\_3\\_en](https://issuu.com/kunstenpuntflandersartsinstitute/docs/kunstenpocket_3_en)

<sup>249</sup> UNESCO, "Culture & working conditions for artists: implementing the 1980 Recommendation concerning the Status of the Artist" (2019), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000371790>

<sup>250</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/26/EC, available at: <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

by 15 %), it remains a significant problem in the EU, more so in some Member States than in others. For example, the average Internet user in the EU accessed pirated content 9.7 times per month in 2018, ranging from almost 26 times per month in Latvia and Lithuania to less than 4 times per month in Finland.<sup>251</sup> Digital technologies make it easy to copy and manipulate creative works, and artists are receiving little or no pay for the dissemination of their copyrighted works on content sharing platforms. These are big problems in ensuring that artists have access to fair remuneration for their work.

## 5.2 Support ecosystems for artists and cultural and creative professionals

Access to finance is one of the key issues facing those working in the cultural and creative sectors. External sources to finance for artists and creative professionals are often grants and subsidies.

### *Public support measures*

Public support measures for cultural and creative professionals are above all done via direct subsidies and grants. Despite the availability of various types of public support for artists and cultural and creative professionals, they **often face challenges in accessing and receiving such public funding**. Overall, the predominant challenges in Western Europe include the low priority of the governments' budget for culture and the diminishing resources for local culture.<sup>252</sup> In contrast, challenges in Eastern European countries relate mostly to political control, outmoded education and lack of effective strategies.<sup>253</sup>

The **financial crisis played a significant role in countries' budget cuts for culture**. For example, Portugal's budget for culture peaked in 2005 but soon began shrinking and currently amounts to 0.2% of the national budget.<sup>254</sup> Funding cuts in particular of subsidies for theatres, operas and other performing art venues and cultural institutions often occur in relation to shifting political priorities. For example, the Flemish Government has recently proposed a budget cut of 3% for bigger art institutions, 6% for all other art organisations and a 60% cut of the individual artist project funding.<sup>255</sup>

For other cultural and creative sectors, such as cinema productions, access to loans or also guarantee schemes are more relevant. Banks are often reluctant to give loans to cultural and creative professionals (there is some experience with training of banks within the Creative Europe Guarantee, with a view to increasing their understanding of the CCS).

Artists interviewed for this study admitted to **limited knowledge around funding opportunities in the arts**. A few artists submitted projects for funding in the arts (on local, regional, national and EU level) with mixed experiences. As to national-level grant systems, some artists pointed out multiple opportunities to benefit from awards and scholarships. Others complained about the difficulty of the whole process, unrealistic

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<sup>251</sup> European Union Intellectual Property Office, "Online Copyright Infringement in the European Union – Music, Films and TV (2017-2018), Trends and Drivers" (2019), available at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/quantification-of-ipr-infringement/online-copyright-infringement-in-eu/online\\_copyright\\_infringement\\_in\\_eu\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/quantification-of-ipr-infringement/online-copyright-infringement-in-eu/online_copyright_infringement_in_eu_en.pdf)

<sup>252</sup> Scottish Parliament, "Arts Funding Inquiry comparative analysis" (2018), available at: [https://www.parliament.scot/S5\\_European/Inquiries/CTEEA\\_Arts\\_Funding\\_Research.pdf](https://www.parliament.scot/S5_European/Inquiries/CTEEA_Arts_Funding_Research.pdf)

<sup>253</sup> *Ibid.*

<sup>254</sup> IETM, "Contemporary Performing Arts in Portugal: An Overview" (2018) [https://www.ietm.org/en/system/files/publications/ietm\\_mapping-portugal\\_2018\\_0.pdf](https://www.ietm.org/en/system/files/publications/ietm_mapping-portugal_2018_0.pdf)

<sup>255</sup> Jubilee, "The arts and civic society threatened by the Flemish Government's austerity measures" (open letter, published in L'internationale) (2019), available at: [https://jubilee-art.org/?rd\\_news=2428&lang=en](https://jubilee-art.org/?rd_news=2428&lang=en)

budgets in relation to the costs of artistic productions, and conditions excluding those applicants who actually needed public funding the most.

A 2019 survey conducted in the context of the Creative FLIP project confirms that, in fact, **grants are considered as the most effective public policy initiative (as well as the most widely used)** to improve access to finance for CCS.<sup>256</sup> Investing in capacity building, although not as high as grants, was also considered very effective in general. Capacity building and grants were also determined to be two instruments that are most relevant for the future. Certain measures were deemed more effective at different levels, as providing space for culture was considered especially effective at local level, whereas microfinance and guarantee schemes were considered more effective by national and EU policy makers than by regional and especially local policy makers. Interestingly, promoting equity finance or more innovative financing not considered effective. Regarding the instruments, Tailor-made grant schemes were considered as most relevant and effective for freelance/project-based creative entrepreneurs and artists to improve their financial situation, followed by ensuring fair payment in public tenders.

There are examples of **'one-stop shops'** across Europe that offer a diversified portfolio of funding instruments. For example, Cultuur & Ondernemen (C&O) in The Netherlands supports cultural organisations, artists and creatives with advice and assistance to get more value from their activities and assists them in professional development, innovation of business models, and the development of good governance and oversight. C&O provides, researches and implements different funding mechanisms, such as microcredits, loans and guarantees. It works together with parties (such as municipalities and funds) and uses its network to increase the impact of cultural policies and investments.

**Tax incentives** also support those working in the cultural and creative sectors. These include deduction, exclusion or exemption from a tax liability, offered as an incentive to engage in a specified activity for a certain period.<sup>257</sup> Cultural tax incentives are defined as all provisions resulting in a decrease in the tax charge (from the taxpayer standpoint) and, conversely, a decrease in tax proceeds collected by governments. Within the EU there are numerous examples of audio-visual production incentives targeted to attract foreign productions, as well as broader audiovisual tax credit schemes that apply to both domestic and foreign productions. For example Belgium has offered tax shelters first to audiovisual productions, which has later been extended also to theatre and performing arts.<sup>258</sup>

Another public support measure, that is mainly utilised by the more industry-related parts of the CCS, such as cinema production, is **vouchers**. These entitle the holder to a payment or a free good or service. Several Member States have creative or innovation voucher schemes (such as Ireland, The Netherlands, Estonia and Lithuania). Vouchers can be used for a number of reasons, such as R&D, management, design or other areas.

There are a **number of support schemes available to the CCS at EU level**. In addition to the Creative Europe programme, some parts of the Horizon Europe research

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<sup>256</sup> Amann, S.; De Voldere, I., "Policy Makers Focus Group" (presentation) (2020), available at: [http://creativeflip.creativehubs.net/FLIPPING\\_ODDS\\_PDFS/Focus%20group%20policy%20makers\\_ppt%20webs%20ite.pdf](http://creativeflip.creativehubs.net/FLIPPING_ODDS_PDFS/Focus%20group%20policy%20makers_ppt%20webs%20ite.pdf)

<sup>257</sup> Business dictionary, tax incentive definition, available at: <http://www.businessdictionary.com/definition/tax-incentive.html>

<sup>258</sup> ING, Tax Shelter: taxation in aid of Belgian audiovisual, available at: [https://www.ing.be/Assets/Documents/710849E\\_productfiche\\_TAX\\_Shelter.pdf](https://www.ing.be/Assets/Documents/710849E_productfiche_TAX_Shelter.pdf)

programme will also have actions directed at cultural heritage and cultural and creative sectors. In addition, there is the European Regional Development Fund (ERDF), the European Social Fund (ESF), Interreg (smart specialisation) and other support opportunities used by CCS such as Erasmus+. For creative entrepreneurship, in particular there is COSME (including Erasmus for young entrepreneurs), the CCS Guarantee Facility, Start-up Europe or the planned KIC (Knowledge and Innovation Communities) for CCIs.

Concerning support for cultural and creative industries and entrepreneurship, at national level, there are **several examples of support programmes**. For example, in Croatia, the program 'Entrepreneurship in Culture' began more than 10 years ago as an attempt by the Ministry of Culture and the Ministry of Entrepreneurship to support cultural industries.<sup>259</sup> In Bulgaria, the operational programme 'Innovations and Competitiveness' is a relatively new national measure for the financial support of entrepreneurs in Bulgaria. It provides grants to entrepreneurs in architecture, photography, publishing, film, music, TV, radio and design.<sup>260</sup> The total budget of the programme for 2014-2020 amounts to EUR 1.3 billion<sup>261</sup>

There are also examples of **regional and local support schemes** for cultural and creative industries, such as the Berlin Senate Department of Economics provides funding for Literature & Publishing, Music, Arts, Film & Broadcast and other sectors.<sup>262</sup> Other good practice examples are cited in the OMC (Open Method of Coordination) EU expert report on "The role of public policies in developing entrepreneurial and innovation potential of the cultural and creative sectors"<sup>263</sup> Some examples include the Estonian Entrepreneurship Growth Strategy (2014-2020), the Polish Package for Creative Industries (2017-2020, with perspective until 2030), and the Romanian "White Paper on Unlocking the Economic Potential of the Cultural and Creative Sectors".<sup>264</sup>

The Estonian Entrepreneurship Growth Strategy focuses on three main challenges: increasing productivity, stimulating entrepreneurship and encouraging innovation. Moreover, it targets several objectives some of which include increased income for the CCS and the increased contribution of the CCS to regional development.

The Polish Package for Creative Industries comprises several actions and mechanisms for supporting the creation and further development of innovative products in the CCS. Furthermore, the scheme ensures that the CCS are more competitive and that more capital is secured within the sector.

In turn, the Romanian White Paper on Unlocking the Economic Potential of the Cultural and Creative Sectors strives to target the definition and identification of the status quo of the CCS, and highlight their immense economic and social potential.

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<sup>259</sup> UNESCO, "Program 'Entrepreneurship in Culture' (2018), available at:

<https://en.unesco.org/creativity/policy-monitoring-platform/program-entrepreneurship-culture>

<sup>260</sup> Dobreva, N., "Cultural Policies for Cultural Entrepreneurship. Case-study Bulgaria" (2017), available at:

<https://www.goethe.de/resources/files/pdf148/cma-publication-final.pdf>, pp. 163-173

<sup>261</sup> European Commission, "Programme: Innovations and Competitiveness – BG – ERDF", available at:

<https://cohesiondata.ec.europa.eu/programmes/2014BG16RFOP002>

<sup>262</sup> Creative City Berlin, "Funding & Financing", available at: <https://www.creative-city-berlin.de/en/questions-answers/questions-on-funding-and-financing/>

<sup>263</sup> <https://op.europa.eu/en/publication-detail/-/publication/5d33c8a7-2e56-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-68820857>

<sup>264</sup> European Commission, Report of the OMC Working Group of Member States' Experts, "The Role of Public Policies in Developing Entrepreneurial and Innovation Potential of the Cultural and Creative sectors" (2018), available at: <https://op.europa.eu/en/publication-detail/-/publication/5d33c8a7-2e56-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-68820857> pp. 40-45

Next to these government support programmes, support structures are also important for the development of entrepreneurs and their careers. These structures come in many shapes and sizes; for example clusters, incubators, accelerators, creative hubs, networks, digital platforms, professional organisations, co-working spaces, creative labs, 'makerspaces' and fabrication labs. It is important to note that these structures should be at the core of the CCS ecosystem, and not, as so often nowadays, in the periphery of it, in order to maximise their impact.<sup>265</sup>

### **Private funding, debt and equity finance**

In addition to public funding, cultural and creative sectors frequently also make use of private funding. **Debt finance** is a financing method in which a company receives a loan and promises to repay it, and includes both **secured and unsecured loans**. Microfinance or microcredit organisations have developed platforms, recently often on the internet, that facilitate a modified form of (indirect) peer-to-peer lending where the microcredit organisation typically sources capital from the crowd. The microcredit fund lends to companies at reasonable rates, and provides other financial services (such as coaching) to entrepreneurs. Microfinance consists mainly of micro-loans (less than EUR 25,000) tailored to micro-enterprises and people who would like to become self-employed but are facing difficulties in accessing traditional banking services.

**Private donations** form an important source of funding for the CCS. Donations are considered one-sided business transactions, from which the donor expects no direct benefit. Donations can either be 'pure' donations, in which the donor stays anonymous, or 'public' donations, in which the donor is publicly announced, and receives indirect benefits from the promotion of his name in public.<sup>266</sup> A recent example emphasising the importance of donations to the CCS comes from the Arts Council England Private Investment in Culture Survey (PICS) published in 2019 which shows a total of 599 million EUR of private investment in arts and culture in 2017/18 in the United Kingdom.<sup>267</sup> It also shows that in the UK, around 91% of arts and culture organisations receive some form of private investment, thus making it the most prevalent form of income for the sector. Turning to EU Member States, in France for example, in 2016 cultural sponsorship represented 12% of the overall sponsorship budget – around 500 million EUR.<sup>268</sup> In contrast, in Italy private giving, such as donations and sponsorship, represents a limited source of cultural financing.<sup>269</sup> In Lithuania, in 2018 legal persons in the field of culture received around 13.3 million EUR in private funding from sponsorships.<sup>270</sup>

Many Member States have developed laws that outline tax deductions to private sponsors of arts and culture. The following table provides an overview of these laws, as well as the main sectors attracting sponsorship and the estimated value of private sector sponsorship.

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<sup>265</sup> Report of THE OMC (Open Method of Coordination) working group of Member States' experts, "The role of public policies in developing entrepreneurial and innovation potential of the cultural and creative sectors" (2018), available at: <https://op.europa.eu/en/publication-detail/-/publication/5d33c8a7-2e56-11e8-b5fe-01aa75ed71a1>

<sup>266</sup> European Parliament, Encouraging private investment in the cultural sector (2011), available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/460057/IPOL-CULT\\_ET%282011%29460057\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/460057/IPOL-CULT_ET%282011%29460057_EN.pdf)

<sup>267</sup> Arts Council England, "Private Investment in Culture Survey" (2019), available at: <https://www.artscouncil.org.uk/sites/default/files/download-file/Private%20Investment%20in%20Culture%20Survey%202019.pdf>

<sup>268</sup> Compendium of Cultural Policies and Trends, Custom Report, available at: <https://www.culturalpolicies.net/wpcontent/plugins/pdf/pdfCustom.php?cid=3,5,6,7,8,9,10,11,12,13,15,16,18,19,20,21,23,25,29,30,31,32,36,37,38,39,28&tid=,32&rso=c, p. 7>

<sup>269</sup> *Ibid*, p. 11

<sup>270</sup> *Ibid*, p. 15

table 5 Private sector sponsorship: laws, schemes and targets

Country	Main law which outlines tax deductions to private sponsors of arts and culture	Government schemes to promote business sponsorship in the arts and culture	Main sectors attracting private sponsorship	Estimated value of private sponsorship generated per year
<b>Austria</b>	Sponsors' Ordinance (1987) + regional legislation (tax breaks)	Some Regions (Länder) and cities offer special public contributions / services	Fine arts, performing arts and music	50m EUR (2013) = 1.94% of the overall public cultural funding
<b>Belgium (Flanders)</b>	No legal provision for corporate tax deductions of cult. investments	PPP programme (attractive for commercially profitable projects)	Concerts and festivals of classical music, art exhibitions	89m EUR (2011)
<b>Belgium Francophone</b>	No legal provision for corporate tax deductions of cult. investments	"Promethea" Association (linking the cultural and the economic world, mainly through sponsorship)	Information not available	Information not available
<b>Bulgaria</b>	Corporate Income Tax Act (2002): deductions increased from 5% to 10%.	No	Popular music concerts, literary publications, festivals, theatre performances	Information not available
<b>Croatia</b>	Law on Capital Gains Tax (NN 177/04) and Law on Direct Taxes (NN 177/04): Donations of more than 2% of the annual income need Ministry of Culture certificate	NO	Concerts, festivals, art exhibitions	ca. 4m € (2013 CIV survey)
<b>Czechia</b>	Act No. 586/1992: Business entities can deduct the value of a donation for cultural purposes from their tax base if the value of the donation is at least 2 000 CZK.	NO	Film, contemporary arts	Information not available
<b>Denmark</b>	Act nr. 1389 (2004): max. 25% of the donation deductible	NO	Museums, art and music festivals	Information not available
<b>Estonia</b>	Income Tax Act (1999): companies can deduct up to 3% - individuals up to 5% - from their taxable income for donations to non-profit organisations or 10% of last profits	NO	Private business sector has not yet shown any major interest in sponsoring culture	0.13m EUR (2012)
<b>Finland</b>	Income Tax Act: corporate donations for the arts, science or the preservation of Finnish cultural heritage tax deductible within certain minimum and maximum limits	No policies to encourage business sponsorship	Business sponsorship: visual art (art museums, main exhibitions), music (classical and popular, events) music theatre (operas, musicals).	17.4m EUR (2008)
<b>France</b>	Law on the Development of Sponsorship • 1987 Mécenat Law • 2003	Projects launched by the Ministry of Culture to attract private sponsorship	Music, Museums / Exhibitions, performing arts	According to ADMICAL, around 494m EUR corporate cultural investments through corporate sponsorship
<b>Germany</b>	Directive of the Ministry of Finance (BMF-Sponsoring-Erlass 1998): Series of tax breaks	Incentives mainly on the local government level	Fine arts and music	350m EUR (2010)

<b>Greece</b>	Law 3525/2007 : tax exemptions	Central bureau to certify bona fide causes of cultural sponsoring proposals	Music and arts	Information not available
<b>Hungary</b>	Non-Profit Act (CLVI/1997): Up to 150% of donations to "Public Benefit Organisations" tax-deductible (limit: 20% of a company's tax base); up to 30% of personal taxes can be deducted for charitable purposes	Performing Arts Law (2008) provided extra state support for theatres, symphony orchestras and dance groups	Performing arts and classical music, large festivals, fine arts, film	4,3bn HUF = 16.5m EUR
<b>Ireland</b>	Tax Consolidation Act (1997): Tax breaks to encourage business sponsorship	Arts2Business Programmes; Arts Sponsor of the Year Award	Information not available	3.9m EUR (2010); Deloitte survey: 12% of cult. institutions' turnover from private/corporate sponsorship
<b>Italy</b>	Law 342/2000: deduction of donations and sponsorship	Reshaping and extension of tax reliefs for donations and sponsorship and for investments in the cinema industry as well as through the institute of "concessions"	Cultural heritage, musical and performing arts, exhibitions and cultural events.	391m EUR (2011)
<b>Latvia</b>	Law on Enterprise Income Tax (1995): Tax Rebate of 85% for amounts donated to budget institutions (companies with functions delegated by the Ministry of Culture), as well as to foundations / societies registered in Latvia.	Costs of corporate social infrastructure facilities (education, culture, sports etc.) can be tax-deducted, if service fees are lower than market prices, or free of charge	Information not available	Information not available
<b>Lithuania</b>	Law on Charities and Promotion (1993 amended in 2011): defines administrative procedures of promotion, rights of donors & recipients, tax exemptions, control and accounting of donations and relief	"Maecenas of the Year" award introduced by the Ministry of Culture in 2010.	Theatre, Music, festivals	Information not available
<b>Luxembourg</b>	Article 112, Income Tax Law (L.I.R., 1967): Exemptions for donations to bodies recognized to be of public interest	NO	Public events (festivals), heritage	Information not available
<b>Malta</b>	Corporate financial assistance to recognised non-profit organisations and / or to the Arts Fund eligible for tax deductions (2008)	Information not available	Cultural events, festivals	Information not available
<b>The Netherlands</b>	Gift and Inheritance Tax Act (2012) covers a number of aspects of fiscal law in order to make "giving to culture" fiscally attractive. The act also introduces a new multiplier of 125% which applies to donations made to cultural institutions. Additionally there exist different tax incentive	Cultural Sponsorship Code (1990): Defines rules for sponsors and beneficiaries and sets framework for sponsorship agreements. Cultural Entrepreneurship Programme 2012-2016 (Ministry of	Fine arts and music	287m EUR (2011)

	schemes relevant for the arts, media and heritage	Education, Culture & Science) supports entrepreneurial efforts of cultural organisations and producers (coaching, advice, supervision etc.) to find alternative funding.		
<b>Poland</b>	Income Tax Act (1993, amendments 2003): Deductions of donations up to 10% (legal persons) or 6% (individuals). Law on income tax of individuals (2007) simplifies deduction procedure of 1% of annual income tax for donations to public benefit organisations	Cultural Sponsoring Code (2011): A set of rules for both sides. The code has no legal force, it acts as guidance and its usage is completely voluntary	Cultural institutions, large scale performances, film productions	Information not available
<b>Portugal</b>	Statute of Patronage (Law 74/99): regulates different types of patronage and sponsorship and increases available tax incentives (the highest level for long term contracts). Law 52A/2006 limits fiscal benefits to donations to public & non-profit sectors Law on Sponsorship and Donations • 1999	No	Music, fine arts, large scale events	Information not available
<b>Slovakia</b>	Direct allocation of 2% from the individual income tax rate and corporate income tax to registered NGOs active in the arts and heritage	NO	Concerts, heritage, festivals (film, music...), film production, music & theatre performances, art exhibitions	Information not available
<b>Slovenia</b>	Corporate Income Tax Act: 0.3% deduction for donations to various good causes and also a special deduction for culture of 0.2% of taxable income, with the possibility of averaging over a three year period.	NO	Cultural centres, events and festivals	No information available
<b>Spain</b>	Tax Exemptions Act for Non-profit Organisations and on Sponsorship (2002) : Income tax exemption for donations to non-profit bodies and public administration	NO	Classical music and painting	45.1m EUR
<b>Sweden</b>	No law to encourage private sponsorship of culture and the arts	Culture and Business Forum	ca. 50% of funds go to museums and art galleries, the rest to theatre and dance.	SEK 93bn (2002)

Source: Council of Europe/ERICarts, *Compendium of Cultural Policies and Trends in Europe*, 19th edition, 2017, and national sources. In most cases, figures include contributions from foundations and other private donors. This overview has been updated with the support of Causales (*Annual of Cultural Brands*).

Public incentives to donate often result in more donations for cultural organisations and artists.<sup>271</sup> A number of EU Member States have implemented measures to incentivise individual donations, and some countries offer deductions for individual donors. Some countries (such as Germany, Italy and Greece) have special incentives for inheritance taxes, where the tax on bequests can be reduced up to 60% (Germany). In recent years, **lottery funds** for culture are considered an important source of private investment in culture as their distribution has allowed cultural interventions that would otherwise have not been possible.<sup>272</sup>

**Guarantee schemes** aim to stimulate investment in the cultural and creative sectors by sharing the risks of investors. A guarantee is where a third-party (guarantor) agrees to be directly or collaterally responsible for the obligation of a first party (e.g. reimbursement of a loan to a bank), and is liable to cover all or a specified amount of shortfall or default on the borrower's debt. Regarding its use in the cultural and creative sectors, two categories exist that are relevant: public guarantee schemes for SMEs, and public-private guarantee instruments intended specifically for the creative sectors.

In the context of limited access to finance for the cultural and creative sectors, the Creative Europe programme of the European Commission for the period 2014-2020 earmarked 121 million EUR to a financial mechanism acting as insurance to financial intermediaries (e.g. banks) offering financing to cultural and creative sector initiatives.<sup>273</sup> This **Cultural and Creative Sector Guarantee Facility** has been implemented through the European Investment Fund (EIF) and provides guarantees and counter-guarantees on debt financing to financial intermediaries to improve CCS SMEs' access to finance and will continue within the Invest-EU programme under the next funding period.

Similar mechanisms exist at national level as an example, since 1983, Institut pour le Financement du Cinéma et des Industries Culturelles (IFCIC) in France has facilitated access to bank credit for enterprises in the cultural and creative sectors. IFCIC is owned by the State and a private shareholder, and creates a link between the banking world and cultural and creative enterprises, offering bank guarantees and financial expertise.<sup>274</sup> As of December 31, 2018, outstanding loans guaranteed and granted by the IFCIC amounted to nearly 1 billion EUR for the benefit of 1,000 cultural businesses and associations.<sup>275</sup>

Another instrument available to artists and creative professionals can be **crowdfunding** - a study by the European Commission "Crowdfunding4Culture" has been carried out in 2017. According to this study, European creatives and cultural organisations have launched around 75,000 campaigns since 2013, with half of the CCS crowdfunding campaigns successful in reaching their goal and 247 million EUR raised by the crowd for

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<sup>271</sup> European Parliament, Financing the arts and culture in the European Union (2006), available at: [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2006/375309/IPOL-CULT\\_ET\(2006\)375309\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2006/375309/IPOL-CULT_ET(2006)375309_EN.pdf)

<sup>272</sup> *Ibid.*

<sup>273</sup> Creative Europe, "Cultural and Creative Sector Guarantee Facility - What is it?", available at: [https://ec.europa.eu/programmes/creative-europe/cross-sector/guarantee-facility\\_en](https://ec.europa.eu/programmes/creative-europe/cross-sector/guarantee-facility_en)

<sup>274</sup> IFCIC, Profile, available at: <http://www.ifcic.eu/>

<sup>275</sup> *Ibid.*

CCS activities.<sup>276</sup> Crowdfunding can be an additional instrument, in particular also for audience development and marketing rather than funding artistic activities alone, but cannot replace public funding for artistic productions, as has been repeatedly emphasised by sector representatives.

**Crowdfunding has been used by artists in the context of the COVID-19 crisis** as a means to generate alternative income. Artists and venues have turned to crowdfunding measures to ensure that they can continue to operate during the time where they are unable to work or unable to open their doors. Social media is being used to raise awareness of the plight of self-employed artists during this time. An example of this is the Artist Relief Tree (ART), which has launched a crowdfunding campaign to collect funds to help artists in need.<sup>277</sup>

### **Challenges for artists and creative professionals regarding access to finance**

A key characteristic of those working in the cultural and creative sectors is that in many cases in certain sectors, they are highly dependent on intangible assets such as copyright, licences and royalties. Banks and financial institutions often have difficulty recognising the economic value of these assets, as well as other assets such as talent and creativity.<sup>278</sup> This is problematic, considering that these assets often constitute the main assets.<sup>279</sup> In addition to the difficulty to correctly appraise intangible assets such as intellectual property rights and creative talent, the market demand for products and services in the cultural and creative sectors is often uncertain and filled with risk. For financial institutions that are assessing the risk of lending money according to the ability of the borrower to repay, this is an important barrier to access loans. Additionally, the value generated by intangible assets in the CCS may span over very long periods of time, with the temporal factor increasing the uncertainty of the value, which makes it difficult to value it in current prices.<sup>280</sup> These challenges are successfully addressed by the Creative Europe Guarantee Fund (see above), but more funds are needed to cover the existing needs and the geographical coverage would also need to be further increased.

It is often claimed that artists and cultural and creative professionals would benefit from skills development actions to increase their business skills. On the other hand, as described in the OMC Report "Innovation and Entrepreneurship in CCS", the amount of time available for artists and creative professionals is limited, and they cannot be expected to take care of all aspects required in the context of their business, from artistic creation to marketing, at the same time.

Entrepreneurs in the cultural and creative sectors are often more content-driven than commercially oriented, and often have a limited understanding of funding sources. Additionally, they often **lack relevant business skills to be able to develop business plans or cash flow projections**, which are central elements in the

<sup>276</sup> De VALdere, I.; Zego, K.; "Crowdfunding - Reshaping the crowd's engagement in culture" (2017), available at: <https://europa.eu/capacity4dev/crowdfunding/documents/new-report-crowdfunding-reshaping-crowds-engagement-culture>

<sup>277</sup> Operawire, Artist Relief Tree Enters Phase 2 of Fundraiser (2020), available at: <https://operawire.com/artist-relief-tree-enters-phase-2-of-fundraiser/>

<sup>278</sup> European Commission, "Survey on access to finance for cultural and creative sectors – Evaluate the financial gap of different cultural and creative sectors to support the impact assessment of the creative Europe programme" (2013), available at: [https://ec.europa.eu/assets/eac/culture/library/studies/access-finance\\_en.pdf](https://ec.europa.eu/assets/eac/culture/library/studies/access-finance_en.pdf)

<sup>279</sup> KEA European Affairs, "Promoting investment in the cultural and creative sector: financing needs, trends and opportunities" (2010), available at: [http://www.keanet.eu/wp-content/uploads/access-to-finance-study\\_final-report\\_kea-june2010.pdf](http://www.keanet.eu/wp-content/uploads/access-to-finance-study_final-report_kea-june2010.pdf)

<sup>280</sup> European Commission, "Survey on access to finance for cultural and creative sectors – Evaluate the financial gap of different cultural and creative sectors to support the impact assessment of the creative Europe programme" (2013), available at: [https://ec.europa.eu/assets/eac/culture/library/studies/access-finance\\_en.pdf](https://ec.europa.eu/assets/eac/culture/library/studies/access-finance_en.pdf)

evaluation of loan requests.<sup>281</sup> Often, CCS entrepreneurs find it difficult to understand the criteria and conditions upon which a bank loan is granted. In some cases there is also a great dependence on public investment schemes. Some subsectors, such as heritage, television, museums and performing arts, are heavily reliant on public funding schemes as a source of income.<sup>282</sup> However, too singular dependence on any particular type of finance can put these types of organisations of professionals in a risky financial position. Public investments are also not a very reliable source of income, and a change in public policy or budget cuts could mean losing out on income.

**Specific market conditions also have an impact on access to finance.** Within Europe there are a number of cultural contexts, resulting in a culturally and linguistically fragmented market. The fragmentation can decrease market access opportunities for businesses in the sector, making it potentially to sell cultural products outside of a particular market. This potentially discourages financial intermediaries to build up specific market intelligence in the cultural and creative sectors, as the market is considered to be too small. In addition, the **digital shift** provides opportunities in regards to diversified channels through which it can reach the public, but also presents a number of challenges (such as the "value gap" and fair remuneration).

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<sup>281</sup> Burrows, H.; Ussher, K.; "Risky business" (2011) (Demos), available at: [https://www.demos.co.uk/files/Risky\\_business\\_-\\_web.pdf?1320841913](https://www.demos.co.uk/files/Risky_business_-_web.pdf?1320841913)

<sup>282</sup> KEA European Affairs, "Promoting investment in the cultural and creative sector: financing needs, trends and opportunities" (2010), available at: [http://www.keanet.eu/wp-content/uploads/access-to-finance-study\\_final-report\\_kea-june2010.pdf](http://www.keanet.eu/wp-content/uploads/access-to-finance-study_final-report_kea-june2010.pdf)

## 6 Career development of artists and creative professionals

This chapter will provide an overview of the career prospects, development and challenges facing artists and professionals in the cultural and creative sectors. As described in the **OMC report on Innovation and Entrepreneurship in CCS**, careers in the cultural and creative sectors may happen by chance and are often beyond rational planning. Some artists have a steep career path, whereas for most artists this remains a remote dream and they struggle for it most of their life. In addition, as described by the OMC report, there is “low consideration for creative entrepreneurship: The level of entrepreneurship and its nature vary widely between Member States, which means that there are diverse reasons for low enthusiasm in attaining an entrepreneurial career. In countries with high unemployment rates, and in particular for young people, being ‘self-employed’ or an ‘entrepreneur’ is often not a matter of choice and creators often live under precarious conditions.”<sup>283</sup>

Another major difference with the traditional economy is that the main focus for many CCS professionals is often on the intrinsic value of culture or creative core, and not so much on economic growth or revenues. The main focus of the business is often on the cultural or creative core and not so much on economic growth or economic added value. The artist’s “career choice” therefore is very often centred on the intrinsic value of culture and creation and economic sacrifices and uncertainty is part of this choice of life. In addition, artists often also work towards social inclusion and societal values including freedom of expression, again with very little regards to earning a living. This is recognised by public cultural policies and subsidies for the arts, at least in times of political tolerance and relative affluence of societies. Cultural and creative entrepreneurship is thus not a choice for everyone.

Artists and cultural professionals often have to transition in their careers. Reasons can be linked to artists reaching the limits of their physical capacities (dancers retire rather young, between 30 and 40 normally), a change in personal situation that requires a different lifestyle (e.g. limitations in travelling for work because of the start of a family), or other.<sup>284</sup> Artists and professionals often transition within their sub-sector, for example from dancer to choreographer or from musician to music teacher. Support for this transition is crucial in order to keep people active in the sector.

The contemporary dance sector seems to be especially aware of this, given the fact that there’s even an International Organization for the Transition of Professional Dancers (IOTPD).<sup>285</sup> Mid-career sectorial drop out is assumed to be pretty high in the sector, and interviews show that artists and professionals that want to make a transition within the sector often are not capable of doing so due to lack of knowledge or (financial) support. The IOTPD tries to support the transition from dance to a new career by raising awareness worldwide, organising opportunities to share experiences, find information and support and by initiating and encouraging research about the role of a dancer in society.

<sup>283</sup> EU OMC report, ‘The role of Public Policies in Developing Entrepreneurial and Innovation Potential of the Cultural and Creative Sectors’ (2018), <https://op.europa.eu/en/publication-detail/-/publication/5d33c8a7-2e56-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-68820857>, page 36

<sup>284</sup> The International Network for Contemporary Performing Arts (IETM), “Life off-stage - Survival guide for creative arts professionals” (2017), available at: [https://www.ietm.org/en/system/files/publications/survivalguide\\_ietm\\_nov2017\\_1.pdf](https://www.ietm.org/en/system/files/publications/survivalguide_ietm_nov2017_1.pdf)

<sup>285</sup> International Organization for the Transition of Professional Dancers, available at: <http://www.iotpd.org>

Stakeholders emphasise that more attention should be addressed to the provision of (continuous) vocational training to support artists and culture and creative professionals to cope with the required career change. In the audiovisual media sector, film directors for example need training to cope with the digital technological development and/or to learn how to organise work more efficiently. According to stakeholders, American studios are very good at training employees to be more efficient but in Europe the visual artistic part of the audiovisual media sector seems to be little understood and there is a gap in the need for training. Another aspect is the fact that producers need to be able to change format easily – from TV series to documentaries and film, and vice-versa.

From the impression collected from stakeholders, it seems that governments focus vocational training on retraining to other professions instead of on another career in the sector the artist or cultural and creative professional is working in. Often the income is too low to afford training (for example, an average female filmmaker earns EUR 12,000 a year).

Artists and cultural professionals often act as one-person enterprises or decide to start their own enterprise. The usual terms of entrepreneurship which are used in more business driven sectors, like “the pursuit of profit and commercial gain”<sup>286</sup> or “a person who sets up a business or businesses, taking on financial risks in the hope of profit”<sup>287</sup> often have little in common with entrepreneurs in the cultural and creative sector, who pursues other goals than mere financial ones (for example linked to the importance of artistic or personal independence, personal growth, artistic development or societal impact).

Art schools and other institutions that educate artists and cultural and creative professionals more and more provide courses and training schemes on entrepreneurship. These courses over the years have become integrated in a number of curricula, and for most formally trained artists and professionals form the basis for their entrepreneurial knowledge and a starting point for the development of their career as an entrepreneur. However, once these artists and professionals leave the supporting structures of a school or institution, they are pretty much on their own. The same goes for self-taught artists and professionals, who never had the supporting structures of a formal education.

An UNESCO study shows the extent to which artists are actually often absent from the various cultural policies or programmes that are referred to, covering cultural expressions, arts institutions, cultural entrepreneurship or cultural and creative industries.<sup>288</sup> It is a collective responsibility of all those involved in the sector to take care of the people in it and improve the agency of the entrepreneurs in order to build more sustainable careers.

Investments should therefore be made in centralised, sector specific training, education and support programmes that are easily and equally accessible for those working in the sector. These programmes should focus on the complete lifespan of the careers. Where they now mostly tend to focus on young people or newcomers on the labour market, training, education and support has to become a lifelong possibility for people in every

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<sup>286</sup> Bridgstock, R.; Not a dirty word: Arts entrepreneurship and higher education” (2012), available at: [https://www.researchgate.net/publication/257367377\\_Not\\_a\\_dirty\\_word\\_Arts\\_entrepreneurship\\_and\\_higher\\_education](https://www.researchgate.net/publication/257367377_Not_a_dirty_word_Arts_entrepreneurship_and_higher_education)

<sup>287</sup> *Ibid.*

<sup>288</sup> UNESCO, Reshaping cultural policies: advancing creativity for development (2018), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000260592>

stage in their career. As careers do not develop in a linear way, training, education and support would have to follow the same path.

For example, the Social Fund for Performing Arts in Flanders keeps aside a certain amount of money in order to allow freelancers to follow certain business courses at a lower prices and slots are kept for the freelancers to take the course. Within UNI-MEI a project is carried out in which live performance and audiovisual sectors are working together to bring together actors and different stakeholders in order to exchange good practices. A lot of good practices have been exchanged in relation to, for example, industry initiatives, corporations' initiative which all allowed for a sustainable model because the industry relies on highly qualified freelance professionals and there are very good models in the audiovisual sector (e.g. the social partnership investment in France). As a result of this project national counsels began communicating and cooperating. Stakeholders suggest that the Commission should support cooperation between skills councils in EU countries where they exist, and exchange of best practices.

## 7 Artistic freedom and expression

UNESCO defines artistic freedom as the 'freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or the pressures of non-state actors. It includes the right of all citizens to have access to these works and is essential for the wellbeing of societies.'<sup>289</sup> In addition, as previously stated, the **UNESCO Recommendation concerning the Status of the Artists, 1980**<sup>290</sup> highlights the importance of artists to be regarded as cultural workers and benefit from all advantages available. In addition to effective social security protection, the recommendation urges public authorities to take actions so as to compensate alarming situations that artists might deal with, supporting also the fundamental freedom of creation and put all the appropriate safeguards in order to protect them as employees.

**Artistic expression is a key component of European culture. Artistic freedom is also an important aspect in relation to the conditions in which artists work**, and it is important that this freedom is protected and promoted. Allowing artists to express themselves freely means that audiences are able to enjoy diverse cultural expressions. Artistic expression plays a crucial role in addressing important social issues, and has a key role in ensuring vibrant and functioning democracies.

**Artistic freedom, furthermore falls under the broad scope of freedom of expression which is a universal human right**, which is included in many international human rights instruments such as the International Covenant on Civil and Political Right (Article 19), the International Covenant on Economic, Social, and Cultural Rights (art. 15(3)). It is also protected under the 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions, to which the EU is a party.<sup>291</sup> The former UN Special Rapporteur in the field of cultural rights, Farida Shaheed, notes that restrictions to artistic freedom are bad not only for the artists themselves, but also for 'the development of vibrant cultures and the functioning of democratic society'.<sup>292</sup> She adds that restricting artistic freedom is not only bad for the creative professionals and artists but also for the general public and their right to form their own opinion of expressions of creativity.<sup>293</sup>

### **Relevant international, European and EU legal framework**

The following legal instruments do not specifically mention the freedom of artistic expression, however they clearly define the freedom of expression, which includes freedom to participate in cultural life and freedom of thought often expressed by artistic creations.<sup>294</sup> Freedom of Expression is defined in Article 11 of the Charter of Fundamental Rights of the European Union<sup>295</sup> which states:

<sup>289</sup> UNESCO, Artistic Freedom (2019), available at :

[https://en.unesco.org/creativity/sites/creativity/files/artistic\\_freedom\\_pdf\\_web.pdf](https://en.unesco.org/creativity/sites/creativity/files/artistic_freedom_pdf_web.pdf)

<sup>290</sup> UNESCO, Recommendation concerning the Status of the Artists (1980), a summary is available at:

<https://culturalrights.net/en/documentos.php?c=18&p=194>

<sup>291</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6\\_-l2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6_-l2Sm2kd-XoRN17w5CaB0)

<sup>292</sup> *Ibid.*

<sup>293</sup> *Ibid.*

<sup>294</sup> United Nations, Digital Library, "Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed: the right to freedom of artistic expression and creativity"(2013), available at:

<https://digitallibrary.un.org/record/755488?ln=en>

<sup>295</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01), available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

- Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers;
- The freedom and pluralism of the media shall be respected.<sup>296</sup>

Article 13 of the Charter on 'Freedom of the Arts and Sciences' goes on to state:

- The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

In 2014, **EU Human Rights Guidelines on Freedom of Expression Online and Offline** were adopted by the Council of the European Union.<sup>297</sup> The Guidelines first explain the international human rights standards on freedom of expression and provide guidance to the EU Institutions and Member States for their work in third countries. Furthermore, they provide practical advice on how to help combat potential violations of freedom of expression and promote such right, as well as describing specific and rare circumstances in which such right can be limited.<sup>298</sup>

**Article 10 of the European Convention on Human Rights (ECHR) of the Council of Europe** guarantees the right to freedom of expression, including, the "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".<sup>299</sup> Moreover, Freedom of Expression is enshrined in Article 27 of the Universal Declaration of Human Rights which states that 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'.<sup>300</sup> **The International Covenant on Civil and Political Rights (ICCPR) of the United Nations**, in Article 19, stipulates the right to freedom of opinion and expression, including artistic expression. The only instance in which such expression can be limited is addressed in Article 20 of the ICCPR which states that "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."<sup>301</sup>

With these provisions, it is also important to consider the principles of necessity and proportionality. International law stipulates that restrictions can only be justified if it is in accordance with a law, serves a legitimate aim and is necessary for the protection or promotion of the legitimate aim, according to Article 19(3) of ICCPR. These requirements were created to ensure that restrictions introduced by the government on freedom of expression are legally justified and can also be extended to assess whether restrictions imposed on artists and their right to artistic freedom are lawful. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. Therefore, when

<sup>296</sup> *Ibid*, Art. 11

<sup>297</sup> Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014), available at: [https://eeas.europa.eu/sites/eeas/files/eu\\_human\\_rights\\_guidelines\\_on\\_freedom\\_of\\_expression\\_online\\_and\\_offline\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf)

<sup>298</sup> *Ibid*.

<sup>299</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWhbHb6\\_-I2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWhbHb6_-I2Sm2kd-XoRN17w5CaB0)

<sup>300</sup> United Nations, Universal Declaration of Human Rights (1948), available at: <https://www.un.org/en/universal-declaration-human-rights/>

<sup>301</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWhbHb6\\_-I2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWhbHb6_-I2Sm2kd-XoRN17w5CaB0)

assessing the possible impact on freedom of expression, a restriction must also be proportionate in relation to the alleged benefits of such a restriction. Therefore, where the harm to freedom of expression outweighs the benefits, the restriction cannot be justified.

Beyond international and EU provisions, also EU **Member States national constitutional provisions enshrine the freedom of speech or expression**. Governments and courts need to apply the principles of necessity and proportionality consistently when addressing artistic freedom and national constitutions have a bearing when international courts decide on related matters.

**With these principles in mind, public morality can be used as a justification for the restrictions of artistic expression.** For instance, Article 21 of the Italian Constitution states that although everyone has the right to freely express their thoughts in speech, writing, or any other form of communication, whilst also noting that publications, performances, and other exhibits offensive to public morality shall be prohibited.

However, restrictions on the basis of criteria such as morality can often be perceived as arbitrary, and can result in the censorship of artworks, and the persecution, imprisonment of artists as well as threats to artists by governments for creating art that is subjectively considered a danger to “public morality”.

### ***The increase of restrictions to artistic freedom in Europe***

In January 2020, Freemuse, an independent international organisation which advocates for freedom of artistic expression, published a study that examined the instances of restrictions to artistic freedom in the European region. Freemuse examined 380 cases of violations of artistic freedom in 28 European countries, including 17 EU Member States, from January 2018 to October 2019.<sup>302</sup> Analysis of these cases showed that government authorities were the main violators of artistic freedom (72% of documented violations). The main grounds for violations by government authorities included artists opposing governments’ policies or practices (40%), conflict-related violations (16%) and on grounds of anti-terrorism (12%).

This study pointed out that although historically European governments and rights organisations have largely focused their scope on restrictions to artistic expression taking place outside of Europe, there is now evidence of use of restrictions on artistic freedom in some European countries. This can represent a danger for the region’s cultural diversity.

Additional restrictions can be placed on fundamental rights and freedom of expression in times of uncertainty and securitisation, most recently also through COVID-19 (as voiced by Freemuse)<sup>303</sup> or through anti-terror legislation.

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<sup>302</sup> *Ibid.*

<sup>303</sup> Freemuse, Hungary must not misuse the COVID-19 crisis to erode democratic values (2020), available at: <https://freemuse.org/news/hungary-must-not-misuse-the-covid-19-crisis-to-erode-democratic-values-freemuse/>

### **The main restrictions to artistic freedom in Europe**

The 2020 Freemuse study<sup>304</sup> identified a number of key ways in which the **freedom of expression of artists is being challenged in Europe, including in EU countries**. There were cases of violations of artists' rights across Europe as a result of their legitimate expressions of political dissent, their vocal opposition to governments or royal families, their articulation and representation of religious doctrines and symbols, allegations that their expression insulted officials or state symbols and for artistically expressing support for LGBTI rights. Deliberate attempts to exercise control over cultural and arts institutions have ensured that only those artworks found to suit the mainstream political narrative have been exhibited.

The sections below provide insight into the various challenges existing in Europe with regards to artistic freedom.

### **Anti-terrorism legislation used to silence dissent**

The most worrying challenge to artistic freedom is the use of **anti-terrorism laws to silence artists**.<sup>305</sup> Recent attack and fear of terrorism in Europe resulted in most governments implementing legislation and measures aimed at increasing public security.<sup>306</sup> Such measures are, however, sometimes used as a pretext of governments to legitimise measures to further their own agenda, posing restrictions on artistic freedom. The particular ability of right-wing authoritarian governments to infiltrate the cultural and creative sectors presents a particular danger for many artists in these countries and the risk of being blacklisted or arrested is very serious.<sup>307</sup>

### **Religious values overriding artistic freedom**

In some European countries, **blasphemy laws prohibit insult or hurting the religious feelings of others**.<sup>308</sup> These laws have often been interpreted in a manner by the courts which inevitably limits the scope of artistic expression, confining and restricting the manner in which artists can touch on or engage with religious themes. Religious authorities have been shown to interfere with artists who they perceive as being against their teachings. It is also very common to find instances of vandalism of artwork which religious authorities see as a threat to their doctrine. Both the right to freedom of expression and the right to freedom of religion are recognised within International Treaties but that does not mean one of the rights is prevailing and can limit the other freedom.

The Council of Europe's advisory body on constitutional matters, the European Commission for Democracy through Law (better known as the Venice Commission), submitted a report on blasphemy legislation and concluded that the offence should be abolished, and religious insults should not be criminalised unless they contain an element of incitement to hatred. A growing number of nationalistic parties and rise of secular fundamentalism in Europe poses a threat to democracy. Furthermore, art which

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<sup>304</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3lzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6\\_-I2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3lzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6_-I2Sm2kd-XoRN17w5CaB0)

<sup>305</sup> Stakeholder interview.

<sup>306</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3lzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6\\_-I2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3lzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6_-I2Sm2kd-XoRN17w5CaB0)

<sup>307</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020.

<sup>308</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3lzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6\\_-I2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3lzwLiPFisCuVZYDjvb8pNI1Ga1HXWbhHb6_-I2Sm2kd-XoRN17w5CaB0)

contains nudity is persistently being censored at the initiative of religious authorities who deem such art to be offensive.<sup>309</sup>

### **Insult to the state and its symbols**

As shown from the figures mentioned above, when there is obstruction of artistic freedom, **governments** are mostly responsible. This is done through a variety of different methods including implementing vague laws that allow for wide interpretation, declaring states of emergencies that suspend laws, or by simply ignoring their obligations to international human rights treaties they are party to.<sup>310</sup> Artists often do not express what they really want to, but what those providing funding want to see. Therefore, it is possible that artists that do not adapt to and engage with the political propaganda are less likely to receive access to funding.

Additionally, **a number of states across Europe have laws that, broadly speaking, make it an offense to insult the state including its symbols and emblems**, (such as flags and national anthems, for example), public institutions or officials, and even in some cases foreign heads of states. Additionally, some EU Member States have 'Lèse majesté' laws that are applied in monarchist states to protect their royal families from insult. It is often the case that these laws remain unused, although there are recent examples within Europe where they are still being used to restrict artistic expression.

### **Undue government influence on museums and arts institutions**

A number of countries, predominantly the ones with nationalist or far-right governments are **increasingly trying to control national museums and cultural institutions**. Most commonly, the demand is to project nationalist rhetoric and disapproval is made towards objections running against such ideologies. In some instances, the pressure has been direct in terms of dismissals of museum directors or withdrawal of funding. The UN Special Rapporteur in the field of human rights has noted that right-wing nationalism has a "deleterious effect on the enjoyment of cultural rights."<sup>311</sup>

### **LGBTI artists and artworks targeted**

The **narratives emphasising the role of family values are mostly felt by the LGBTI communities, who have historically suffered from experiences of inequality and discrimination from state and non-state actors**.<sup>312</sup> The main problem is the introduction of laws in some countries that prohibit the expressions of support towards the LGBTI community and which have been used as a tool of placing restrictions on artistic freedom of expression. The reasoning that governments provide behind such laws is that they are aimed at protecting minors from "inappropriate" content. Some countries also tried to impose laws prohibiting promotions of non-traditional relationships.

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<sup>309</sup> *Ibid.*

<sup>310</sup> KEA European Affairs, "Research for CULT Committee – Mobility of artists and culture professionals: towards a European policy framework" (2018), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/617500/IPOL\\_STU\(2018\)617500\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/617500/IPOL_STU(2018)617500_EN.pdf)

<sup>311</sup> KEA European Affairs, "Research for CULT Committee – Mobility of artists and culture professionals: towards a European policy framework" (2018), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/617500/IPOL\\_STU\(2018\)617500\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/617500/IPOL_STU(2018)617500_EN.pdf)

<sup>312</sup> Freemuse, "Security, Creativity, Tolerance and their co-existence: The new European agenda on freedom of artistic expression" (2020), available at: [https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWhbHb6\\_-l2Sm2kd-XoRN17w5CaB0](https://freemuse.org/news/the-security-creativity-tolerance-and-their-co-existence-the-new-european-agenda-on-freedom-of-artistic-expression/?fbclid=IwAR3IzwLiPFisCuVZYDjvb8pNI1Ga1HXWhbHb6_-l2Sm2kd-XoRN17w5CaB0)

### Challenges for women and minorities

The **gender-based silencing of women artists remains one of the big challenges for the freedom of artistic expression**.<sup>313</sup> Women are often prohibited from certain expressions in order to uphold traditional or religious norms, and are often labelled indecent in cases where these norms are challenged. Many women artists also suffer negative repercussions when they use their creative skills to express their opinions on issues such as body positivity and sexuality or to challenge gender inequalities.

Additionally, it is sometimes the case that artists from minority groups who wish to express their ideology which opposes the government are persecuted or even arrested as a result of their art. There have been examples of certain cases in Europe where in order for certain artists to share their content on the video platform YouTube, this content needs to be firstly approved by the police; this is disproportionality affecting members of minority communities.

### Impact on Artists

Artistic freedom is a challenge of a global nature. The artists' right of expression is being violated by censorship (by governments, religious authorities and other groups), threats, imprisonments, physical treats, etc.<sup>314</sup> When they take place, these **threats to such a fundamental human right have the effect of diminishing and weakening cultural expressions, while having a negative impact on individual wellbeing and general quality of life**.<sup>315</sup> Despite the measures implemented to support and uphold human rights such as the freedom of expression, as a whole, **artistic freedom has received little specific support when compared with media freedom**. Nevertheless, in some countries, the European cultural and creative sector is likely to continue being challenged through political pressure, and attempts by the authorities (including religious authorities) to challenge and censor the work of artists who offer alternative views.

The **development of online platforms has exacerbated the situation** and also presented new challenges. There is evidence that women and LGBTI artists in particular are vulnerable to attack and restrictions. The impact furthermore increases where there is intersectionality.<sup>316</sup>

While most artists depend on public or semi-public support to survive, one of the more imminent threats to them is that of becoming mere advertisers of corporate or political interests. **Self-censorship is occurring, and it is possible that artists are working in certain ways in order to keep access to funding and are able to exhibit their work in public**. Institutions, such as museums, galleries and theatres, are also self-censoring, and there are also examples of this taking place within Europe. Self-censorship is also increasingly apparent in the context of social media platforms, where rules on content management are leading to self-censorship

The precarious situation in which artists work may affect both the **diversity amongst artists and the artists' ability and willingness to take risks and fully use their freedom of expression**. Such trends are likely to preserve and even increase in some

<sup>313</sup> Freemuse, "Creativity Wronged: How Women's Right to Artistic Freedom is Denied and Marginalised" (2018), available at: <https://freemuse.org/resources/item/creativity-wronged-how-womens-right-to-artistic-freedom-is-denied-and-marginalised/>

<sup>314</sup> UNESCO, Artistic Freedom (2019), available at : [https://en.unesco.org/creativity/sites/creativity/files/artistic\\_freedom\\_pdf\\_web.pdf](https://en.unesco.org/creativity/sites/creativity/files/artistic_freedom_pdf_web.pdf)

<sup>315</sup> *Ibid.*

<sup>316</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020 and interviews with stakeholders.

parts of Europe.<sup>317</sup> One potential means to address this is through the 'arm's length principle' which establishes the distance at which the State should remain in relation to financial or legal support for artists or arts organisations. Given the importance of the contribution artists make to social debates, ensuring freedom of expression and creativity is necessary for the development of vibrant cultures and the functioning of democratic societies.<sup>318</sup>

Additionally, it is important to note that **the current socio-economic system in which artists function today (including the other aspects that have been discussed within this report, such as taxation, social security, types of employment, nature of income, etc.) is the source of huge impediment to a free expression in the artistic sector.** Being caught up in various "survival solutions", artists, especially those working as freelancers, simply do not have time to freely express what they want and potentially can.<sup>319</sup> Artists are dependent on financiers, whether they are public funds, broadcasters, streaming platforms, galleries, publishers or private investors or philanthropists, and it is very difficult to criticise those who are controlling the funds due to the risk that the funding will be removed. The combination of these issues can lead to restrictions to artistic freedom.

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<sup>317</sup> KEA European Affairs, "Research for CULT Committee – Culture and creative sectors in the European Union – Key future developments, challenges and opportunities" (2019), available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/629203/IPOL\\_STU\(2019\)629203\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/629203/IPOL_STU(2019)629203_EN.pdf)

<sup>318</sup> UNESCO, "Culture & working conditions for artists: implementing the 1980 Recommendation concerning the Status of the Artist" (2019), available at: <https://unesdoc.unesco.org/ark:/48223/pf0000371790>

<sup>319</sup> Stakeholders' workshop Culture Action Europe (CAE), 28 February 2020 and interviews with stakeholders.

## 8 Measures related to countering the effects of COVID-19

The COVID-19 pandemic is shown to have a great impact on the whole of the CCS. In response, the European Union and Member States have and are implementing a number of measures to mitigate the social and economic impact. The CCS are one of the hardest hit sectors. Museums, theatres, concert halls and other live venues are closed, exhibitions, events and festivals are cancelled, and as a result, in particular self-employed artists and cultural organisations immediately lost their incomes, leading to both economic and social uncertainty. Initial Commission estimates of May 2020 foresaw a drop in turnover of more than 50% in 2020, without taking into account further lock-down periods<sup>320</sup>. The European Union has developed a number of measures in order to address the COVID-19 pandemic<sup>321</sup>. The European Union adopted 37 billion EUR for the **Corona Response Investment Initiative (CRII)**. Through the Initiative (CRII), EU Structural Funds are used to flexibly respond to the rapidly emerging needs in the most exposed sectors, such as healthcare, SMEs and labour markets, and help the most affected areas and their citizens.

At the beginning of April 2020, the European Commission also proposed a new instrument for temporary **Support to mitigate Unemployment Risks in an Emergency (SURE)** amounting to 200 billion EUR. The SURE instrument will be available to Member States that need to mobilise significant financial means to fight negative economic and social consequences of the coronavirus outbreak on their territory. It will provide financial assistance to Member States to address sudden increases in public expenditure for the preservation of employment. Specifically, the SURE instrument will support short-time work schemes and similar measures to help Member States protect jobs and thus employees and self-employed against the risk of unemployment and loss of income.

In addition, the Commission also helped to set up a platform for the cultural and creative sectors by the cultural and creative sectors, Creatives Unite<sup>322</sup>. It offers a common space for all cultural and creative sectors in Europe and beyond to share initiatives and actions in response to the coronavirus crisis. It gives access in one single space to a multitude of existing resources and numerous relevant networks and organisations and also offers a curated space to co-create and upload contributions towards finding solutions together. Pertinent information can be found on this platform also on artists' working conditions, made available in particular also by Europe-wide networks such as Culture Action Europe, IETM, ECF, PEARLE, On the Move, Freemuse, ECHN and many others.

The European Commission also published **specific calls in the field of culture** in times of COVID: 100m EUR have been allocated to an extraordinary ERASMUS call, Partnerships for Creativity, linking skills development and inclusion through creativity and the arts with the formal, informal and non-formal educational sectors. Special measures and calls have also been taken under the Creative Europe programme. Other relevant COVID-related measures taken by the European Commission include the temporary framework for state aid measures, a relief fund for small and medium-sized enterprises, a European guarantee fund, a platform for EU Member States to allow

<sup>320</sup> European Commission, Identifying Europe's recovery needs - COM(2020)456), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0098>

<sup>321</sup> European Commission, Cohesion policy action against coronavirus (2020), available at: [https://ec.europa.eu/regional\\_policy/en/newsroom/coronavirus-response/](https://ec.europa.eu/regional_policy/en/newsroom/coronavirus-response/)

<sup>322</sup> See <http://creativesunite.eu/>

culture ministries to exchange good practices, different measures relating to flexible and additional funding arrangements and the like.<sup>323</sup>

All Member States are **implementing some form of support measures** aimed at enterprises as well as towards the self-employed. Most measures specifically focus on the sectors hit hardest, which includes the CCS sectors:

- Most countries distinguish specific measures for micro and small enterprises to keep the money flow in the business sector intact, and avoid bankruptcy and/or large dismissals.
- Some Member States introduce specific measures for self-employed use of the welfare system so that some income is available. Ideally this type of support should be available in all Member States.
- In most Member States the support measure will be valid for 3 months after announcement (first were announced in March 2020), but if needed the support needs to be prolonged for a longer period, and probably longer than the extra 3 months that is already possible in some countries.

**A good overview of countries' COVID responses with respect to cultural policies** can be found in the **Compendium of Cultural Policies and Trends**, which features 24 country reports. It is also curating a collection of online cultural initiatives per specific sector, accessible through the COVID-19 section.<sup>324</sup>

Following the initial outbreak of COVID-19, some **EU Member States adopted specific measures aiming to support those working in the cultural and creative sector financially through the COVID-19 crisis**. This section presents some examples of measures taken by Member States since mid-March that are for the benefit of the cultural and creative sectors.

In Finland for example, the Ministries of Culture, Education and Culture and the Finnish Centre for Art Promotion (Taike) agreed to jointly provide rapid support for arts and cultural professionals experiencing distress as a result of the COVID-19 crisis. The measures included EUR 1.5 million being distributed to artists in April. In addition, the Kone Foundation is offering a three-month work grant for artist's residencies which will take place in artists' homes. The size of the grant depends on the career situation of artists – EUR 2,400 for emerging artists, EUR 2,800 for mid-career artists and EUR 3,500 for experienced artists.<sup>325</sup>

The Portuguese Ministry of Culture announced an emergency support line of EUR 1 million for the financial support of artists and vulnerable entities.<sup>326</sup> This emergency support line is financed through the Cultural Promotion Fund and aims at supporting artistic creation in the performing arts, visual arts and disciplinary crossing of all entities that do not receive any financial support. In addition, the Gulbenkian Foundation has also launched a EUR 5 million emergency fund aiming to strengthen the resilience of society across the statutory fields of intervention of the Foundation.<sup>327</sup> The support of this fund is spread across five areas, one of which is culture. Emergency support will be

<sup>323</sup> More information can be found here: <https://ec.europa.eu/culture/resources/coronavirus-response> and also here: <https://creativesunite.eu/eu-response/> (information is continuously updated).

<sup>324</sup> For more information, see: <https://www.culturalpolicies.net/covid-19/>

<sup>325</sup> Jackie Bailey, "Government responses to the impact of COVID-19 on the arts and creative industries" (2020), available at: <https://www.bygroup.com/blog/2020/3/21/government-arts-responses-to-covid-19?fbclid=IwAR2UyFZax-Om7Ejhj92cdf115Jf75wYWUOEIK0oAMWQDiMdu9cP5CRN7Do>

<sup>326</sup> Cultura Portugal, "Cultura cria linha de apoio de emergência de um milhão de euros" (2020), available at: <https://www.culturacovid19.gov.pt/cultura-cria-linha-de-apoio-de-emergencia-de-um-milhao-de-euros/>

<sup>327</sup> Calouste Gulbenkian Foundation, "Emergency Fund Covid-19" (2020), available at: <https://gulbenkian.pt/en/emergency-fund-covid-19/>

provided to artists or artistic production companies which have had their projects cancelled.

In Greece, on April 2nd, the Ministry of Culture and Sports announced a EUR 15 million support plan to stimulate and enhance the resilience of contemporary culture, creators and professionals. From this amount, EUR 5 million came from the 2020 Ministry's budget, while the extra EUR 10 million came from the Ministry of Economy. Those measures come in parallel to horizontal measures announced by the government, which in some cases also touch on the cultural and creative sectors.<sup>328</sup>

On 17 March, Italy adopted the emergency legislation entitled 'Cura Italia'. Within this aid program, EUR 3 billion are allocated for the support and safeguard of the period of inactivity of professionals, freelancers and self-employed.<sup>329</sup> As part of the measures within the emergency package, the following are directly relevant to artists:

- Extension of unemployment benefits to cultural workers and non-profit organisations (article 22);
- EUR 600 allowance (for the month of March) for freelancers in the performing arts sector for a maximum of EUR 48,6 million in 2020 (according to certain conditions laid down in article 38);
- Suspension of social security payments, welfare contributions and other levies and taxes (including VAT) for museums, theatres, concert venues and other cultural organisations (articles 61 and article 62);
- Vouchers for reimbursement of tickets already sold (e.g. cinema, museums, theatres) valid for 1 year (article 88);
- Establishment of two funds to support the audiovisual, cinema and performing arts sectors with overall budget of EUR 130 million in 2020 (EUR 80 million in current account and EUR 50 million capital account as detailed in article 89).

The Government of Malta is attempting to mitigate the economic impact of the crisis by implementing a programme called COVID Wage Supplement, which provides a basic wage supplement to people active in sectors deemed to have suffered drastically.<sup>330</sup> On March 24th, the creative arts (including performing and visual arts) were identified as one such sector which suffered drastically as a result of COVID-19 restrictions. Through this programme, people working in the creative arts – whether full-time employees or self-employed/freelance – are entitled to a monthly supplement of EUR 800. Part-time employees within the creative arts sector are entitled to a monthly supplement of EUR 500.

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<sup>328</sup> <https://www.culturalpolicies.net/covid-19/greece/>

<sup>329</sup> The Global Fashion Business Journal, "Employment, factories and freelance protection: France and Italy's take measures against coronavirus" (2020), available at: <https://www.themds.com/markets/employment-factories-and-freelance-protection-france-and-italys-measures-against-coronavirus.html>

<sup>330</sup> For country reports, see <https://www.culturalpolicies.net/covid-19/ma/>

## 9 Conclusions and recommendations

### Concluding remarks

At the time of writing, this study on **the working conditions of artists and creative professionals** have become more pertinent and urgent than ever, even more so than during the 2008 economic crisis, of which many artists and creative professionals are still suffering the consequences. The current context of the COVID-19 pandemic has demonstrated once more the vulnerability of artists and cultural and creative professionals. The difficulties in staging large gatherings of people due to social distancing rules (with a view to containing the spread of the virus) has meant that live performance venues (such as theatres, concert halls, music bars, dance houses), as well as libraries, cinemas, creative hubs, cultural centres, are being closed down for some time. The financial risks associated with these closures are mostly being borne by the artists and cultural and creative professionals themselves. In particular, in small structures, artists often don't have financial liquidity to cover running costs, even with government support. When this support stops, they may not be able to start up again. Additionally, next to the current impossibility to present work, it is also, in many cases, not possible to produce work, with rehearsals and physical meetings also being cancelled. Moreover, international touring is currently on hold.

This study has shown that in regards to working conditions for artists and creative professionals:

- Those working in the sector are likely to have a **complicated employment status**, and are more likely to be self-employed, freelancers, employed short-term, or in a combination of employment and self-employment. Project-based work and **inconsistent work patterns** are a key feature of work for artists, and, cultural and creative professionals.
- A large number of artists and cultural and creative professionals are **self-employed**, which leads to precarious working conditions, including lack of regular income (periods of inactivity), relatively low average income levels, less access to social security compared to employees and unfavourable tax regulations, limited access to external finance and limited possibility for (continuous) vocational training, depending of the country. In 2019, 32% of workers in the cultural and creative sectors in the EU-27 were self-employed compared to 14% in the total workforce.
- The labour market situation of **employees** is characterised by a succession of temporary contracts, relatively low incomes compared to other sectors. Artists and creative professionals are in a situation where (over-)work tends to be required and/or expected, often without any additional remuneration.
- Many artists take **secondary jobs**, which can provide access to some degree of (social) security, but limit the time for artistic or creative endeavours. These jobs can be either within the cultural and creative sectors (CCS), or beyond.
- Lack of **collective bargaining practices** in the CCS contribute to poor job quality, low income and limited social protection, and focus normally only on employees and not on the self-employed.
- For certain **groups of artists** and creative professionals, in particular women, young people and disabled people, there is a higher likelihood of precarious working conditions.
- **Cross border mobility** is a common characteristic in the CCS. Although it brings about certain benefits (more working opportunities and thus more

possibilities to ensure a continuous income, international reputation...), it also entails important challenges, in particular in relation to social protection and taxation.

- Several Member States have **specific legislation** that provides some degree of (employment/professional) status to artists, aiming to provide access to social benefits, however this is less the case in other countries.
- **Freedom of artistic expression** remains a challenge, even in some EU countries. In the context of the current COVID-19 crisis, there are also concerns that civil liberties are under threat, which could be used to suppress artistic freedom.

## Recommendations

Based on the results of the study, recommendations are offered by the authors, based upon the research carried out in consultations with stakeholders. The recommendations are presented addressing/in order of the topics discussed in this report, and are directed at the European Commission, EU Member States and the sector itself.

General recommendations related to working conditions are presented, followed by recommendations relating to the cross border mobility of artists. Recommendations related to funding, career development and freedom of artistic expression are also provided.

In the final phase of this study, the COVID-19 pandemic reached Europe. Due to its strong impact on the CCS, this section starts with recommendations specifically related to policies developed to mitigate the impact of the COVID-19 pandemic and its consequences on working conditions of artist and cultural and creative professionals. It is important that a long-term perspective is taken, with a strategic focus on rebuilding the current frameworks in which artists and creative professionals function.

It needs to be **ensured that EU level and national funds are used to support the CCS** in the short term, medium and long term and that these funds quickly arrive to the ones that need them the most, in particular independent artists often living under precarious conditions. Sharing of good practice at different levels (EU, national, regional, local and stakeholder organisations) could help this process and highlight bottlenecks and success stories.

It is also important to **integrate culture and the arts into economic and social regeneration strategies** recognising their value for the well-being of citizens, as well as their power to unite people, even in times when it is impossible to come together physically.

The European Commission should collect and disseminate good practice and inform Member States of policies and measures that are available to those working in the CCS. Short-term policies to alleviate the negative impact due to the COVID-19 crisis on CCS that are or can be taken by local, regional and national authorities include:

- Continuation of the support programmes and grants. Provide guarantees that grants do not have to be paid back in case the output cannot be delivered due to the COVID crisis;
- Extra instalments for payments of grants, so that the money can be received fast to help bridge the negative impact of the COVID crisis;

- Delay, or entirely waive, rent payments for government-owned buildings used by cultural and creative organisations and incentivise private owners to do likewise;
- Creation of emergency and hardship funds for the cultural and creative sectors taken from other non-cultural budget lines especially dedicated to mitigating the consequences of the COVID-19 crisis; ensure that CCS get a fair share from general COVID funds both at EU and national/regional levels;
- Grant artists and cultural professionals access to unemployment payments and social benefits and compensate their losses caused by the COVID-19 crisis;
- Apply a maximum flexibility within different existing funding schemes, allowing beneficiaries to decide whether they should postpone, cancel or transform activities, and/or extend the cycle of the funded project;
- Support the initiatives which organisations, artists and cultural and creative professionals are developing to reach their audience digitally. This should however not replace regular subsidies for live creation, presentation and touring;
- Initiate a far-reaching debate on the current nature of the status of the artist with a view to ensuring sustainability of artists' careers, practices and activities, as well as artists' freedom of expression, social and financial recognition, and individual well-being.

In the future, it is important that the **implementation and impact of these measures is monitored and evaluated**. A situation such as the current COVID-related one in which policy makers provide support to the CCS sectors is unprecedented and the support is temporary. It offers, however, opportunities to assess which type of support is the most beneficial to the sector and which type of support has the most positive impact on the working conditions of artists and cultural and creative proposals.

### **General recommendations to improve the status and working conditions**

EU Member States and European institutions should **recognise the fundamental role culture plays within society** and should provide support for culture, cultural diversity and cultural rights, freedom of artistic and cultural expression, recognising its intrinsic value as well as its economic contribution. Member States and European institutions should therefore recognise the value of culture that is provided by artists and creative professionals with regards to social, economic and societal impact. It is important that Member States also take **measures to ensure fair working conditions** for artists and cultural and creative professionals.

**Policy makers and stakeholders should mitigate the effects on society where self-employment is becoming more and more prevalent** and standard employment relationships are changing, by taking the necessary measures to protect workers. As recommended by **EU Member States experts within the OMC group** on Innovation and Entrepreneurship in cultural and creative sectors: "**Ensure social protection for CCS professionals**: Policy frameworks designed to foster innovation in the cultural and creative sectors should make special provisions to enable all the professionals of these sectors to be creative and innovative. This can be done by ensuring that those who work on a project or other unconventional basis have access to appropriate employment rights and labour rights."<sup>331</sup>

<sup>331</sup> EU OMC report « The role of Public Policies in Developing Entrepreneurial and Innovation Potential of the Cultural and Creative Sectors (2018), <https://op.europa.eu/en/publication-detail/-/publication/5d33c8a7-2e56-11e8-b5fe-01aa75ed71a1/language-en/format-PDF/source-68820857>, page 38

Artists and professionals should be more involved in **dialogue between policy makers regarding working conditions and related policies**. It is highly important that self-employed artists and professionals (men and women alike) are involved in such dialogues. A bottom-up approach would ensure that the challenges faced in practice by artists and cultural and creative professionals are heard and considered and can lead to fresh insights and ideas.

**Member States need to ensure that organisations representing self-employed are included in sectoral dialogues.** Member States and representative organisations in the CCS should incentivise self-employed workers active in the sector to join national organisations and to inform them on the importance of participation. In addition, the **conflict between labour law rights and competition law should be resolved** so that all artists, including the self-employed, adequately enjoy freedom of association, the right to collective bargaining and the related beneficial outcomes.

Recently, there have been calls for a “**European Artists’ Status**”. For example, in its **Policy statement on the Cultural Recovery of Europe**<sup>332</sup>, IETM calls for an “**EU Framework for working conditions of artists and creative workers**: The measures, taken by European national governments to mitigate the impact of the COVID-related social distancing on the cultural sector, vary widely from country to country. Moreover, some Member States have no, or insufficient, legislative basis on the status of artists and various aspects of artists’ working conditions. This deepens the existing gaps between cultural communities across the EU and can hinder the pan-European cultural collaboration in the future. Therefore, the European institutions should launch a **European Framework for working conditions of artists and creative workers, providing a set of principles and recommendations**, which would trigger legislative and non-legislative activity at the Member States level, on most crucial issues related to socio-economic conditions of artists, such as contracts, taxes, wages, social benefits, mobility issues, and many more. Such a framework should be based on the recognition of the atypical nature of artists’ work and the acknowledgement that their situation requires improvement.”

On the 14<sup>th</sup> September 2020, a majority of the Members of the European Parliament adopted the Resolution on **Cultural Recovery of Europe**, which sets the vision on how the European institutions and the Member States should address the recovery of the cultural and creative sectors, and how culture can be a key driver in the recovery of Europe.<sup>333</sup> The Resolution highlights the social and intrinsic values of culture in addition to its economic assets, recognises the atypical nature of work in the cultural and creative sectors (specific economic models, mixed and irregular incomes, etc.) and the impact of the COVID-19 pandemic on the cultural sector. Furthermore, the text also looks into the social rights and working conditions of artist and vulnerabilities that were in place prior to the pandemic. Overall, the Resolution brings to the spotlight the urgent need to improve the working conditions of the people working in the cultural and creative sectors, and proposes the creation of a European framework for working conditions in the cultural and creative sector and industries, with a particular attention to transnational employment.

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<sup>332</sup> Policy Statement on the Cultural Recovery of Europe, IETM, 04-09-2020, available at: <https://mailchi.mp/15bb8995aaeb/life-off-stage-survival-guide-for-creative-arts-professionals-1236558?e=88bdbad6ff>

<sup>333</sup> European parliament, Joint motion for a resolution on the cultural recovery of Europe (2020/2708(RSP)), available at: [https://www.europarl.europa.eu/doceo/document/RC-9-2020-0246\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/RC-9-2020-0246_EN.pdf)

**Member States that have not done so should consider implementing legislation that accords some type of status to artists**, acknowledging the atypical way in which they work. The **advantages and disadvantages of applying specific laws and/or provisions should be shared among Member States**, both by those which implement them and those that do not. Member States, in the context of the upcoming OMC working group on artist working conditions, should discuss the different forms of support for artists, and consider their position to arrange and secure the most optimal working conditions for artists and professionals, both for nationals as well as for artists from other Member States. Different approaches to address this are applied across Member States, such as the “Intermittents du spectacle” model in France, or Ireland recognising a professional status for self-employed visual artists and writers within the existing social welfare system when actively looking for employment.

It is important that different models are shared as good practice and further discussed by **EU Member States expert groups under the Open Method of Coordination**. As concluded by Member States OMC experts in January 2020 during a stock-taking meeting, “improving the position of freelancers/nano-enterprises is generally recognised as a priority, but the best way forward remains to be found”. According to their survey, “policy-makers lack full clarity on which direction to take” and that further action was needed in policy areas beyond culture. The Member States experts suggested that “the upcoming OMC group should combine Ministries of Culture and Ministries of Employment in order to discuss artists’ working conditions and the future of work.”<sup>334</sup>

Regarding minimum wage, Member States should ensure that employees in the cultural and creative sectors earn a **minimum income** to be able to live from their work. This does not exist for self-employed, although some Member States are considering the possibility to introduce minimum hour rates for the self-employed. This does not guarantee that the self-employed have a minimum income to live from but only the intention that at least some fair minimum hourly rate is guaranteed. Other options discussed are the introduction of a basic income, so that each citizen has a minimum income to live from. Given the work of an artist, the provision of a **basic income** could be most relevant. Stemming from this:

- Member States should further **study the pros and cons of minimum hourly rates for the self-employed**. From 14 January to 25 February 2020, the European Commission held the first-stage consultation of social partners on a possible action addressing the challenges related to fair minimum wages. Replies were provided by 23 European social partners, representing workers’ and employers’ organisations.<sup>335</sup> On 3 June 2020 the European Commission launched the second-stage consultation with social partners, which ended on 4 September 2020. Minimum rates for the self-employed should be included in future consultations;
- **Member States and the European Commission should carry out an inventory of existing practices and examine together lessons learnt** from trials on universal basic income introduced in some Member States. This is particularly relevant in times of **the pandemic crisis**, when the shutting-down of cultural venues forces artists to discontinue performances;

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<sup>334</sup> [http://creativeflip.creativehubs.net/FINAL\\_EAC\\_19\\_213\\_CCis-2019-Brochure.pdf](http://creativeflip.creativehubs.net/FINAL_EAC_19_213_CCis-2019-Brochure.pdf)

<sup>335</sup> European Commission, Fair minimum wages: Commission launches second-stage consultation of social partners (2020), available at: First-stage consultation document: [https://ec.europa.eu/commission/presscorner/detail/en/fs\\_20\\_51](https://ec.europa.eu/commission/presscorner/detail/en/fs_20_51), Second-stage: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_979](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_979)

- An effort is needed to **reconcile competition law enforcement with the role of collective bargaining** as a tool to better protect self-employed workers in the sector.
- Many of the issues that are faced by artists and creative professionals are not unique to the cultural and creative sectors, and the increase in self-employment, freelancing and new forms of work is linked to the emergence of the platform economy. Member States should therefore **rethink access to basic social protection**, and a more global approach being the optimal solution. For example, certain rights linked to a person could be the same for everyone, regardless of the employment status. Another option would be to consider a statute which gives access to the same social protection as employees while allowing them to be self-employed;<sup>336</sup>
- Member States, cultural institutions and sectoral organisations should look into the **development of fair practice codes for the payment of artists** where these do not exist, and support existing fair payment codes and practices, which help to ensure that artists are fairly paid for their work. Institution directors and artist associations should play a role in reforming the system, to secure payments for artists and to ensure that they can continue to work and make a living. It should also be ensured that men and women are paid equally for equal work. The European Commission can contribute towards sharing and supporting such good practice and recommendations.

Some Member States have started to take initiatives for fair pay of artists and cultural professionals. Other countries prefer to speak about “fair practice”, rather than “fair pay” in order to go beyond salary and to link up to ‘good governance’ and policies for diversity and inclusion. Works are ongoing and should further be discussed at EU-level, including sharing of experiences and good practice.

Cultural employment data available at EU-level underestimate the true extent of cultural employment due to the difficulty in determining the cultural part of some economic activities and occupations which are only partially cultural (and therefore excluded from the estimations) and the lack of information on the possible secondary cultural jobs (only the main job of surveyed individuals is taken into account). The existing Eurostat cultural employment statistics are broken down into broad categories, not allowing insight into more specific sectors. For instance, “Arts, entertainment and recreation” is one aggregated section of economic activities of the classification NACE and does not provide details on music, theatre or ballet sectors. **Moreover, it is difficult to collect data on income/earnings in the cultural and creative sectors.** This makes it difficult to measure the full economic impact and dynamics of these sectors.

There should also be a support for initiatives and cooperation aimed at collecting relevant **gender-aggregated data** about the specific cultural and creative sectors. Particularly, gender-aggregated data should be collected in relation to earnings, types of employment, contractual relations (indefinite/fixed-term employment contracts versus self-employed) leading and decision-making positions, access to funding, participation in the mobility programmes etc.

More detailed statistics on employment and income in cultural and creative sectors will be important in informing relevant policies at both EU and national levels.

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<sup>336</sup> Sarah de Heusch, *l'accès à la sécurité sociale pour les travailleurs Atypiques* (2016), available at: <https://cultureactioneurope.org/files/2016/04/CAE-REFLECTION-PAPER-ON-RIGHTS.-REPORT-ON-SURVEY-2016.02.pdf>

Strong copyright provisions provide a means to ensure that artists are fairly compensated for their work. The 2019/790 Copyright Directive entered into force in 2019 and must be implemented into the national legislation of Member States by 7 June 2021. The swift and effective **implementation of the Copyright Directive is essential to ensure** the ability of creators to negotiate and be properly remunerated for the use of their works online. It would also significantly contribute to address some of the challenges that have been exacerbated by the COVID-19 related crisis.

### **Recommendations in relation to the cross border mobility of artists and cultural and creative professionals**

This study has shown that cross border mobility is an essential component of the careers of many artists and cultural and creative professionals within Europe. New challenges to mobility, in particular those related to COVID need to be considered in light of future support for mobility. Support to mobility cannot be achieved adequately by the Member States alone, which creates huge disparities of access among the Creative Europe countries, hence the need of an **operational framework to be supported at a European level and a longer term funding commitment**. Dialogue and action among Member States coordinated at EU level remains relevant and is necessary to tackle longstanding impediments and to remove administrative obstacles.

Member States should **recognise the value of cultural mobility** across the EU and beyond. Mobility of artists and creative professionals, as well as artistic works, contributes to the strengthening of shared cultural understanding, market development, innovation, and sustainable cultural practices. Therefore, **sufficient resources should be allocated to support the mobility of cultural workers and cultural works for all sectors within Europe and beyond**.

In the current situation around the COVID-19 crisis, when Member States are compiling emergency funds for the cultural sectors, they very often suspend mobility, touring and internationalisation funds and tend to cut down drastically on national schemes supporting mobility. Therefore, it is important that the EU continues to provide support for the mobility of cultural workers and cultural works following the COVID-19 pandemic.

Accurate and up to date information is key to facilitating mobility of artists and creative professionals within Europe. The production, regular updating and translation into all EU languages of **online guides and toolkits on obstacles to mobility** and related information is important, such as the ones produced by PEARLE (international cookbooks on VAT, social protection, taxation, visas etc.) and cultural mobility funding guides co-produced by "On the Move"<sup>337</sup>. However, as international cooperation implies a certain knowledge of a lingua franca among the collaborators leading to enhancing audiences, co-production and co-creation, the availability and distribution of this kind of information for example via the Creative Europe Desks could be enhanced.

Additionally, stakeholders indicate that **support for Mobility Info Points (MIP)** would help with providing the necessary information and support for Mobility. MIPs are organisations that within their main mission or part of their missions provide tailor-made information on administrative issues related to mobility.<sup>338</sup> These Mobility Info Points, members of the cultural information network On the Move, originate from the

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<sup>337</sup> See <https://www.pearle.eu/publications>

<sup>338</sup> On The Move, Mobility Information Points, available at: <http://on-the-move.org/news/article/19558/mobility-information-points/>

PRACTICS project first support by the European Commission in 2010-2011,<sup>339</sup> which has been discontinued. According to stakeholders, renewed support for these Mobility Info Points would allow:

- More exchange on good practice between mobility info points (working methodologies with the sector, with relevant national / regional administrations, ministries, and also on tools used to answer artists and cultural professionals' specific questions etc.);
- More regular updates provided to MIP professionals on legislative changes at European levels;
- More communication support for a web presence highlighting the different mobility info points that artists and cultural professionals in mobility can refer to in European countries;
- More support to train and inform the creation of new Mobility Info Points to cover all Creative Europe countries
- More means to collect data on the nature of the needs and questions of mobile artists/cultural professionals, the nature of the change of faced obstacles and the solutions provided that would be both highly useful at a national and of course European level;
- A leverage/complementarity between national support and EU funding that guarantees EU added value.

However, as experienced with the 2019 i-Portunus study, a model articulated around Intermediary Organisations (IO) selected through a call for proposals by the European Commission, would be best positioned to implement the European mobility scheme for the mobility of artists and culture professionals, while unlocking its European added potential in relation to the above-mentioned notions of values, solidarity, complementarity and ethics. Co-financed by Member States, in the same way as Creative Europe Desks, IO would be de facto Mobility Information Points, following the Mobility Information Standard framework to provide information based on a list of priority topics (regulatory, opportunities, resources) and adopting consistent guidelines on customised information on cultural mobility. Should such a scheme not prove possible due to budgetary restrictions, Creative Europe desks can also play a key role in supporting mobility, and therefore should continue to be provided the necessary information to give the necessary support. The 2020 i-Portunus final report noted that the advantages of a centralised management structure would allow for the inclusion of all Creative Europe countries in the mobility scheme, lower overhead costs, resulting in greater financial resources for mobility, and the strong position for synergies with other actions in the European Union.<sup>340</sup>

The success of the i-Portunus pilot means that this mechanism should continue to receive further support under the Creative Europe programme for 2021-2027. The budget for this action should be increased.

Equal access to mobility schemes and opportunities for male and female artists should also be ensured. Given that women's mobility is often impeded by family obligations, providing child caring services and facilities for mobile artists (men and women alike) would be an important step in this direction.

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<sup>339</sup> On The Move, Practics Infotools, available at: <http://on-the-move.org/practicsinfotools/>

<sup>340</sup> European Commission, Artists abroad: i-Portunus the EU's First Mobility Scheme for Culture (2020), available at: <https://op.europa.eu/en/publication-detail/-/publication/fb0d6926-b1d2-11ea-bb7a-01aa75ed71a1/language-en/format-PDF/source-138499746>

Atypical employment conditions in the CCS often mean that artists and creative professionals have less access to the **social security benefits** of salaried employees. Lack of information for artists and creative professionals regarding social security issues represents an obstacle for mobility. Many artists and professionals are not sufficiently familiar with EU rules and how coordination works. Existing online information pages are usually too general to be really helpful. National websites and information systems are therefore necessary, which prepare the EU regulations "tailor-made" for the needs of artists. Often, even artist organisations are not sufficiently informed about the EU regulations, sometimes not even sufficiently sensitised to these questions. The European Commission has developed an e-learning tool, the 'A-Z of coordination', which provides detailed explanations of the basic principles and functioning of the EU social security coordination regulations.<sup>341</sup> Within the e-learning tool, references to around 70 keywords are given and around 200 questions are answered.

Regarding **taxation**, the inability to deduct business expenses and income averaging are often cited as some of the most common challenges encountered. Artists and cultural and creative professionals often do not have the possibility of deducting business expenses in relation to their artistic activity, as such expenses are seen as relating more to leisure activities, and costs concerning equipment or training are not considered part of business expenses.

The taxation of **cross-border performances is another complicated issue that causes problems for artists and cultural professionals who wish to work internationally**, both in the country of performance and in the residence country. Article 17 of the OECD Model Convention has been taken over in most bilateral tax treaties to avoid practical difficulties, but in reality often creates practical problems such as double taxation and high administrative expenses. Member States should consider following the example from The Netherlands, Ireland and Denmark and **unilaterally exempt non-resident performers**. This would solve the issues of the non-deductibility of expenses in the country of performance, the difficulties in obtaining tax credits in the residence country, as well as high administrative expenses. The next best solution to be considered would be a minimum threshold for smaller performers, which is currently being used by the UK and the USA.

Finally, it should be noted that discussions are required regarding how mobility can be more sustainable, not only in terms of **environmental sustainability**, but also in terms of the careers of the artists. Mobility should not be carried out without reason but should be meaningful; leaving some long-lasting impact on local audiences, helping artists pursue their values and create a long-term added value. Hence, in order to reap the benefits, mobility needs to be targeted and strategically planned, instead of scattered, ad hoc, short-term initiatives.

### **Recommendations related to career development**

Both Member States and the European Commission should support initiatives and programmes that support entrepreneurship and the **development of the careers** of artists and creative professionals. Support should be provided for clusters, incubators, accelerators, creative hubs, networks, digital platforms, professional organisations, co-working spaces, creative labs, maker-spaces and fabrication labs. These structures should be at the core of the CCs ecosystem in order to maximize its impact. Policy

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<sup>341</sup> European Commission, E-learning tool, available at: <https://ec.europa.eu/social/main.jsp?catId=1142&langId=en>

instruments and funding schemes should take into consideration that the sector mainly consists of the self-employed or micro enterprises.

In addition to digital skills, it is important that artists have **opportunities to develop 'human skills'** that can encourage and help artists to strengthen community cohesion and feelings of belonging through art. Art and culture have the ability to bring people together through shared experiences. Therefore, when considering skills for the arts and culture, there must also be room for other types of skills such as community management and mediation in addition to digital and soft skills.

Continuous vocational training should be made available to male and female artists and cultural and creative professionals, allowing them to develop new skills both within the sector and outside of the sector. The latter is especially important in the context of retraining when it is no longer possible to continue a career in the CCS. More information and data are needed on the **training needs and career development** in the different sectors at national and EU-level. Stakeholders suggest that the Commission should support cooperation between skills councils in EU countries where they exist, and exchange of good practice.

Policies which seek **to balance the representation of men and women in organisations and positions** should be implemented. Not only do they encourage equal treatment but can also be useful as they help to broaden the perceptions which people, in and out of the CCSs, have regarding what are typically men's and women's occupations. Having more women leaders and women in positions classically held by men can help promote the role model effect and encourage other women to reach for areas and positions supposedly reserved for men. <sup>342</sup>

### **Recommendations in relation to funding**

This study has shown that having publicly available funding for artists and cultural and creative professionals is important, with public grants being considered the most effective means of funding in the CCS.

With regards to European and national funding, the European Commission and the Member States should continue their efforts **to simplify the process of applying for funding as well as the administrative processes once an application is approved**. Equal access to funding for female artists and those with special needs, should be promoted.

The European Commission should also consider the possibility of introducing a **special funding strand for smaller scale projects** and review the financial capacity checks for smaller organisations in order to make them eligible for pre-financing without a bank or third guarantee. **Auditing and self- or co-financing requirements should be further simplified** and the Commission should do more to reduce bureaucracy and administrative burdens for potential participants. The evaluation criteria should also provide room for experimentation, which is crucial to the arts.

The European Commission should **specifically fund projects aimed at research, residence, creation, rehearsing and training as part of supporting the development and innovations made within the sector**. Funding schemes could take

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<sup>342</sup> European Expert Network on Culture and Audiovisual (EENCA), "Gender Gaps in the Cultural and Creative Sectors" (2019), available at: <http://www.eenca.com/index.cfm/publications/gender-gaps-in-the-cultural-and-creative-sectors/>

inspiration from the i-Portunus project, whereby a small grant is provided to the artist in regards to a mobility project, where 70-80% is provided up front, and the final part is received at the end of the project. The Artists and cultural and creative professionals could highly benefit from smaller scale support to be able to experiment as this is central in the creative process.

Regarding the future of funding for culture at EU level, the ongoing budgetary discussions in the context of the multiannual financial framework (MFF) should ensure that funding for culture is not reduced. Sectoral organisations are already calling upon the European Commission and Member States to ensure that culture receives sufficient funding, both within the Creative Europe programme, as well as through national support schemes.<sup>343344</sup> In the case of an 'emergency' 2021 budget given the challenges in agreeing to the next EU budget during the current crisis, sufficient funding for culture should be continued, and if possible, increased given the impact of the COVID-19 crisis on the cultural and creative sectors and how this impacts the working conditions of artists.

### **Recommendations relating to freedom of artistic expression**

In its **Policy Statement on the Cultural Recovery of Europe**, IETM states: "As confinement measures have ceased artistic production and presentation, the capability of the artistic communities across the whole world to stimulate and feed critical reflection and socio-political engagements and debates have been drastically reduced. On top of that, in some of the Member States, the most critical and independent artistic voices have been deprived of emergency support and excluded from the long-term recovery plans. Therefore, the freedom of artistic expression must be high on the EU's agenda, and it should be a priority and a guiding value of the future Creative Europe programme."<sup>345</sup>

Recent research has shown that there are threats to the freedom of artistic expression and that this issue is becoming more apparent in Europe. Therefore, the European Union needs to **take measures to ensure that Member States meet their obligations to respect, protect and fulfil the right of every person to freedom of artistic expression and creativity**. It is important that all stakeholders (Member States, European institutions and the sector) take into consideration the recommendations provided in the recent Freemuse study 'The Security, Creativity, Tolerance and their Co-existence: The New European Agenda on Freedom of Artistic Expression', as well as the specific recommendations that were developed by Culture Action Europe and Freemuse on the state of artistic freedom in Europe.<sup>346</sup>

**Artistic freedom should be explicitly recognised within the broader framework of fundamental freedoms and freedom of expression, alongside media freedom.** The Commission should also strive to include in its publication of the annual report on

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<sup>343</sup> Culture Action Europe, : Effect of COVID-19 on Creative Europe and the European Cultural and Creative Sectors (2020), available at : <https://cultureactioneurope.org/files/2020/03/Effect-of-COVID-19-on-Creative-Europe-and-the-European-Cultural-and-Creative-Sectors.pdf>

<sup>344</sup> Culture Action Europe, Remaining together in times of crisis (2020), available at: <https://cultureactioneurope.org/files/2020/03/Remaining-together-in-times-of-crisis.pdf>

<sup>345</sup> Policy Statement on the Cultural Recovery of Europe, IETM, 04-09-2020, available at: <https://mailchi.mp/15bb8995aaeb/life-off-stage-survival-guide-for-creative-arts-professionals-1236558?e=88bdbad6ff>

<sup>346</sup> Freemuse and Culture Action Europe, The State of Artistic Freedom in Europe - Towards a New Agenda on Freedom of Artistic Expression: Specific Recommendations for the European Parliament, (2020), available at: [https://cultureactioneurope.org/files/2020/01/Artistic-Freedom\\_CAE-Freemuse-recommendations.pdf](https://cultureactioneurope.org/files/2020/01/Artistic-Freedom_CAE-Freemuse-recommendations.pdf)

the application of the Charter of Fundamental Rights an analysis on the state of artistic freedom within the framework of freedom of expression.

Member States should ensure that **all relevant legislation is brought in line with international obligations**, particularly for artists from vulnerable and already marginalised groups, such as women, minorities and LGBTI groups. Restrictions should be justified in accordance with provisions within the law, ensure that they serve a legitimate aim, and be proven necessary for the protection or promotion of the legitimate aim, according to Article 19(3) of ICCPR. Additionally, they should encourage a plural and diverse political environment by strengthening the mandates of relevant cultural institutions and entities to maintain their independence, as well as ensure transparency in decision making, ensuring that these bodies are overseen by independent cultural institutions and entities to check upon the potential misuse of power. Civil society organisations and other relevant stakeholders working in the field of freedom of expression and artistic freedom should be involved in consultations prior to the drafting and submission of Quadrennial Periodic Reports (QPR) to UNESCO. The European Union Agency for Fundamental Rights should also be given a mandate to investigate violations of freedom of artistic expression.

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## 11 About the authors

### Jacqueline Snijders



Jacqueline Snijders studied international monetary economics at the University of Tilburg. She started at Panteia (former EIM Business & Policy Research) in 1988. At Panteia, Jacqueline is responsible for the international projects carried out in social and economic field. For more than 25 years Jacqueline has managed and carried out a large number of national and international research and consultancy projects covering the European Union.

Subjects included are entrepreneurship, SMEs, self-employment, employment and social security, finance, innovation, export, diversity and internationalisation.

During the last years she among others has worked on projects on working conditions and on projects on the cultural and creative sectors both for the European Commission including its agencies. In 2018 for example she supervised and participated in the Impact assessment 'sub-programme for culture' of the successor programme to the Creative Europe programme 2014-2020. She has finished the study on "The situation of the circus sector in the EU Member States", and at present she is project leader of the Feasibility study on a European Music Observatory. In 2019, she was one of the rapporteurs of the DG EAC Prague Platform on 'Cultural Heritage in the Digital Age, 2019 during which solution-oriented proposals were developed by local, regional, national and international stakeholders.

In 2013, 2016 and 2019, Jacqueline is appointed as Director of the European Network for Social and Economic Research (ENSR). The network consists of members in all EU Member States, together with members in Norway, Iceland, Switzerland (covering also Liechtenstein), and the United Kingdom.

### Martin Clarke



Martin Clarke holds a master's degree in European Law from the University of Maastricht. Through his studies, Martin is knowledgeable in areas such as employment law, cross border mobility and the internal market, as well as aspects of copyright law. At Panteia, Martin has carried out several studies in relation to European culture, and he is an assistant coordinator of the European Expert Network on Culture and Audiovisual (EENCA). He

has contributed to a number of studies in the field of culture, including subjects such as cultural heritage, as well as sectoral studies on the theatre sector, the music sector and the circus sector. Martin is currently involved in the Music Moves Europe studies on the feasibility of a European Music Observatory and on market trends and gaps in funding needs for the music sector. He also was a leading contributor to an impact assessment on the implementation of a 'sub-programme for culture' within a successor programme to the Creative Europe programme 2014-2020.

In addition to work in the cultural sectors, Martin has also contributed to studies relevant to working conditions for agencies of the European Union, such as the Improvement of Living and Working Conditions (Eurofound) and the European Agency for Health and Safety at Work (EU-OSHA). For instance, he has conducted representativeness studies in several sectors for the Eurofound, and has contributed to projects relating to musculoskeletal disorders for EU-OSHA.

### **Amber van der Graaf**



Amber van der Graaf has been working at Panteia since early 2012 where she works primarily on international studies. She has an interdisciplinary academic background, combining the areas of politics, media, international relations and culture. Projects have included studies on social policy relating to working life and work-life balance, education, sports and culture, as well as studies on (inclusive) entrepreneurship, media and communications. She has worked on a European evaluation of provisions of the Audiovisual Media Services Directive, and has also conducted the study for the European Parliament on Communicating Europe to its Citizens, which had a strong communication and cultural component in order to explore the concept of "Europe". Amber works on areas relevant to DG EAC's activities, including two studies for the European Parliament, on early school leaving and the Erasmus+ programme, as well as a study on gender gaps in the cultural and creative sectors.

### **Valerio De Stefano**



Valerio de Stefano is the BOF-ZAP Research Professor of Labour Law at the Institute for Labour Law and the Faculty of Law of the University of Leuven. Valerio works on labour and technology. His current research focuses on Artificial Intelligence, People Analytics and the workplace as well as platform-based work in the gig-economy. From 2007 to 2014 he worked in the employment practice of Freshfields Bruckhaus Deringer. In 2011, he was awarded a PhD in Law of Business and Commerce from Bocconi University (Milan). From 2014 to 2017, he was an officer of ILO, the International Labour Organization, where he did research on non-standard forms of employment. Valerio has published extensively in peer-reviewed journals and edited several volumes on labour and employment law. From 2017 he holds a chair in Leuven where he coordinates a group of 3 junior researchers working on new forms of work and manages several grants awarded by national and European research institutions. He has been consultant for the ILO, several EU institutions, and national governments.

### **Frank Kimenai**



Frank Kimenai is an independent cultural professional and consultant, specialised in performing arts in general and music in particular. He holds a masters degree in ecology, which trained him in system analysis. A very welcome skill in the dynamic ecosystem that is the cultural and creative industry. Frank operates from Amsterdam, and is involved in both European, national and regional projects. On a European level, he is currently consulting the Dutch sector about the possibilities of Creative Europe funding and he is involved as an expert in the development of Music Moves Europe, the European Commission's initiative to support the European music sector. On a national level, Frank participates in numerous projects, varying from setting up projects for emerging musicians to consulting the Dutch Performing Arts Fund. Frank started his career as a musician and organiser of DIY shows, became a promoter in one of the biggest music venues of the Netherlands, founded several companies and eventually started his own international booking and management agency. His vast experience in the music business translates into being a regular panel member, speaker and moderator at music conferences, such as Eurosonic, SXSW, ByLarm, ILMC and many more. Next to that,

Frank is a board member of several non-profits and cultural organisations like the Welcome to the Village festival and the Academy for Pop Culture.

### **Mária Tajtáková**



Mária Tajtáková is a leading Slovak expert in arts marketing and audience development. Her expertise encompasses also the field of cultural tourism, culture-led urban and regional development, and cultural sustainability. She graduated from the University of Economics in Bratislava and the Academy of Arts in Banská Bystrica (Slovakia). She did her PhD. in arts marketing (2005) and she was promoted to associate professor based on her works on audience development strategies in the performing arts (2009). Currently she works in the field of culture as a researcher, instructor, manager and active performer. She is associate professor at the School of Management/City University of Seattle in Slovakia. Besides, she is manager of non-for-profit organisation ARS IUVENTUTIS dealing with research studies within culture and the career development of young artists. She is also experienced with European projects, namely as project manager of the EU project KULT-TOUR CENTRE (Interreg IIIA) intended to enhance cross-border cultural tourism between Slovakia and Austria, and as evaluator (member of the international evaluation team) within the ex-post evaluation of the EU project European Capital of Culture – Košice 2013. Prior to her current position she worked as marketing manager of Opera and Ballet of the Slovak National Theatre, consultant of the Slovak Ministry of Culture and senior researcher at the National Centre for European and Global Studies of the Slovak Republic.